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

[2025] SGHC 143

Suit No 942 of 2021

Between

(1) Envy Asset Management Pte Ltd (in liquidation)
(2) Envy Management Holdings Pte Ltd (in liquidation)
(3) Envy Global Trading Pte Ltd (in liquidation)
(4) Bob Yap Cheng Ghee
(5) Tay Puay Cheng
(6) Toh Ai Ling

… *Plaintiffs*

And

(1) Ng Yu Zhi
(2) Lee Si Ye
(3) Ju Xiao
(4) Cheong Ming Feng

… *Defendants*

JUDGMENT

[Civil Procedure — Affidavits — Affidavit of evidence-in-chief]
[Companies — Directors — Duties]
[Companies — Directors — Dividends]
[Damages — Joint and several liability]
[Debt and Recovery — Right of set-off]

[Evidence — Witnesses — Privilege]
[Insolvency Law — Avoidance of transactions — Intent to defraud]
[Insolvency Law — Avoidance of transactions — Transactions at an undervalue]
[Insolvency Law — Avoidance of transactions — Unfair preferences]
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[Tort — Conspiracy — Unlawful means conspiracy]
[Trusts — Accessory liability — Dishonest assistance]
[Trusts — Accessory liability — Knowing receipt]

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v
Ng Yu Zhi and others

[2025] SGHC 143

General Division of the High Court — Suit No 942 of 2021
Mohamed Faizal JC
30 July, 1–2, 6–8, 13–15, 20 August 2024, 4 February, 11 March 2025

29 July 2025 Judgment reserved.

Mohamed Faizal JC:

Introduction

1 This suit is the latest instalment of civil proceedings as a result of the fallout from the largest Ponzi scheme in Singapore's history: a nickel-trading fraud that resulted in the solicitation of over S$1.5bn of funds to perform allegedly highly profitable investments.[1] As it turned out, these investments simply did not exist.

2 This judgment is one of two related judgments that I am issuing concurrently, arising from back-to-back trials brought by the liquidators of the insolvent entities used to facilitate the fraud. The other judgment is *Envy Asset Management Pte Ltd (in liquidation) and others v Lau Lee Sheng and others*

[1] Transcript (30 July) at p 11 lines 22–25.

[2025] SGHC 144, which arises from Originating Claim 193 of 2022 ("OC 193"). These insolvent entities comprise three distinct companies which will be described later in greater detail. I will collectively refer to the three entities as the "Envy Companies". The proceedings that are the subject of this judgment are taken by the liquidators of the Envy Companies against three defendants in particular (collectively, the "Defendants"):

(a) Ms Lee Si Ye (the "Second Defendant");

(b) Mr Ju Xiao (the "Third Defendant"); and

(c) Mr Cheong Ming Feng (the "Fourth Defendant").

3 The intended first defendant in this case, the apparent protagonist and mastermind of the entire Ponzi scheme, was Mr Ng Yu Zhi ("NYZ"). However, NYZ was adjudged bankrupt after a partial summary judgment for some S$416.4m and US$17.6m was obtained against him after the present suit commenced.[2] These sums represent a series of illegitimate transfers made by NYZ from the Envy Companies' bank accounts to himself.[3] Thus, NYZ is no longer a defendant as no leave was sought, and therefore no permission was obtained, to include him in these proceedings. Nonetheless, as the Plaintiffs have not sought leave to amend their statement of claim, NYZ is still named in the title of this action. NYZ remains a witness in this case and his evidence on the matter will be addressed in due course. In light of the fact that he is no longer a party in this case, none of my findings should be seen as binding on him or otherwise reflective of his culpability for the purposes of any other proceedings.

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2 HC/ORC 3010/2022 filed on 14 June 2022.

3 Mr Bob Yap Cheng Ghee's affidavit of evidence-in-chief dated 3 June 2024 ("Yap's AEIC") at para 3.7.1.

4 The plaintiffs in this case allege that the Defendants all played key roles in perpetrating the Ponzi scheme. Consequently, the Defendants breached their respective duties and responsibilities owed to the Envy Companies. The respective claims made against each of these individuals will be discussed very shortly, but the primary head of claim relates to what the plaintiffs term the "Minimum Net Principal", a phrase that will be described in some detail in this judgment.

Background

The Purported Nickel Trading

5 The six plaintiffs are as follows, comprising the Envy Companies and the three joint and several liquidators of these entities (the "Plaintiffs"):

(a) Envy Asset Management Pte Ltd ("EAM");

(b) Envy Management Holdings Pte Ltd ("EMH");

(c) Envy Global Trading Pte Ltd ("EGT");

(d) Mr Bob Yap Cheng Ghee;

(e) Mr Tan Puay Cheng; and

(f) Ms Toh Ai Ling.

6 The first plaintiff, EAM, was incorporated in Singapore on 8 October 2015.[4] From in or around 2015 to April 2020, EAM purported to engage in the business of physical nickel trading (the "Purported Nickel Trading"). EAM did so by purporting to purchase quantities of London Metal Exchange ("LME") Nickel Grade Metal ("Poseidon Nickel"), from an Australian company known

[4] Yap's AEIC at para 2.1.1.

as Poseidon Nickel Limited ("Poseidon"). EAM represented to its investors that, pursuant to a distributorship agreement with Poseidon that was renewed on a periodic basis, EAM was able to purchase Poseidon Nickel at a discounted rate compared to the average LME nickel spot price.[5] Consequently, EAM purported to sell the Poseidon Nickel at a higher price to third party buyers such as China MinMetals Corporation ("China MinMetals") and BNP Commodity Futures Limited ("BNP Commodity").[6] On top of the Purported Nickel Trading, EAM also purported to have purchased aluminium from Meikles EC ("Meikles") and sold the same to China MinMetals.[7]

7 Potential investors were offered the opportunity to profit from the Purported Nickel Trading by entering into Letters of Agreements ("LOAs") with EAM. The LOAs entered into between the investors and EAM provided for investments on the following terms:

(a) The investors would provide an investment amount to EAM to be used "solely for investment in LME Nickel Grade Metal" or "solely for investment in LME Grade Nickel Concentrates" for a three-month term. In certain cases, investors would commit to multiple consecutive three-month tranches upfront.[8]

(b) When the LOA matured, EAM would be liable to pay the investor the "Investment Amount" and any "Appreciation", which was defined to mean the fair market value of "each liquid asset of [EAM] at any given time after the date of [the LOA]" minus the fair market value

5 Yap's AEIC at paras 2.1.1 and 3.1.2.

6 Yap's AEIC at para 3.1.3.

7 Yap's AEIC at para 3.1.4.

8 Yap's AEIC at para 3.1.6.

"of each liquid asset of [EAM] as of the date of [the LOA]" or the "date of acquisition of such asset" after the deduction of stipulated fees.[9]

(c) EAM typically guaranteed that investors "will receive a minimum equivalent to 85%" of their invested principal upon maturity of the LOA.[10]

(d) After the LOA matures, investors have the option of: (i) fully or partially withdrawing their returns; or (ii) rolling over any returns into a new LOA.[11]

8 On or around 19 March 2020, the Monetary Authority of Singapore ("MAS") placed EAM on its Investor Alert List to "highlight that EAM may have been wrongly perceived as being licensed by MAS", as MAS received "public feedback that EAM had told [its investors] that it was in the process of applying for a license from MAS, when in fact no such application had been submitted".[12]

9 Following MAS's actions, the Envy Companies were restructured. The third plaintiff, EGT, was incorporated in Singapore on 10 December 2019. From in or around April 2020, EAM's business of Purported Nickel Trading was transferred to and conducted by EGT.[13] The second plaintiff, EMH, was incorporated in Singapore on 18 June 2020 as the sole shareholder of EGT.[14]

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9 Yap's AEIC at para 3.1.7(d).

10 Yap's AEIC at para 3.1.7(a).

11 Yap's AEIC at para 4.10.2.

12 Yap's AEIC at para 3.2.1.

13 Yap's AEIC at para 3.3.1.

14 Yap's AEIC at para 2.1.2.

10 From April 2020 to around March 2021, EGT continued the business of the Purported Nickel Trading. However, instead of LOAs, investors invested into the business by entering into Receivables Purchase Agreements ("RPAs") with EGT. RPAs were essentially the new form by which EGT would procure investment in the Purported Nickel Trading,[15] but they differed from the LOAs in the follow manner:

(a) The investor would purchase a receivable under a "Forward Contract", *ie*, the investor may purchase EAM's or EGT's right to payment from a "Forward Buyer" of Poseidon Nickel.[16] The investor's payment was referred to as the "Sale Price", which would entitle the investor to a portion of the "Total Receivable" that EAM or EGT would be entitled to from the Forward Buyer.

(b) EGT also represented that BNP Paribas SA and Raffemet Pte Ltd ("Raffemet") were Forward Buyers in addition to BNP Commodity.[17] I will refer to BNP Commodity and BNP Paribas SA collectively as "BNP".

11 Apart from these relatively superficial differences, the RPAs as an investment modality were largely the same as their predecessors, the LOAs. In particular, similar to the LOAs, the RPAs typically guaranteed at least 85% of the investor's principal or "Sale Price". Investors were also similarly given the option of paying for the receivable under the RPAs by rolling over their invested principal and returns under the LOAs.[18]

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15 Yap's AEIC at para 3.3.3.

16 Yap's AEIC at paras 3.3.4–3.3.5.

17 Yap's AEIC at para 3.3.8.

18 Yap's AEIC at para 3.3.6.

The incorporation of Envysion

12 There is another group of companies that is relevant to these proceedings and which NYZ was involved in setting up. I will refer to these companies collectively as "Envysion":

(a) Envysion Wealth Management Pte Ltd ("Envysion Wealth") was incorporated on 17 April 2019 as an "independent asset manager" for high net worth and accredited investors.[19] Envysion Wealth was licensed as a fund manager by MAS on or around 6 November 2019.[20]

(b) On 14 October 2019, Envysion Holdings Pte Ltd was incorporated as a holding company of Envysion Wealth.[21]

(c) On 7 April 2020, Envysion Global Investments VCC ("Envysion VCC") was incorporated. Envysion VCC was a fund managed by Envysion Wealth as its fund manager. Envysion VCC later formed the Envysion Commodity Strategy Fund ("ECSF").[22]

13 It is alleged that Envysion Wealth's status as a fund manager licensed by MAS was leveraged on by NYZ to give the impression that the Purported Nickel Trading was genuine.[23] NYZ and/or EAM introduced Envysion Wealth as a company "related" to the Envy Companies.[24] However, in reality, Envysion was not actually part of the shareholding structure of the Envy Companies.

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19 Yap's AEIC at paras 3.4.1 and 3.4.10; and Core Bundle of Documents dated 17 July 2024 ("Core Bundle") vol 9 at pp 941–942.

20 Yap's AEIC at para 3.4.1.

21 Yap's AEIC at para 3.4.1.

22 Yap's AEIC at para 3.4.2.

23 Yap's AEIC at para 3.4.9.

24 Yap's AEIC at paras 3.4.4 and 3.4.10.

Nonetheless, from in or around February 2020, promotional material circulated by the Envy Companies represented that Envysion was part of the wider Envy group and had a Capital Markets Services License ("CMS License") from MAS.[25]

14 From in or around May 2020 to February 2021, Envysion Wealth and ECSF invested approximately S$56.5m and US$15.4m of their funds received from investors into the Purported Nickel Trading by way of RPAs entered into with EGT.[26]

The winding up of the Envy Companies

15 On 22 March 2021, the Commercial Affairs Department ("CAD") announced that it had preferred charges against NYZ for cheating and fraudulent trading. Since then, at least 106 charges have been framed against NYZ for various offences linked to his involvement in the Ponzi scheme.[27] At the time of this judgment, the criminal trial against NYZ is ongoing.

16 On 15 April 2021, the Envy Companies filed applications to be placed under judicial management. Subsequently, on 27 April 2021, interim judicial managers ("IJMs") were appointed over the Envy Companies.[28] The IJMs were tasked to investigate and independently verify the financial affairs of the Envy Companies.[29] On 25 May 2021, the IJMs issued an IJM report which concluded that the Envy Companies' Purported Nickel Trading was "non-existent", that

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25 Yap's AEIC at para 3.4.11.

26 Yap's AEIC at para 3.4.16.

27 Yap's AEIC at para 3.5.5.

28 Yap's AEIC at para 3.6.3.

29 Yap's AEIC at para 1.3.2.

the "documents presented to [the IJMs] in support of the Purported Nickel Trading were forgeries", and that "[n]one of the purposes of a judicial management as set out in section 89(1) of the [Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA")] can be achieved".[30]

17 On 2 July 2021, the IJMs applied to place the Envy Companies in compulsory liquidation. The court allowed the applications and appointed the liquidators on 16 August 2021.[31]

The Defendants

18 Now that I have contextualised the modality of the Purported Nickel Trading, I turn to the Defendants and their involvement in the Envy Companies. NYZ was the founder of the Envy Companies. He held at least 80% to 90% of the ordinary shares of the Envy Companies, and was appointed a director of EAM on 8 October 2015 as well as a director of EGT from 10 December 2019 until his resignation on 31 March 2021.[32] It is undisputed amongst the parties before me that NYZ was the protagonist of the Envy Companies. As alluded to above, NYZ was adjudged a bankrupt and, as no leave had been sought to continue these proceedings against him, is technically no longer a defendant in these proceedings.

The Second Defendant

19 The Second Defendant, Ms Lee Si Ye, held the remaining 10% to 20% of the ordinary shares in the Envy Companies. She was appointed as a director in the Envy Companies in the following manner: (a) as a director of EAM on

30 Yap's AEIC at para 3.6.4.

31 Yap's AEIC at para 3.6.5.

32 Yap's AEIC at para 2.2.1.

12 November 2015 until her resignation on 2 June 2021; (b) as a director of EGT on 13 April 2020 to date; and (c) as a director of EMH from 18 June 2020 until her resignation on 2 June 2021.[33]

20 The Second Defendant was a trained accountant who came to know NYZ during the course of her past employment as an auditor.[34] During the Second Defendant's employment with the Envy Companies, she was directly responsible and had oversight over the Envy Companies' "back-office functions", which included the following responsibilities and work:

(a) The accounting of the Envy Companies, including but not limited to, the preparation of audit schedules, cash flow statements, balance sheets, profit and loss statements, management accounts and/or unaudited financial statements. As I will go into further detail later, it is the Second Defendant's broad case that she did the accounting of the Envy Companies based on the information and documentation provided by NYZ, *ie*, she was not aware of the fraudulent nature of the Purported Nickel Trading.[35]

(b) The provision of the template agreements to be used as the LOAs.[36]

(c) The updating of the excel investment trackers which were used to record the flow of funds between the Envy Companies and investors (the "Investment Trackers"). The Second Defendant populated the

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33 Yap's AEIC at para 2.3.1; Transcript (1 August) at p 12 line 25 to p 13 line 14.

34 Ms Lee Si Ye's defence dated 28 January 2022 ("Lee's Defence") at para 7(1).

35 Transcript (1 August) at p 19 lines 7–14.

36 Transcript (1 August) at p 26 line 1 to p 27 line 25.

trackers herself before 2017. Subsequently, a team of support staff under the Envy Companies took over. Nonetheless, the Second Defendant retained access to the Investment Trackers.[37]

(d) Calculation of the commission, salaries, bonuses and the share of the companies' profits to be paid to employees.[38] I will discuss these payments and what they entail in greater detail at a later point, as the Plaintiffs are seeking to claw back some of these payments from the Defendants.

(e) Prior to 2017, the Second Defendant would personally send monthly market outlook updates and investment reports to investors. From 2017 onwards, the Second Defendant would occasionally assist the client management team to send out such updates or reports if they were shorthanded,[39] but she continued to be copied in these communications and retained oversight over these updates. These updates included a personalised spreadsheet of the purported profit and loss of each investor's own investment in the Envy Companies, and a market outlook report that purported to track trends in the nickel market.[40]

(f) Finally, the Second Defendant was one of the two authorised signatories (the other party being NYZ) of various bank accounts owned

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37 Lee's Defence at para 7(4)(e); and Transcript (1 August) at p 29 lines 12–18 and p 33 lines 6–16.

38 Transcript (1 August) at p 41 lines 6–20.

39 Lee's Defence at para 7(4)(g).

40 Yap's AEIC at paras 2.3.10 and 2.3.11.

by the Envy Companies.[41] Transactions above S$200,000 required two signatures.[42]

The Third Defendant

21 The Third Defendant, Mr Ju Xiao, was, prior to his involvement in the Envy Companies, employed as a treasury and finance manager, and also a trading manager, by a company that traded physical metals including copper and nickel. On 10 December 2019, the Third Defendant was appointed as a director of EGT, before his resignation on 16 November 2020. The Third Defendant was also the "Head of Trading" of the Envy Companies from 2 December 2019 to 17 May 2021, when the IJMs were appointed.[43]

22 The Third Defendant only reported to NYZ.[44] According to the Third Defendant, his work revolved around proprietary trading of various financial products, including foreign exchange contracts for differences, options and fixed-income bonds.[45] In relation to the Purported Nickel Trading, the Third Defendant averred that he was only involved in the purchase and re-sale of nickel to Raffemet between August and September 2020 (the "Singapore Nickel Shipment"). I discuss this incident in further detail below (at [27]–[30]).

The Fourth Defendant

23 The Fourth Defendant, Mr Cheong Ming Feng, was a "Business Administrative Executive" and/or "Client Support Associate" in the Envy

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41 Yap's AEIC at para 5.4.1.

42 Transcript (1 August) at p 101 lines 2–6; and Transcript (6 August) at p 33 lines 1–4.

43 Yap's AEIC at para 2.4.1; and Transcript (6 August) at p 78 line 20 to p 79 line 18.

44 Transcript (6 August) at p 80 lines 23–25.

45 Yap's AEIC at para 7.6.2; and Core Bundle vol 3 at p 107.

Companies from 16 May 2017 to 30 April 2021.[46] He reported to NYZ, the Second Defendant and also another employee known as Ms Shen Xuhuai, who is a witness in these proceedings and also a defendant in the other trial that had taken place before me involving the Envy Companies (*ie*, OC 193). The Fourth Defendant's work was mainly administrative, and included the following:[47]

(a) filling in the investors' personal details and invested amounts into the unsigned, pre-prepared LOAs and RPAs and sending these documents to the various investors *via* email for their execution;

(b) sending prospectuses and/or fact sheets about the Envy Companies to potential and actual investors;

(c) preparing monthly statements to the investors and responding to potential investors' or investors' queries based on the information and figures obtained from the Investment Trackers;

(d) selling the physical nickel; and

(e) conveying instructions from NYZ to one Mr Heng Yong Hui ("Heng") for certain documents to be forged.

24 It is undisputed that the Fourth Defendant conveyed NYZ's instructions to Heng to prepare certain forged documents,[48] though the Fourth Defendant denies any actual knowledge of the Ponzi scheme. These forged documents were shown to, amongst others, employees of the Envy Companies and/or

46 Yap's AEIC at para 2.5.1.

47 Mr Cheong Ming Feng's affidavit of evidence-in-chief dated 3 June 2024 ("Cheong's AEIC") at para 20.

48 Cheong's AEIC at paras 30–34.

potential investors of the Purported Nickel Trading. Briefly, these forgeries involving the Fourth Defendant include: (a) the forgery of internet banking screenshots (the "IB Screenshots") with United Overseas Bank Pte Ltd ("UOB"); (b) forged trading statements issued by BNP to EAM purporting to record nickel trades made by EAM (the "BNP Statements"); and (c) forged shipping documents relating to the purported purchase of Poseidon Nickel (the "Shipping Documents").

The IJMs' and liquidators' investigations

25 I now summarise the key findings by the IJMs and the liquidators which were relied on in their conclusion that the Purported Nickel Trading was non-existent and propped up by forgeries.

The Envy Companies never transacted with Poseidon

26 It is undisputed that the Envy Companies never purchased any Poseidon Nickel. All contracts and documents purporting to represent any such arrangement between the Envy Companies and Poseidon were forged or fabricated. Indeed, it appears that the first time NYZ reached out to Poseidon to inquire about the purchase of physical nickel was 1 November 2019, even though the Purported Nickel Trading was represented to have been ongoing since 2016 at least.[49] On 4 May 2021, Poseidon informed the IJMs that it had "no business relationship (current or historic)" with the Envy Companies and further stated:[50]

> Poseidon has been made aware of possible fraudulent trading offences under Singaporean Law involving the Envy Entities and the purported sale of nickel products by Poseidon. *Any contract(s) purported to be entered into between the Envy Entities*

[49] Yap's AEIC at para 4.1.3–4.1.5.

[50] Yap's AEIC at para 4.1.7.

> *and Poseidon are not authentic and have no legal substance. In fact, Poseidon has had no production or sales since its incorporation.*
>
> [emphasis added]

The Envy Companies' transactions with Raffemet

The Singapore Nickel Shipment

27 Investigations also revealed that Raffemet did not conduct any transactions with the Envy Companies, save for an isolated shipment of nickel that I will refer to as the "Singapore Nickel Shipment". This particular shipment involved the purchase of approximately 2969.26 metric tonnes of primary nickel briquettes by EGT from Raffemet in August 2020. The *same* nickel that constituted the Singapore Nickel Shipment was then *re-sold* back to Raffemet between August to September 2020.[51] These were the only transactions that had ever actually occurred between EGT and Raffemet. In other words, Raffemet was never a Forward Buyer in any sense.[52]

28 The Singapore Nickel Shipment comprised nickel that had been sitting around in Steinweg Warehouse (FE) Pte Ltd ("Steinweg Warehouse") from sometime in 2016 to 2018.[53] However, it was falsely represented to investors that the Singapore Nickel Shipment was Poseidon Nickel that the investors had recently invested into in 2020. On 24 August 2020, prior to the re-sale of the nickel back to Raffemet, a physical inspection of the Singapore Nickel Shipment was conducted and recorded on video (the "Inspection"). The

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51 Yap's AEIC at para 4.2.14.

52 Yap's AEIC at para 4.2.6.

53 Yap's AEIC at para 4.2.13; Core Bundle vol 7 at pp 1131–1136.

Inspection was broadcasted *via* Zoom, and video-links to the Inspection were circulated to investors.[54]

29 Sometime in February or March 2021, after CAD commenced its investigations and froze the Envy Companies' bank accounts, a video recording of the Inspection was featured in a live webcast with around 382 investors in attendance. In the webcast, NYZ stated that "[t]he video [of the Inspection] shows the team conducting a stock count on the actual nickel briquettes that you invested in late last year. We were in a 3rd party, Steinweg warehouse in Tuas for the stock take".[55] The webcast was held by NYZ to assure investors that the team intended to "meet [their] obligations" to the investors.[56] These webcasts had its intended effect (of clothing the Ponzi scheme with continued legitimacy): after the inspection of the Singapore Nickel Shipment, the Envy Companies received approximately a further S$472,216,712 in fresh funds from investors.[57]

30 It is clear to me that the Singapore Nickel Shipment was an attempt to assure investors of the legitimacy of the Purported Nickel Trading and to obtain fresh funds from investors. The procurement of the Singapore Nickel Shipment was also in response to a request from Envysion's staff for the "relevant shipping docs, payment invoices, and hedging transactions for each month going back to the start of [2020]" for the purposes of due diligence.[58] I will explain this in further detail later when considering the Third Defendant's role

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54 Yap's AEIC at para 4.2.16.

55 Core Bundle vol 4 at p 859; and Plaintiffs' native documents CB-319 – LIQ0000004028.

56 Core Bundle vol 4 at p 859.

57 Yap's AEIC at para 4.2.21.

58 Yap's AEIC at para 4.2.8.

in the Ponzi scheme, his close involvement in the procurement of the Singapore Nickel Shipment, and his awareness of its fraudulence.

The forged Forward Contracts

31 The liquidators identified four Forward Contracts by which EGT purported to sell nickel to Raffemet, which were provided to Envysion by NYZ for due diligence purposes. The WhatsApp correspondence between NYZ and the Third Defendant revealed that NYZ instructed the Third Defendant to prepare these Forward Contracts and provided the details to be included in the contracts such as the amount of nickel purchased, the "sell price", the date of the contract and its expiry. The Third Defendant complied with these directions.[59]

The Envy Companies never transacted with BNP

32 In June and July 2021, BNP similarly informed the IJMs that, contrary to the Envy Companies' representations of their business with BNP, BNP Commodity had ceased operations since February 2019 and BNP Paribas SA did not have any dealings with the Envy Companies.[60]

33 However, despite the above, the Envy Companies purported to have in their possession the BNP Statements, *ie*, 22 trading statements issued by BNP to EAM purporting to record nickel trades made by EAM on the LME. These were indisputably forged.[61] The correspondence between the parties revealed

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59 Yap's AEIC at paras 4.2.22–4.2.30.

60 Yap's AEIC at para 4.3.3.

61 Yap's AEIC at paras 4.3.4 – 4.3.9.

that, on NYZ's instructions, the Fourth Defendant and Heng would digitally revise the terms of a sample document to produce the BNP Statements.[62]

The Envy Companies never transacted with China MinMetals

34 It was similarly represented to investors that China MinMetals was a Forward Buyer. EAM's prospectus which was provided to investors represented that there were previous sales of nickel and aluminium to China MinMetals. However, the liquidators were unable to identify any inflow of funds from China Metals to EAM or any of the Envy Companies.[63]

35 Moreover, invoices that were purportedly issued by EAM to China MinMetals (the "MinMetals Invoices") were circulated to other employees and investors.[64] The correspondence between NYZ and the Second Defendant revealed that NYZ had enlisted the Second Defendant's help to prepare these invoices to China MinMetals.[65] I discuss this in greater detail below (from [102] onwards).

Other forgeries

The forged Shipping Documents

36 To date, the liquidators only identified shipping documents relating to a *single* purported purchase of Poseidon Nickel in the Envy Companies' records. The Shipping Documents consist of: (a) a marina cargo insurance policy from MSIG Insurance (Singapore) Pte Ltd ("MSIG Insurance"); (b) a letter of credit

62 Yap's AEIC at para 4.3.9.

63 Yap's AEIC at para 4.4.5.

64 Yap's AEIC at paras 4.4.2–4.4.4.

65 Yap's AEIC at para 4.4.6.

issued by Citibank Singapore Ltd ("Citibank"); and (c) a bill of lading issued by New Golden Sea Shipping Pte Ltd.[66] These documents were shown to investors, employees and staff from Citibank.[67]

37 Again, the Shipping Documents were forged. For one, MSIG Insurance confirmed that none of the Envy Companies were policyholders.[68] Second, the correspondence between NYZ and the Fourth Defendant revealed that NYZ provided the Fourth Defendant with: (a) a sample letter of credit issued by the Development Bank of Singapore ("DBS") to an unrelated entity, Mikas Stainless Steel Pte Ltd ("Mikas"); (b) a sample marine cargo insurance policy issued by MSIG Insurance to Mikas; and (c) a sample bill of lading similarly issued to Mikas. The Fourth Defendant forwarded the documents listed in the preceding paragraph to Heng and instructed Heng to "edit" the documents. He would "send [Heng] the amendments [to be made] in [WhatsApp]", and instruct Heng to follow "the pattern and font" of certain other documents.[69]

The forged IB Screenshots

38 The Plaintiffs also point towards the forged IB Screenshots. These were provided by NYZ to a fellow employee of the Envy Companies, Mr Lau Lee Sheng, as proof of incoming payments from a Forward Buyer under the RPAs.[70] I outline one instance of such a forgery. The original image was a screenshot of EAM's account on UOB's digital banking platform, with details of an "Inward Remittance" from one "LOW EN GENEVIEVE" of S$10,000 to EAM on

66 Yap's AEIC at paras 4.5.1–4.5.2.

67 Yap's AEIC at para 4.5.3.

68 Yap's AEIC at para 4.5.4(b).

69 Yap's AEIC at paras 4.5.7–4.5.9.

70 Yap's AEIC at paras 4.6.1–4.6.3 and 6.2.2–6.2.3.

1 October 2018.[71] This was later edited by Heng, on NYZ's instructions which were conveyed by the Fourth Defendant, such that the inward remittance was from "BNP Paribas Commodity Futures Ltd" instead, and the amount remitted was amended from S$10,000 to US$24,888,566.99.[72]

39 The Fourth Defendant would also instruct Heng, on NYZ's instructions, to amend the screenshots of the ledger and available balance of EAM's UOB account, such that the forged IB Screenshots reflected a balance that was higher than its actual balance.[73]

The forged Citibank documents

40 Between 26 April 2018 and 10 February 2021, a total of S$416,575,000 and US$17,665,000 were transferred from EAM or EGT's bank accounts to accounts under "EAM Trading" or "Envy Asset Management Trading" ("EAMT"). As it turned out, the latter accounts were actually bank accounts held in NYZ's own name or in the joint names of NYZ and an associate of his, Ms Li Qiong.[74] These sums corresponded to the total amount ordered against NYZ in a partial summary judgment.

41 EAMT purportedly had the role of making and receiving payments for Poseidon Nickel. The Second Defendant described her understanding of the flow of funds to be as follows: (a) the investor transfers money to EGT; (b) NYZ transfers those funds to EAMT; and (c) EAMT then uses those funds to pay for the Poseidon Nickel. On EGT's side, these payments are then recorded as a

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71 Core Bundle vol 11 at pp 396–397.

72 Yap's AEIC at para 4.6.5.

73 Yap's AEIC at para 4.6.6.

74 Yap's AEIC at para 4.7.8(b) and Annex 2.

"loan" to EAMT.[75] However, that is plainly not the actual function of EAMT. EAMT was in fact a company incorporated in the British Virgin Islands which NYZ purchased and re-named in or around February 2021. This was almost a year *after* the Purported Nickel Trading was transferred to EGT in April 2020, and a couple of months before the applications were filed to place the Envy Companies in judicial management.[76]

42 From 9 to 19 March 2021, NYZ also forwarded multiple documents to the Second Defendant, such as statements of account for EAMT's Citibank UK account, that were allegedly provided from one Mr Sanjiv Sawhney from Citibank UK.[77] However, the liquidators found that there was no evidence that EAMT held any accounts with Citibank.[78] Instead, as stated above, the approximately S$416.5m and US$17.6m of money from investors went to NYZ's bank accounts.

Where the investors' moneys went to instead

43 None of the moneys received from investors were used to purchase Poseidon Nickel. Instead, these were, *inter alia*:[79]

(a) transferred to NYZ through EAMT (see [40]–[42] above);

(b) paid as directors' fees to NYZ and the Second Defendant;

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75 Yap's AEIC at para 4.7.2.

76 Yap's AEIC at para 4.7.5.

77 Yap's AEIC at para 4.7.6.

78 Yap's AEIC at para 4.7.7.

79 Yap's AEIC at para 4.9.1.

(c) paid as commission payments, profit sharing fees and/or other payments to the Defendants and other employees of the Envy Companies;

(d) paid as referral fees or "profits" in excess of the invested principal to investors; and

(e) transferred or paid to related entities such as other companies owned by the Envy Companies or NYZ.

The false representations made to investors

44 As evidenced by the voluminous correspondence between the Envy Companies and its investors, the Envy Companies made multiple false representations to the investors that the Purported Nickel Trading was genuine and profit-making. Before me, the liquidators pointed to the following examples to broadly underscore the nature and tenor of the false representations made.

45 First, from February 2016 to March 2021, the Envy Companies sent various emails to potential and current investors describing their arrangements with different counterparts in the Purported Nickel Trading. In essence, these emails gave the impression that the Envy Companies were conducting the Purported Nickel Trading. I state a few examples:[80]

(a) On 6 October 2016, the Second Defendant sent an email to an investor describing the nickel deal at that time with Poseidon and China MinMetals. The Second Defendant represented that the nickel purchased from Poseidon in February 2016 was delivered to China

[80] Yap's AEIC at paras 4.8.3–4.8.4.

MinMetals in April 2016, and that aluminium purchased from Meikles in June 2016 was delivered to China MinMetals in July 2016.

(b) On 22 July 2018, an employee of the Envy Companies made representations to an investor regarding their dealings with BNP Paribas. Specifically, the employee stated that the Envy Companies "purchase[d] the physical nickel stock from [an] Australian supplier (listed company) at 18% discount of market spot rate", and that they were "selling the stock to BNP Paribas as Market Spot Rate using [a] 3 month forward contract".

(c) On 16 September 2020, the Second Defendant emailed an investor regarding the Envy Companies' transaction with BNP. Specifically, she stated that "BNP [was] still the end buyer, however they are buying it through a broker this time round, namely, Raffemet" which was "an established firm with more than 25 years in experience and is worth about 1 billion in market value".

Furthermore, from 2016 to 2021, investors received marketing materials describing the Purported Nickel Trading model and purported historical returns. These marketing materials included fact sheets, prospectuses and slide decks.[81]

46 Second, the Envy Companies provided each investor with monthly updates on the performance of their investments. This was through spreadsheets setting out their monthly returns.[82]

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81 Yap's AEIC at para 4.8.5

82 Yap's AEIC at para 4.8.6 and Tabs 13 and 86.

47 Third, allegedly forged documents were shown to existing and potential investors, employees of the Envy Companies, and Citibank,[83] some of which I have canvassed above at [36]–[42].

48 Fourth, from 2016, EAM was falsely represented to investors as being registered with and/or licensed by MAS. The Second Defendant prepared EAM's prospectus which represented that EAM was "currently licensed by the Monetary Association of Singapore [*sic*] and categorised as a Registered Fund Management Company (RFMC)".[84] However, none of the above averments were true: EAM was not licensed by MAS nor categorised as an RFMC.[85] These representations were made notwithstanding that NYZ and the Second Defendant knew that EAM was not registered with and/or licensed by MAS.[86]

49 Fifth, NYZ and/or the Envy Companies used Envysion Wealth's status as a fund manager licensed by MAS to lend perceived legitimacy to the Purported Nickel Trading through Envysion's investments into the Purported Nickel Trading (see [13] above).[87]

50 Sixth, even after CAD commenced investigations and froze the Envy Companies' bank accounts, NYZ represented to investors that payments could still be made from the Envy Companies' trading entity in the UK if their local accounts were still frozen by April 2021.[88]

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83 Yap's AEIC at para 4.8.7.

84 Yap's AEIC at para 4.8.9(b).

85 Yap's AEIC at paras 4.8.10–4.8.13.

86 Yap's AEIC at para 4.8.10.

87 Yap's AEIC at para 4.8.15.

88 Yap's AEIC at para 4.8.16.

Procedural history

51 After the Envy Companies were placed in compulsory liquidation, on 22 September 2022, the liquidators issued several letters of demand against over-withdrawn investors such as CH Biovest Pte Ltd. An investor was deemed to be over-withdrawn where they withdrew money above and beyond their investment principal.[89] On 21 February 2024, in *Envy Asset Management Pte Ltd (in liquidation) and others v CH Biovest Pte Ltd* [2024] SGHC 46 ("*Biovest (HC)*"), Goh Yihan J found that the over-withdrawn sums were transactions made with the intent to defraud creditors, or, alternatively, transactions at an undervalue. The over-withdrawn investor was ordered to pay the sum of $2,319,484 with interest (*Biovest (HC)* at [205], [206(b)] and [206(c)]). The outcome of this decision was affirmed recently by the Court of Appeal in *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd (in liquidation) and others* [2025] 1 SLR 141 ("*Biovest (CA)*"). Some aspects of these decisions will be considered in greater detail later in this judgment.

52 In the present suit before me, the liquidators applied to recover the Envy Companies' assets from the Defendants not only *qua* investors, but also in their respective capacities as directors and/or employees of the Envy Companies. For completeness, in OC 193, the liquidators applied to recover the Envy Companies' assets from six other employees in their capacities as investors and employees of the Envy Companies.

The Minimum Net Principal

53 According to the Plaintiffs, the net funds that remain due and owing to the investors are approximately S$593,015,240, US$192,220,888 and

[89] Yap's AEIC at para 5.5.4(c).

€880,000.[90] The Plaintiffs refer to these sums collectively as the "Minimum Net Principal", which is essentially the total amount of under-withdrawn investors' moneys.[91] The Plaintiffs argue that the Defendants should be jointly and severally liable for the Minimum Net Principal.[92] At this juncture, I point out that none of the Defendants dispute the methodology that had been applied to calculate the Minimum Net Principal, even if they dispute their liability for it.

54 I briefly outline the liquidators' methodology in deriving this sum. The Plaintiffs obtained the Minimum Net Principal by way of the following calculations:[93]

(a) The liquidators obtained the quantum of fresh funds paid in by investors ("fresh fund inflow") and also any withdrawals by the investors, which included outflows of their investment principal as well as any net fictitious profits ("outflows"). This data was then corroborated as far as possible with the monthly statements issued to each investor, the LOAs and RPAs, and also any other invoices or receipts recording the payment and/or withdrawal of funds by investors.

(b) In order to determine if a particular investor was under-withdrawn, the liquidators aggregated the fresh fund inflow and outflow for that investor. If the amount paid into the Envy Companies is greater than the outflows of any investment principal as well as net fictitious profits, that investor was deemed to be under-withdrawn. Conversely, as

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90 Mr Bob Yap Cheng Ghee's supplementary affidavit of evidence-in-chief dated 12 July 2024 ("Yap's (S)AEIC") at para 4.1.1.

91 Transcript (30 July) at p 109 lines 14–15.

92 Yap's AEIC at para 1.2.3(a).

93 Yap's AEIC at paras 9.1.8(a)–9.1.8(c).

stated above, an investor was deemed to be over-withdrawn where they withdrew money above and beyond their investment principal.[94]

(c) The Minimum Net Principal was derived by adding up all the under-withdrawn sums.

55 The following sums were treated as fresh fund inflows: (a) moneys that an investor paid to EAM and/or EGT; (b) moneys that an investor paid to purported agents of EAM and/or EGT; (c) moneys transferred from the commission payments and profit sharing payments that were purportedly due to the investors; (d) investments with the Envy Companies or NYZ that were not related to the Purported Nickel Trading; (e) moneys transferred by other investors to the investor in question in so far as the sums transferred consist of the principal amounts invested; and (f) all other inflows of moneys from investors which are supported to the liquidators' satisfaction,[95] which include fresh funds paid by investors to third parties pursuant to RPAs.[96]

56 On the other hand, the following sums were treated as outflows: (a) moneys paid out of or on behalf of EAM and/or EGT on any LOAs and/or RPAs; (b) all transfers from amounts accrued on LOAs and/or RPAs to other investments with the Envy Companies that did not relate to the Purported Nickel Trading; (c) all transfers by an investor to another investor's Purported Nickel Trading accounts or other investments; and (d) all other outflows of moneys to an investor which are supported to the liquidators' satisfaction.[97]

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94 Yap's AEIC at para 5.5.4(c).

95 Yap's AEIC at para 9.1.8(d).

96 Yap's AEIC at para 9.1.15.

97 Yap's AEIC at para 9.1.8(e).

57 Where an investor is over-withdrawn instead of under-withdrawn, the amount found to be due and owing to that investor is treated as '0' for the purposes of the Minimum Net Principal. There are separate accounts for persons who are over-withdrawn, with the proceedings in *Biovest (HC)* serving as an example of the liquidators' action against these over-withdrawn persons.[98]

58 Finally, the following amounts were *not* included in the Minimum Net Principal:

(a) Any outstanding commission payments, profit sharing or referral fees. The Plaintiffs take the position that these claims are premised on actual profit made on the Purported Nickel Trading. Since the latter does not exist, there was no profit and therefore, from the Plaintiffs' perspective, no bases to these payments.[99]

(b) Any claims for outstanding salary and certain other payments (*eg*, those by landlords and suppliers), as these form a very small part of the Envy Companies' liabilities in any event.[100]

The parties' cases

An overview of the Plaintiffs' claims

59 I first set out a summary of the Plaintiffs' claims against the Defendants, rounded to the nearest dollar, which is based on the table prepared by the

98 Transcript (30 July) at p 109 lines 10–24.

99 Yap's AEIC at para 9.1.13.

100 Yap's AEIC at para 9.1.14.

Plaintiffs in their written submissions.[101] The first five rows relate to statutory causes of action, and the latter five are common law causes of action:

S/N	Cause of action	Second Defendant	Third Defendant	Fourth Defendant
1.	Fraudulent trading	Jointly and severally liable for the Minimum Net Principal		
2.	Transactions to defraud creditors	S$26,186,667	US$1,835,647 + S$471,569	S$1,921,486
3.	Transactions at an undervalue	S$24,197,653	US$1,835,647 + S$471,569	S$1,779,879
4.	Unfair preferences	S$20,525,978	US$1,835,647 + S$471,569	S$618,998
5.	Payment of dividends	S$1,000,000 + US$2,500,000	NA	NA
6.	Breach of directors' duties	Jointly and severally liable for the Minimum Net Principal, or, alternatively, an account of profits (same as S/N 2, 7 and 9)		NA
7.	Knowing receipt	S$26,186,667	US$1,835,647 + S$471,569	S$1,921,486
8.	Dishonest assistance	Jointly and severally liable for the Minimum Net Principal		

[101] Plaintiffs' closing submissions dated 2 December 2024 ("PCS") at para 1.2.1.

S/N	Cause of action	Second Defendant	Third Defendant	Fourth Defendant
9.	Unjust enrichment	S$26,186,667	US$1,835,647 + S$471,569	S$1,921,486
10.	Unlawful means conspiracy	Jointly and severally liable for the Minimum Net Principal, or, alternatively, an account of profits (same as S/N 2, 7 and 9)		

60 In relation to the sums claimed by the Plaintiffs in the table above that are *not* the Minimum Net Principal, these comprise the following categories of claims (the "Payments"):

Category	Second Defendant	Third Defendant	Fourth Defendant
Profit sharing and commission payments	✓		✓
Profit sharing from proprietary trading		✓	
Salary, allowance, bonus and reimbursements	✓	✓	✓
Director's fees	✓		
Dividends	✓		
Payments for unknown purposes	✓		✓

61 A breakdown of the amounts claimed against each Defendant above may be found in Annex A (S/N 2, 7 and 9 from the summary table at [59] above),

Annex B (S/N 3) and Annex C (S/N 4), which are based on the tables prepared by the Plaintiffs in their written submissions.[102]

62 Both the Plaintiffs' and Defendants' specific evidence and positions in relation to each cause of action will be considered in the respective sections of this judgment.

An overview of the Defendants' case

63 As the Second and Third Defendants were self-represented in these proceedings (and the Third Defendant elected not to file any written submissions altogether), they did not advance any specific legal position as to whether the Plaintiffs' various causes of action are made out, though they maintained their factual positions that they were unaware of the Ponzi scheme at the time, and therefore should not generally be liable.

64 The Second Defendant's broad position is that, while she accepts that she should have exercised more oversight over the Envy Companies, she did not possess actual knowledge of the Ponzi scheme nor any dishonest intent. First, she believed in the legitimacy of the Purported Nickel Trading.[103] She and her family members had personal investments in the Purported Nickel Trading and she was consistently seeking documentation and clarification from NYZ, such as by requesting that the Envy Companies undergo an external audit.[104] Second, the Second Defendant avers that, in reality, she only had a limited administrative role in the Envy Companies. She trusted NYZ and relied on the

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102 PCS at pp 152–154.

103 Second Defendant's closing submissions dated 14 November 2024 ("2DCS") at para 1.

104 2DCS at paras 1 and 5(b); and Transcript (6 August) at p 52 line 18 to p 54 line 12..

information provided by him when executing her "clerical and administrative tasks".[105]

65 As I briefly addressed above (see [22] above), the Third Defendant's position is that his work revolved around proprietary trading unrelated to the Purported Nickel Trading, which was genuine and generated profits for EGT.[106] However, the Third Defendant accepts that he did provide "limited administrative assistance" on an *ad hoc* basis to NYZ.[107] According to the Third Defendant, the proprietary trades were funded by the shareholders, and *not* investors' money from the Purported Nickel Trading. His involvement in any nickel trading was in relation to the Singapore Nickel Shipment.[108] According to the Third Defendant, the Singapore Nickel Shipment was a legitimate transaction which brought profit to EGT, and the Third Defendant had no knowledge that the shipment was held out to investors as a shipment of Poseidon Nickel.[109]

66 The Fourth Defendant does not dispute that he assisted NYZ to forge various documents. His case instead is that he was not a knowing party to the Ponzi scheme. The Fourth Defendant did not pursue tertiary education and was only educated up to the level of obtaining a Primary School Leaving Examinations ("PSLE") certificate, and that his prior work had been mainly in the food and beverage industry. He therefore claims to have had little understanding of the documents prepared and the nature of the amendments,

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105 2DCS at para 2.

106 Mr Ju Xiao's defence and counterclaim dated 10 January 2022 ("Ju's Defence and Counterclaim") at paras 8, 19, 29 and 32(a).

107 Ju's Defence at para 8(b).

108 Ju's Defence at paras 8(c)–8(d).

109 Ju's Defence at para 32(a).

and was unaware that the amended version of these documents were being shown to investors of the Envy Companies. He was merely following NYZ's instructions and passing them on to Heng.[110] Indeed, as an indicia that he was misled himself, he pointed out he had invested approximately S$3m into the Purported Nickel Trading and is presently under-withdrawn by about S$2.4m.[111]

Issues to be determined

67 The issues to be determined are as follows. In relation to the statutory causes of action by the Plaintiffs:

(a) whether the Defendants are liable for fraudulent trading under s 238(1) of the IRDA and, its immediate predecessor, *ie*, s 340(1) of the Companies Act (Cap 50, 2006 Rev Ed) prior to 30 July 2020 (the "Pre-IRDA Companies Act");

(b) whether the Defendants received the Payments to defraud creditors under s 438(4) of the IRDA and, its immediate predecessor, *ie*, s 73B(1) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) (the "CLPA");

(c) whether the Payments were transactions at an undervalue under s 224(3) of the IRDA;

(d) whether the Payments constituted unfair preferences under s 225(3) of the IRDA; and

110 Mr Cheong Ming Feng's defence dated 21 January 2022 ("Cheong's Defence") at para 43.

111 Cheong's Defence at para 59.

(e) whether the dividends paid to the Second Defendant were in contravention of s 403(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act").

68 As to the common law causes of action:

(a) whether the Second and Third Defendants acted in breach of their directors' duties;

(b) whether the Defendants were unjustly enriched by way of the Payments;

(c) whether the Defendants are liable for dishonestly assisting NYZ;

(d) whether the Defendants are liable to return the Payments for knowing receipt; and

(e) whether the Defendants are liable for unlawful means conspiracy for conspiring with NYZ to operate the Purported Nickel Trading.

69 Finally, should I find in favour of the Plaintiffs for any of the above causes of action, there would be the attendant issue of the appropriate relief to be granted.

Preliminary observations

70 Before turning to the issues proper, I first address two preliminary procedural issues that arose in the course of the proceedings: the Second Defendant's and NYZ's failure to file their affidavits of evidence-in-chief.

The Second Defendant's evidence-in-chief

71 The first issue involves the fact that the Second Defendant did not file an affidavit of evidence-in-chief in support of her case. Notably, the Third Defendant re-filed his pleadings as his affidavit of evidence-in-chief. The Second and Third Defendants were self-represented at the trial before me, though their earlier cause papers were filed when they were still represented by counsel (who subsequently, but prior to trial, were discharged). At the start of the trial, I allowed the Second Defendant to similarly rely on her pleadings as her affidavit of evidence-in-chief. I explain my reasons for doing so.

72 Order 38 r 2(1) of the Rules of Court (2014 Rev Ed) ("ROC 2014") makes it clear that the evidence-in-chief of a witness shall be given by way of affidavit. However, no such affidavit was filed by the Second Defendant, despite her having had a considerable amount of time to do so. The directions for the parties to file their affidavits of evidence-in-chief were made on 27 February 2024, and the trial before me began on 30 July 2024. Moreover, the rules regarding the need for an affidavit of evidence-in-chief are clear and unambiguous, and there are guides online on the Supreme Court website to provide self-represented individuals an understanding of how to file such affidavits.

73 It is well-established that, while indulgence and accommodation may be shown by the court so that the issues important to self-represented persons are properly ventilated, justice cannot be compromised. The court cannot and should not act in a way that improperly or unduly prejudices the other parties involved in the litigation. In *BNP Paribas SA v Jacob Agam and another* [2019] 1 SLR 83 (at [103]), the Court of Appeal noted that while the courts may show greater indulgence to litigants in person, such indulgence is not to be

expected as an entitlement. Indeed, such indulgence should not be taken as an entitlement to ride roughshod over the court's rules and processes (*Ong Chai Hong (executrix of the estate of Chiang Chia Liang, deceased) v Chiang Shirley and others* [2016] 3 SLR 1006 at [40]). As a corollary to this, while the courts should endeavour to ensure that self-represented individuals are given an opportunity to present their case, the balance cannot be tilted in their favour such that it prejudices the other side (*VYR v VYS* [2023] 3 SLR 1370 at [29] and *Mak-Levrion Kah Kay Natasha (alias Mai Jiaqi Natasha) v R Shiamala* [2024] 4 SLR 616 at [11(b)]).

74 In essence, while being self-represented in court proceedings should not unduly prejudice that self-represented party, it must also not unfairly benefit that same party at the expense of the other parties. What the court should seek to avoid is a situation where too much indulgence is granted, such that it becomes "oppressive to the other party who is represented by counsel" (Jaclyn L Neo & Helena Whalen-Bridge, *Litigants in Person: Principles and Practice in Civil and Family Matters in Singapore* (Academy Publishing, 2021) at para 5.35).

75 I am mindful that, pursuant to O 38 r 2(4) of the ROC 2014, the court is empowered to order that the evidence of any witness or party be given orally at the trial if that were just. Nonetheless, I was not inclined to allow the Second Defendant to offer oral evidence as her primary evidence. The very purpose of requiring parties to adduce their evidence-in-chief by way of affidavit is to eliminate the element of surprise as to what such parties wish to state as part of their evidence, or to put it more colloquially, to ensure that parties do not engage in "trial by ambush" (*Basil Anthony Herman v Premier Security Co-operative Ltd and others* [2010] 3 SLR 110 at [78]). Accordingly, while the law provides the court with the power to grant leave for parties' evidence to be given orally,

this ought to be done very sparingly. This is to prevent the situation where self-represented individuals are allowed to preview the case of represented parties while intentionally and strategically shielding their own evidence, resulting in a perverse outcome where self-represented litigants may strategically place themselves in a much more advantageous position than those who elect to have legal representation.

76 This is supported by the fact that O 15 r 16(2) of the Rules of Court 2021 ("ROC 2021") only allows for evidence-in-chief to be presented orally "[i]n a special case". To my mind, there is no cogent reason for the ROC 2014 to take a more *laissez-faire* approach to this issue than the ROC 2021. As rightly observed by Tay Yong Kwang JC (as he then was) in *Mathi Alegen s/o Gothendaraman v The Tamils Representative Council Singapore and Others* [2002] SGHC 310 (at [24]), in order to minimise any surprises by parties in a trial, there must be "good reason" for oral testimony to be allowed (as one's evidence-in-chief). While Tay JC's comments were made in the context of a non-partisan witness, such considerations are, in my view, of even more significant force when involving a defendant who, by dint of their role in the proceedings, is almost necessarily a partisan witness.

77 Be that as it may, I was concomitantly of the view that it was not fair to take the diametrically opposed position, which the Plaintiffs initially sought to advance before me, namely that the Second Defendant's failure to file an affidavit of evidence-in-chief meant that she would be unable to give any evidence at all in her defence.[112] Almost as a matter of course, this would be tantamount to accepting the Second Defendant's liability as being proven, as she would not, in substance, be able to provide any evidence to rebut the

112 Plaintiffs' lead counsel's statement on trial proceedings dated 18 June 2024 at p 20.

allegations against her or to provide her account of what transpired. To my mind, this would not have been equitable since the Second Defendant had given notice by way of her initial detailed pleadings that she was disputing the allegations advanced by the Plaintiffs.

78 Having regard to these competing considerations, I found that a commonsensical middle ground ought to be taken in this case. In the premises, I ordered that the Second Defendant's pleadings be taken as her affidavit of evidence-in-chief, and for her to affirm the truth of such pleadings and be bound by them. This was by no means a perfect compromise in so far as pleadings serve quite distinct functions from affidavits. Nonetheless, this approach allowed the Second Defendant to advance her defence within the four walls of her pleadings, whilst simultaneously ensuring that the Plaintiffs were not unduly prejudiced by any belated attempt on her part to introduce previously undisclosed yet key pieces of evidence. This approach turned out to be largely unproblematic in the present case: given the volume of evidence proffered by the Plaintiffs, much of the evidence in support of the Second Defendant's case was largely to be found within the documents already adduced by the Plaintiffs.

NYZ's evidence-in-chief

79 The approach I took with NYZ's evidence, however, was somewhat distinct. The Fourth Defendant, who was calling NYZ as a witness, had provided undisputed evidence that NYZ *refused* to file any statement of his evidence-in-chief in spite of the Fourth Defendant having undertaken reasonable attempts to get him to do so. The Fourth Defendant even offered to the court a copy of the draft statutory declaration that NYZ was supposed to

sign.[113] Disallowing the Fourth Defendant from leading oral evidence from NYZ would therefore unduly prejudice his defence, given that it was plain that he could not have procured an affidavit from NYZ in the circumstances. Consequently, in my view, "good reason" has been shown by the Fourth Defendant as to why leave should be given for NYZ to adduce his evidence-in-chief orally.

80 I add a further point. At the time NYZ gave evidence in the proceedings before me, he had yet to face trial for his outstanding criminal charges concerning his role in the Purported Nickel Trading. When he was on the stand to give evidence, he answered most questions posed to him about the role of the various Defendants without any qualification. However, as to questions pertaining to his own culpability or which had a potentially incriminatory slant to them, he demurred from answering them and raised his concerns of the impact such answers may have on his upcoming criminal proceedings.[114]

81 The question of whether an individual is duty bound to testify to relevant questions in a civil trial when facing pending criminal proceedings was dealt with at some length by Ang Cheng Hock J in *Debenho and another v Envy Global Trading Pte Ltd and another* [2022] SGHC 7 ("*Debenho*"), which involved NYZ as well. In *Debenho,* NYZ sought to stay a civil suit against him on the ground that he was facing criminal charges arising out of the same facts. He argued that his right of silence and privilege against self-incrimination would be infringed if the civil suit was not stayed. Briefly, the "right of silence" refers to the "legal right of a person to remain silent in the face of compulsory

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113 Cheong's AEIC at paras 102–110.

114 See, for example, Transcript (15 August) at p 2 lines 12 to 14 and p 16 line 22 to p 17 line 6.

questioning and/or to elect not to give evidence in his own defence against a criminal charge, and the evidential immunity from having adverse inferences drawn against him from such silence" (*Debenho* at [39]). A "specific manifestation" of the right of silence is the privilege against self-incrimination, which allows a person to not say anything or produce evidence, under compulsion, that might expose him to a criminal charge, penalty or forfeiture (*Debenho* at [43]).

82 Ang J held (at [49]) that a defendant facing concurrent criminal and civil proceedings *cannot* invoke the privilege against self-incrimination whilst being cross-examined in a civil trial. Indeed, this is the effect of s 134(1) of the Evidence Act 1893 (2020 Rev Ed) (the "Evidence Act"). Such a defendant is nevertheless afforded the protection of s 134(2) of the Evidence Act in respect of any such incriminating answers given as part of his testimony (*Debenho* at [48]–[49]). I reproduce ss 134(1) and 134(2) of the Evidence Act for ease of reference:

> **Witness not excused from answering on ground that answer will criminate**
>
> **134.**—(1) A witness is not excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate, such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind, or that it will establish or tend to establish that the witness owes a debt or is otherwise subject to a civil suit at the instance of the Government or of any other person.
>
> (2) No answer which a witness is compelled by the court to give shall subject him or her to any arrest or prosecution, or be proved against him or her in any criminal proceeding, except a prosecution for giving false evidence by such answer.

83 Hence, it "will not suffice for a defendant, who seeks to stay a civil action on the ground of concurrent criminal proceedings, to invoke his right of

silence and privilege against self-incrimination". Instead, the defendant must show that requiring him to defend himself in the civil action will "give rise to a real danger of prejudice to him in the criminal proceedings" (*Debenho* at [50]). The court may then consider the following factors to determine if there is such a "real danger" of prejudice to the defendant *(Debenho* at [36], citing both *Jefferson Ltd v Bhetcha* [1979] 1 WLR 898 at 905 and *McMahon v Gould* (1982) 7 ACLR 202 at 206), including: (a) the proximity in time of the trial of the criminal proceedings to the trial of the civil action; (b) whether the disclosure of the defence in the civil action by an accused enables the fabrication of evidence by prosecution witnesses or interference with defence witnesses, resulting in a miscarriage of justice in the criminal proceedings; (c) the burden on the defendant of preparing for both sets of proceedings concurrently; (d) whether the defendant already disclosed his defence to the allegations; and (e) the conduct of the defendant, such as his own prior invocation of the civil process when it had suited him.

84 I agree with the holdings in *Debenho*. In my view, while the points made by Ang J were in the context of a *defendant's* rights, those observations apply with equal, if not more, force to a *witness's* rights, such that it would not be *prima facie* prejudicial for NYZ to testify in these proceedings despite his facing of criminal charges arising out of similar facts. Generally, when one is testifying as a witness, any potential prejudice is almost always diminished by the fact that the case is strictly speaking not one that is directly against that witness concerned. In *Debenho*, NYZ's arguments regarding prejudice stemmed largely from the contention that the civil claim in that case was almost exactly coincident with the matters in the criminal proceedings against him (at [24]). In that sense, in concurrent civil and criminal proceedings involving the same defendant and underlying facts, that defendant effectively gives the prosecution a "preview" of his evidence in the civil proceedings. Even then, Ang J noted

that the advantage suggested is only a theoretical one, and any advantage would have been minimal, if at all (at [54]).

85 Such concerns become considerably diminished in the present context where the individual concerned (NYZ) is not a defendant but merely a witness testifying to the liability or otherwise of other parties. In other words, what is directly relevant in this case is not the actions, culpability or liability of NYZ but that of his associates. There is no real issue of evidence overlapping in a way that would cause any prejudice to NYZ. Seen in this context, the pending criminal proceedings *vis-à-vis* NYZ are only tangentially relevant, since those proceedings would be concerned with the actions of NYZ and not the parties who are presently before this Court.

86 In the circumstances, I was of the view that NYZ could not rely generally on the right of silence or privilege against self-incrimination to refuse to answer questions in these proceedings. Moreover, where appropriate, I ordered NYZ to answer the questions posed where the answers were likely to be relevant to the issues before me and would assist me in my determination of the Defendants' liabilities. To be fair, in the proceedings before me, NYZ did not generally take issue with his duty to answer questions posed to him by the respective parties, and he answered most of the questions on his own volition. Nonetheless, to the extent NYZ answered the questions out of compulsion (*ie*, where I informed him that, notwithstanding his reservations that his answers may incriminate him, I was directing him to respond), such responses ought to generally be clothed with immunity from being used against him in subsequent criminal proceedings under s 134(2) of the Evidence Act.

The solvency of the Envy Companies

87 Having dealt with those procedural matters, I now turn to my substantive findings proper. The first issue that arises for my determination is the solvency of the Envy Companies. Based on an application of the cash flow test, I find that the Envy Companies were indeed hopelessly insolvent and unable to pay its debts for the purposes of s 226(2)(*a*) read with s 125(2)(*c*) of the IRDA. In *Biovest (HC)* (at [120]), it was held that a Ponzi scheme is insolvent from its inception, given that "its total liabilities will always exceed its total assets from the moment that it takes in its first [investment]". However, in *Biovest (CA)* (at [114]), the Court of Appeal held that it was not appropriate to rely on a general principle of law to determine the solvency of a Ponzi scheme. Instead, the issue of solvency is ultimately a question of fact in all cases, including those which involved Ponzi operations, and the cash flow test should be applied.

88 The cash flow test involves "an assessment of whether the company's current assets exceed its current liabilities (defined respectively as assets which will be realisable and debts which will fall due within a 12-month timeframe) such that it is able to meet all debts as and when they fall due" (*Biovest (CA)* at [110], citing *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] 2 SLR 478 ("*Sun Electric*") at [65]). The court adopts a "commercial rather than a technical view of insolvency", and the "question to be answered is whether the company's assets are realisable within a timeframe that would allow each of the debts to be paid as and when it becomes payable, and whether any liquidity problem can be cured in the reasonably near future". Additionally, the debts to be considered need not be already due or demanded, and include contingent and prospective liabilities (*Biovest (CA)* at [110], citing *Sun Electric* at [66]–[68]). The court should also

consider the following non-exhaustive list of factors in applying the cash flow test (*Biovest (CA)* at [110], citing *Sun Electric* at [69]):

(a) the quantum of all debts which are due or will be due in the reasonably near future;

(b) whether payment is being demanded or is likely to be demanded for those debts;

(c) whether the company has failed to pay any of its debts, the quantum of such debt, and for how long the company has failed to pay it;

(d) the length of time which has passed since the commencement of the winding-up proceedings;

(e) the value of the company's current assets and assets which will be realisable in the reasonably near future;

(f) the state of the company's business, in order to determine its expected net cash flow from the business by deducting from projected future sales the cash expenses which would be necessary to generate those sales;

(g) any other income or payment which the company may receive in the reasonably near future; and

(h) arrangements between the company and prospective lenders, such as its bankers and shareholders, in order to determine whether any shortfall in liquid and realisable assets and cash flow could be made up by borrowings which would be repayable at a time later than the debts.

89 In *Biovest (CA)* (at [116]), the Court of Appeal applied the cash flow test and concluded that "as a matter of commercial reality, EAM was never going to have sufficient realisable assets to pay its debts and liabilities as they fell due". It came to this conclusion as a result of the following observations:

(a) "EAM did not carry out nickel trading or any other legitimate, revenue-generating business. EAM could only generate cash inflows by entering into further LOAs with investors – the same LOAs which obliged it to repay 85% of the investment amount upon the expiry of three months, regardless of whether EAM was earning any profits from its (non-existent) nickel trading business, and exposed it to contingent liabilities".

(b) In turn, those moneys were used to pay: (i) NYZ and the other directors and employees; (ii) the Envy Companies' overhead costs; and (iii) referral fees and fictitious profits to earlier investors. As highlighted earlier, the IJMs identified a significant number of transfers into bank accounts held by NYZ personally (see also [43] above).[115]

(c) "In fact, according to the IJMs' [updated] report dated 2 July 2021, the transfers made by the Envy Companies to NYZ or individuals and entities associated with him amounted to over S$475m".[116] Moreover, "[s]ome of these transfers were not even recorded in the Envy Companies' bank records, let alone explained".

90 For similar reasons, I find that both EGT and EMH were also never going to be in possession of sufficient realisable assets to pay their debts and

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115 IJMs' report dated 25 May 2021 at paras 2.3.3–2.3.7 (Core Bundle vol 12 at p 225).

116 Update to the IJMs' report dated 2 July 2021 at para 2.2.1 (Core Bundle vol 12 at pp 143–144).

liabilities as they fell due. From the evidence adduced before me, it was clear that neither EGT nor EMH had any legitimate, revenue-generating business, and that there was "no other meaningful business undertaken by" the Envy Companies":[117] EGT could only generate cash inflows by entering into further RPAs with investors, which similarly obliged it to repay 85% of the investment amounts upon the expiry of three months regardless of whether EGT was earning any profits from its non-existent nickel trading business, and EMH was set up to be the sole shareholder of EGT. In turn, these moneys were used to pay NYZ, the other directors, employees, overhead costs and other fees. Indeed, the IJMs' updated report disclosed that the Envy Companies' assets, not just EAM's, were "grossly insufficient to meet the potential claims of the [Envy] Companies' investors".[118] I also note that, in these proceedings, none of the Defendants disputed the insolvency of the Envy Companies.

91 In sum, it is clear to me that the Envy Companies were indeed insolvent from their inception.

The state of mind of each Defendant

92 Before setting out my findings on each of the causes of action pleaded by the Plaintiffs, it is useful for me to first discuss the mental states of the various Defendants, as this forms the necessary scaffold upon which to discuss the merits of the various heads of claim. I deal with each Defendant in turn.

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117 IJMs' report dated 25 May 2021 at para 6.1.2 (Core Bundle vol 12 at p 254).

118 IJMs' report dated 25 May 2021 at para 6.1.2 (Core Bundle vol 12 at p 254).

The Second Defendant

93 In relation to the Second Defendant, the Plaintiffs highlight that there were numerous markers of her knowledge of the fraudulent nature of the operations throughout the years. Some of the more salient points that have been raised by the Plaintiffs are as follows:

(a) The Second Defendant was the "*de facto* financial controller" during her directorship of the Envy Companies.[119] She knew of discrepancies in the records of the Purported Nickel Trading and other red flags but was "reckless as to the truth of the Purported Nickel Trading".[120]

(b) The Second Defendant was aware that NYZ forged the IB Screenshots and knowingly or recklessly assisted NYZ to conceal these forgeries.[121]

(c) The Second Defendant knowingly or recklessly created the forged MinMetals Invoices.[122]

(d) The Second Defendant was knowingly or recklessly complicit in the Envy Companies' representations that they were licensed by MAS and audited.[123]

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119 PCS at para 3.2.2.

120 PCS at para 3.7.

121 PCS at para 3.3.

122 PCS at para 3.4.

123 PCS at para 3.6.

(e) The Second Defendant allegedly attempted to conceal certain matters from CAD.[124]

(f) The Second Defendant knowingly or recklessly assisted to facilitate the fraudulent transfers of money from the Envy Companies to NYZ's personal accounts.[125]

94 I do not disagree with the points raised by the Plaintiffs as set out in the preceding paragraph. In my view, all of points raised by the Plaintiffs are borne out in that the Second Defendant clearly had some knowledge of the various discrete aspects of NYZ's fraudulent behaviour and/or practices. However, in my judgment, these only go to prove that the Second Defendant was grossly derelict in her duties, and that she failed make the sort of inquiries that any reasonable person or director should or would have made in the circumstances.[126] They do not, whether individually or collectively, prove any actual knowledge or wilful blindness on her part of the Ponzi scheme. In other words, they are not probative of the Second Defendant's knowledge of the fraud underlying the Purported Nickel Trading (*ie*, that it did not exist at all). I address each point (raised in paragraph [93] above) in turn.

The Second Defendant's role in the Envy Companies

95 The Second Defendant was a director of the Envy companies and she was in theory responsible for the back-office functions of the company, which included the preparation and/or oversight of the financial records of the Envy Companies (see [20] above). According to the Plaintiffs, the evidence reveals

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124 PCS at para 3.8.

125 PCS at para 3.5.

126 Yap's AEIC at para 6.1.3.

the Second Defendant's knowledge of the discrepancies in the accounts and other financial records and her failure to take any meaningful steps to address the same:[127]

> (a) From as early as September 2016, the Second Defendant was aware that the financial records were incomplete and inaccurate. She had even contacted NYZ to express that the financial records were "in a mess". The Second Defendant had also communicated to NYZ that the records from multiple periods of time were missing.[128]
>
> (b) Moreover, the Second Defendant was copied or directly addressed in correspondences from the Envy Companies' employees, where it was highlighted that there were discrepancies and inaccuracies in the Envy Companies' financial records.[129]
>
> (c) Even if it were accepted that the Second Defendant requested NYZ for external auditors since 2016, the Envy Companies were *never* actually independently audited (until their winding up). As such, the Second Defendant was derelict in her duties as a director, despite the serious red flags that arose during her tenure as a director.[130]

96 In my view, while the Second Defendant should have quite obviously been much more careful in scrutinising the financial records, her actions do not appear to be those of an individual who was seeking to cover up fraudulent activity. Instead, they appear to be those of an individual who failed to ask the

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127 PCS at para 3.7.9.

128 Yap's AEIC at paras 6.1.8–6.1.9.

129 Yap's AEIC at paras 6.1.14–6.1.15.

130 Yap's AEIC at paras 6.1.17–6.1.18.

questions that a director would be duty-bound to ask. In fact, it appears that NYZ took steps to keep her in the dark and to reassure her of the propriety of the Envy Companies' operations. For example, in attempting to address her concerns about the financial records, NYZ assured the Second Defendant that the Envy Companies would be audited and even got her involved in discussions to arrange for such external audits:

(a) In 2017, the Second Defendant messaged NYZ about an external audit of EAM. NYZ then represented to the Second Defendant that he had engaged Grant Thornton, a multi-national professional services firm (that undertakes, *inter alia*, tax, accounting, auditing and advisory work). When the Second Defendant followed up with NYZ on the progress of the audit, NYZ represented that Grant Thornton had undergone a restructuring recently and the audit had to be delayed.[131]

(b) In 2019, the Second Defendant contacted KPMG Services Pte Ltd ("KPMG Services") for an independent audit,[132] and there were email discussions between NYZ, the Second Defendant and representatives from KPMG Services as to the engaging of the latter's auditing services.[133] However, no audit was ultimately carried out because, according to the Second Defendant, KPMG Services "was not comfortable with the arrangement as EAM was placed on the Investor Alert List".[134]

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131 Exhibit D2-1; and Transcript (15 August) at p 19 lines 5–23.

132 Transcript (15 August) at p 20 lines 3–5.

133 Core Bundle vol 8 at pp 667–688.

134 Core Bundle vol 3 at p 169.

97 For rather self-evident reasons, no one orchestrating or overseeing a Ponzi scheme (such that there was an awareness that there was no underlying substantive business) would ever consider being independently audited as such a Ponzi scheme would invariably quickly be exposed by the complete lack of meaningful documentation. Indeed, such an operator would actively discourage audits for that very reason. The fact that the Second Defendant welcomed the possibility of and even sought an independent auditor coming in and scrutinising the accounts itself is indicative of the fact that she likely believed the operations to be legitimate. This was despite the fact that she assumed that the accounts were in a complete mess, or in her words when expressing the same to the IJMs, that "[i]t was very messy, and there were lots of missing information".[135]

98 With this in mind, the fact that NYZ took pains to engage in such discussions with KPMG Services strongly suggests that NYZ was giving the Second Defendant *faux* assurances of the legitimacy of the operations in that regard and to throw her off the scent, even if he may not have had any plan to actually have KPMG Services scrutinise the accounts.

The forged IB Screenshots

99 Next, I turn to the Second Defendant's knowledge of NYZ's use of the forged IB Screenshots. There were communications on the LINE platform between NYZ and the Second Defendant to show that she was aware of these forgeries:[136]

NYZ:	But the screenshot u have to help me cover up
	No choice

135 Core Bundle vol 3 at p 160.

136 Core Bundle vol 6 at pp 580–601.

	It's gonna explode in our faces if [Lau Lee Sheng] knows the truth
	I forward u all the ss I sent him
Second Defendant:	The uob one ah
	I also shock lei
	Why you go fabricate this kind of thing to him
	Is forgery lei. If he's crazy enough I think he will go report on you for that lo
	…
NYZ:	This one I know shouldn't do
	…
Second Defendant:	Ya la
	Forgery
	Siao lei you
	…
NYZ:	Can u at least tell him u checked your uob and saw the payments
	To calm him abit
	…
Second Defendant:	Ya lo. Later I tell him
	…
NYZ:	To me it was a white lie so I didn't think too much about it
	U better just message him the dates u saw
Second Defendant:	Lol came biting you back in the ass lo. Sometimes honesty is the best policy
	…
	Your spending

> …
>
> Of cos will wonder where the funds come from mah
>
> That's why he scared is ponzi, and you're spending clients' monies. His worst fear lol

100 I accept that these communications between the Second Defendant and NYZ showed that the former was aware that the IB Screenshots were forgeries. However, in my view, they do not provide any support for the proposition that she was explicitly aware of the broader fraudulent nature of NYZ's actions. On the contrary, those very same communications relied upon by the Plaintiffs also reveal that the Second Defendant could not quite fathom as to why NYZ needed the forged IB Screenshots.[137] The Second Defendant expressed shock at such actions,[138] and even asked why NYZ felt it necessary to "fabricate this kind of thing". These are reflective of the fact that the Second Defendant herself had assumed that the business was legitimate and that any fabrication appeared to be entirely unnecessary. She even chastised NYZ at one point for seeking recourse to forgeries, just because there were ostensibly some confidential matters in the actual bank statements that NYZ claimed he did not want to reveal to third parties,[139] stating to him that "sometimes honesty is the best policy".[140] In my judgment, these do not appear to be the words or actions of a guilty mind.

101 At other times, the Second Defendant even indicated that she could relate to why third parties were concerned about the Envy Companies' operations: given NYZ's spending patterns, these individuals were

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137 Core Bundle vol 6 at p 582.

138 Core Bundle vol 6 at pp 580–581.

139 Core Bundle vol 6 at p 582.

140 Core Bundle vol 6 at p 595.

understandably "scared is ponzi, and [NYZ is] spending clients' monies".[141] The point I am making is that the Second Defendant was not in fact party to the scheme, even if she was obviously far too charitable with letting entirely inexplicable behaviour by NYZ be left unscrutinised and was overly accepting of some of his assertions, which appear plainly ridiculous on hindsight, as amounting to nothing more than "white lie[s]".

The forged MinMetals Invoices

102 As outlined above (at [35]), the Second Defendant created the MinMetals Invoices on NYZ's instructions. The Plaintiffs highlighted that the Second Defendant created these invoices without verifying the underlying Forward Contracts. In fact, the Second Defendant admitted that she had never seen a single Forward Contract during her entire time of employment with the Envy Companies.[142] According to the Plaintiffs, since there was never any money received by the Envy Companies, the Second Defendant "must have ... known that EAM never actually received any monies from China MinMetals".[143]

103 The Second Defendant's defence is that she believed these invoices recorded genuine transactions with China MinMetals.[144] In my view, this appears to be borne out by the evidence. On 29 August 2016, NYZ reached out to the Second Defendant for help with preparing the MinMetals Invoices in the following manner:[145]

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141 Core Bundle vol 6 at p 601.

142 PCS at para 3.4.2.

143 PCS at para 3.4.3.

144 Lee's Defence at paras 64–65.

145 Yap's AEIC at Tab 86.

> Also I will need your help with something confidential. *We didn't issue invoice/receipt for the previous Nickel and Aluminium deal because everything was verbal and agreed over the phone.* We need to create the relevant documents to insert into the prospectus. Will you be able to assist with this? Invoiced amount to them would be tonnage X sales price. Have to keep this confidential thanks thanks
>
> [emphasis added]

104 NYZ's claim that these invoices were to cover up for the fact that invoices and receipts were not issued previously, was a very poor one. It should also have immediately alerted the Second Defendant of extremely shoddy, if not fraudulent, practice. Nonetheless, while the Second Defendant was shockingly derelict in her duties as a director, I did not find this correspondence to be cogent evidence of her knowledge of the broader fraudulent scheme. Indeed, there would have been no reason for NYZ to explain himself in the manner that he did to the Second Defendant if the Second Defendant was aware of the Ponzi scheme.

Representations by the Envy Companies

105 Next, the Second Defendant disseminated misleading information and forged documents to third parties. These included prospectuses suggestive of the trading arrangements for nickel (which of course simply did not exist) and containing the representation that EAM was registered and/or licenced with MAS, as well as various other correspondences.[146]

106 However, there is again no evidence that she had been doing so in order to advance the ends of the Ponzi scheme. I accept that she must have known that the claim in some of the prospectuses suggesting that EAM was a RFMC was potentially misleading, and that she should have verified whether EAM was

146 Yap's AEIC at paras 6.4.1–6.4.5.

indeed registered and/or licenced with MAS. After all, she conceded in cross-examination that she knew from 2016 that EAM was not in MAS's list of registered companies,[147] she never saw the RFMC licence, she did not recall going through the process of applying for such a licence,[148] and she did not actually independently verify NYZ's claim that EAM was registered.[149] Nonetheless, the evidence before me suggested that she was misled by NYZ. In January 2016, NYZ represented to the Second Defendant that EAM was an RFMC. When the Second Defendant questioned NYZ as to why she could not find EAM in MAS's financial institution directory, NYZ stated that EAM was approved in principle and that time was needed for the directory to be updated.[150] Subsequently, in 2017, when the Second Defendant asked NYZ about the status of the license, he represented to her that EAM was not listed in the directory as they were in the midst of applying for a retail license.[151]

The concealment of bank statements from CAD

107 When the investigations by CAD were taking place, CAD had written to the Second Defendant with several document requests. In a WhatsApp group chat involving other employees from the Envy Companies, the Second Defendant had indicated that she was not sharing a particular bank statement from Citibank UK with CAD to "avoid the statement landing in CAD's hands again".[152] The Second Defendant was referring to a forged Citibank UK

147 Transcript (2 August) at p 112 lines 2–17.

148 Transcript (2 August) at p 98 lines 15–20.

149 Transcript (2 August) at pp 127 – 131.

150 Transcript (6 August) at p 63 lines 1–18; and Transcript (15 August) at p 17 lines 8–15.

151 Transcript (15 August) at p 17 lines 16–20.

152 Yap's AEIC at para 6.5.3.

statement of account for EAMT that was provided by NYZ to the Second Defendant (see [42] above), even though the Envy Companies did not actually have any bank accounts with Citibank UK.[153] The Second Defendant also instructed an employee of the Envy Companies to "delete" a screenshot of the forged Citibank UK account.[154] From the Plaintiffs' perspective, the fact that she was hiding evidence was an act indicative of culpability.

108 On this matter, I agree with the Plaintiffs that the Second Defendant's actions are that of someone who was concerned that the disclosure of such a document to CAD may result in a finding of culpability on her part. She testified in court that she did so pursuant to instructions from NYZ.[155] However, this does not take her defence very far: even if it was true that NYZ gave such instructions to the Second Defendant, it still would have remained unlikely that she would have done it solely for his benefit, as opposed to concomitantly attempting to insulate herself from liability. However, that further point must be contextualised as it necessarily begs the logically anterior question: liability in relation to what? In my mind, this appeared to be an act of self-preservation tethered to broadly insulating herself from any ramifications, rather than with a view to hiding evidence of any specific offences or any specific facet of civil liability. As I will explain in the rest of this judgment, it is clear that her actions *qua* director were abysmal, and she would have known by this late stage that there was a real prospect of facing possible civil (and potentially criminal) sanctions for her completely lackadaisical and inexcusable approach to corporate governance. I find that it was in that specific context of self-

153 Yap's AEIC at para 6.5.4; and Transcript (2 August) at p 141 lines 6–17.

154 Yap's AEIC at Tab 106; and Transcript (2 August) at p 146 lines 7–9.

155 Transcript (2 August) at p 142 lines 4–10.

preservation against any possible liability that she sought not to provide that evidence to CAD.

109 While such actions should clearly not be condoned in the slightest, it is important to understand that such actions merely reflect the act of a guilty mind but provided no specific or real insight into what she assessed herself to be guilty of. I note further, for completeness, that she did in fact eventually disclose such document to CAD on her own volition.[156]

The fraudulent transfers by NYZ to his own account

110 In my view, the marker perhaps closest to being suggestive of some level of actual knowledge on the Second Defendant's part of the fact that the Envy Companies were not in fact engaged in any trading, were the circumstances underlying the transfer of hundreds of millions of dollars to NYZ's personal accounts. The Second Defendant was a co-signatory to EAM's and EGT's accounts from 24 April 2018. During the time she was co-signatory, NYZ fraudulently transferred some S$416.5 m and US$17.6m to his own personal account.[157] The Plaintiffs contend that the Second Defendant failed to make any reasonable inquiry on this and therefore allowed and/or acquiesced in NYZ's actions.[158] In this connection, they also allege that the Second Defendant further facilitated NYZ's conduct by redacting some of these fraudulent transfers from bank statements when sending such statements to employees.[159]

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156 Transcript (2 August) at p 143 line 19 to p 144 line 2.

157 Yap's AEIC at para 6.3.2.

158 Yap's AEIC at para 6.3.3.

159 Yap's AEIC at para 6.3.5.

111 According to the Second Defendant, the narrative peddled by NYZ at the time was purportedly that the funds had to be transferred to EAMT as it was EAMT that would be undertaking the actual trading in nickel. There are a number of somewhat glaring indicators that suggest that NYZ's story on this front simply did not check out. Some prominent examples of such markers are as follows:

(a) NYZ claimed that EAMT's account was under Citibank UK. However, as the Plaintiffs highlighted, the transfers in question were in fact apparently being made to various other banks as well, for example to bank accounts with the Hongkong and Shanghai Banking Corporation ("HSBC") and the Oversea-Chinese Banking Corporation ("OCBC").[160] The fact that there were such transfers would have been evident from EAM's and EGT's bank statements over the years. Given that NYZ never suggested to the Second Defendant that EAMT had bank accounts with either of these banks, and the Second Defendant's own evidence suggests that she herself assumed that EAMT only had a bank account with Citibank and no one else,[161] this should have been a rather glaring tip-off that something was quite amiss and that the moneys may not have been going to where they were supposed to go.

(b) The Plaintiffs highlighted that the transfers tended to operate in a one-way fashion, in that money kept flowing out of the EAM and EGT bank accounts to EAMT, but not the other way round. The Second Defendant states that such a manner of fund flow was due to a "netting

160 As examples, see the entries found in the DBS bank statements found in Core Bundle vol 1 at pp 698–700.

161 Transcript (2 August) at pp 30 line 21 to p 31 line 5.

arrangement".[162] However, a careful and considered assessment of that dynamic would have afforded her obvious hints that moneys were likely being siphoned off. As a matter of logic, for the business to be viable, or to make financial sense, the profits must surely from time to time be channelled back from EAMT to EAM or EGT to facilitate expenses and to disburse purported profits to the investors.

(c) It was not the case that NYZ insisted, as a policy, that all transfers of over S$200,000 should be divided into multiple transactions each consisting of less than S$200,000. When I queried the Second Defendant about this at the conclusion of her court testimony, she confirmed that for matters such as payroll payments of more than S$200,000, she had to serve as a second signatory.[163] If so, then it could be argued that this would have made it even more peculiar to the Second Defendant that when it came to the transfers into EAMT, the transfers were always done in chunks of (often exactly) S$200,000 rather than any larger amount.

112 I agree entirely with the Plaintiffs that the circumstances underlying these transfers to EAMT were suspect. Having said that, in my mind, the facts stated in the preceding paragraph again do not prove knowledge of the Ponzi scheme, but once more merely affirm the absence of an inquiring mind on the part of the Second Defendant, and an apparent dearth of desire on her part to even ask the most basic questions that a director would be duty bound to ask. In coming to this conclusion, I note that there were explicable reasons for the Second Defendant's lack of knowledge (even if, as I explain later, these reasons

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162 Transcript (2 August) at p 20 line 20 to p 21 line 7; and Core Bundle vol 3 at p 179.

163 Transcript (6 August) at p 34 lines 8–17.

amount to sorry excuses when viewed through the lenses of her liability for her duties *qua* director):

(a) The fact that the transfers were to non-Citibank UK accounts could be explained by the fact that the Second Defendant only accessed the bank accounts online, as opposed to reviewing the physical bank statements.[164] The latter was unlikely to have presented the same information in a way that would have drawn her attention to the fact that the transfers were made to non-Citibank UK accounts.[165] Nonetheless, this once more reflects a shockingly *blasé* attitude on her part about checking the veracity of transfers.

(b) In the same vein, the fact that a "netting arrangement" had been in place was likely to be not all that unexceptional in her mind as there was never any suggestion that the Envy Companies were failing to repay any investors who were seeking repayment – in that sense, it just suggested that moneys were coming in at such an accelerated and ever-increasing pace (as one imagines would be common with Ponzi schemes before eventual doubts start to creep in on their longevity and viability) that there was never any real need to pull moneys out of EGT. Indeed, one could very well argue that some of the markers relied on by the Plaintiffs themselves point towards the Second Defendant not having any knowledge of the Ponzi scheme – to state a simple example, if she was in fact in on it, there would be no reason at all for NYZ to avoid attempting to ensure that the payments did not have to go through her as a second signatory, since she would presumably not ask too many

164 Transcript (2 August) at p 33 line 1 to p 34 line 10.

165 Core Bundle vol 7 at p 436.

questions even if she was asked to co-sign transfers as a second signatory if she in fact was privy to what precisely was going on.

(c) It is not in dispute between the parties that any transfer of S$200,000 or below did not require her signature, and therefore did not require her consent. It is also not in dispute that while she did redact transactions in the bank statements sent to employees, this was pursuant to the fact that those transactions were not related to the investors, and therefore outside the scope of what had been required by the said employees.[166]

113 I further observe that, in understanding the Second Defendant's state of mind at the material time, care must be taken to avoid simply applying knowledge of subsequent events when evaluating decisions and actions in question. In particular, the court should be careful to assess the matter solely on the information and context available to the individual at the time. Having assessed her evidence against that backdrop, my view is that these were all markers of someone who overly trusted NYZ and did not ask too many questions by virtue of such trust.

114 There are various other subsidiary markers raised by the Plaintiffs in the course of arguments before me, all of which they claim to be indicative of some level of knowledge on the Second Defendant's part. It would be unnecessary to deal with each of these in any great depth in this judgment. Suffice it to say that in relation to each of these, much as was the case with the matters I have discussed above, they provide compelling evidence of the shocking level of ineptitude and nonchalance on the part of the Second Defendant, or "gross

166 Lee's Defence at para 59; and Transcript (2 August) at pp 57, 65 and 66.

negligence" as the Plaintiffs put it, but nonetheless did not go so far as to prove the existence of any actual knowledge of the absence of any actual nickel trading being undertaken by the Envy Companies.

Wilful blindness

115 The considerations above apply with equal force for any assessment of the Second Defendant's knowledge by way of wilful blindness. It is important to appreciate the distinction between wilful blindness and lack of diligence. Wilful blindness essentially involves a deliberate choice to ignore or avoid the obvious signs of fraud (in this case), with a view to never confirming what one in a certain sense already suspected or knew. Lack of diligence reflects a fundamental disregard for one's obligations or possible consequences thereof, stemming from negligence, apathy or sloppiness rather than intentional evasion. In a sense, wilful blindness connotes an active attempt to purposely avoid knowledge while lack of diligence is characterised by an indifference to what is going on. Here, on a balance of probabilities, I am of the view that the evidence suggests a lack of diligence that falls just shy of any wilful blindness or actual knowledge.

116 As helpfully summarised in *South East Enterprises (Singapore) Pte Ltd v Hean Nerng Holdings Pte Ltd and another* [2012] 3 SLR 864 (at [47]), "actual knowledge" is a subjective mental state, whereas "wilful blindness" is an objective evidential tool for establishing such a mental state. In *Chwee Kin Keong and others v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 ("*Digilandmall.com*"), the Court of Appeal made the following observations in relation to the concept of wilful blindness (in the context of whether the non-mistaken party had knowledge of a mistake) (at [42]):

> In order to enable the court to come to the conclusion that the non-mistaken party had actual knowledge of the mistake, *the court would go through a process of reasoning where it may consider what a reasonable person, placed in the similar situation, would have known.* In this connection, we would refer to what is called "Nelsonian knowledge", namely, wilful blindness or shutting one's eyes to the obvious. *Clearly, if the court finds that the non-mistaken party is guilty of wilful blindness, it will be in line with logic and reason to hold that that party had actual knowledge.*
>
> [emphasis added]

Indeed, wilful blindness can only be invoked in situations where an individual "suspected the fact; he realised its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge" (*Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") at [49], quoting Glanville Williams, *Criminal Law: The General Part* (London: Sweet & Maxwell, 1961) at p 159).

117 Properly understood then, there is an important, if at times fine, distinction between wilful blindness and any negligence in making inquiries. The former involves the dishonest and deliberate shutting of eyes to facts that one prefers to not know. Actual knowledge of those facts may then be attributed to that person as a consequence of his wilful blindness. In contrast, a person's "failure through negligence to make inquiry is insufficient to enable knowledge to be attributed to him" (*Twinsectra Ltd v Yardley and others* [2002] 2 All ER 377, cited in *MKC Associates Co Ltd and another v Kabushiki Kaisha Honjin and others (Neo Lay Hiang Pamela and another, third parties; Honjin Singapore Pte Ltd and others, fourth parties)* [2017] SGHC 317 ("*MKC Associates*") at [195]). The court in *MKC Associates* at [223] also held that an element of "conscious or intentional impropriety is required" for wilful blindness to be found, and the failure to "infer from the available facts, unless

amounting to wilful blindness, is more akin to negligence, carelessness or a failure to make inquiries".

118 Hence, whether a party is wilfully blind would turn on the circumstances under which the party should make the inquiry, and whether the failure to make those inquiries would be considered to be shutting his eyes to the obvious. As observed in *Digilandmall.com* at [43]:

> This then gives rise to the question as to the circumstances under which a party should make inquiry. *When should such a party make inquiries failing which he would be considered to be shutting his eyes to the obvious?* We do not think this question is amenable to a clear definitive answer. Situations in which such a question could arise are infinite. But we could accept what Mance J said in *OT Africa Line Ltd v Vickers Plc* [1996] 1 Lloyd's Rep 700 ("*OT Africa*") at 703 that there must be a "real reason to suppose the existence of a mistake". What would constitute "real reason" must again depend on the circumstances of each case. Academicians may well query whether this should be based on an "objective" or "subjective" test. At the end of the day, the court must approach it sensibly. *The court must be satisfied that the non-mistaken party is, in fact, privy to a "real reason" that warrants the making of an inquiry*.
>
> [emphasis added]

119 Even with the above in mind, my conclusion in relation to the Second Defendant's state of mind does not vary even when each of these markers are seen as a composite whole. It is all too easy to assume that, even if the markers individually do not reflect a guilty mind, the composite picture would. To ascribe knowledge by piecing together disparate actions that one should individually ask questions or be highly suspect about is, in my judgment, to misunderstand human psychology. Human experience suggests that real life is a tapestry of nuanced contexts and subtexts and, for that reason, resists a neat order akin to that of a jigsaw puzzle. In my view, the totality of the evidence at best suggests or shows a complete lack of independent checks (and

verifications) on the Second Defendant's end, and a willingness to take even the shoddiest of explanations given by NYZ at face value. That she did so was entirely explicable given their longstanding friendship and working relationship, even if it does not augur well for the solemnity and seriousness with which she was undertaking her obligations *qua* director.

120 At the risk of reiteration, none of what I have said above about her lack of explicit knowledge changes the fact that she had failed abysmally to ask the necessary questions, a point that she herself concedes she really should have done at the time. In fact, the Second Defendant, in cross-examination, appeared to readily accept this, noting on hindsight that she "do[es] not disagree" with the proposition that she should have noticed the red flags, asked more questions and requested access to more source documents.[167]

Evidence that the Second Defendant was being duped by NYZ

121 I also note that there were some clear markers to suggest that the Second Defendant herself was being duped by NYZ. I state just a few here to make the point.

122 Perhaps the most glaring example of this is the fact that the Second Defendant's own family members and loved ones invested in the Purported Nickel Trading.[168] She had numerous family members, including her husband, mother and other relatives, invest moneys into EAM for the purposes of nickel trading. When the Purported Nickel Trading and funds were transferred to EGT, at least some of them continued to invest through the Second Defendant, who was an accredited investor. They did so to get around the requirement that EGT

167 Transcript (2 August) at p 76 line 19 to p 79 line 22.

168 Lee's Defence at para 10(2).

could only accept moneys from accredited investors.[169] While not dispositive of the Second Defendant's state of mind, in my view, there is no reason for her to get her family members to invest in that manner if she had genuinely and subjectively believed, or otherwise strongly suspected, that there was no nickel trading to speak of.

123 There were also clear attempts by NYZ to convey to her reassurances of the operations being legitimate to ensure that she did not suspect that something was amiss:

(a) NYZ provided her with two Citibank statements of EAMT that purported to show that such accounts existed (and by extension therefore, that the business must be genuine since it was being funded through the use of a genuine bank account).[170]

(b) The Second Defendant was also introduced to a "Terence" at Citibank who purportedly was the contact person from Citibank for EAMT. The Plaintiffs make much hay about the fact that Terence does not likely exist for a variety of reasons,[171] including the fact that there was no follow-up with Terence and no name card was given to her. However, those matters are, in my view, entirely beside the point. What seems clear from the evidence was that such a meeting was indeed arranged. This fact speaks volumes about the reality that, whatever one may say about whether the Second Defendant had acted with due diligence, she was not in fact acting with knowledge of the fraud.

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169 Core Bundle vol 12 at pp 75–85.

170 See, as examples, Core Bundle vol 9 at pp 29–31 and Core Bundle vol 7 at pp 984–987.

171 Transcript (1 August) at pp 105–107.

(c) In 2019, the Second Defendant flew to Perth, Australia with NYZ on the latter's representation that they were going to meet Poseidon executives. However, the meeting fell through and NYZ and the Second Defendant did not actually meet with any executives from Poseidon. NYZ confirmed this account as well on the stand.[172]

124 NYZ even took pains to explain at times to the rest of his team, including the Second Defendant, about the workings of the market and the need to take certain strategic positions in view of market volatility after purported discussions with Poseidon. As a simple example, on 18 May 2017, he wrote an email to various parties including the Second Defendant, stating that he needed to lock in purchases at a particular price due to "Nickel prices [taking] a bad hit recently".[173] Again, it is fair to say that the Second Defendant should have asked more questions about this. However, my main point remains that NYZ was strategically peddling a false narrative (to the Second Defendant, and to some others) that the Purported Nickel Trading was real.

125 I also note that, in spite of the many hundreds of thousands of pages of documents before me, there is not a single clear reference, or a single message between NYZ and the Second Defendant, that suggests that the latter was in on the wider Ponzi scheme. Indeed, as observed earlier, I struggle with the idea that she knew about the fraud underlying the Purported Nickel Trading (*ie*, that it did not exist and it was a Ponzi scheme) and yet at the same time was happy to request that NYZ have independent auditors vet the accounts (see [96] above).

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172 Transcript (15 August) at p 20 line 22 to p 21 line 3.

173 Core Bundle vol 10 at p 129.

126 It is not in dispute as well that NYZ only withdrew less than S$200,000, despite each transaction from EAM to EAMT amounting to hundreds of millions of dollars, as any higher amount would have necessitated the Second Defendant signing off on the transfer. While hardly determinative, this again somewhat corroborated the idea that the Second Defendant was not directly complicit in the matter and would not have been willing to be party to the Ponzi scheme. That she was duped by NYZ was perhaps entirely unsurprising (even if, at the risk of reiterating the obvious, it speaks very badly of her discharge of her duties *qua* director), given that it is clear that the power dynamic was always such that NYZ was effectively her superior, even if they were co-directors of EAM for the most part.

127 On balance, therefore, I find that the Second Defendant was not explicitly aware that she had been involved in a Ponzi scheme. While there were obvious markers of fraud that she could have, and should have, picked up in the course of her time in the company, the penny never dropped for her, at least not before the CAD investigations commenced.

128 I should emphasise once more that none of what I have articulated hitherto detracts in any significant way from the fact that the Second Defendant was shockingly derelict in her duties as a director of the Envy Companies. Accordingly, while I was unable to conclude, on a balance of probabilities, that the Second Defendant knew of the fraudulent nature of the transfers, I nonetheless agree entirely with the Plaintiffs that the Second Defendant's culpability is extremely high, and that her actions "amount to a total abrogation of [her] duties as a director of the Envy Companies".[174] Most shockingly, some S$400m flowed out of the EAM and EGT accounts under the Second

[174] Yap's AEIC at para 6.6.3.

Defendant's watch *qua* director of the Envy Companies and/or second signatory of these accounts. This amount was transferred out in the form of numerous discrete S$200,000 transactions. Such fund transfers would have been unmistakable and near-impossible to miss as these were not one-off transfers. Indeed, they were so frequent that there were some days on which more than a million dollars were transferred in less than 24 hours. NYZ had represented to the Second Defendant that these were transfers to EAMT to facilitate trading in nickel but, as I explained earlier, it would have been obvious with even the most minimal of checks that there appeared to be something suspect going on and all was not as it seemed and, as a director, one would be required to, at the very least, ask more questions at that point. The following are some (non-exhaustive) clear markers that the entire arrangement was suspect:

(a) The sheer number of transactions undertaken by NYZ (almost always amounting to exactly S$200,000) should have been a red flag as it was suggestive of NYZ seeking to avoid having a second signatory (namely the Second Defendant) approve the transaction. What would be the concern on NYZ's part in this regard with just withdrawing the sum as a composite amount (signed off by both signatories) if indeed the transactions had been for an approved purpose? I note that, as a trained accountant, it would have been obvious to the Second Defendant that the need for a second signatory was to serve as a check, or a bulwark to, unauthorised withdrawals of large sums of moneys. A secondary party is generally required to assess the legitimacy of such withdrawals, review the necessary documents to verify their necessity, and to ensure that sufficient information is being provided by the first signatory that the withdrawals are for a valid and legitimate purpose.

(b) The Second Defendant was never granted access to EAMT's bank accounts or statements at any time. Given that it was ostensibly represented to the Second Defendant that the sums being transferred to EAMT from EGT or EAM were to facilitate actual trading and that the transfers amounted to hundreds of millions of dollars, it would have been obvious to any diligent director that the existence and proprietary of the EAMT account was something that she needed to satisfy herself on. Indeed, EAMT was apparently not even in existence at the time many of the transfers were made purportedly to it (see [41] above), and this was never verified by the Second Defendant despite the fact that some S$400m over the years flowed out ostensibly to EAMT. For a company that was so integrally associated with the Envy Companies' operations, it is shocking that the Second Defendant did not take any efforts at all to check or verify that such a company did exist and was doing the business that it purportedly did. She contended, when asked by the liquidators during their investigations, that this was because she was not a director or signatory of EAMT.[175] While this is true, it is difficult to see its relevance given the centrality of EAMT to the Envy Companies' operations. All of this, coupled with the fact that she appears not to have had sight of a single Forward Contract which was the very essence of the entire business,[176] highlights how shoddy her level of diligence was.

(c) As I observed earlier, the Second Defendant herself accepted that she knew over the years that the money flows went exclusively in one direction, namely from EGT or EAM to EAMT, but never the other way

175 Core Bundle vol 3 at p 179.

176 Core Bundle vol 3 at p 166.

round. Put another way, investor moneys were constantly being pumped into the EAMT coffers but the purported returns from nickel trading were never pumped back to the investors *via* EAMT. While, as I had explained earlier, this was plausible in theory, it should have raised some obvious questions on her part if she had been a diligent director. As I had further noted earlier, all of this is above and beyond the fact that the Second Defendant missed the obvious marker that some of these moneys were being transferred to accounts in HSBC and OCBC when EAMT only purportedly had a Citibank account.

(d) There were times where NYZ sought the assistance of the Second Defendant to "create the relevant documents" for use in the prospectus.[177] While the claim is that this was to cover up for the fact that invoices and receipts were not issued previously and therefore had to be *ex post facto* manufactured in order to prove their existence, as I had noted earlier, this was a very poor claim and really something that should have immediate raised alarm bells on her end as being an unacceptable, if not entirely fraudulent, practice.

(e) At times, the Second Defendant was happy to take an entirely cavalier approach to her directorship and to assert any fact that may not be accurate, or that may be false. Despite knowing full well that EAM could not be found on the MAS's list of registered companies by sometime in 2016 or 2017,[178] she was happy not to rectify obvious representations in a prepared list of "Frequently Asked Questions" and

177 Core Bundle vol 11 at p 451.

178 Transcript (2 August) at p 110 line 14 to p 112 line 17.

answers suggesting the exact opposite,[179] and even on occasion explicitly represented to third parties that EAM was an RFMC.[180]

129 The Second Defendant's conduct as a whole, in my view, betrayed a blatant disregard for the duties she owed *qua* director. While one's duties and responsibilities are not always commensurate with the level of remuneration received, the Second Defendant's complete nonchalance at everything that was ongoing was especially dreadful given that she was receiving extremely handsome remuneration for her work at the Envy Companies.

130 For the above reasons, I am of the view that, while the Second Defendant missed very obvious signs of malfeasance and of the Purported Nickel Trading being a sham that never existed, she nonetheless cannot be said to have knowledge that she was involved in a sham for much of the operating period of the Envy Companies. It may be that this would have become obvious to her just before the collapse of the Ponzi scheme but, to be fair, no provable liability attaches to that in so far as much, if not all, of the receipt of moneys took place long before that.

The Third Defendant

131 I turn next to the matter of the Third Defendant. Much as they did for the Second Defendant, the Plaintiffs claim *vis-à-vis* the Third Defendant, that there were numerous markers of his knowledge of the fraudulent nature of the operations throughout the years:

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179 Core Bundle vol 11 at pp 550–551.

180 Core Bundle vol 11 at p 630.

(a) The Third Defendant assisted NYZ to procure the Singapore Nickel Shipment and the inspection thereof. Throughout the entire arrangement, the Third Defendant was very much aware of NYZ's attempts to pass off the shipment as being a sample shipment from Poseidon Nickel, and therefore being representative and proof of the existence of the Purported Nickel Trading.[181]

(b) The Third Defendant assisted NYZ to forge the Forward Contracts with Raffemet.[182]

(c) The Third Defendant prepared slide decks for and answered queries related to the Purported Nickel Trading.[183]

(d) The Third Defendant assisted NYZ to make a lodgement with the Accounting and Corporate Regulatory Authority ("ACRA") that falsely represented that EGT had a paid up capital of S$100m.[184]

(e) The Third Defendant used investors' moneys, which were procured for the purpose of the Purported Nickel Trading, to conduct unrelated proprietary trading under EGT.[185]

The Singapore Nickel Shipment

132 In relation to the Singapore Nickel Shipment, the Third Defendant assisted NYZ to procure it and the inspection thereof. He was, in many ways,

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181 Yap's AEIC at para 7.2.

182 Yap's AEIC at para 7.3.

183 Yap's AEIC at para 7.4.

184 Yap's AEIC at para 7.5.

185 Yap's AEIC at paras 7.6.2–7.6.5.

the key architect of the transaction. The Third Defendant was the one who signed off on the contracts and liaised with Raffemet for the purchase and subsequent re-sale of the same nickel that constituted the Singapore Nickel Shipment.[186] He was also the one who arranged for the temporary storage of the Singapore Nickel Shipment at the Steinweg Warehouse.[187]

133 The Third Defendant contends that the Singapore Nickel Shipment was a genuine commercial transaction which led to EGT making a profit of US$1,747,231.72.[188] He claims that he was unaware that NYZ planned to use the videos of the physical inspection of the Singapore Nickel Shipment to pass off the shipment as genuine purchases with the investors' moneys. He was instead informed by NYZ that "[NYZ] needed to physically show certain investors some of the nickel purchased by the Envy Companies", but the nickel shipments purchased by NYZ on behalf of the investors were stored in Europe and it was impracticable to arrange for a physical inspection due to travel restrictions as a result of the COVID-19 pandemic at the time. As such, the Third Defendant was instructed by NYZ to arrange for a physical inspection of the Singapore Nickel Shipment instead.[189]

134 With respect, such a defence does not take the Third Defendant very far. Even on the Third Defendant's own account, he was assisting NYZ to facilitate a fraud by misrepresenting that the nickel that was ordered as part of the Singapore Nickel Shipment was the Poseidon Nickel purchased with the investors' moneys. Moreover, it is clear that the Third Defendant must have

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186 Yap's AEIC at paras 4.2.11 and 4.2.14.

187 Yap's AEIC at para 4.2.12.

188 Ju's Defence at para 19(d).

189 Ju's Defence at para 27.

known the Singapore Nickel Shipment would be passed off as being investments of third-party investors. There were WhatsApp conversations showing that the explicit *raison d'etre* of the exercise was to mislead investors and to assist to deal with the due diligence queries from Envysion. On 3 July 2020, NYZ asked the Third Defendant if it was possible to obtain "BHP branded nickel", *ie*, the same type of nickel as Poseidon Nickel, in Singapore:[190]

NYZ:	Sgpore got BHP branded nickel?
Third Defendant:	i checking
	[picture attached]
	but need to check with warehouse if they can do visits also
	[picture attached]
NYZ:	Ok
	[audio recording attached]
Third Defendant:	Ya ok lo. then tell them we do 1k ton each batch.
	sell off once we have cargo to avoid storage charge
…	
Third Defendant:	Actually i was thinking can get them to view the physical next week leh.. Cuz we just happen to have free cash at hand, and [sooner or later we have to let them see it.]*earlier they see the cargo, earlier can clear their doubts*.. What do u think?
NYZ:	*No.leh cause it wont march [sic] the timeline*
	The free cash will be there one in August

[190] Core Bundle vol 6 at pp 210–211.

Third Defendant:	what do u mean wont match time line ha?
	the cargo will be from the apr tranche
NYZ:	It will be from june tranche
	The apr and may shipments should be in Europe alr
Third Defendant:	o ok

[emphasis added]

The Third Defendant was therefore acutely aware that the shipment was to be prepared to "clear [the investors'] doubts", and NYZ also explicitly stated to the Third Defendant that they could not show the nickel too early as it would not "[match] the timeline" of the "[J]une tranche" of nickel shipments.

135 In fact, the Third Defendant assisted NYZ to conceal the fact that the Singapore Nickel Shipment was *not* actually a recent shipment of Poseidon Nickel. On 24 July 2020, Steinweg Warehouse provided draft warehouse warrants for the Singapore Nickel Shipment, which revealed that the nickel had been stored at Steinweg Warehouse since sometime in 2016 to 2018.[191] The Third Defendant showed the draft warrants to NYZ over WhatsApp and the latter responded that he "[c]an see date of storage leh … [t]hen can't say is recrnt [*sic*] purchased gooda [*sic*]".[192] The Third Defendant then requested that Steinweg Warehouse re-issue the warrants without the date of storage, but Steinweg Warehouse initially stated that this was not possible.[193] This led to a

191 Core Bundle vol 7 at pp 1131–1136.

192 Core Bundle vol 6 at p 237.

193 Core Bundle vol 7 at pp 1246–1249.

further WhatsApp conversation between the Third Defendant and NYZ on 27 July 2020:[194]

Third Defendant:	u think can explain storage date?
NYZ:	Hard leh
	Lol
Third Defendant:	i call in afternoon see how

Eventually, after quite a bit of back and forth, Steinweg Warehouse relented and issued revised warrants with the storage date omitted.[195]

136 Again, in August 2020, NYZ and the Third Defendant spoke about whether the actual storage date of the Singapore Nickel Shipment would be apparent and the Third Defendant re-assured NYZ that he would keep the warehouse personnel "busy" such that there would be no questions asked:

(a) On 2 August 2020:[196]

NYZ:	Cannot tell when being shipped in right
	Can we bring clients ourselves? Don't want them asking the warehouse ppl
	Need to show at least 1.1k tonnes or so
Third Defendant:	normally a security ppl will accompany the viewing. The [*sic*] have no info of your stock so wont tell. …

(b) On 23 August 2020:[197]

194 Core Bundle vol 6 at p 243.

195 Core Bundle vol 7 at pp 1199–1204, and 1235–1239.

196 Core Bundle vol 6 at p 253.

197 Core Bundle vol 6 at pp 279–280.

NYZ:	I just don't want them saying its not freshly shipped in
Third Defendant:	ya.. wont know
…	
Third Defendant:	i keep e warehouse ppl busi tmr

137 It is also particularly telling that the WhatsApp messages in July 2020 (reproduced at [134]–[135] above) between the Third Defendant and NYZ were deleted by the Third Defendant from his chat records initially produced in specific discovery.[198] These messages plainly paint a clear picture of the Third Defendant's knowledge that the entire point of the Singapore Nickel Shipment was to mislead investors about its purpose. When asked about this in cross-examination, the Third Defendant's poor excuse for deleting such damning parts of the WhatsApp conversation was that he wanted to protect himself from "being misunderstood by the plaintiffs".[199] But this only underscored the probative value of the deleted portions. In fact, the Third Defendant effectively admitted that the deleted portions could indicate his guilt. In his cross-examination, the Third Defendant contended that the deleted texts could "mislead" the Plaintiffs (and third parties) into "think[ing] [he is] guilty when the fact is [he is] not".[200] In a similar vein, when I posed a query to the Third Defendant about the purpose of such deletions at the conclusion of his testimony, he conceded that the point of "the deletion was to protect [himself]".[201]

198 PCS at para 6.3.7; Core Bundle vol 12 at pp 867–872; and Transcript (7 August) at p 33 lines 12–19.

199 Transcript (7 August) at p 32 line 6.

200 Transcript (7 August) at p 33 lines 4–8.

201 Transcript (7 August) at p 32 lines 17–24.

The forged Forward Contracts

138 Between September and December 2020, the Third Defendant further forged four Forward Contracts signed with Raffemet on NYZ's instructions, even though there were no genuine underlying transactions with Raffemet.[202] These forged Forward Contracts were subsequently used by NYZ for due diligence purposes with Envysion. For context, the Third Defendant accepts that he "made certain changes" to the documents in question and that he knew that they were being sent to Envysion. In his defence, the Third Defendant contended that he forged the contracts on NYZ's instructions in order for Envysion to have "samples" of what the contracts looked like, and to prevent "confidential information and trade secrets" from being revealed.[203]

139 This defence is entirely contradicted by both the facts and common sense. Turning first to the facts, the communications between NYZ and the Third Defendant show that the latter was co-ordinating with NYZ on what details needed to be forged on the Forward Contracts,[204] whether the forged contracts were acceptable to send over to Envysion staff, and sharing concerns about whether MAS would have questions about various aspects of the Purported Nickel Trading.[205] The Third Defendant even took the audacious step of recommending to NYZ what needed to be forged to paint a convincing picture to MAS.[206] It is obvious they were concerned that they would be found out as having submitted forgeries as part of their business operations, since it would be obvious that no third party would take issue with whether "samples"

202 Yap's AEIC at paras 4.2.22–4.2.30.

203 Ju's Defence at para 33(b).

204 Core Bundle vol 6 at pp 295–296.

205 Core Bundle vol 6 at pp 297–299.

206 Core Bundle vol 6 at p 294.

were forged as the authenticity of "samples", by definition, are of no legal relevance. Indeed, this is obvious from the communications where NYZ even, at one point, explicitly pointed out that the purpose of the entire exercise was to "show got forward [contracts]",[207] loose parlance that was employed by NYZ to suggest that the aim of the entire exercise was to give the illusion that the Envy Companies in fact had the Forward Contracts (*ie*, that they were running a legitimate business and had the contractual documents to prove this).

140 Moreover, as a matter of common sense, it is impossible to understand what the point of such "samples" were and why Envysion needed sample contracts as opposed to actual contracts. In any event, even in the absurd situation where Envysion needed samples for no explicable reason, one would have thought that the only common-sensical way to pass off such documents would be either to place a watermark indicating that it was a "sample" document or to otherwise redact sensitive information from an existing contract. It would make absolutely no sense to go to the trouble of replacing and forging details on an existing contract to make it seem as if it were genuine. Therefore, the obvious inference was that the purpose of the entire exercise was to pass off such forged Forward Contracts as genuine contracts.

False lodgement with ACRA

141 The Third Defendant also assisted NYZ to falsely represent, *via* a notice of alteration in share capital lodgement with ACRA,[208] that EGT had a paid-up capital of S$100m, even though there were insufficient funds at the time to support such a representation. The correspondence between the parties suggests that the purposes of the exercise was to enhance the viability of EGT as a

207 Core Bundle vol 6 at p 293.

208 Core Bundle vol 3 at pp 37–38.

company, by falsely representing it as having an artificially inflated level of financial resources such that it would be worth investing in.[209]

142 I pause here to highlight two points specific to the Third Defendant's defence. The first is that, in relation to the circumstances of representing EGT as having a paid-up capital of S$100m, the Third Defendant contends that this was inadvertent in so far as he was unaware of the difference between *authorised* capital and *paid-up* capital. He contends that in assisting with the ACRA lodgement, he had merely intended to reflect EGT as having an authorised capital (rather than paid-up capital) of S$100m and, in that sense, he was not intending to mislead anyone.[210]

143 With respect, this is a plainly untenable defence that I have little hesitation in rejecting. The evidence clearly shows active discussions between NYZ and the Third Defendant about the cancerous motivations underlying the need to misrepresent the paid-up capital. In several of the WhatsApp messages between the parties, the Third Defendant specifically indicated that he had to shop around for a corporate secretary that would be able to facilitate the transaction. Initially, the Third Defendant told NYZ that an earlier secretary he identified said they would "need [the] bank statement to show funds".[211] Subsequently, the Third Defendant succeeded in increasing the paid-up capital of EGT to S$100m, as he had found "another [secretary] that [was] willing to" assist. The Third Defendant then stated that it would be necessary to "change back" the false entries or "fund" the increased paid-up capital before any audit

209 Yap's AEIC at paras 7.5.1–7.5.8.

210 Ju's Defence at para 34.

211 Core Bundle vol 6 at p 151.

took place, so that he would not be "in trouble".[212] All of this was on the back of conversations between the parties a couple of months prior in which the Third Defendant suggested that they "pump up paid up [capital] to abt 50 mil".[213]

144 The evidence also clearly shows that the Third Defendant knew the difference between paid-up capital and authorised capital, and had at one point even asked NYZ whether he could find an audit firm that would be able to certify EGT's paid-up capital and confirm that they had such funds on hand.[214] It should be obvious that any change to authorised capital would not have been problematic in so far as "authorised capital" is simply the maximum worth of shares a company can issue, and *not* actual paid-up capital. Any amendments to authorised capital would therefore not have caused many difficulties. They would have easily passed any audit check as long as the necessary resolutions were in order. This is even assuming the concept of "authorised capital" is relevant at all, given that the Companies Act was amended to remove the concept of authorised capital: Hans Tjio, Pearlie Koh and Lee Pey Woan, *Corporate Law* (Academy Publishing, 2015) at para 12.029. It would also clearly have been pointless to "show funds" if the *authorised* capital was the one being varied, since any such amendment would not itself be reflective of any infusion of fresh funds (being merely an accounting variation that serves to reflect the *theoretically possible* ceiling for capital infusion, not any factual or actual infusion of funds).

145 Indeed, at one point of time in the WhatsApp conversations between the parties, the Third Defendant stated that "paid up capital [amounts to]

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212 Core Bundle vol 6 at p 152.

213 Core Bundle vol 6 at p 86.

214 Core Bundle vol 6 at pp 151 and 164.

max[imum] shareholder liability?", to which NYZ affirmed as true.[215] The entire tenor of the conversations therefore puts paid to any possibility that the Third Defendant was confused about whether he was effecting a variation of the paid-up capital of the company, or the authorised capital. At trial, the Third Defendant's explanations as to why he lodged a notice of alteration of share capital with ACRA was at times entirely evasive and consisted of non-responses. At one point, he even suggested that perhaps ACRA was to blame for accepting his application to make the false representation by not requiring supporting documents to verify the lodgement, by stating that "if [he did] not have the authority [to file the lodgement], [ACRA] shouldn't have let [him] lodge that change in the first place".[216] The obvious picture that emerged was, in my judgment, one of indisputable guilt.

Proprietary trading with investors' moneys

146 Further, the Third Defendant used more than US$15m of EGT's funds to conduct unrelated proprietary trading and was paid over US$1.8m in profits. The Plaintiffs contend that the Third Defendant must have known that he was misusing investors' moneys because: (a) the only source of funds into the Envy Companies at the time was from investors for the Purported Nickel Trading; and (b) the Third Defendant knew that the Purported Nickel Trading was non-existent as suggested by the need to choreograph the Singapore Nickel Shipment and to forge the Forward Contracts with Raffemet.[217]

147 The Third Defendant, in his defence, paints a picture of him being solely involved in the proprietary trading side of the house in the Envy Companies.

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215 Core Bundle vol 6 at p 87.

216 Transcript (8 August) at p 27 line 11 to p 28 line 8.

217 Yap's AEIC at paras 7.6.1–7.6.5; and PCS at para 4.7.1.

With respect, such a characterisation clearly very much understates his involvement in and knowledge of the Purported Nickel Trading. While it is true that some part of his work related to proprietary trading on behalf of the Envy Companies (for which, as far as I can tell, there does not appear to be any explicit allegation of wrongdoing), the Third Defendant was in fact quite involved in certain aspects of the nickel trading operations. To state but one example, the Third Defendant prepared slide decks on NYZ's instructions setting out the logic of the Purported Nickel Trading,[218] which the Third Defendant must have known would be distributed to investors.

148 Above and beyond this, the evidence also shows that the Third Defendant had used his own industry knowledge when discussing responses to investors' questions about the legitimacy of the investments in the Purported Nickel Trading[219] and that he had taken the lead pertaining to some of the queries from third parties.[220] The Third Defendant had also personally made representations to Envysion in relation to the Singapore Nickel Shipment and the Purported Nickel Trading, such as the following:[221]

> Just to add on, cargo is first stored as collateral at our designated LME warehouse so we have full ownership before selling them. A sample of proof of ownership called warehouse receipt is as attached. As these receipts are LME standard, which is as good as bank deposits, they are impossible to manipulate or fake.

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218 Core Bundle vol 9 at pp 1172–1189.

219 Core Bundle vol 9 at p 1150.

220 Core Bundle vol 6 at p 127.

221 Core Bundle vol 9 at p 1150.

I also add that these were all clearly lies given that the Third Defendant knew full well that such documents could be forged (as his own actions proved) and that he was very much a primary player in the Singapore Nickel Shipment.[222]

149 The evidence similarly shows that Envysion Wealth corresponded with the Third Defendant and kept him in the loop from time to time.[223] All in all, seen in context, the Third Defendant was very much integral to the operations of the Envy Companies and the investments into the Purported Nickel Trading.

150 Indeed, the Third Defendant's suggestion that he was primarily focused on the proprietary trades simply does not square with the evidence provided. For one, the parties accept that "proprietary trading" represents the trading of financial instruments using the company's own money rather than client funds.[224] Yet, the Third Defendant, despite being a director of EGT, could not even explain the source of money that he was using to engage in such trades. His evidence on this precise point was difficult to understand, and there was no clear position taken by him on this even at the end of cross-examination. At various junctures, often almost in the same breath, he would explain that they came from mutually exclusive sources. For example, while claiming that these were "accumulated profits" in EGT, he also claimed these to be funds from "shareholders".[225] At the same time, he also claimed that it may have come from NYZ himself *qua* shareholder as he pays significant income tax and therefore "he can pump [money] into his own entity, which makes sense".[226] It speaks

222 Yap's AEIC at paras 7.4.1–7.4.5.

223 Core Bundle vol 8 at p 643; and Core Bundle vol 7 at p 162.

224 Transcript (7 August) at p 113 lines 6–8.

225 Transcript (7 August) at p 109 lines 6–16.

226 Transcript (7 August) at p 109 line 20 to p 110 line 9.

volumes that, despite the bizarre lack of any understanding of where the moneys were coming from and the myriad of hypotheses that he had on these, the Third Defendant never questioned the genesis of the money he was using for the proprietary trades.

151 All of these strands of logic merely serve to expose the obvious reality that the Third Defendant, in all likelihood, knew full well that much, if not all, of the funds he was dealing with at EGT were tainted funds directly procured through false representations from the Purported Nickel Trading. This explanation dovetails very well with the logic of why, when the entire Purported Nickel Trading eventually had to be transferred from EAM to EGT, the Third Defendant did not seem to take any issue with this. In this connection, the Third Defendant claimed in court that he did take issue with the move.[227] However, the evidence squarely suggests otherwise: the Third Defendant was actively discussing with NYZ ways to get MAS out of the picture by "shift[ing] operation"[228] and the WhatsApp conversations show clearly that he had no real reservations to such a move.[229] Indeed, even in court, in response to the Third Defendant's claim that he had "rejected the proposal at first", NYZ responded that he "[did] not recall [such a] rejection".[230]

The Third Defendant was aware that the Purported Nickel Trading was amiss

152 The fact that the Third Defendant was previously in the commodities trade and had experience in the area of "metals trading"[231] only fortifies my view

227 Transcript (7 August) at p 93 line 8 to p 94 line 15.

228 Core Bundle vol 6 at p 132.

229 Core Bundle vol 6 at p 133.

230 Transcript (15 August) at p 29 lines 17–20.

231 Core Bundle vol 3 at p 109.

that he was either aware of or he must have been wilfully blind about the hollow nature of the Purported Nickel Trading. As the Third Defendant himself conceded in one of his interviews with the IJM (the accuracy of which he does not dispute), with his metals trading background, he did not personally invest in the Purported Nickel Trading as "the return seemed high" and was "a bit too high" for him.[232] Simply put, as someone who knew the market, he refused to invest himself as he knew that the exaggerated returns that were being claimed were completely untenable.

153 Indeed, for that reason, the Third Defendant even suggested in his interview with the IJMs that he tried to persuade some other employees not to invest, but failed to convince them. Significantly, these suspicions had already emerged by early 2020, as he was warning others not to invest by then.[233] In that very same interview, he noted that he had asked NYZ to see the underlying contracts of the Purported Nickel Trading to verify the legitimacy of the trades. It is relevant to note that, in seeking such documents, his aim was to contact "friends in BNP Paribas whom [he] could ask to confirm whether it [was] legitimate".[234] Seen in the round, the interview betrays an obvious sense from the Third Defendant that the entire business model simply did not add up, and that he knew something was obviously amiss such that not only did he not see it fit to personally invest, he saw it as necessary to actively warn others to be wary about investing. In short, even at EGT, he knew that the "too high" returns were not genuine.

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232 Core Bundle vol 3 at p 109.

233 Core Bundle vol 3 at p 110.

234 Core Bundle vol 3 at p 110.

The Third Defendant's testimony in court

154 In coming to this conclusion, I also accord some weight to the Third Defendant's demeanour in his oral testimony before me. Indeed, I had difficulty understanding much of the evidence given by the Third Defendant. The reason for this is because almost the entirety of the Third Defendant's testimony appeared to be self-interested. As canvassed in the preceding paragraphs, the Third Defendant proffered excuse after excuse to deny even the most irrefutable of points. Furthermore, quite apart from the inexplicable excuses given by the Third Defendant for what he did, I noticed that he had a penchant, when testifying, to either pause, seek clarification on unambiguous questions or offer complete non-answers when the questions posed by counsel for the Plaintiffs, Mr David Chan ("Mr Chan"), caught him in a bind or where he had no cogent response. While this occurred for a large part of his evidence on the stand, it was a matter that came into sharp relief close to the end of cross-examination when Mr Chan called it out repeatedly and on the record.[235]

155 It is clear to me that he was doing so because anytime he realised he had no honest answer to give that would not lay bare his complicity in NYZ's actions, he required time to fashion up a false reason on the spot so as not to give an inch on any point, however absurd the false reason might be. An emblematic example would be his farcical account that the forged documents that were sent to Envysion were intended to be no more than "samples" (see [138]–[140] above). Be that as it may, I only give this observation on his demeanour and conduct in court minimal weight in the entire calculus coming to a finding as to the Third Defendant's mental state, as it did reflect a tendency on his part to delay answering questions when being cross-examined to buy time

235 See, for example, transcript (8 August) at p 22 lines 7–18; p 23 lines 4–20; and p 30 lines 6–20.

to explain even the most inexplicable of behaviours. As the courts have often taken pains to highlight, one should be careful not to place too much weight on court performance given that "demeanour", or facets thereof, should not be used as a crutch to support otherwise shaky conclusions that cannot be defended in their own right (*Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [69]). Nonetheless, in the circumstances, it does seem to me that some slight weight should be placed on such demeanour. I should stress that these observations on the Third Defendant's demeanour merely *affirm* my earlier findings based on the evidence (*ie*, that he was aware that the Purported Nickel Trading was fraudulent).

156 At bottom, the Third Defendant's willingness to be complicit in NYZ's schemes, albeit without explicitly acknowledging the same to NYZ, appeared to be informed by his belief that no one had a right to consider him a bulwark of EGT's interests. Even in court, it was clear that his true belief was that the only person he had a duty to look out for was himself. Everyone else, including EGT (or the individual investors), were subsidiary. This outlook was perhaps best reflected in an unprompted trivialising missive right at the conclusion of his re-examination. In his re-examination, the Third Defendant lamented that even "sleeping" directors of other companies which were in the news at the time were rewarded with thousands of dollars annually. Yet, in comparison, the Third Defendant himself "wasn't even paid a single cent" in director's fees.[236] He then dismissively stated, "[w]hat kind of director is this, director of charity?".[237] Finally, he capped the musing by concluding that "[b]ecause I am not paid a single cent of director['s] fees I assume that I do not have duties as a director

[236] Transcript (8 August) at p 82 lines 6–11.

[237] Transcript (8 August) at p 82 line 13.

also".[238] That exchange, offered by the Third Defendant *sua sponte*, laid bare his willingness to engage in a Faustian bargain with NYZ in a way that aligns to all of the findings I have made above about his state of mind. It encapsulated the reality (as is already evidenced by the numerous examples I gave earlier) that the Third Defendant never harboured serious misgivings about sacrificing the well-being of investors at the altar of the financial rewards of being a part of the Envy Companies. If being complicit in NYZ's actions is the sacrifice he had to make in order to achieve that then, as the evidence before me shows, he quite quickly concluded that this was a worthwhile sacrifice, since it was not ultimately his investment moneys on the line, as he was sufficiently savvy to know that the investment mechanics simply did not make sense.

157 I therefore find, on a balance of probabilities, that the actions of the Third Defendant, unlike that of the Second Defendant, were not reflective of any authenticity in his protestations of ignorance. Instead, his actions suggested he was engaged in kayfabe with NYZ; a delicate dance in which he purported to feign obliviousness while seeing obvious markers of the hollow nature of the operations, agreeing to do NYZ's bidding to assist in the perpetuation of the fraud while simultaneously seeking to dissuade others he had a personal relationship with from investing as he knew that there was something obviously illegitimate and fraudulent about the entire enterprise.

158 In any event, even if I am wrong in the conclusion set out in the preceding paragraph, it is clear that, at the very least, the Third Defendant's actions as a whole reflect a very obvious lack of due care and complete dearth of interest to take his director duties seriously. His actions reflected a willingness to do anything and everything for the significant rewards that

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238 Transcript (8 August) at p 82 lines 16–18.

flowed from being a part of the Envy Companies. That he was willing to forge documents, fraudulently change the paid-up capital sums for EGT and mislead investors on the Singapore Nickel Shipment spoke to his entire approach to his role as a director and employee of the company. These actions also reflect his willingness to be complicit in whatever he was asked to do. This made a mockery of his duties as a director of EGT. Therefore, even if I am wrong that the Third Defendant had explicit knowledge of the fraudulent nature of the Purported Nickel Trading, much like the Second Defendant, he would have been, at the minimum, manifestly and grossly derelict in his duties. As the Plaintiffs similarly assert, the Third Defendant's actions amounted to "a total abrogation of his core fiduciary duties as a director of EGT, or gross negligence".[239] In respect of his actions *vis-à-vis* the increasing of paid-up capital of EGT and the background circumstances of the Singapore Nickel Shipment, his actions were plainly fraudulent.

159 I note, for completeness and for fairness to the Third Defendant, that some aspects of the WhatsApp communications between NYZ and the Third Defendant could be said to be supportive of a belief on the Third Defendant's part that the business was a legitimate one. To take some examples of this:

(a) The Third Defendant questioned NYZ about the legal risks of the expansion of physical trading in other countries.[240] He also cautioned NYZ that the trades made by other individuals should be statistically sound and backed by logic, otherwise those trades will essentially be "gambling".[241]

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239 Yap's AEIC at para 7.6.7.

240 Core Bundle vol 6 at p 232.

241 Core Bundle vol 6 at p 194.

(b) The Third Defendant took issue with a client signing a contract under his personal name but with funds coming from his company. He requested NYZ to avoid such things moving forward as "it looks very fishy".[242]

(c) When NYZ informed the Third Defendant that "[n]ickel price [was] going crazy", the Third Defendant responded with suggestions as to how they might respond to that market change, such as by "wait[ing]" for a bit. Such a discussion necessarily assumes that the Envy Companies were in fact trading in nickel.[243]

All of these actions could ostensibly be seen as suggesting that the Third Defendant lacked explicit awareness of NYZ's underlying *modus operandi* at the time.

160 Nonetheless, on balance, I am of the view that the preponderance of the evidence suggests knowledge on his part. Even if there was any lingering doubt about the fraudulent nature of the operations of the Envy Companies, such suspicions would presumably have been put beyond any doubt from September 2020 when NYZ started getting the Third Defendant to forge documents on his behalf. The Third Defendant informed the IJMs that he doubted if the returns of the Purported Nickel Trading were "legitimate" as they were "too high", and that he sought to verify the underlying supporting documents of such returns.[244] When NYZ sought the Third Defendant's assistance to misrepresent the Singapore Nickel Shipment and/or forge the Forward Contracts with Raffemet, that should have been the smoking gun that the Third Defendant himself

242 Core Bundle vol 6 at p 246.

243 Core Bundle vol 6 at pp 250–251.

244 Core Bundle vol 3 at p 109.

claimed to have been seeking. He did not even need his apparent "friends in BNP Paribas" to confirm this, since he must have known that the various documents were forged, as he personally assisted to facilitate the forgeries and false representation to investors. This exchange must surely then have *proved* his own suspicion that the entire Purported Nickel Trading was a very wobbly, if at all existent, house of cards.

161 For the above reasons, I find that the Third Defendant was explicitly aware of the Purported Nickel Trading being a sham, or at least wilfully blind to that fact. Furthermore, even if I am wrong on this assessment, it is clear that he was at the very least grossly negligent in relation to his director's duties.

The Fourth Defendant

162 Finally, I move to the state of mind of the Fourth Defendant. Unlike the Second and Third Defendants, the Fourth Defendant was not a director of any of the Envy Companies. To recapitulate, the Fourth Defendant was involved in getting a third party, Heng, to prepare forged documents for NYZ's use. These documents included the forged Shipping Documents, IB Screenshots and BNP Statements.

163 The Plaintiffs contend that the Fourth Defendant was not just merely a conduit for Heng's forgeries, but that he had been supervising some of the edits that were done, including providing comments and mark-ups to the forgeries done by Heng.[245] The Fourth Defendant also circulated various forged documents within the Envy Companies and made various representations to third parties relating to Purported Nickel Trading despite knowing that such

[245] Yap's AEIC at para 8.1.3.

nickel trading was non-existent.[246] The Plaintiffs also contend that the fact that the Fourth Defendant concealed and deleted messages between himself and NYZ was further reflective of his complicity in forgery of documents relating to the Purported Nickel Trading.[247]

164 On the other hand, the Fourth Defendant accepts that he was factually complicit in the creation of the forgeries in the manner asserted by the Plaintiffs. However, he contends it was done without any ill-will, and without any intent to injure innocent parties. He asserts that he was not particularly intelligent, with his highest academic qualifications being that of PSLE, and with his professional life largely consisting of odd jobs and relatively minor roles before working in the Envy Companies.[248] He also averred that he had little to no knowledge of "finance or conducting business"[249], and the nature of his work for the Envy Companies was largely administrative.

165 According to the Fourth Defendant, he got to know Heng from his time in National Service and knew that the latter was a wedding photographer. As such, when he was asked by NYZ if he knew anyone who could provide photo-editing services, the Fourth Defendant decided to approach Heng.[250] The Fourth Defendant was under the impression that the photo-editing of the company's documents was to prevent the originals from being seen by employees (such as Mr Lau Lee Sheng) who may become potential competitors in the longer term.[251] The Fourth Defendant claims that he only realised that the entire business was

246 Yap's AEIC at paras 8.1.4 and 8.2.1–8.2.2.

247 Yap's AEIC at paras 8.1.5–8.1.6.

248 Cheong's AEIC at paras 3–6.

249 Cheong's AEIC at para 19.

250 Cheong's AEIC at paras 25–29.

251 Cheong's AEIC at paras 31–32.

a sham sometime in May 2021, when Poseidon announced that it had no working relationship with the Envy Companies.[252] I pause here to note that the factual assertions made by the Fourth Defendant are largely not disputed by the Plaintiffs, though they contend that, even on those facts, the Fourth Defendant must have known that the documents forged by Heng with his co-operation were being used to perpetrate a fraud on investors and to paint a false financial picture of the Envy Companies.[253]

166 On balance, I find that the Fourth Defendant knew that he was creating forgeries, and that he also became aware that these were being circulated to both internal employees and external investors. Nonetheless, for the reasons I will explain below, I concomitantly find that he did not specifically know that such actions were being done to prop up a non-existent trading scheme. I instead am of the view that the entirety of his touch points with NYZ would have left him convinced that the Purported Nickel Trading was real and legitimate, even if he was aware that false documentation was being circulated both internally and potentially externally to investors.

167 As I explained earlier when discussing the state of mind of the Second Defendant, we need to assess the Fourth Defendant's state of mind in the context of the circumstances at the material time. In particular, it is critical that we avoid assessing such matters with the benefit of hindsight. In assessing the Fourth Defendant's state of mind, one must consider the matter through the lenses of the Fourth Defendant's perspective and the information available to him at the time, taking into account his background, station in life, and ability to understand and contextualise the actions he was complicit in against the wider

252 Cheong's AEIC at para 100.

253 PCS at para 5.1.3.

backdrop of the entire business. With that in mind, in my judgment, none of the markers suggested by the Plaintiffs necessarily strongly suggested that the Fourth Defendant had knowledge of the sham nature of the investment and the centrality to the same of the documents he helped alter or forge.

168 I will deal with some facets of the Plaintiffs' case very shortly, but I first make one overarching point that renders problematic the Plaintiffs' suggestion of complicity and knowledge on the part of the Fourth Defendant. The Plaintiffs essentially contend that the Fourth Defendant appreciated the minutiae and implications of the documents he had helped forge; he was not a mere conduit for NYZ's instructions, as he had supervised Heng's work and made independent decisions.[254] On the evidence, there is little to suggest that this was the case. Instead, it was clear from the Fourth Defendant's undisputed background and the nature of his testimony in court that he was not particularly sophisticated and possessed a rather rudimentary understanding of the business of the company.

169 On the stand, he came off as a somewhat simple man who, at times, found it difficult to follow or understand relatively simple lines of questioning and was susceptible to being confused. He required Mr Chan to repeat or rephrase even simple questions,[255] but unlike the Third Defendant (who, as I noted at [155] above, appeared to be doing so in order to buy time to respond to difficult questions), it was painfully apparent that this was because he had difficulty comprehending even slightly complex or nuanced questions. At times, he had to look at the live transcript of the hearing and read the question(s) posed a few times before he could truly understand what the actual question being

254 PCS at paras 5.2.1 and 5.3.1.

255 Transcript (13 August) at pp 11–12.

asked was. In my view, it was not likely that the Fourth Defendant applied his mind to the question of why the forged documents were being prepared, or gave a second thought as to whether NYZ had any nefarious purpose for the documents.

170 All of this must also be seen in the context of the nature of the relationship between NYZ and the Fourth Defendant. The power differential between them was plainly apparent from their text messages.[256] In essence, the Fourth Defendant did whatever he was told because, as he himself asserted, the entire premise of his work was to handle all of the administrative matters for NYZ.

171 In the course of cross-examination, it was suggested that some of the documents he had helped forge were, *inter alia*, used as part of the prospectuses provided to third parties,[257] and that some of the forged BNP documents were subsequently sent by him to Mr Cliff Ho, an investor in the company.[258] To me, all of these missed the point: the questions asked by counsel for the Plaintiffs in these areas appeared to assume that the Fourth Defendant was a savvy business individual who was actively mindful and keeping track of all the paper trails, who understood the nuances of the business, and who could readily appreciate the implications of sending out these emails on investment sentiment and on how funds were brought in.

172 With respect, the reality was quite different: it was very likely that the Fourth Defendant had little idea on how precisely the documents he had a hand

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256 Native document in Core Bundle vol 6, NYZ_0000160026.

257 Core Bundle vol 8 at p 267; and Transcript (13 August) at p 25 lines 3–11.

258 Core Bundle vol 11 at pp 584–585; and Transcript (13 August) at p 28 lines 14–18.

in forging were going to be used. I can accept that he certainly would have known that the documents he forged were being used for external purposes for the business, but, on balance, I am unable to accept that he knew at the time that this was for the purposes of affording a front to a sham business.

173 Indeed, much of his actions appear to disprove such a hypothesis. For one, I note that, much like the Second Defendant, the Fourth Defendant had invested in the Purported Nickel Trading.[259] His investments started even *before* he joined the Envy Companies and he had assisted some of his friends to do the same.[260] As mentioned *vis-à-vis* the Second Defendant, this suggests that he himself bought into the logic of the Purported Nickel Trading. For another, and perhaps significantly, I note that, from around February to March 2021, the Fourth Defendant even *paid investors out of his own moneys* to keep the business going when CAD arrested NYZ.[261] In my view, such actions, especially when seen in the round, are vastly inconsistent with the idea that he was knowingly complicit to the Ponzi scheme at the time. They only reflect how he would unthinkingly execute anything he was tasked to do, never really stopping at any time to ask questions about the legitimacy of the business, having assumed from the outset that it was real.

174 To the extent he was aware that he was sending his own forged documents outside the Envy Companies, it was not apparent to me that he knew what the purpose of such communications were. It may be that, viewing NYZ's instructions collectively with the benefit of hindsight, it should have been somewhat obvious to him that what he had been asked to do seemed really odd.

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259 Cheong's AEIC at paras 69–72.

260 Cheong's AEIC at paras 13, 73–77.

261 Cheong's AEIC at paras 79–82.

Nonetheless, as I have impressed earlier, it is important not to assess his understanding of the situation by recourse to hindsight.

175 The Plaintiffs also place weight on the contention that the Fourth Defendant had standing instructions to shred the hard copies of the documents that were forged,[262] and the fact that NYZ also instructed the Fourth Defendant to ensure that copies of certain forged documents were "scanned [copies] of a print out".[263] While these were true, they are entirely in sync with the idea that the Fourth Defendant was unthinkingly executing what he saw to be administrative instructions from NYZ. I might add that there was little that was suspicious about this *from the Fourth Defendant's perspective* – if indeed, he believed that the aim was to present the forged documents as being authentic (whether for cancerous or benign reasons), then it was in a sense logical to get rid of the inconvenient copies which, when carefully studied, may show flaws and imperfections suggestive of forgery. In the same vein, the Plaintiffs contend that his deletion of his WhatsApp correspondence on NYZ's directions showed a guilty mind. Once more, I was unable to come to the same conclusion. Again, having regard to the entirety of the evidence, all this shows is a man who took orders from NYZ and who executed them without thinking about it.

176 Indeed, when one looks at the entirety of the WhatsApp conversations between them (as had been retrieved from NYZ's phone), there was little by way of a smoking gun in the form of any suggestion on his part that he was in on the Ponzi scheme or otherwise understood the implications of what he was falsifying. Instead, they appear to corroborate his account of being an unthinking tool for NYZ. In fact, if one accepts the Fourth Defendant's claims

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262 Transcript (13 August) at p 66 lines 5–9.

263 PCS at paras 5.3.11–5.3.12.

that he deleted such WhatsApp conversations on the directions of NYZ at or around the time of CAD's investigation,[264] then it makes it even more unbelievable that he had appreciated that it was a scam. As I noted a few paragraphs earlier, at around that time, he had used his own money to pay investors, undoubtedly with the view that he would eventually be paid back since, in his mind, this was a legitimate business and all of this was nothing more than a storm in a teacup that would likely pass with the passage of time.

177 I would add, for completeness, that NYZ's evidence further corroborates the relatively limited knowledge that the Fourth Defendant possessed. NYZ testified that the Fourth Defendant had "no direct involvement in the trading" and was hired merely to serve as an "administrative staff".[265] NYZ also gave evidence that, from his perspective, the Fourth Defendant understood his instructions to make the necessary amendments to the documents as a means to "support the nickel trading [business]".[266] None of this, of course, changes the fact that the Fourth Defendant clearly knew he was making forgeries but, on balance, I find that he had assumed that they had an entirely different purpose and were not being used to legitimise an otherwise hollow business model bereft of any meaningful financial or trading activity.

178 To be clear, none of this changes the fact that the Fourth Defendant's actions tangibly contributed to the perpetuation of the fraud. It is clear that the forged documents that were prepared with his assistance very much allowed the Purported Nickel Trading scheme to endure for as long as it did. In that sense, he was not an insignificant player. Nonetheless, one must not translate the

264 Transcript (13 August) at p 83 lines 16–25.

265 Transcript (15 August) at p 6 lines 2–5.

266 Transcript (15 August) at p 14 lines 7–11.

centrality of the forged documents into an assumption of knowledge. In my view, the Fourth Defendant was operating within the bounds of a very narrow frame of reference. He was acting as one would when operating under bounded rationality, making decisions based on the small sliver of information he had, neglecting to ask questions about the meaning or logic of the intended use of such documents. At the risk once more of reiterating the obvious, it is all too easy for us to conclude on hindsight that such actions were ethically inappropriate or made him a knowing player in the fraud in question, but to do so *ex post facto* when one has access to information of the entirety of the Envy Companies' operations (as the court and liquidators did) would be unfair.

179 On balance, therefore, I am of the view that the Fourth Defendant was not knowingly complicit in what had transpired. I find, in particular, that he knew that he was facilitating forgeries, but that it was not apparent in his mind at the time that the documents were going to be used for the purposes of perpetuating a fraud on investors.

Conclusion on the state of mind of each Defendant

180 To recapitulate, for the reasons set out above, I am of the view that the Third Defendant had explicit knowledge (or was at least wilfully blind) of the fact that NYZ was running a Ponzi scheme.

181 For the Second and Fourth Defendants, I find that they did not have explicit knowledge of the Ponzi scheme. Nonetheless, I also find that both of them have, through their own unique means, significantly and tangibly contributed to the eventual state of affairs in the Envy Companies. NYZ was no doubt the architect of the entire scheme, but each of the Defendants were, in their own way, bricklayers supporting the architect. They were, individually and collectively, party to small but impactful fraudulent acts along the way which

built up the entire scheme. In this connection, it is also patently obvious that the Second Defendant had breached her duties as a director.

182 The question then is how the law responds to their respective roles and states of mind, and how the law maps the above findings onto the issue of liability in respect of the causes of action that have been put forth by the Plaintiffs. It is to that I now turn.

Statutory causes of actions

Fraudulent trading

The parties' positions

183 The Plaintiffs contend that the Defendants are liable for the Minimum Net Principal as they were involved in "fraudulent trading" under s 340(1) of the Pre-IRDA Companies Act for conduct that occurred prior to 30 July 2020 and s 238(1) of the IRDA for conduct from 30 July 2020 onwards.

184 As the Second and Third Defendants were self-represented in these proceedings (and, as I had observed earlier, the Third Defendant did not file any written submissions in any event), they did not state their specific legal positions as to whether the Plaintiffs' various causes of action are made out, though they maintain their factual positions that they were unaware of the Ponzi scheme and there was thus no intent to defraud. The Fourth Defendant argues that he was not a knowing party to the Ponzi scheme, and that the Plaintiffs have not proven the requisite causal link between the Fourth Defendant's actions and loss

caused. The forged documents at worst aided in the attracting of investments but had no role in the dissipation of moneys invested.[267]

The applicable law

185 Section 16(1)(*c*) of the Interpretation Act 1965 (2020 Rev Ed) operates to ensure that s 340(1) of the Pre-IRDA Companies Act continues to apply to the present proceedings even though it has been repealed (see also *Marina Towage Pte Ltd v Chin Kwek Chong and another* [2021] SGHC 81 at [13]–[15]). Section 16(1)(*c*) provides as follows:

> **Effect of repeal**
>
> **16**.—(1) Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears, the repeal does not —
>
> …
>
> (*c*) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed;

186 Both provisions under the Pre-IRDA Companies Act and the IRDA are identical in all respects which are material to the rights and liabilities of the parties in the present action. I set out both provisions for ease of reference:

> **Responsibility for fraudulent trading**
>
> **340**.—(1) If, in the course of the winding up of a company or in any proceedings against a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

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267 Fourth Defendant's closing submissions dated 2 December 2024 ("4DCS") at paras 123 and 198.

> **Responsibility for fraudulent trading**
>
> **238.**—(1) If, in the course of the judicial management or winding up of a company or in any proceedings against a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court, on the application of the judicial manager, liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.

As such, for ease of reference, I will collectively refer to claims under either provision as "fraudulent trading".

187 In order for the Plaintiffs to make their case out for fraudulent trading, it has to be shown that: (a) the Envy Companies' business had been carried out with the intention of defrauding creditors or creditors of any other person or for any fraudulent purpose; and (b) the Defendant(s) were "knowingly a party to the business being carried out in that manner" (*Traxiar Drilling Partners II Pte Ltd (in liquidation) v Dvergsten, Dag Oivind* [2019] 4 SLR 433 ("*Traxiar*") at [117]).

188 In relation to the first element, whether any given circumstances amount to "fraud" is a question to be determined by the court. Nonetheless, the "only invariable element [to fraud] is the element of *dishonesty* on the part of the fraudster or cheat" [emphasis added] (*Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263 ("*Tang Yoke Kheng*") at [7]–[8]). Such an intent to defraud must be subjectively held, though the objective standard of what an honest person would have done in the circumstances may "still be a useful device to test the honest intention of the person concerned against all the other evidence available, including, and

especially, the explanation by the defendant of his deviation from what an honest person would have done in his circumstances" (*Tang Yoke Kheng* at [9]). Be that as it may, a finding of fraud is *not* only made when there is an admission or direct evidence proving the same, particularly since it is the reality that fraudsters do not usually "come clean about [their] deceit". Instead, the court may ultimately draw an inference of fraud where "the surrounding circumstantial evidence is so compelling and convincing" (*Chan Pik Sun v Wan Hoe Keet (alias Wen Haojie) and others and another appeal* [2024] 1 SLR 893 ("C*han Pik Sun*") at [112]).

189 As to the second element for fraudulent trading to be made out, knowing participation has two aspects, "participation" and "knowledge". "Participation" requires a defendant to take "take positive steps to take part in the fraudulent trading" and "knowledge" requires that the defendant has personal knowledge that "the transactions are intended to defraud creditors or are in some other way fraudulent" (*Marina Towage* at [156]–[158]). It is important to note that a failure to appreciate that the company was trading fraudulently does not suffice to establish knowledge no matter how negligent the failure (*Marina Towage* at [158], citing *Morris and others v State Bank of India* [2004] 2 BCLC 236 at [11]).

190 A further issue that arises in this regard is whether the defendant in question must be aware of the fraudulent business of the company generally or need only be aware of *some* aspect of fraud surrounding the business in question? To put this in the specific context of the present case: must the Defendants have had knowledge of the fact that the Envy Companies were operating a fraudulent scheme, or would it suffice that they had knowledge that certain facets of the business operations of the company operated on fraudulent premises?

191 In my view, the better reading of s 340(1) of the Pre-IRDA Companies Act would be the former, *ie*, to require proof that the Defendants had knowledge that the Envy Companies were operating a Ponzi scheme. I say this for two reasons. First, this is consonant with the plain reading of the provision. That section contemplates that an individual would only be liable for the "business of the company [that] has been carried out with intent to defraud" if they were "knowingly a party to the carrying on of the business in that manner". Put differently, an individual is only liable under s 340(1) if that person is knowingly party to the business carried out with the intent to defraud. On the Plaintiffs' pleaded case, the business carried out with the intent to defraud is the Ponzi scheme that underlies the Purported Nickel Trading that simply never existed. Second, this is also consistent with the logic of the legislative schema – s 340(1) renders an individual for the liabilities incurred (with no limit to liability) due to fraudulent trading. If the point of lifting the corporate veil in such circumstances is because "the corporate form has been abused to further an improper purpose and not for a *bona fide*, usually commercial, transaction" (*Walter Woon on Company Law* (Tan Cheng Han gen ed) (Sweet & Maxwell, Revised 3rd Ed, 2009) ("*Walter Woon*") at para 2.51) it would, in my mind, be odd for the law to require no proof of a connection between the state of mind of the individual in question and the actual purported fraudulent trading (*ie*, the said improper purpose).

192 Finally, as to the applicable standard of proof for fraud, "although the criminal standard of proof is not required and the standard of proof remains that of one on a balance of probabilities, the more serious the allegation of fraud, the more the party bearing the burden of proof may have to do to make out its case" (*Traxiar* at [116], citing *Tang Yoke Kheng* at [14]). This approach of requiring more evidence in selected circumstances before the burden is discharged coheres with the commonsensical notion encapsulated in s 3(3) of the Evidence

Act that a matter is proved when it can be shown that the level of evidence is such that "a prudent person ought, under the circumstances of the particular case, to act upon the supposition that it exists".

193 I parenthetically note that the need for more cogent evidence is not just predicated on the *seriousness* of the allegation, but also on its *plausibility*, to the extent that a more serious allegation tends to be more implausible. For that reason, in the context of sexual offending (which is often viewed as serious), the UK Supreme Court in In *re S-B (Children) (Care Proceedings: Standard of Proof)* [2010] 2 WLR 238 at [34] made plain that "there is no necessary connection between the seriousness of an allegation and the improbability that it has taken place". In this regard, I also refer to Lord Hoffman's comments in *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153 at [55]:

> The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But, as Lord Nicholls of Birkenhead explained in In re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563, 586, some things are inherently more likely than others. *It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian.* On this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not.
>
> [emphasis in original omitted; emphasis added in italics]

194 I accept that there would be a very close link between seriousness and plausibility in many cases. Nevertheless, at least conceptually, it is the *improbability* of the occurrence that informs the need for more cogent evidence, rather than its inherent gravity or seriousness. For that reason, Prof Jeffrey Pinsler posits in his seminal treatise, *Evidence and the Litigation Process* (LexisNexis, 7th Ed, 2020) at para 12.096B, that there may be a need for more

cogent evidence even in prosaic circumstances involving car accidents, depending on how improbable the circumstances alleged appeared to be.

Only the Third Defendant is liable for fraudulent trading

195 Having dealt with the law, I now apply it to the facts. It follows from the reasoning I have stated hitherto that only the Third Defendant is liable for fraudulent trading. The same cannot be said about the Second and Fourth Defendants.

196 Admittedly, both the Second and Fourth Defendants acted dishonestly or inappropriately in some way (as described earlier) and it could be said that they both have fallen far short of the standards required of them in their respective capacities. However, neither of them could be said to have "known" that the Purported Nickel Trading was in reality a Ponzi scheme. In the course of the arguments, there were suggestions advanced on the part of the Plaintiffs that they may have been "wilfully blind" to the nature of the Ponzi scheme and to the fact that there was, in fact, no substantive business underlying the Envy Companies. As explained by the Court of Appeal in *Adili* at [45]–[50], the term "wilful blindness" has been used by our courts in two related but conceptually distinct senses. The first is an evidential tool where an individual's suspicion coupled with a deliberate refusal to inquire further represent evidential markers suggestive of actual knowledge; and the second, as an extension to the requirement of knowledge (or in the words of the Court of Appeal, "a very narrow qualification to the requirement of actual knowledge"), in so far as such individual harboured a suspicion of the true state of affairs, but deliberately refused to inquire in order not to have his suspicions confirmed.

197 In my view, while both the Second and Fourth Defendants acted inappropriately, I was not able to cross the evidential Rubicon to conclude that

they were wilfully blind to the fact that the Purported Nickel Trading was a Ponzi scheme. As I noted earlier, for each of them, there were clear markers suggestive of a genuine (if altogether uninformed) belief that the Envy Companies were involved in actual nickel trading.

198 For the above reasons, I find that only the Third Defendant is liable for fraudulent trading, though there exists a rather problem-fraught question of quantification of damages attributable to the Third Defendant which will be dealt with later below. I am unable to conclude that the Second and Fourth Defendants were liable for fraudulent trading, whether under s 340(1) of the Pre-IRDA Companies Act or under s 238(1) of the IRDA.

Transactions to defraud creditors

The parties' positions

199 The Plaintiffs are claiming all of the moneys that the Defendants received from the fraudulent transactions, pursuant to s 73B of the CLPA for transactions made before 30 July 2020 and s 438 of the IRDA for transactions from 30 July 2020 onwards. They say that any payment made by the Envy Companies were made despite the knowledge that the scheme would eventually collapse. As such, these payments must have been made with the intent to defraud investors.[268] The Defendants cannot rely on the defence under s 73B of the CLPA as: (a) they must have had notice of the Envy Companies' intent to defraud creditors; and (b) the Defendants did not provide the requisite consideration to retain the moneys received under the fraudulent transactions.[269]

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268 PCS at para 10.2.3.

269 PCS at paras 10.2.5 and 10.2.6.

200 In his defence, the Fourth Defendant argues that the payments made to him were in the course of his employment under the Envy Companies, which he provided adequate consideration for. As outlined above at [184], both the Second and Third Defendants broadly argued that they were unaware of the Ponzi scheme and thus they necessarily did not have notice of the Envy Companies' intent to defraud creditors.

Section 73B of the CLPA

(1) The applicable law

201 Pursuant to reg 15 of the Insolvency, Restructuring and Dissolution (Saving and Transitional Provisions) Regulations 2020, s 73B of the CLPA continues to be applicable for transactions that pre-date the IRDA. Section 73B of the CLPA and s 438 of the IRDA are *not* identical (*DDP (in his capacity as the joint and several trustees of the bankruptcy estate of [B]) and another v DDR (a minor) and another* [2024] 3 SLR 1457 ("*DDP*") at [29]), and each provision will therefore be addressed separately in this judgment. I begin with s 73B of the CLPA, which provides as follows:

> **Voluntary conveyances to defraud creditors voidable**.
>
> 73B.—(1) Except as provided in this section, every conveyance of property, made whether before or after 12th November 1993, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.
>
> (2) This section does not affect the law relating to bankruptcy for the time being in force.
>
> (3) This section does not extend to any estate or interest in property disposed of for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the disposition, notice of the intent to defraud creditors.

202 The relevant principles are as follows, which I respectfully adopt from *Biovest (HC)* at [92]:

(a) A claim under s 73B of the CLPA succeeds if the plaintiff establishes that: (i) there has been a conveyance of property; (ii) this conveyance was made with the intent of defrauding creditors; and (iii) the plaintiff was prejudiced by the foregoing conveyance of property (*Wong Ser Wan v Ng Bok Eng Holdings Pte Ltd and another* [2004] 4 SLR(R) 365 ("*Wong Ser Wan*") at [5] and [27]).

(b) The intent to defraud creditors may be evidenced by actual fraud or constructive fraud. For constructive fraud, if a person conveys property to his creditors for no consideration or for nominal consideration and that person is then insolvent or becomes insolvent by reason of the conveyance, a fraudulent intent would be "irrebuttably imputed to that person, even if he did not subjectively intend to defraud his creditors" (*Sim Guan Seng and others v One Organisation Ltd and others* [2023] 3 SLR 590 ("*Sim Guan Seng*") at [150]).

(c) In order to make out the defence in s 73B(3), the transferee must possess more than merely "a belief that all the steps have been regularly and properly done". Instead, "the transferee must have no reason to believe that there is anything dubious about the transaction" (*Wong Ser Wan* at [58]).

(2) The payments made to the Defendants are conveyances of property

203 Section 2 of the CLPA provides that a conveyance "includes assignment, appointment, lease, settlement and other assurance made by deed on a sale, mortgage, demise or settlement of any property, and on any other dealing with or for any property". "Property" is also defined to include "real and personal property". I agree with Goh J's conclusion in *Biovest (HC)* at [111] that, in considering both definitions of "conveyance" and "property" in s 2 of the

CLPA, the transfer of moneys would amount to conveyance of property. As such, the Payments made to the Defendants necessarily constitute conveyances of property.

(3) The Payments were made with the intent to defraud creditors

204 I find that the Payments were indeed made with the intent to defraud creditors, since the Purported Nickel Trading was plainly a Ponzi scheme such that it is presumed that transactions made thereunder were to defraud creditors. As helpfully outlined in *Biovest (HC)* at [115], the following characteristics are common to Ponzi schemes generally: (a) there is no genuine investment; (b) earlier investors receive the moneys paid by subsequent investors, which the scheme disguises as fictitious profits; (c) to sustain the illusion of a profitable investment, there must be a constant inflow of moneys from investors; and (d) the scheme collapses when the moneys from subsequent investors are insufficient to pay earlier investors. It is not disputed in the present case that the Purported Nickel Trading was non-existent, and that the only inflow into the Envy Companies at the time was the investors' money. Nonetheless, these moneys were used to pay, *inter alia*, other investors and also the Defendants before the scheme collapsed.

205 In the US, there exists a "Ponzi scheme presumption", whereby proof of a Ponzi scheme satisfies the requirement for actual intent, because transfers made in the course of a Ponzi scheme operation are presumed to have been made for no purpose other than to hinder, delay or defraud creditors (*In re Manhattan Inv Fund Ltd* 397 BR 1 (NYSD US Bankruptcy Court, 2007) ("*Re Manhattan*") at 8). This is because such transfers were made to "further a Ponzi scheme" (*Re Manhattan* at 11). Although this presumption was adopted by the court in *Biovest (HC)* at [119], this particular finding was not discussed on appeal in

Biovest (CA). However, given that the Court of Appeal affirmed that the over-withdrawn sums paid to investors were indeed transactions that defrauded creditors, the reasoning in *Biovest (HC)* in this regard appears to have been accepted by the Court of Appeal. In the circumstances, I agree that a Ponzi scheme operator must have intended to defraud future investors.

206 In response to the above, the Fourth Defendant argues that the Ponzi scheme presumption should not apply to all and any payments made from the funds of a Ponzi scheme. While payments to early investors were integral to furthering the Ponzi scheme, the same cannot be said of payments such as employee remuneration to "mere administrative workers" like the Fourth Defendant because such payments were not "critical to the continuance of the Ponzi scheme".[270]

207 However, the Fourth Defendant did not explain why such a distinction was meaningful. In *Re Manhattan* at 11, it was accepted that certain transfers may be "so *unrelated* to a Ponzi scheme that the [Ponzi scheme presumption] should not apply" [emphasis added], such as the repayment of a debt that was "antecedent" to the company's fraud. Nonetheless, where the transfers at issue were indeed "related" to the Ponzi scheme, the US courts have continued to apply such a presumption. In my view, it cannot be seriously disputed that the payment of salaries were "related" to the scheme, and served to "further" the scheme such that the payments are presumed to be fraudulent (see also *Picard v Madoff (In re Bernard L Madoff Inv Sec LLC)* 458 BR 87 ("*Madoff*") at 105). In *Madoff*, a securities business operated as a Ponzi scheme. The appointed trustee commenced proceedings against four persons who worked in that business for, amongst other things, their breach of fiduciary duties. The court

[270] 4DCS at para 153 and 4DRS at paras 119–120.

agreed that the Ponzi scheme presumption applied to the "redemptions of fictitious profits and payments of salaries" as these served to further the Ponzi scheme (*Madoff* at 105).

208 As such, I find that the Payments to the Defendants were *presumptively* made with an actual intent to defraud the Envy Companies' creditors.

(4) The Plaintiffs were prejudiced by the Payments

209 I also find that the Plaintiffs were prejudiced by the Payments, as these Payments of "significant value" have been "eroded from the [Plaintiffs'] estate, and therefore from the reach of [their] creditors" (*Biovest (CA)* at [79]). None of the Defendants appear to dispute this.

210 Given that the statutory requirements for s 73B of the CLPA are made out, the issue at hand then turns to whether the Defendants acted in good faith and the transfers at issue constituted valuable and adequate consideration in exchange for their services.

(5) The defence under s 73B(3) of the CLPA is not made out

211 I first reproduce the remuneration clauses in the Defendants' respective employment agreements. With respect to the Second Defendant's remuneration:

From January 2016[271]	**From 7 September 2020 onwards**[272]
Your basic monthly salary will be S$5,500.00 per month. Basic monthly salary will be paid out on the first day of	The employee's starting salary will be a fixed basic monthly salary of S$13,200.00 per month. Basic monthly salary will be

271 Core Bundle vol 3 at pp 234.

272 Core Bundle vol 3 at pp 337–338.

From January 2016[271]	**From 7 September 2020 onwards**[272]
each calendar month. Variable portion of salary will be 20% of the Company's monthly net profit and is to be paid out on the last day of each calendar quarter as an investment dividend.	paid out on the first day of each following calendar month. … [EMH] may at its own discretion and without any obligation pay a bonus which will depend among other factors on the Employee's individual performance and fulfilment of his/her duties and [EMH's] overall results. Any bonus payment must not be regarded as salary. … Any granting of bonus is an exceptional and voluntary benefit as a reward of the Employee's commitment and an incentive for his/her future performance. The decision to pay a bonus does not constitute a precedent for bonus payments in the future.

212 For the Third Defendant:

From 18 November 2019[273]	**From 8 September 2020 onwards**[274]
Your basic monthly salary will be S$24,000.00 per month. Basic monthly salary will be paid out on the first day of each following calendar month. Bonus equivalent to two (2) months of your basic salary will be paid to you at the end of each calendar year, subject to the sole and absolute	The Employee's starting salary will be a fixed basic monthly salary of S$24,000.00 per month. Basic monthly salary will be paid out on the first day of each following calendar month. … A Bonus equivalent to two (2) months of the Employee's basic salary will be paid to the Employee at the end of each calendar year, subject to the sole and absolute discretion

273 Core Bundle vol 3 at p 251.

274 Core Bundle vol 3 at pp 264–265.

discretion of [EAM]. Any variable bonus or declarations of variable bonus shall be made at the sole and absolute discretion of the Company. In determining the amount of bonus, the Company shall consider your work performance, amongst other factors.	of [EMH]. Any variable bonus or declarations of variable bonus shall be made at the sole and absolute discretion of [EMH]. In determining the amount of bonus, [EMH] shall consider the Employee's work performance, amongst other factors. Any bonus payment must not be regarded as part of the salary. … Any granting of bonus is an exceptional and voluntary benefit as a reward of the Employee's commitment and an incentive for his/her future performance. The decision to pay a bonus does not constitute a precedent for bonus payments in the future.

213 As to the Fourth Defendant:

From 10 May 2017[275]	**From 7 September 2020 onwards**[276]
Your fixed basic monthly salary will be S$2,600.00 per month. Basic monthly salary will be paid out on the first day of each calendar month. Variable portion of salary will be 50% of the Company's monthly net profit generated by your clients and is to be paid out on the last day of each calendar quarter as an investment dividend.	The Employee's starting salary will be a fixed basic monthly salary of S$3,3740.00 per month. Basic monthly salary will be paid out on the first day of each following calendar month. … [EMH] may at its own discretion and without any obligation pay a bonus which will depend among other factors on the Employee's individual performance and fulfilment of his/her duties and [EMH's] overall results. Any bonus payment must not be regarded as salary. …

275 Core Bundle vol 3 at p 244.

276 Core Bundle vol 3 at pp 258–259.

	Any granting of bonus is an exceptional and voluntary benefit as a reward of the Employee's commitment and an incentive for his/her future performance. The decision to pay a bonus does not constitute a precedent for bonus payments in the future.

(A) COMMISSION PAYMENTS AND PROFIT SHARING

214 With respect to the remuneration agreements with the Second and Fourth Defendants prior to September 2020, it is clear that commission payments and profit sharing would hinge on the Envy Companies making a "monthly net profit". However, I note that there is no similar reference to "monthly net profit" in the Third Defendant's renumeration agreements with the Envy Companies, and all of the agreements in respect of the Defendants post-September 2020. These agreements only state the terms of the Defendants' basic salary and bonus payments, and on first glance it is unclear how commission and profit sharing sit in relation to these heads of payment. Nonetheless, it is clear from the payroll records that commission payments and profit sharing were, factually speaking, treated as distinct from bonus payments.[277]

215 It is undisputed that the commission payments and profit sharing payments were indeed payments made to employees only when there were profits or returns from the investments into the Purported Nickel Trading. The Second Defendant had explained that these payments were made in the following manner:[278]

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277 See, for example, Yap's AEIC at Exhibit "BYCG-120".

278 Yap's AEIC at para 5.5.5.

(a) The Envy Companies would take a cut of between 8% and 15% of returns that an investor earned on a particular contract (whether it be *via* an LOA or RPA) as the "Companies' Earnings".

(b) Of the Companies' Earnings, 30% to 50% will be paid as commission payments to the employee managing the investor.

(c) On some occasions, between 14% to 20% of the Companies' Earnings will be paid as profit sharing fees to certain employees such as the Second Defendant.

216 In *Biovest (CA)* at [80], the Court of Appeal clarified that the words "for valuable consideration and in good faith or upon good consideration and in good faith" in s 73B of the CLPA should be regarded as a "singular defence, requiring that the defendant must have acted in good faith and provided consideration of adequate value for the property received". Moreover, for the defence to be made out, the recipient "must have provided not merely consideration, but value for the property received". As such, the question before us is whether the recipient provided good consideration for the commission payments and profit sharing fees, which turns on whether there was any basis for the payments (*Biovest (CA)* at [81]).

217 I find that the Purported Nickel Trading was non-existent and there were thus no "profits" or returns on the LOAs or RPAs to speak of. As such, there is no contractual obligation to pay the commission and profit sharing fees to the Defendants. The commission and profit sharing payments were therefore extra-contractual, and no valuable or good consideration was provided for their receipt.

218 My view stands even in relation to the Third Defendant's profit share from proprietary trading outside of the Purported Nickel Trading, as there appears to be no profit or return from these external investments. The Plaintiffs' position is that the Third Defendant did not generate any real profit from proprietary trading: based on the brokerage statements, as at 31 December 2020, the assets under management were approximately US$42,701,056 while the consolidated net asset value was US$38,973,499. This meant that the Third Defendant actually lost US$3,727,556 for EGT.[279]

219 In response, the Third Defendant asserts that he did in fact make close to S$10m in his proprietary trading portfolio, and S$1.8m as a result of his involvement in the Singapore Nickel Shipment.[280] He argues that: (a) the financial statements relied on by the Plaintiffs were incomplete as they only comprise statements up until December 2020 whereas the Third Defendant made certain profits in early 2021;[281] (b) the statements did not record the $1.8m profit he made from the Singapore Nickel Shipment;[282] and (c) losses that were part of other hedging accounts rather than the Third Defendant's investment portfolio were wrongly included in his profit and loss calculations.[283] I reject these arguments as the Third Defendant failed to provide any documentation to support his assertions. This was in spite of him being given multiple opportunities during the trial to produce these documents or to refer the court to the relevant evidence.[284] Moreover, he failed to file any written submissions

279 PCS at para 10.2.11.

280 Transcript (30 July) at p 58 lines 11–15.

281 Transcript (8 August) at p 3 line 20 to p 4 line 9.

282 Transcript (8 August) at p 9 line 10 to p 10 line 2.

283 Transcript (7 August) at p 3 lines 9–16; and Transcript (8 August) at p 12 lines 1–6.

284 Transcript (7 August) at p 83 lines 19–25; and Transcript (8 August) at p 4 lines 10–21.

despite being invited to do so,[285] and did not address this particular point in his closing oral submissions.[286] I also note that the Third Defendant did not actually state in his pleadings (which were crafted with assistance from his counsel at the time) that he made close to S$10m through his proprietary trading.

220 As such, I find that there is no evidence to support the assertion of profit having been made in the proprietary trades carried out by the Third Defendant and there was thus no counter-obligation to pay him the profit sharing fees which were contingent on profits and/or returns being made. For completeness, there was no evidence led that the remuneration agreement for profit sharing of *proprietary trades* was different from that of the *Purported Nickel Trading*.

(B) BASIC SALARY PAYMENTS

221 Unlike the commission and profit sharing payments, the basic salary payments to the Defendants were contractual obligations which were not contingent on the Envy Companies turning a profit. The question is thus whether the Defendants acted in good faith and provided adequate value for their salary payments (*Biovest (CA)* at [80]–[81]). In this regard, the Plaintiffs argue that the salaries may be "clawed back on a 'fault' basis".[287] According to the Plaintiffs, the Defendants failed to discharge their respective responsibilities as employees and/or directors of the Envy Companies, and their work even harmed the Envy Companies and deepened the insolvency.[288] It thus appears to me that the Plaintiffs' case is that the Defendants failed to provide consideration of adequate

285 Transcript (20 August) at p 18 lines 3–10.

286 Transcript (11 March) at pp 41–44.

287 Plaintiff's Reply Submissions dated 23 December 2024 at para 4.5.1.

288 PCS at paras 10.2.14 and 10.2.16.

value for their salaries, as a result of their acts that have harmed the Envy Companies.

222 I respectfully disagree with the Plaintiffs in this regard. In *Schonk Antonius Martinus Mattheus and another v Enholco Pte Ltd and another appeal* [2016] 2 SLR 881 ("*Schonk*") at [12], the Court of Appeal observed that an employer is generally not entitled to withhold salary payments unless permitted by statute or by the employment contract itself. An employee's breach of duty would not, in itself, "disentitle" him to his salary. Instead, if the complaint at hand was that the employee breached their duty then the appropriate recourse was either through seeking damages or establishing that there was a total failure of consideration. While these observations were made in the context of a breach of a director's duties and not specifically made in the context of fraudulent transactions such as the present, I find that they remain apposite on the present facts. It is clear from the case law that "fault", as understood by the Plaintiffs, (*eg*, a breach of duty and/or acts undertaken that harmed the Envy Companies' interest) would not in itself be sufficient to argue that there was no consideration provided for that employee's salary. The Plaintiffs also have not shown that there has been a *total* failure of consideration as a result of the Defendants' actions that have perpetrated the Ponzi scheme. I discuss this in greater detail below at [278] when addressing total failure of consideration as an unjust factor under the auspices of the doctrine of unjust enrichment.

223 With this in mind, in my view, only the Second and Fourth Defendants may rely on the defence under s 73B(3) of the CLPA for their salary payments. I accept that the Defendants provided adequate consideration for their salary payments, in so far as no evidence was actually led as to whether their salary payments were so disproportionate to their work done as an employee that the work done could not have been adequate consideration for the salary payments.

It does not appear to be the Plaintiffs' case that the Defendants' basic salaries were so disproportionate to their work done such that these could not amount to adequate consideration.

224 However, as I found earlier, it cannot be said that the Third Defendant acted in good faith such that he may rely on the defence under s 73B(3) of the CLPA. "Good faith" refers to a "belief" on the "transferee's part" that "all is regularly and properly done". In fact, "good faith on the transferee's part must involve more than a belief that all the steps have been regularly and properly done; the transferee must have no reason to believe that there is anything dubious about the transaction", such that "the transferee's acting in good faith must also involve his not having knowledge about the fraudulent intent of the transferor" (*Wong Ser Wan* at [58]). Based on my earlier findings, it is clear that the Third Defendant knew about the fraudulent nature of the Purported Nickel Trading. In contrast, I was unable to find that the Second and Fourth Defendants were aware of the same. Thus, in my view, only the Third Defendant is unable to rely on the good faith defence. As such, his contractual salary payments may be clawed back.

(C) BONUSES

225 It is clear from the terms of the Defendants' remuneration agreements that bonuses were "discretionary", such that these payments were extra-contractual and there was no counter-obligation to pay the bonuses. In any case, these bonus payments were based on "work performance" and indeed fashioned as an "incentive" or "reward" for the employees. No company would sensibly give bonuses to employees creating forgeries and/or those who breached their duties (*John While Springs (S) Pte Ltd and Another v Goh Sai Chuah Justin and*

Others [2004] 3 SLR 596 at [7]). I thus find that no valuable or good consideration was provided for the bonus payments.

(D) CPF PAYMENTS

226 In relation to the moneys credited to the Defendants' Central Provident Fund ("CPF") accounts that went hand in hand with the Payments, these sums are still the Defendants' moneys that may be used for their own benefit. As such, there is no reason to distinguish payments into their CPF accounts from any other payment. In other words, where I find that certain payments may be clawed back from the Defendants, the CPF payments thereon would similarly be clawed back. Conversely, where certain payments may *not* be clawed back from the Defendants, the CPF payments thereon would also not be clawed back.

227 As stated in the preceding paragraph, the Defendants remain the beneficial owners of their CPF moneys, and I find that there is no reason to distinguish these from the other payments to them on the mere basis that some are in their CPF accounts. Any other outcome would mean that, in theory, a party can otherwise act fraudulently and the singular question in recovery would be whether it was transferred to their CPF accounts, even though all these moneys are in substance owned by the recipient and can be used in a variety of settings (*eg*, selected investments, financing of loans or the purchase of property). In the case of *Zaiton bte Adom v Nafsiah bte Wagiman* [2023] 3 SLR 533 at [193], albeit in the context of an unjust enrichment claim, the court found that the second defendant there was enriched, as the proceeds from certain cashier's orders were at his free disposal even though it was through the medium of his or someone else's CPF account.

228 In sum, based on the analysis thus far, I find as follows:

(a) all profit sharing and commission payments and the CPF payments thereon may be clawed back;

(b) all bonus payments and the CPF payments thereon may be clawed back; and

(c) the Third Defendant's salary and the CPF payments thereon may be clawed back.

(E) DIRECTOR'S FEES

229 Based on the evidence before me, the terms that govern the payment of director's fees and the basis of these fees are both unclear. A total of S$29.5m was paid as director's fees to NYZ, and S$500,000 to the Second Defendant. However, there appears to be no correspondence or record explaining the basis for these payments or the reason for their quantum.[289] Unlike the salary payments, the director's fees were not governed by the terms of the Second Defendant's remuneration agreement. Rather, the director's fees appeared to have been determined by a directors' resolution during extraordinary general meetings. Yet, the liquidators were not able to identify *any* relevant resolutions except for one in August 2020. In that resolution, it appears that only NYZ and the Second Defendant were present at the meeting, and the minutes do not disclose the reason or basis for the payment either.[290] In these circumstances, I find that there was no contractual basis for the director's fees.

(F) DIVIDENDS

230 I turn next to the dividend payments to the Second Defendant. In *BTI 2014 LLC v Sequana SA and others* [2019] 2 All ER 784 ("*Sequana (CA)*") at

289 Yap's AEIC at para 5.5.3.

290 Core Bundle vol 9 at pp 22–24.

[41], the English Court of Appeal held that dividend payments are not gifts but, rather, "commercially and legally *a return on investment*" [emphasis added]. However, the fact that dividends were "paid in accordance with rights attached to the shares" does not mean that the company received consideration for the dividend (*Sequana (CA)* at [50]). The finding that a dividend payment could be regarded as a transaction on terms which provided for the company to receive *no consideration* was endorsed in *Biovest (CA)* at [101] as well.

231 In essence, dividends are payments made pursuant to a contractual obligation that arises upon the declaration of dividends by the company. The right to receive dividends (if and when a dividend is declared) is the return on an investment (*Biovest (CA)* at [102]). However, given that there was in actuality no real investment by the Envy Companies, there was also no return to speak of.

(G) UNKNOWN PAYMENTS AND OTHER REIMBURSEMENTS

232 Finally, I note that the Plaintiffs are claiming for payments that were made on unknown and/or unverifiable premises, and certain other reimbursements such as for employee expenses disbursed to the Second and Fourth Defendants. Not much evidence was led in this respect. Nonetheless, it appears that these payments were not contractually provided for and it remains unclear if these were provided for adequate consideration. I thus find that these payments may be clawed back. In any event, these are for small sums relative to the overall sum claimed (around S$190,000 in relation to the Second Defendant and S$9,500 for the Fourth Defendant) and does not substantively affect the overall outcome of this judgment, especially given my eventual finding (see [308] below) that the Second Defendant is liable for the Minimum Net Principal.

Section 438 of the IRDA

233 In relation to s 438 of the IRDA, its relevant principles and the differences from s 73B of the CLPA were considered in *DDP* at [28]–[29]:

> 28 It is relevant to highlight that s 438 was introduced into the IRDA to replace s 73B of the CLPA 1994. The following observations made by the Law Reform Committee in 2013 are instructive (see Law Reform Committee, Ministry of Law, Report of the Insolvency Law Review Committee: Final Report (2013) (Chairperson: Lee Eng Beng SC) (the "Report") at pp 184–185).
>
> > (a) Section 73B of the CLPA 1994 mirrors the language of s 172 of the Law of Property Act 1925 (c 20) (UK), the latter having since been repealed and replaced with s 423 of the Insolvency Act 1986 (c 45) (UK) (the "UK IA").
> >
> > (b) There are three main differences between s 73B of the CLPA 1994 and s 423 of the UK IA. First, s 423 focuses on transactions at an undervalue, which is a narrower category than s 73B that applies to "every conveyance of property". Second, s 423 eschews the requirement of having to prove an "intention to defraud creditors" in favour of a subjective inquiry into the purpose of the transaction. Third, s 423 provides prescriptive remedies, while s 73B simply provides that a successfully impugned transaction is voidable.
> >
> > (c) Given that claims under s 73B of the CLPA 1994 are closely intertwined with insolvency proceedings, s 73B should be shifted to the IRDA and amended to mirror s 423 of the UK IA. This has the advantage of, among others, ensuring that the scope of the provision coincides with its underlying policy rationale, ie, preserving the net asset value of the company for distribution amongst its creditors.
>
> 29 In my view, these observations are instructive as to how s 438 of the IRDA is to be interpreted. It is clear from these observations that s 438 of the IRDA is not meant to be an exact replica of s 73B of the CLPA 1994. Therefore, the cases interpreting s 73B may be of limited value in the interpretation of s 438. Conversely, as noted in the Report, the new s 438 of the IRDA is meant to mirror s 423 of the UK IA. This must mean that the cases interpreting s 423 of the UK IA are highly persuasive in the interpretation of s 438 of the IRDA. Of course, s 438 is to be interpreted with its underlying policy rationale in mind, which is to preserve the net asset value of the company

> concerned so as to maximise the possible distribution to the creditors.

234 One of the elements of s 438 is a debtor entering into a transaction with another person at an undervalue, such that the principles governing undervalue transactions under s 224 of the IRDA may be relevant to s 438 (*Biovest (HC)* at [171]):

> **Transactions defrauding creditors**
>
> **438**.—(1) This section relates to any transaction entered into by a person (called in this section and section 439 the debtor) with another person at an undervalue.
>
> (2) For the purposes of subsection (1), a debtor enters into a transaction with another person at an undervalue if —
>
> > (*a*) the debtor makes a gift to the other person or the debtor otherwise enters into a transaction with the other person on terms that provide for the debtor to receive no consideration;
> >
> > (*b*) the debtor enters into a transaction with the other person in consideration of marriage; or
> >
> > (*c*) the debtor enters into a transaction with the other person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the debtor.
>
> (3) Where a debtor enters into a transaction at an undervalue, the Court may, if satisfied under subsection (4), make such order as the Court thinks fit for —
>
> > (*a*) restoring the position to what it would have been if the transaction had not been entered into; and
> >
> > (*b*) protecting the interests of any person who is, or is capable of being, prejudiced by the transaction (called in this section a victim).
>
> (4) An order under subsection (3) may only be made if the Court is satisfied that a transaction at an undervalue was entered into by a debtor for the purpose —
>
> > (*a*) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against the debtor; or

> (*b*) of otherwise prejudicing the interests of any person in relation to a claim which the person is making or may make against the debtor.

235 The court must also be satisfied that the transaction at an undervalue was "entered into by the debtor for the purposes spelt out in s 438(4) of the IRDA, which broadly relate to the transaction being entered into with the intent to defraud or prejudice creditors", before the court can then make an order under s 438(3) (*DDP* at [30]).

236 The claims under this head will be answered in the same manner as the claims under s 224 of the IRDA (see [246]–[248] below). As it will become apparent, I reach the following conclusion: all the Payments may be clawed back, save for the basic salary payments (and CPF payments paid thereon) in respect of all three Defendants.

Conclusion

237 In sum, I find that the following payments may be clawed back as transactions to defraud creditors under s 73B of the CLPA:

(a) commission and profit sharing payments in relation to all the Defendants (including the CPF payments thereon);

(b) basic salary payments (including the CPF payments thereon) only in relation to the Third Defendant;

(c) bonus payments (including the CPF payments thereon) in relation to all the Defendants;

(d) director's fees and dividends in respect of the Second Defendant; and

(e) unknown payments and reimbursements to the Second and Fourth Defendants.

238 Under s 438 of the IRDA, my conclusion is the same as in the preceding paragraph, except that the basic salary payments to *all* three Defendants would not be clawed back under this provision.

Transactions at an undervalue

The parties' positions

239 In relation to transactions at an undervalue, the Plaintiffs contend that the elements under s 224 of the IRDA are made out such that the transactions entered into three years before the Envy Companies' winding up may be set aside. No consideration was provided by the Defendants for the Payments and, even if there were consideration provided, the value provided is not commensurate to the actual sums paid.[291]

240 The Fourth Defendant argues that there is no evidence that the services provided by the employees were significantly lower in value than their salaries.[292] In rebuttal, the Fourth Defendant contends that the Envy Companies did derive value and benefit from the commission payments and other discretionary payments. These payments were "bona fide payments for the purpose of carrying on the company's business that could reasonably be expected to benefit the company", as they provide positive encouragement to the workforce, and incentivise an employee's continued performance.[293]

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291 PCS at paras 11.1.1–11.1.2.

292 4DCS at para 161.

293 4DCS at paras 143–149.

The applicable law

241 Under s 224 of the IRDA, a transaction entered into at an undervalue can be set aside. The relevant provision is as follows:

> **Transactions at undervalue**
>
> **224**.—(1) Subject to this section and sections 226 and 227, where a company is in judicial management or is being wound up, and the company has at the relevant time (as defined in section 226) entered into a transaction with any person at an undervalue, the judicial manager or liquidator (as the case may be) may apply to the Court for an order under this section.
>
> (2) The Court may, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.
>
> (3) For the purposes of this section and sections 226 and 227, a company enters into a transaction with a person at an undervalue if —
>
> (*a*) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or
>
> (*b*) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.
>
> (4) The Court must not make an order under this section in respect of a transaction at an undervalue if —
>
> (*a*) the company entered into the transaction in good faith and for the purpose of carrying on its business; and
>
> (*b*) at the time the company entered into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

242 The requirements for setting aside a transaction on this basis are as follows:

(a) The company either: (i) makes a gift to a person; (ii) enters into a transaction with that person on terms that provide for the company to receive no consideration; or (iii) enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company. For the first two sub-limbs, which are covered by s 224(3)(*a*) of the IRDA, the inquiry is on the existence of consideration. For the last sub-limb, which is provided for under s 224(3)(*b*), the inquiry requires a "comparison of the value between the consideration provided and the consideration received" (*Biovest (CA)* at [90]). As outlined in *Biovest (HC)* at [170(a)], the comparison of value received and provided must be from the perspective of the insolvent grantor, *ie*, the company (*Rothstar Group Ltd v Leow Quek Shiong and other appeals* [2022] 2 SLR 158 at [25]). To assess if value was provided, the touchstone is whether there was a bargain of such magnitude that cannot be explained by normal commercial practice (*Parakou Shipping Pte Ltd (in liquidation) v Liu Cheng Chan and others* [2017] SGHC 15 at [94]).

(b) Pursuant to s 226(1)(*a*) of the IRDA, the relevant time is three years before the winding up of the company.

(c) As per s 226(2), the company must be unable to pay its debts at that time or in consequence of the transaction.

(d) Pursuant to s 224(4), if the company entered into the transaction in good faith and for the purpose of carrying on its business and, at the time the company entered into the transaction, there were reasonable grounds for believing that the transaction would benefit the company, the transaction will not be set aside.

The Payments, save for the basic salary payments, are transactions at an undervalue

243 With the above principles in mind, I find that the Payments, save for the basic salary payments to all the Defendants, may be set aside as transactions at an undervalue for the following reasons:

(a) The Payments sought to be clawed back by the Plaintiffs were made three years before the winding-up application (see s 126(2) of the IRDA).

(b) The Envy Companies were indeed insolvent from the outset (see [87]–[91] above).

(c) No consideration had been given for the Payments or they were made as gifts, save for the basic salary payments to the three Defendants. I expand on this below.

(d) Finally, it is also clear that the Envy Companies did not enter into these transactions in good faith or for the purposes of carrying on their business, such that they cannot rely on the defence in s 224(4) of the IRDA. There was no Purported Nickel Trading or any legitimate business to speak of.

(1) Commissions, profit sharing, bonus payments, and unknown payments and reimbursements

244 In respect of the bonus payments, commissions, profit sharing payments, unknown payments and reimbursements, I find that these are "gifts" as per the first limb of s 224(3)(*a*) of the IRDA. As outlined earlier, these were extra-contractual, unilateral payments made to the Defendants on terms which provided for the Envy Companies to receive no consideration. Moreover, it is

indisputable that these payments were made to the Defendants with the Envy Companies' intention to make these payments to the Defendants and for them to retain the benefit of these moneys (see also *Biovest (CA)* at [92] and [104]–[108]).

(2) Basic salary payments

245 As to the basic salary payments to the Defendants, these are not transactions at an undervalue. The salary payments are contractually provided for such that they are not "gifts". They are also not provided for absolutely "no consideration". Nor were the salary payments made "for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company" since no evidence was led as to the value of the work done by the Defendants (see [223] above).

(3) Dividend payments

246 The dividends paid to the Second Defendant are transactions at an undervalue under the second limb of s 224(3)(*a*), *ie*, a *transaction* with the Second Defendant on terms that provide for the company to receive no consideration. As explained above, the dividend payments are contractually-obligated payments, such that there is a mutual dealing between the transferor and transferee (see also *Biovest (CA)* at [97]); and dividends are essentially the returns on an investment. The dividend payments were not founded on genuine investments and hence cannot be said to be returned on those investments.

(4) Director's fees

247 Given the lack of clarity as to the terms that govern the payment of director's fees, I am unable to identify if these were contractually provided such

that these payments were part of a "transaction". Regardless of whether the director's fees are better described as gifts or a transaction on terms that provide for the company to receive no consideration, it is clear that payment of director's fees may be set aside as a transaction at an undervalue given the Second Defendant's patent breach of her duties.

Conclusion

248 By virtue of the above, I find that the following Payments may be set aside as transactions at an undervalue:

(a) commission, profit sharing and bonus payments (including the CPF payments thereon) in relation to all the Defendants;

(b) director's fees and dividends in respect of the Second Defendant; and

(c) unknown payments and reimbursements in relation to the Second and Third Defendants.

Unfair preferences

The parties' positions

249 Alternatively, if this court found that there was consideration for the Payments such that the Defendants had a contractual claim to them, the Plaintiffs argue that the Payments would nevertheless constitute unfair preferences under s 225 of the IRDA. According to the Plaintiffs, the Payments to the Defendants put them in a better position as compared to other creditors such as the investors.[294] In response, the Fourth Defendant argues that there was

[294] PCS at para 12.1.2.

no subjective desire to prefer him and place him in a better position than other creditors. I will also analyse whether the Second and Third Defendants can avail themselves of such a legal position.

The applicable law

250 Section 225 of the IRDA provides as follows:

> **Unfair preferences**
>
> **225.**—(1) Subject to this section and sections 226 and 227, where a company is in judicial management or being wound up, and the company has at the relevant time (as defined in section 226), given an unfair preference to any person, the judicial manager or liquidator (as the case may be) may apply to the Court for an order under this section.
>
> (2) The Court may, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that unfair preference.
>
> (3) For the purposes of this section and sections 226 and 227, a company gives an unfair preference to a person if —
>
> > (*a*) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and
> >
> > (*b*) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company's winding up, will be better than the position that person would have been in if that thing had not been done.
>
> (4) The Court must not make an order under this section in respect of an unfair preference given to any person unless the company which gave the preference was influenced in deciding to give the unfair preference by a desire to produce in relation to that person the effect mentioned in subsection (3)(*b*).
>
> (5) A company which has given an unfair preference to a person who, at the time the unfair preference was given, was connected with the company (otherwise than by reason only of being the company's employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give the unfair preference by such a desire as is mentioned in subsection (4).

251 A transaction may be set aside as an unfair preference if the following requirements are satisfied (*Group Lease Holdings Pte Ltd (in liquidation) and another v Group Lease Public Co Ltd* [2025] 3 SLR 1315 ("*Group Lease*") at [90]):

(a) First, there is a pre-existing relationship of debtor and creditor between the company and the transaction counterparty.

(b) Second, the transaction that is alleged to be a preference must be referrable to an antecedent debt between the company and the transaction counterparty.

(c) Third, the company must have given a factual preference to the transaction counterparty. There are two facets to this: (i) the company must have done (or suffered to have been done) something that had the effect of putting the counterparty in a better position in the company's liquidation than it would otherwise have been if that thing had not been done; and (ii) the advantage to the counterparty must have come at the expense of the company's other unsecured creditors.

(d) Fourth, the company must have been influenced by a desire to prefer the transaction counterparty. This can either be proven through evidence or with the aid of the statutory presumption if the counterparty is a connected person to the company.

(e) Fifth, the transaction must have taken place at a relevant time prior to the commencement of the winding up: (i) the transaction must have taken place either within one year before the commencement of the winding up or, where the counterparty is a connected person to the company, two years before the commencement of the winding up; and

(ii) the transaction must either have taken place when the company was insolvent or the company became insolvent as a result of the transaction.

There was no subjective desire to prefer the Defendants

252 Given my findings above that the Payments, save for the basic salary payments, may be set aside as transactions with the intent to defraud creditors or transactions at an undervalue, I focus on only the basic salary payments and whether these may constitute unfair preferences. In my view, there was no subjective desire to prefer any of the Defendants.

253 The court in *Amrae Benchuan Trading Pte Ltd (in liquidation) v Tan Te Teck Gregory* [2006] 4 SLR(R) 969 at [51] made the following observation:

> As every payment or grant of security potentially has the effect of preferring the payee or the grantee in the event of the paying company's subsequent insolvency, *something more* has to be shown. Otherwise, the question of preference would be determined in every case simply by undertaking an objective inquiry into whether in effect there had been a preference.
>
> [emphasis added]

The "something more" refers to the debtor's subjective desire to improve the creditor's position in the event of its own insolvent liquidation, which desire must be a factor that influenced the debtor's decision (*DBS Bank Ltd v Tam Chee Chong and another (judicial managers of Jurong Hi-Tech Industries Pte Ltd (under judicial management)* [2011] 4 SLR 948 at [26]).

254 It is particularly important to establish the "something more" in a case like the present: in a Ponzi scheme that was insolvent from the outset, almost every payment made may potentially be a preference. The salaries owed to the Defendants may be seen as "antecedent debt", such that the payment of these salaries would be seen as "referable" to that antecedent debt. Moreover, these

salary payments were arguably made at the expense of other creditors before the inevitable fallout of the Ponzi scheme. Thus, the key question to be determined is whether the Envy Companies were influenced by a desire to prefer the Defendants when paying them their salaries.

255 I note that, by virtue of ss 217(2)(*b*)(i) and 225(5) of the IRDA, it is statutorily presumed that the Envy Companies and EGT respectively were influenced in deciding to give unfair preference to the Second and Third Defendants who were directors of the respective entities. Nonetheless, based on an assessment of the evidence and on a balance of probabilities, I find that there is no such subjective desire to prefer any of the Defendants. In particular, the salary payments were regular payments made to the Defendants and also other employees of the Envy Companies (until, of course, when the Ponzi scheme began to fall apart and the Envy Companies began falling behind on certain payments). Such salary payments were "underpinned by proper commercial considerations and not by a positive desire to prefer [the defendant in question] in the event of an insolvent liquidation" (*Liquidators of Progen Engineering Pte Ltd v Progen Holdings Ltd* [2010] 4 SLR 1089 at [40]).

Payment of dividends

256 Finally, the last statutory claim is for the repayment of dividends that were issued under s 403(1) of the Companies Act. This claim only pertains to the Second Defendant. In particular, the claim encompasses two distinct factual heads:

(a) On 11 June 2020, EAM issued S$1m of dividend payments to EAM shareholders (the "EAM Dividend Payment"). In line with their shareholdings, S$200,000 was paid to the Second Defendant, and S$800,000 was paid to NYZ. This was despite the fact that they were

informed specifically beforehand that dividends can only be paid out of business profits.[295]

(b) Sometime in November 2020, EGT remitted a sum of US$2.5m as dividends to EMH as a shareholder of EGT (the "EMH Dividend Payment").[296]

257 The Plaintiffs contend that both these payments are in breach of NYZ's and the Second Defendant's duties *qua* directors and the statutory prohibition of the payment of dividends except out of profits under s 403(1) of the Companies Act. The Envy Companies could never have been in the black as they were operating a Ponzi scheme and would therefore never have had any profits to begin with. Such a statutory prohibition stems from the trite principle that dividends cannot be paid out of capital (*Chip Thye Enterprises Pte Ltd (in liquidation) v Phay Gi Mo and others* [2004] 1 SLR(R) 434 at [70]). The Plaintiffs therefore seek to make the Second Defendant jointly liable for such payments under s 403(2)(*b*) of the Companies Act.

258 Section 403(2)(*b*) of the Companies Act reads as follows:

> Every director or chief executive officer of a company who wilfully pays or permits to be paid any dividend in contravention of this section … shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors.

259 The provision in question does not, on its face, require explicit knowledge on the part of the director of the fact that there are no profits from

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295 Yap's AEIC at paras 11.4.2–11.4.3.

296 Yap's AEIC at para 11.4.4.

which to allow for the payment of dividends and instead grounds liability on the premise of a "wilful payment" or "permitting" such payment to be made. As outlined above, "wilfully" has been defined as amounting potentially to knowledge. In any event, in my view, the Second Defendant should be caught for the EAM Dividend Payment for *permitting* the same – it cannot be that a director can otherwise avoid liability by neglecting to fulfil her duties.

260 With respect, in my view, a somewhat different conclusion ought to follow for the EMH Dividend Payment. It is to be reminded that the Plaintiffs had previously obtained approval for the adoption of a "running account" approach to the liquidation of the Envy Companies (*Yap Cheng Ghee Bob (in his capacity as joint and several interim manager of Envy Asset Management Pte Ltd) and others v Envy Asset Management Pte Ltd and other matters* [2023] SGHC 342). The aim of obtaining such approval was to allow for the liquidators to consolidate claims and accounts across the different entities, both to simplify any claims process but also to allow for the consolidation of claims *vis-à-vis* third parties across the entirety of the Envy Companies. I would add that this is entirely understandable, in so far as it does seem like the funds across the group are so obviously intermeshed that it would be a Herculean task to try and artificially attribute discrete fund flows to the respective companies within the Envy Companies.

261 Nonetheless, precisely because of that, it would follow that any move from one company to another within the Envy Companies is not a transfer out of the composite entity but a transfer within the entity. Seen in that context, I found little basis for allowing the claim against the Second Defendant *vis-à-vis* the EMH Dividend Payment. The dividend in question was sent from one entity to another within the Envy Companies. The Plaintiffs do not suggest that these transfers were done with a view to creating some form of intricate fund flows

to facilitate an eventual transfer out of the Envy Companies. In that sense, the Envy Companies, as a composite entity, was neither better nor worse off as a result of the dividend payment in question. Given that the liquidators were dealing with the assets as a collective whole on behalf of the Envy Companies, the net position of the Envy Companies as a result of the EMH dividend was exactly the same as the net position of the Envy Companies *before* the payment of such dividend. If one accepts that the very *raison d'etre* of s 403(2)(*b*) is to allow for the "recovery" of such dividends wrongfully paid as it reduces the pool of available funds for creditors (or underlying shareholders), then no reduction of such funds (when seen in the context of the Envy Companies) happened in this case.

262 In this case, given that the Envy Companies are to be seen as a composite entity, as the Plaintiffs themselves so accept, there is, in that sense, no underlying "loss" to the entity and the creditors to the Envy Companies are not prejudiced in any substantive way. Indeed, there is some jurisprudence to suggest that shareholders obtaining those dividends (in this case, EMH) could be made to indemnify the Second Defendant for any payment recovered (*In re Alexandra Palace Company* (1882) 21 Ch D 149).

Common law causes of action

Breach of directors' duties

263 A director's fiduciary duties to the company are: "(a) the duty to act honestly and in good faith in the best interests of the company; (b) the duty not to exercise his powers for an improper purpose such as to profit personally from his office; and (c) the duty not to place himself in a position which will result in a conflict of interest between his duties to the company and his personal interests" (*BIT Baltic Investment & Trading Pte Ltd (in compulsory liquidation)*

v Wee See Boon [2023] 1 SLR 1648 ("*BIT Baltic*") at [31], citing with approval *DM Divers Technics Pte Ltd v Tee Chin Hock* [2004] 4 SLR(R) 424 at [80]–[81]). The duty to "act honestly and in good faith in the best interests of the company represents the overarching duty of 'single-minded loyalty' owed to the company", which is the "the distinguishing obligation of a director as a fiduciary of the company" (*BIT Baltic* at [32]). Where a company is insolvent (like in the present case), the directors' fiduciary duty to act in the best interests of the company extends to ensuring that the company's assets are not misapplied to the prejudice of the creditors' interests as a whole (*BIT Baltic* at [54]).

264 The duty of care, skill and diligence is a distinct but related duty owed by directors to their company (*BIT Baltic* at [34]). Such a duty is *not* a fiduciary duty "because it is not imposed to exact loyalty from a director" (*Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*") at [135]). This duty to the company includes not only the duty to "keep aware of the company's transactions", but also that "if the director becomes aware of an illegal course of action, he has a duty to object to and correct the misconduct" (*BIT Baltic* at [57]).

265 The Plaintiffs contend that the Second and Third Defendants are liable for the Minimum Net Principal as a result of both their breaches of fiduciary duties and their duties of care to the Envy Companies and EGT respectively. In my view, the Second Defendant was not aware of the broader fraudulent nature of the Envy Companies. As such, I do not find that she acted dishonestly, though she was shockingly derelict in her duty of care, skill and diligence in many aspects. In contrast, the Third Defendant was indeed aware of the fraud and had acted dishonestly such that he was in breach of his fiduciary duties and also his duty of care, skill and diligence.

266 As Kannan Ramesh JC (as he then was) observed in *Prima Bulkship Pte Ltd (in creditors' voluntary liquidation) and another v Lim Say Wan and another* [2017] 3 SLR 839 ("*Prima Bulkship*") at [44], while the standard of care owed by a director may vary depending on the circumstances, the standard "will not be lowered to accommodate any inadequacies in the individual's knowledge or experience", and may instead be raised if that individual "held himself to possess or in fact possesses some special knowledge or experience" (see also *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 at [42]). As observed in *Ho Yew Kong* at [137], this necessarily means that all directors "are subject to a minimum objective standard of care which entails the obligation to take reasonable steps to place oneself in a position to guide and monitor the management of the company". This includes, *inter alia*, a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company's business to enable them to properly discharge their duties (*Re Barings PLC (No 5)* [1999] 1 BCLC 433 at 489a). Indeed, it is insufficient for a director to argue that he had a "confined area of responsibility" in order to escape liability (*Weavering Capital (UK) Ltd (in liquidation) and others v ULF Magnus Michael Peterson and others* [2012] EWHC 1480 (Ch) at [173]).

267 To be fair, this does not mean that directors need to be involved in, or know, everything. The realities of modern-day corporations mean that, for a large number of directors, such a standard would be impossible to meet. Instead, the scope of the duty and what can be delegated are necessarily fact-sensitive. If, for example, the company is very large or requires expertise in specific areas, then directors necessarily would have to delegate their functions, though even then, in so doing, they must reasonably believe that those they delegate functions to, can competently discharge their duties (see the comments of VK

Rajah JC (as he then was) in *Vita Health Laboratories Pte Ltd and others v Pang Seng Meng* [2004] 4 SLR(R) 162 ("*Vita Health*") at [20]).

268 It is, in my view, unnecessary to consider whether the Second Defendant (or the Third Defendant) should be ascribed elevated standards of care by virtue of their individual circumstances or special expertise. Indeed, even taking their duties at the most basic of levels, there cannot be any doubt that they have failed to come anywhere close to achieving even the most minimum of standards expected of directors. As can be seen from the earlier discussion regarding their states of mind, they did not take their roles as directors seriously, and if they had even exercised some minimal supervision, it would have been obvious to them that NYZ was running a Ponzi scheme (and indeed, for the Third Defendant, he knew this was being done). They appeared to assume that their roles were sinecure and intended to effectively ensure that NYZ's decisions were implemented unimpeded and unquestioned.

269 As the facts above show, to the extent they did not explicitly know the truth, this was not down to any particularly sophisticated scheme by NYZ to shield the truth from them, but really nothing more than a function of the reality that, having not bothered to ask any real questions, they could not have known what was going on. They did not ask any of the necessary questions one expects all directors to ask, probe further when answers were patently unsatisfactory, or confront NYZ when obvious facets of misconduct were staring them in the face. Instead, they were happy to allow NYZ to call the shots on all fronts and take all of his excuses, no matter how absurd, at face value without any real challenge. In this connection, while a director is not to be held liable just because they were defrauded (*Land Credit Company of Ireland v Lord Fermoy* (1870) LR 5 Ch App 763 at 772), a director who knows of facts that should excite the

suspicion of a reasonable person must make reasonable inquiries or otherwise take the consequences of his actions (*Walter Woon* at para 8.117).

270 On the facts, there were a whole suite of duties that both the Second and Third Defendants simply failed to discharge as directors, and a myriad of red flags that they simply chose to ignore. The examples I have discussed at length above are perhaps some of the clearer examples of their complete abdication of their duties *qua* directors. However, even above and beyond those, some other non-exhaustive illustrations of the *blasé* attitudes that both Defendants exhibited throughout their lives as directors in the Envy Companies are as follows:

(a) The Second Defendant was expressly informed by other employees on various occasions that the Envy Companies' financial records were inaccurate or incomplete. However, no meaningful response was provided by the Second Defendant to these queries.[297]

(b) Similarly, Envysion had requested multiple documents from the Second and Third Defendants for "due diligence", but no meaningful response was provided.[298]

271 Both the Second and Third Defendants claim, in their respective Defences, that they were effectively hoodwinked by NYZ. As I had observed at length earlier, I do not doubt this to be so at least in relation to the Second Defendant whose family members had invested into the Purported Nickel Trading through her (see [122] above). Nonetheless, in the context of their breaches of directors' duties, this is irrelevant. As noted by Pollock J in *John J*

297 Yap's AEIC at paras 6.1.14–6.1.15.

298 Yap's AEIC at paras 4.2.8–4.2.9, 6.1.16 and 7.4.4.

Francis and others v United Jersey Bank and others 432 A 2d 814 (1981) at 821 (reproduced in *Ho Yew Kong* at [137]):

> … Directors may not shut their eyes to corporate misconduct and then claim that they did not see the misconduct, they did not have a duty to look. The sentinel asleep at his post contributes nothing to the enterprise he is charged to protect. …

272 Indeed, the present case is, in my view, considerably worse than the sort of situation Pollock J envisioned. The Second and Third Defendants not only fell asleep at the post, they also allowed NYZ to pass through the gates, opened them on occasion for him, and never checked what he had on his person. There were no two ways about it: at the very least, this represented a shockingly negligent level of conduct.

273 The Second Defendant further alleges that other sophisticated investors were equally hoodwinked by NYZ's representations to believe that the Envy Companies' business was genuine and legitimate.[299] There were hints of similar points being made by the Third Defendant throughout the course of the proceedings before me. With respect, this is entirely besides the point in so far as it relates to whether they had breached their duties *qua* directors. It is reasonable for external investors, who do not have a handle on the intricacies of the internal operations of the Envy Companies, to assume without more that the documents they are presented with (such as the prospectus) are based on accurate, verified and complete data. It is the nature of these things that such innocent third parties, especially retail investors, would often have little understanding of the basic internal workings of the business, and would have to make understandable assumptions about the veracity and accuracy of the representations made to them. The Second and Third Defendants, however, are

[299] Lee's Defence at para 52.

in quite a different position: they were directors of the Envy Companies and this comes with attendant obligations of care, skill and diligence.

274 It is therefore clear to me that the Second and Third Defendants both breached their duties *qua* directors. For the avoidance of doubt, all of this is above and beyond the fact that, as I had found earlier, the Third Defendant knew, or was wilfully blind to the fact, that the Purported Nickel Trading was a Ponzi scheme.

Unjust enrichment

275 The Plaintiffs further contend that the moneys paid and credited to Defendants should be returned the Plaintiffs as the Defendants were unjustly enriched at the expense of the Envy Companies. In my view, no recovery can be had on grounds of unjust enrichment for two reasons.

276 First, I am of the view that the facts do not disclose any viable cause of action in unjust enrichment. In *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [110], the Court of Appeal noted that the requirements for unjust enrichment are four-fold, as follows:

(a) a defendant was enriched;

(b) such enrichment was at the plaintiff's expense;

(c) there exists a recognised "unjust factor" such that it would be unjust to allow the defendant to retain the enrichment; and

(d) there are no defences available to the defendant.

277 On the present facts, I am of the view that no claim in unjust enrichment can be successful given the absence of any unjust factor warranting relief. In this case, the Plaintiffs contend that the unjust that would apply is that of "failure of basis".[300] In my view, this purported unjust factor does not apply on the present facts.

278 I note that Goh J in *Biovest (HC)* at [193]–[194] distinguished between total failure of consideration and absence of consideration. The distinction, while admittedly a fine one, is one of some significance. In that particular case, Goh J concluded that the payments made to a third party (of excessive "returns" that never existed) without consideration was a matter of absence of consideration, and not total failure of consideration. Much as was the case there, the contracts and commissions granted to the Defendants in the present case pertained to remuneration for the business which involved excessive "returns" that similarly did not exist. On a doctrinal level, the legal position in *Biovest (HC)* and the present case are exactly coincident.

279 Of course, moving away from doctrine, one could argue that, on a factual level, the considerations in this case are quite dissimilar from those in *Biovest (HC)* in so far as individual investors in *Biovest (HC)* clearly had no reason to be put on notice that the Purported Nickel Trading was a sham, while the same cannot be said about any of the Defendants here. In that sense, one could argue, with some force, that it would be more "unfair" to allow the Defendants in the present case to retain the benefits compared to the individual investors in *Biovest (HC)*. Nonetheless, with respect, the perceived inequities of the outcome is, in my view, beside the point in so far as the doctrine of unjust enrichment does not operate on how "unjust" the outcome seems to be, but on the basis of

300 PCS at para 14.1.3.

the existence of certain recognised unjust factors. In this case, the Plaintiffs take the view that there was a total failure of consideration. For the very same reasons Goh J articulated in *Biovest (HC)*, I come to the same view that the Plaintiffs have not been able to establish the unjust factor of total failure of consideration here.

280 Second, and in any event, it does not appear to me that there is much scope for the application of unjust enrichment in this case. As I had noted in *Ng Chee Tian and another v Ng Chee Pong and others* [2025] 3 SLR 235 ("*Ng Chee Tian*") at [52], the Court of Appeal's decision of *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 appeared to conceive of unjust enrichment as an interstitial cause of action and, consequently, recourse to the doctrine of unjust enrichment cannot *generally* be had where more conventional causes of action are available. In this case, it is clear that other causes of action are available for most of the sums claimed. I have granted the very remedies sought under unjust enrichment under transactions to defraud creditors, save for the basic salary payments to the Defendants. As such, unjust enrichment has almost no scope for possible operation and/or there has been no unjust factor established. For the above reasons, I am of the view that the claim under unjust enrichment must necessarily fail.

Dishonest assistance and knowing receipt

281 The Plaintiffs also contend that the Defendants are liable for dishonestly assisting NYZ in the breach of his fiduciary duties to the Envy Companies by, *inter alia*, forging documents, "covering up" NYZ's lies and making false representations to the investors, to perpetrate the Ponzi scheme.[301] The Plaintiffs

[301] PCS at para 8.2.1 and 8.2.3.

submit that the appropriate relief in this case is equitable compensation equivalent to the Minimum Net Principal, ordered against all the Defendants.[302]

282 In order to prove a case of dishonest assistance, the Plaintiffs must show four things: (a) the existence of a trust; (b) a breach of that trust; (c) assistance rendered by the third party towards the breach; and (d) a finding that the assistance rendered by the third party was dishonest (*George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 ("*George Raymond Zage*") at [20]). On this front, there has been considerable academic debate on how to assess the matter of "dishonesty". "Dishonesty" in the present context would refer to the Defendants possessing "such knowledge of the irregular shortcomings" of the Purported Nickel Trading such that "ordinary honest people would consider it to be a breach of standards of honest conduct if [they] failed to adequately query them" (*George Raymond Zage* at [22]). To quote Lord Hoffmann in the Privy Council decision of *Barlow Clowes International Ltd (in liquidation) and others v Eurotrust International Ltd and others* [2006] 1 All ER 333 at [15], for liability to accrue, a defendant's "knowledge of the transaction *had to be such as to render his participation contrary to normally acceptable standards of honest conduct*" [emphasis added].

283 In my view, the Second and Fourth Defendants are not liable for dishonest assistance. For one, their knowledge of the falsity of the underlying transactions was minimal. As I have explained above, the Second and Fourth Defendants did not have any knowledge that the Envy Companies were running a Ponzi scheme, even if they could conceivably have found that out if they bothered to ascertain the facts. Taking the Plaintiffs' case at its absolute highest,

302 PCS at para 8.3.1.

it may potentially be that these two Defendants were sloppy in their respective capacities as director and employee, but such negligence, even gross negligence, even when seen against the backdrop that they were all in some way party to small acts of fraud ancillary to the Ponzi scheme, falls short of being properly characterised as "knowledge". Consequently, the Second and Fourth Defendants' assistance in the Purported Nickel Trading could not meaningfully be described as dishonest since they had no subjective knowledge of the nature and scale of the Ponzi scheme.

284 However, the same cannot be said of the Third Defendant. I do find that, dishonest assistance can be made out *vis-à-vis* the Third Defendant, as he had subjective knowledge of (or was wilfully blind to) the nature and scale of the Ponzi scheme.

Knowing receipt

285 The Plaintiffs submit that, on the basis of knowing receipt, the Defendants should return the Payments that constitute fraudulent transactions.[303] As I found above, these would include all the Payments save for the Second and Fourth Defendants' basic salary payments. The Plaintiffs seek proprietary relief where the relevant Payments that are fraudulent transactions remain in the Defendants' possession. If the Payments are no longer in the Defendants' possession, then the Plaintiffs seek personal relief amounting to the value of the Payments that comprise fraudulent transactions.[304]

286 The required elements to establish a claim in knowing receipt are: "(a) a disposal of the plaintiff's assets in breach of fiduciary duty; (b) the beneficial

303 PCS at para 13.1.1.

304 PCS at para 13.2.2.

receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and (c) knowledge on the part of the defendant that the assets received are traceable to a breach of a fiduciary duty". The recipient's state of knowledge had to be "such as to make it unconscionable for him to retain the benefit of the receipt" (*George Raymond Zage* at [23] and [32]).

287 In respect of the Second and Fourth Defendants, I find that they are not liable for knowing receipt as they did not have subjective knowledge of the nature and scale of the Ponzi scheme. In this regard, I repeat my analysis at [283] above.

288 As to the Third Defendant, I find that a claim in knowing receipt may be made out. Given the reasons I have provided earlier, it is clear to me that it would have been unconscionable for the Third Defendant to retain the benefit of his receipts. Here, the Plaintiffs seek both proprietary and personal remedies under the rubric of knowing receipt.[305] As the Plaintiffs note, and I agree, a successful claim on this front entitles it to potentially both proprietary and personal remedies. If the recipient retains the asset, then a Claimant would be entitled to an equitable proprietary remedy; if, however, the recipient no longer holds such asset, then the claim becomes a personal one (*Byers and others v Saudi National Bank* [2024] 2 WLR 237 at [157]).

Unlawful means conspiracy

289 I turn finally to the Plaintiffs' contention that the Defendants are liable under the tort of unlawful means conspiracy. Very briefly, the claim was that NYZ had conspired with the three Defendants to commit unlawful acts to deceive investors in the Envy Companies that the Purported Nickel Trading was

305 Statement of Claim dated 19 November 2021 at para 8.3.2, reliefs 12 and 13.

genuine.[306] The requirements to establish a claim for unlawful means conspiracy are as set out by the Court of Appeal in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]:

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

(e) the plaintiff suffered loss as a result of the conspiracy.

290 In relation to the matter of the agreement *inter partes*, it is clear the conspirators must be sufficiently aware of the surrounding circumstances and share the object in question for them to be liable (*EFT Holdings* at [113]). Furthermore, it must be shown that the conspiracy was targeted or directed at the Plaintiffs and with the intention to cause them injury. The threshold that must be satisfied is a high one – it is not sufficient to show that harm to the Envy Companies was a probable or even inevitable consequence, it must have been "intended as a means to an end or as an end in itself" (*EFT Holdings* at [101]). Put another way, "one is not liable for loss which is neither a desired end nor a means of attaining it [even if it is] a foreseeable consequence of one's actions" (*OBG Ltd and another v Allan and others* [2008] 1 AC 1 at [62]) as it would be "simply insufficient in seeking to meet the element of intention [under unlawful means conspiracy] to show merely that there was knowledge to found an

306 PCS at paras 7.2.1–7.2.3.

awareness of the likelihood of particular consequences" (*EFT Holdings* at [101]). These requirements were reiterated more recently in *Chan Pik Sun*, with the majority of the Appellate Division of the High Court taking pains to impress the fact that a plaintiff must show that the unlawful means and conspiracy were specifically targeted or directed to her (at [171]). At bottom, therefore, the Plaintiffs bore the burden to show that the primary aim of the Defendants was to hurt the Envy Companies.

291 In this case, the Plaintiffs contend that "NYZ conspired with [the Defendants] to commit unlawful acts to deceive" investors that the Purported Nickel Trading was genuine. In that regard, the Plaintiffs assert that the Defendants each acted in concert with NYZ to injure the Envy Companies by causing the companies to incur liabilities that they had no reasonable expectation of meeting in full, and enriching themselves personally from the funds invested by the investors into the Envy Companies.[307]

292 I am unable to agree with the Plaintiffs' contentions. As I had observed earlier, the Second and Fourth Defendants cannot be said to have had any *actual knowledge* that the Envy Companies were a big "rob Peter to pay Paul" Ponzi scheme that only dealt in entirely fictitious nickel trades (save the Singapore Nickel Shipment). It follows that there could never have been any specific agreement between NYZ and the Second and Fourth Defendants (whether individually or collectively) to engage in actions engineered to cause the collapse of the Envy Companies. This is because it is "meaningless to speak of an agreement or combination in absence of a common understanding of the material facts being shared by all the alleged conspirators" (*EFT Holdings* at [114]). As I had highlighted earlier, while the evidence does suggest that each

[307] Yap's AEIC at para 11.3.1; and PCS at para 7.2.4.

of the Defendants were, in their own unique way, bedfellows with NYZ in forging some documents of the Envy Companies or perpetuating the impact of such forgeries (which were clearly unlawful acts, see *Singapore Rifle Association v Singapore Shooting Association and others* [2020] 1 SLR 395 at [113]), the evidence also suggests that the Second and Fourth Defendants had no specific knowledge that their actions were to facilitate a larger Ponzi scheme. The circumstances therefore fell far short of the required evidence to suggest any agreement on the Second and Fourth Defendant's part to harm the Envy Companies in a way that would perpetuate their downfall.

293 In any event, even assuming *arguendo* such an agreement existed, the primary element of the agreement would have been for the Defendants to enrich themselves and not to cause injury to the Envy Companies or their underlying investors or creditors. It would appear that the Defendants have no specific animus against the Envy Companies or their underlying stakeholders. It may be that, in the context of a Ponzi scheme, the inevitable consequence of their desire to fatten their pockets would be the demise of the Envy Companies, but as I noted earlier, the mere appreciation of the probable consequences of such conduct would not suffice. This is not to say that aggrieved parties in such a situation do not have recourse to the law (as the rest of this judgment makes clear), it is just to say that the tort of unlawful means conspiracy would not be the vehicle with which to do so.

294 In the circumstances, I am of the view that there is no basis for the Defendants to be liable for unlawful means conspiracy.

Damages

Calculation of the Minimum Net Principal

295 I turn to the issue of damages. A preliminary point that arises for my consideration is the Plaintiffs' manner of calculation of the Minimum Net Principal and whether this is appropriate. While I agree with the Plaintiffs' manner of calculation and find that the Minimum Net Principal is an appropriate quantification of the Envy Companies' liabilities, I have concerns as to whether there may be a risk of double recovery by the Plaintiffs if they *also* pursue and succeed in clawing back over-withdrawn sums from over-withdrawn investors. As such, in practical terms, if the Plaintiffs succeed in their claim for the Minimum Net Principal against the Defendants in this suit, this may theoretically affect the amount that the Plaintiffs may be able to claim against over-withdrawn investors. I explain.

296 To recapitulate, the Minimum Net Principal represents the total amount of investors' *under-withdrawn sums*. The amount of *over-withdrawn sums* was *not* included in the computation of the Minimum Net Principal. In other words, regardless of whether the Plaintiffs successfully claw back moneys from other over-withdrawn investors, this would have no effect on the amount claimed against the Defendants. According to the Plaintiffs, this is because the Minimum Net Principal is the liquidators' "best estimate of the Envy Companies' aggregate liabilities" and "[a]ny [o]verwithdrawn [s]ums that the [l]iquidators recover does not change the underlying debts and liabilities which are crystallised at the point of liquidation". To hold otherwise, the Plaintiffs assert, would mean that the "same logic could also apply to any recoveries to reduce

the [Minimum Net Principal] and make it a constantly moving target" which "runs counter to the requirement for certainty in such insolvency situations".[308]

297 I accept the Plaintiffs' manner of calculation of the Minimum Net Principal, which in any event is not disputed by any of the Defendants. I agree that the aggregate of all the investors' under-withdrawn sums represents, broadly speaking, a reasonable estimate of the Envy Companies' liabilities, and that it would be challenging for the Plaintiffs to constantly amend this amount based on other moving pieces in the Envy Companies' insolvency. Nonetheless, in my view, such an approach *potentially and in theory at least*, runs a risk of double recovery. In light of the decisions in *Biovest (CA)* and *Biovest (HC)*, it is clear that the Plaintiffs may potentially recover further over-withdrawn sums from other over-withdrawn investors. It is not unforeseeable that the Plaintiffs may pursue such claims. If the Plaintiffs succeed in clawing back the over-withdrawn sums *and* the Minimum Net Principal, which represents the under-withdrawn sums, this may amount to double recovery.

298 To illustrate this, I outline the following simplified hypothetical. An insolvent company has one creditor, Investor A. Investor A is under-withdrawn by $100, while another investor, Investor B, is over-withdrawn by $100. As such, the "minimum net principal" in these circumstances, which represents Investor A's losses, would be $100. Adopting the Plaintiffs' reasoning, even if the company manages to claw back the over-withdrawn $100 from Investor B, it still intends to claim $100 from its fraudulent director. Putting aside issues of causation, if the hypothetical company succeeds in both actions against Investor B and its fraudulent director, it will have a total of $200 even though it only owes $100 to Investor A. While it remains a plaintiff's prerogative to seek

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308 PCS at para 6.4.2.

cumulative remedies against the same or multiple parties, a plaintiff cannot recover, in the aggregate, an amount in excess of its loss. It is trite that the "principle of full satisfaction prevents double recovery" (*Lim Teck Cheng v Wyno Marine Pte Ltd (in liquidation)* [1999] 3 SLR(R) 543 at [29], citing with approval *Personal Representatives of Tang Man Sit v Capacious Investments Ltd* [1996] AC 514 at 522G).

299 All that said, the issue of *how* exactly the outcome of the present judgment may impact other claims against other over-withdrawn investors is not strictly before me and I say no more on this issue.

300 In any event, this point might be purely academic in so far as it might be unrealistic for some of the Defendants to repay the sums they have been adjudged liable for. Their liability for the Minimum Net Principal, as I explain below, runs into the tens of millions (if not hundreds of millions), sums which presumably no one except the most well-heeled in society would ever be able to repay fully.

Joint and several liability of the Second and Third Defendants

301 Next, I hold that the Second and Third Defendants shall be jointly and severally liable for the Minimum Net Principal, though there remains the issue of apportionment of liability. It is well-established that where "several tortfeasors cause indivisible damage to the claimant *ie*, several concurrent tortfeasors, the liability of these several concurrent tortfeasors would be *joint and several*" [emphasis added] (*Crest Capital Asia Pte Ltd and others v OUE Lippo Healthcare Ltd (formerly known as International Healthway Corp Ltd) and another and other appeals* [2021] 1 SLR 1337 ("*Crest Capital*") at [178], citing with approval Glanville Williams, *Joint Torts and Contributory Negligence* (Wm Gaunt & Sons, 1998 Reprint) at pp 3–4). In the same vein,

those who are liable in different causes of action are also "jointly and severally liable if they cause the *same damage*" [emphasis added] (*Crest Capital* at [180]). In gist, if concurrent wrongdoers liable in different causes of action "cause the same and indivisible damage, they can be held jointly and severally liable" (*Crest Capital* at [183]).

302 In such cases where damage is indivisible, "there is no reason, in principle, to limit the [claimant] to recovering only part of the loss from one party and the remaining part from the other". Nonetheless, "the apportionment of the liability between [the defendants] in percentage terms is not a logical corollary of the separate [wrongdoings], but a device to ensure that justice is done as between the [defendants] *inter se*" (*Chuang Uming (Pte) Ltd v Setron Ltd and another appeal* [1999] 3 SLR(R) 771 ("*Chuang Uming*") at [51]). The apportionment of liability between defendants "must be carried out in a manner that is just and equitable, having regard to the person's responsibility for the damage in question" (*Goh Sin Huat Electrical Pte Ltd v Ho See Jui (trading as Xuanhua Art Gallery) and another* [2012] 3 SLR 1038 ("*Goh Sin Huat*") at [48], citing *Chuang Uming* at [43]).

303 The principles outlined above are applicable to the present case. Even where the Second and Third Defendants are liable for different causes of action, the damage caused by them is indivisible; as a whole, their wrongdoing led to the Envy Companies' losses. It is impossible to precisely quantify which losses were directly caused by one particular defendant. Nonetheless, their liability should be apportioned having regard to their responsibility for the damage in question. As observed by the Court of Appeal in *Goh Sin Huat* at [53]–[54], such an exercise necessarily "import[s] a large number of discretionary considerations". Nonetheless, the court is still obliged to justify its determinations on apportionment with clear reasoning, "alluding to the

interaction of the respective parties' individual culpability in a myriad of identified causes from which the damages flowed".

304 With the above in mind, I turn to the apportionment of damages as a result of the Defendants' individual responsibility for the damage caused.

The Second Defendant

305 First, I address the apportionment of damages for the Second Defendant's breach of her director's duty of care, skill and diligence. It is trite that whether loss may be recovered due to a director's breach of his duty of care, skill and diligence is subject to the common law rules of causation such as the "but for" test, remoteness of damages and foreseeability (*Prima Bulkship* at [57]).

306 In theory, a distinct approach applies to quantifying losses from fraudulent trading than from breaches of a director's duty of care, skill and diligence. In the former, damages are not limited by the concept of foreseeability for two inter-related reasons. First, "it serves a deterrent purpose in discouraging fraud" and secondly, "as between the fraudster and the innocent party, moral considerations militate in favour of requiring the fraudster to bear the risk of misfortunes directly caused by his fraud" (*Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [24], albeit in the context of fraudulent misrepresentation, referring to the House of Lords Decision in *Smith New Court Securities v Citibank NA* [1997] AC 254 at 279–280). Those legal principles do not apply to breaches of the duty of care, skill and diligence, in which foreseeability plays a part in the equation and can serve to potentially cap or limit the amount of damages awarded.

307 On the facts, however, the distinction is of little relevance to the Second Defendant. She had been serving as a director and signatory of the Envy Companies for almost the entirety of their existence (since once the CAD investigations started, inflows understandably became close to non-existent). I agree with the Plaintiffs that but for the Second Defendant's negligence, the Plaintiffs' losses would not have materialised. There were multiple red flags that should have put her on inquiry, and if she had acted diligently at any of those points in time, the losses could have been avoided, or at least minimised. Quite apart from what has already been discussed at length earlier, I highlight a few more salient examples:

(a) The Envy Companies were *never* independently audited. In 2016, NYZ represented to the Second Defendant that independent auditors were indeed engaged. Despite her background in accounting and finance, and her awareness that audited financial statements had to be signed off by directors, she never signed off on any financial statements and simply accepted NYZ's assertion that an audit was completed.[309] Although the Second Defendant subsequently reached out to NYZ to engage an independent auditor, she failed to follow through on those discussions in 2017 and in 2019. This was all in spite of the fact that she knew that the Envy Companies' financial records were in a complete mess (see [96] above).

(b) At multiple points, employees had reached out to the Second Defendant to flag irregularities and inaccuracies in the Envy Companies' financial records. There was no meaningful follow up to those queries (see [270] above).

309 Transcript (2 August) at p 133 lines 13–20 and p 134 lines 2–20.

(c) The Second Defendant failed to verify *any* of the purported transactions, which would have exposed the hollow nature of the Purported Nickel Trading from close to its inception. Indeed, the Second Defendant accepted that she had never seen a single Forward Contract during her entire time of employment (see [102] above).

308 The main or entire purpose of the Envy Companies was the Purported Nickel Trading. It should have been obvious to the Second Defendant that, as a director, she effectively served as a primary bulwark against the risk of any malfeasance on the part of NYZ. The loss of the funds invested by third parties over the life of the Envy Companies is an obvious consequence should she fail to discharge her duties. The losses that resulted were thus entirely foreseeable. I therefore agree with the Plaintiffs that the Second Defendant should be fully liable for the Minimum Net Principal.

The Third Defendant

309 However, the issue of which damages were caused by the Third Defendant's breaches of his director's duties is somewhat more complicated. This is because two main factors, which I discuss in turn:

(a) The Third Defendant not only failed to exercise care, skill and diligence as a director, he even misapplied investors' moneys to conduct proprietary trading (see [146] above). He also appeared to be aware of the broader fraudulent nature of the Purported Nickel Trading (see [152] above).

(b) Unlike the Second Defendant, the Third Defendant was only a director in the Envy Companies for less than a year. He was appointed

a director of EGT on 10 December 2019 and had resigned on 16 November 2020.[310]

310 In relation to the Third Defendant's use of investors' moneys for proprietary trading when those sums were meant the Purported Nickel Trading, this was a custodial breach of his fiduciary duties as director of the Envy Companies. As such, the Third Defendant's breach of his duties was the direct cause for the loss of US$15m of investors' moneys. On top of that, the Third Defendant personally earned roughly US$1.8m in profits from those trades. It is clear to me that merely clawing back the relevant Payments from the Third Defendant (which amounts to approximately S$3m) would not be just.

311 I turn to his breach of his director's duty of care, skill and diligence. Although the Third Defendant only served as a director for a year, his culpability is heightened by the fact that he procured the Singapore Nickel Shipment which generated around S$472.2m in fresh investor funds, and that he was aware of the fraudulent nature of the Ponzi scheme. As observed in *Vita Health* at [91]–[93] (cited with approval by the Court of Appeal in *Wishing Star* at [26]), in assessing damages for fraud, "a mechanical approach is to be eschewed in favour of flexibility" and the "multi-faceted dimensions of fraud require pragmatism and malleability from the court in fashioning the appropriate remedy". That squarely applies on the present facts. Having regard to his significant responsibility for the loss in question, as well as his relative culpability compared to the Second Defendant, I hold that the Third Defendant shall be jointly and severally liable for up to 40% of the Minimum Net Principal.

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310 Yap's AEIC at para 2.4.1.

312 For completeness, I do not agree with the Plaintiffs' position that the Third Defendant should be liable for the fresh funds (of around S$472.2m) generated as a result of the Singapore Nickel Shipment.[311] This is not a principled approach to assessing the losses caused to the Envy Companies by the Third Defendant. No breakdown of the sum of S$472.2m was provided beyond asserting that it represented fresh investors' funds. It is thus unclear how much of these funds actually represent losses to investors, since any proportion of it may have later been withdrawn by investors.

The Fourth Defendant

313 I turn to the issue of damages in respect of the Fourth Defendant. In my view, the Plaintiffs' proposed solution, that the Fourth Defendant should be found liable for 70% of the Minimum Net Principal because he was involved in the Purported Nickel Trading for 70% of the Envy Companies' lifespan, is plainly excessive.[312] In my judgment, the Fourth Defendant's culpability clearly paled in comparison to the other two defendants:

(a) The Fourth Defendant was a regular employee, rather than a director.

(b) It is undisputed that the Fourth Defendant's role was very much administrative.

(c) His involvement in the forgeries was largely based on the information and instructions provided to him by NYZ.

311 PCS at para 6.6.12(a).

312 PCS at para 6.6.12(b).

314 In any event, as I found that the Fourth Defendant is not liable for fraudulent trading, dishonest assistance or unlawful conspiracy, there is no basis for him to be jointly or severally liable for the Minimum Net Principal. As a result of his liability for transactions to defraud creditors under s 73B of the CLPA and s 438 of the IRDA, the Fourth Defendant is liable to return the sum of S$1,921,485.98, less his salary payments and any CPF payments thereon. As I found earlier, only the salary payments (and any CPF payments thereon) to the Fourth Defendant should not be clawed back. However, the reference table provided by the Plaintiffs, which is a compilation of the Payments to the Fourth Defendant, does not neatly distinguish the sums paid as bonuses (which can be clawed back) from his salary payments (which cannot be clawed back).[313] With the above directions in mind, I leave it to the parties to agree on the precise number payable by the Fourth Defendant. If they fail to do so within two weeks of this judgment, they may write in to the court.

Setting off

315 Only the Second Defendant pleaded a defence of setting off in relation to the following sums:[314]

(a) unpaid monthly salary of S$25,020 from EMH from April 2021 onwards;

(b) S$272,276.50 from EMH for her payment of staff salaries in March 2021;

(c) S$10,801.25 from EAM for her payment of staff salaries in March 2021; and

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313 Yap's AEIC at Exhibit "BYCG-120" for D4. See, for example, rows 43 and 170.

314 Lee's Defence at paras 78–79.

(d) approximately S$27,939,444.85 of investment principal and profits payable under the contracts entered with EGT between November 2020 and February 2021.

316 I agree with the Plaintiffs that the Second Defendant is not entitled to set off these sums for the following reasons:

(a) In relation to the Second Defendant's liability for transactions to defraud creditors, the Second Defendant is not entitled to set off against that liability. There is no "mutuality of parties and of debts", since the money clawed back from the Second Defendant would be for the benefit of creditors. Now that the Envy Companies are insolvent, the Second Defendant would have to join the ranks of other unsecured creditors and file her proof of debt (*Ng Bok Eng Holdings Pte Ltd and another v Wong Ser Wan* [2005] 4 SLR(R) 561 at [61]).

(b) As to the Second Defendant's liability for breach of her director's duties, any statutory set-off is "not available when the debt owed by the counterparty to the debtor is based on the misfeasance or other wrongdoing by the counterparty", as any other conclusion would "enable the wrongdoer to benefit from his wrongdoing by recovery through set-off instead of having to prove in the winding up in competition with other creditors" (*Parakou Investment Holdings Pte Ltd and another v Parakou Shipping Pte Ltd (in liquidation) and other appeals* [2018] 1 SLR 271 at [67], citing with approval Roy Goode, *Principles of Corporate Insolvency Law* (Sweet & Maxwell, 4th Ed, 2011) at para 9-29).

Conclusion

317 To recapitulate, my holdings are as follows. In respect of the statutory causes of action:

(a) Only the Third Defendant is liable for fraudulent trading.

(b) All the Payments, save for the basic salary payments to the Second and Fourth Defendants only, are liable to be set aside as transactions to defraud creditors under s 73B of the CLPA.

(c) All the Payments, save for the basic salary payments to all three Defendants, are transactions to defraud creditors under s 438 of the IRDA, or transactions at an undervalue.

(d) The basic salary payments do not constitute unfair preferences.

(e) The Second Defendant is liable to return the EAM Dividend Payment.

318 In respect of the common law causes of action:

(a) Both the Second and Third Defendants are liable for breach of their directors' duties.

(b) The Defendants are not liable under unjust enrichment.

(c) Only the Third Defendant is liable for dishonest assistance and knowing receipt.

(d) The Defendants are not liable for unlawful means conspiracy.

319 As such, the Second and Third Defendants are jointly and severally liable for the Minimum Net Principal, *ie*, S$593,015,240, US$192,220,888 and €880,000. In terms of apportionment of liability for this sum, the Third

Defendant is liable for up to 40% of the Minimum Net Principal whereas the Second Defendant is liable for the full sum. Separately, the Fourth Defendant is liable for the sum of S$1,921,485.98, less his salary payments and any CPF payments thereon. As indicated earlier, the parties are to attempt to come to an agreement on the precise number payable by the Fourth Defendant in light of these directions within two weeks, failing which they may write in to the court.

320 As the majority of the Appellate Division of the High Court observed in *Chan Pik Sun* at [3], while "the premise of [Ponzi] schemes may seem incredulous, nonetheless, it is not uncommon for fraudsters to succeed in selling these schemes to investors who probably should have known better typically with the benefit of hindsight". While that may be so, for any Ponzi scheme to achieve a certain scale, its primary architect would require enablers: individuals who knew full well what was going on but were happy to keep quiet as long as their financial interests were advanced by doing so, or individuals who engaged in questionable business practices without asking too many questions.

321 This case features the unfortunate confluence of all of these truly distressing features. The outcome was a truly shocking one: a billion-dollar fraud perpetuated on all and sundry, from the common man on the street to sophisticated investors who were seduced by the apparent attractive returns.

322 I will deal with the issue of costs separately.

Mohamed Faizal
Judicial Commissioner

Chan Ming Onn David, Fong Zhiwei Daryl, Lin Ruizi, Lai Wei Kang Louis and Tan Wei Sze (Shook Lin & Bok LLP) for the plaintiffs;
the first defendant unrepresented;
the second defendant unrepresented;
the third defendant unrepresented;
Koh Kok Kwang, Kenii Takashima and Shanon Kua Yan Yu (CTLC Law Corporation) for the fourth defendant.

Annex A: Breakdown of the sums claimed under s 73B of the CLPA and s 438 of the IRDA (transactions to defraud creditors), knowing receipt or unjust enrichment

Category	**Second Defendant**	**Third Defendant**	**Fourth Defendant**
Profit sharing and commission payments	S$24,968,748.87	NA	S$1,692,657.25
Profit sharing from proprietary trading	NA	US$1,835,646.72 + S$11,100.00	NA
Salary, allowance, bonus and reimbursements	S$927,920.20	S$460,468.82	S$219,299.23
Director's fees	S$500,000.00	NA	NA
Dividends	S$200,000.00	NA	NA
Payments for unknown purposes	S$189,998.00	NA	S$9,529.50
Less shareholder loan	(S$600,000.00)	NA	NA
Total	**S$26,186,667.07**	**US$1,835,646.72 + S$471,568.82**	**S$1,921,485.98**

Annex B: Breakdown of the sums claimed under s 224 of the IRDA (transactions at an undervalue)

Category	**Second Defendant**	**Third Defendant**	**Fourth Defendant**
Profit sharing and commission payments	S$23,244,810.16	NA	S$1,596,614.68
Profit sharing from proprietary trading	NA	US$1,835,646.72 + S$11,100.00	NA
Salary, allowance, bonus and reimbursements	S$662,844.70	S$460,468.82	S$173,734.71
Director's fees	S$500,000.00	NA	NA
Dividends	S$200,000.00	NA	NA
Payments for unknown purposes	S$189,998.00	NA	S$9,529.50
Less shareholder loan	(S$600,000.00)	NA	NA
Total	**S$24,197,652.86**	**US$1,835,646.72 + S$471,568.82**	**S$1,779,878.89**

Annex C: Breakdown of the sums claimed under s 225 of the IRDA (unfair preferences)

Category	**Second Defendant**	**Third Defendant**	**Fourth Defendant**
Profit sharing and commission payments	S$20,311,921.11	NA	S$567,628.60
Profit sharing from proprietary trading	NA	US$1,835,646.72 + S$11,100.00	NA
Salary, allowance, bonus and reimbursements	S$424,058.50	S$460,468.82	S$51,369.00
Dividends	S$200,000.00	NA	NA
Less payments for unknown purposes	(S$2.00)	NA	NA
Less shareholder loan	(S$410,000.00)	NA	NA
Total	**S$20,525,977.61**	**US$1,835,646.72 + S$471,568.82**	**S$618,997.60**