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

[2025] SGHC 206

Originating Claim No 887 of 2023

Between

Lai Kai Jin Michael (Lai Kairen Michael)

… *Claimant*

And

(1) Maybank Securities Pte Ltd
(2) Teo Hui-Ni Sumiko-Jill (Zhang Huini)

… *Defendants*

Counterclaim of 1st Defendant

Between

Maybank Securities Pte Ltd

… *Claimant in Counterclaim*

And

Lai Kai Jin Michael (Lai Kairen Michael)

… *Defendant in Counterclaim*

GROUNDS OF DECISION

[Equity — Remedies — Account — Account on wilful default basis]
[Contract — Breach]
[Damages — Compensation and damages]

TABLE OF CONTENTS

INTRODUCTION **2**

BACKGROUND 2

MR LAI'S CLAIM 4

MAYBANK SECURITIES' COUNTERCLAIM 4

SUMMARY OF DECISION 5

Provision of an account *5*

Authorised but unexecuted trades *5*

Unauthorised but executed trades *6*

Provision of information *7*

Maybank Securities' counterclaim *7*

MR LAI'S CLAIM AGAINST MAYBANK SECURITIES – ACCOUNT **7**

MR LAI'S CLAIM AGAINST MAYBANK SECURITIES – DAMAGES **11**

AUTHORISED BUT UNEXECUTED TRADES 11

UNAUTHORISED BUT EXECUTED TRADES 14

PROVISION OF INFORMATION 18

QUANTUM OF DAMAGES 26

MAYBANK SECURITIES' COUNTERCLAIM **32**

MR LAI'S CLAIM AGAINST MS TEO **34**

CONCLUSION **34**

COSTS **35**

Version No 1: 24 Oct 2025 (15:33 hrs)

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Lai Kai Jin Michael
v
Maybank Securities Pte Ltd and another

[2025] SGHC 206

General Division of the High Court — Originating Claim No 887 of 2023
Andre Maniam J
1–4, 8–11, 15–17 April, 21, 28 May, 20 June 2025

24 October 2025

Andre Maniam J:

1 The claimant ("Mr Lai") had brokerage accounts with the 1st defendant ("Maybank Securities"). The 2nd defendant ("Ms Teo") was the Maybank Securities trading representative that Mr Lai dealt with at the material time.

2 On 7 February 2024, Mr Lai obtained default judgment against Ms Teo, as she had not filed a notice of intention to contest or not contest.

3 Mr Lai's claim against Maybank Securities, and Maybank Securities' counterclaim against Mr Lai, proceeded to trial this year. On 28 May 2025 I dismissed Mr Lai's claim against Maybank Securities, and granted Maybank Securities judgment on its counterclaim against Mr Lai. My decision on costs was conveyed by correspondence on 5 August 2025, with certain typographical/arithmetical errors corrected on 6 August 2025.

4 Mr Lai has appealed against my decisions by AD/CA 61/2025 (on the merits) and AD/CA 79/2025 (on costs). The appeals will be heard together.

5 I gave brief reasons for my decisions earlier. These are my full written grounds of decision.

Introduction

Background

6 Mr Lai dealt with Ms Teo as his trading representative in respect of his accounts with Maybank Securities from 2011 to 2022. Mr Lai was already a client of Maybank Securities before he met Ms Teo, but active trading in Mr Lai's accounts only started with Ms Teo as his trading representative.[1] Over that 11-year period, the trades in Mr Lai's accounts were substantial in number and value.

7 On the evidence, Mr Lai gave Ms Teo a broad discretion to transact in securities using his accounts.[2]

8 The trades that were made in Mr Lai's accounts (by Ms Teo) were duly reported to him by Maybank Securities sending him contract notes, monthly statements, and other documents.[3]

9 Mr Lai, however, generally did not review the documents sent to him by Maybank Securities, although the terms of the contract between him and Maybank Securities made him responsible for reviewing them, and obliged him

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1 Mr Lai's AEIC at p 4.

2 DCB at pp 722 [25/11/20, 09:15:08], 745 [24/2/21, 08:05:23) and 775.

3 Mr Lai's AEIC at [22]; 4AB at pp 134–174.

Version No 1: 24 Oct 2025 (15:33 hrs)

to inform Maybank Securities of any mistake, omission or disagreement within fourteen (14) days, failing which he no longer had the right to dispute the accuracy of the documents.[4] Mr Lai never disputed any of the entries in any of the documents sent by Maybank Securities, within the stipulated time for him to do so. (See [15]–[17], [19]–[20], [36], and [44]–[56] below).

10 Instead, Mr Lai relied on what Ms Teo represented to him, such as (a) by messages from her; (b) by documents that she created for him, and (c) by edits to his portfolio that she made (using his password) through Maybank Securities' Online Trade Platform, which were in turn reflected in what he viewed through the MBKE App (Maybank Securities' mobile application). In so far as what Ms Teo represented to him differed from what was stated in the documents that Maybank Securities had sent him, Mr Lai's position was that he was entitled to hold Maybank Securities to what Ms Teo had represented, although this position ran counter to the contract between Mr Lai and Maybank Securities.[5]

11 Ms Teo had Mr Lai's user name and password for the Online Trade Platform and MBKE App, as he had collected the user name and password from Maybank Securities and provided them to Ms Teo,[6] although for Mr Lai to do so was contrary to the terms of the contract between Mr Lai and Maybank Securities,[7] and moreover the PIN mailer from Maybank Securities told Mr Lai to keep the password strictly private and confidential, and that it was to be used only by himself. Not only did Mr Lai provide his user name and password to

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4 4AB at Clause 1.34, p 830.

5 Claimant's Skeletal Closing Submissions dated 24 April 2025 at [3]–[10].

6 17 April 2025 Transcript at p 88:9; Second Supplemental Affidavit of Evidence-in-Chief of Chai Chih Yung David ("Mr Chai") at Exhibit CCYD-30.

7 DCB at Clause 4.1, p 323.

Version No 1: 24 Oct 2025 (15:33 hrs)

Ms Teo, but he also asked her to remind him what they were from time to time.[8] There is no dispute that Mr Lai knew that Ms Teo had his user name and password. (See [40], [57]–[77]).

Mr Lai's claim

12 Mr Lai claimed against Maybank Securities for:[9]

(a) an account of all the money, securities and property as have been possessed or received by Maybank Securities on his behalf or to his order, and an order for payment of all sums found due to him on the taking of the account;

(b) further or alternatively, damages to be assessed;

(c) interest;

(d) costs; and

(e) further or other relief.

Maybank Securities' counterclaim

13 Maybank Securities counterclaimed against Mr Lai for:[10]

(a) the sums of US$126,261.06 and HK$360,997.47 (being contra losses incurred) and S$52,972.13 (being contractual interest accrued on the losses up to 31 January 2024);

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8 Mr Lai's AEIC at [27].

9 1AB at p 65.

10 1AB at pp 229–230.

Version No 1: 24 Oct 2025 (15:33 hrs)

(b) further or alternatively, damages to be assessed;

(c) continuing interest on the sums in US$ and HK$ at the prevailing contractual rate of HSBC's prime rate + 3.5% from 1 February 2024 to the date of payment in full;

(d) a declaration that Mr Lai is liable to indemnity Maybank Securities for any and all legal fees and expenses as incurred, and an order that he do pay the same forthwith; and

(e) further or other relief.

Summary of decision

Provision of an account

14 As an alternative to damages, Mr Lai sought an account from Maybank Securities of all transactions in his accounts going back to 2011.[11] Maybank Securities had, however, already provided Mr Lai with an account of all such transactions, by the documents Maybank Securities had sent him contemporaneously (which Mr Lai generally did not review, and never disputed at the time). There was no basis to require Maybank Securities to account for those transactions all over again.

Authorised but unexecuted trades

15 Mr Lai claimed that Ms Teo had failed to execute certain trades which he had authorised.[12] However, the terms of the contract between Mr Lai and Maybank Securities provided that Maybank Securities was not obliged to

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11 1AB at p 65.

12 1AB at pp 50–52.

Version No 1: 24 Oct 2025 (15:33 hrs)

execute trades even where a client had given instructions, and bore no liability for such non-execution.[13] Moreover, none of the allegedly authorised trades was reflected in the documents which Maybank Securities had sent Mr Lai contemporaneously, and Mr Lai never disputed that at the time.

16 Mr Lai also deposited millions of dollars into Ms Teo's personal bank account, for her to apply for initial public offers ("IPOs") for him.[14] The terms of the contract between Mr Lai and Maybank Securities, however, stated that a trading representative (like Ms Teo) was not authorised to collect payment on behalf of Maybank.[15] In so far as Mr Lai paid Ms Teo money for IPO applications (which it does not appear she made), Maybank Securities was not liable to Mr Lai for that. Moreover, none of the supposed IPO allotments in question was reflected in the documents which Maybank Securities sent to Mr Lai contemporaneously, and Mr Lai never disputed that at the time.

Unauthorised but executed trades

17 Mr Lai also claimed that there were various unauthorised trades done by Ms Teo on his accounts,[16] but he failed to prove any such unauthorised trades,[17] and in any event this claim would fail as all of the allegedly unauthorised trades were reflected in the documents which Maybank Securities sent to Mr Lai contemporaneously, which he never disputed at the time.

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13 4AB at Clause 1.7(a), p 824.

14 1AB at pp 42–43.

15 4AB at Clause 1.10, p 826.

16 1AB at pp 50–53.

17 17 April 2025 Transcript at pp 103:20 to 104:6.

Version No 1: 24 Oct 2025 (15:33 hrs)

18 Furthermore, in so far as Mr Lai's claim was for breach of contract concerning matters more than six years prior to him suing Maybank Securities, that was time barred.

Provision of information

19 Maybank Securities accounted to Mr Lai for each transaction in his accounts, over the years, and he never raised any dispute at the time.

20 In so far as Mr Lai relied instead on what was represented by Ms Teo, that could not prevail over the documents that Maybank Securities sent to Mr Lai, which he had not disputed at the time.[18]

Maybank Securities' counterclaim

21 Maybank Securities had proved its counterclaim against Mr Lai for contra losses and interest, and I granted judgment to Maybank Securities.

22 My fuller analysis follows.

Mr Lai's claim against Maybank Securities – account

23 Mr Lai said that Maybank Securities had failed to provide him with a proper account;[19] Maybank Securities said that it had done so.[20]

24 I agreed with Maybank Securities that it had provided Mr Lai with a proper account, by way of the monthly statements, contract notes, and other

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18 1 April 2025 Transcript at p 140:17–21.

19 1AB at pp 53–57.

20 1AB at p 190.

Version No 1: 24 Oct 2025 (15:33 hrs)

documents that it had provided to him over the years. It followed that Mr Lai's claim for an account failed.

25 I did not accept that Mr Lai was unable to understand the documents that Maybank Securities provided him, but even if that were the case he should have raised that with Maybank Securities promptly, but he did not.

26 Mr Lai was not financially illiterate, far from it. He was a litigation lawyer from 1994 to 2009;[21] by the time he left legal practice, he was a profit-sharing partner heading the shipping department of the law firm he was in;[22] in 2012, he became group general counsel and head of insurance of Ezra Holdings Limited,[23] which was listed on the Singapore stock exchange, and he was part of the team involved in Ezra's complex restructuring process, leaving Ezra at the end of 2019;[24] by 2020, he owned shipping insurance businesses held through offshore companies;[25] he also held directorships in local and foreign listed companies.[26]

27 Nor was Mr Lai a novice in the trading of securities: he did not merely buy and sell *shares*, but also *derivatives* like warrants and CBBCs (callable bull and bear contracts). He was able to explain how CBBCs worked, agreed that they were risky, and confirmed that he was engaged in contra trading of them.[27] Mr Lai understood that contra trading was short-term trading where a security

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21 1 April 2025 Transcript at pp 12:13–16.

22 1 April 2025 Transcript at pp 14:15–23.

23 1 April 2025 Transcript at pp 16:21–17:8.

24 1 April 2025 Transcript at pp 20:2–21:25.

25 1 April 2025 Transcript at pp 23:23–25:18.

26 1 April 2025 Transcript at pp 14:24–16:16; 38:23–41:10.

27 2 April 2025 Transcript at pp 118:14–120:9.

Version No 1: 24 Oct 2025 (15:33 hrs)

would be bought and sold within a short "contra period", and the gain or loss settled between him and the broker.[28]

28 Mr Lai confirmed that he could understand from the documents sent to him by Maybank Securities, what he was buying/selling, what contra gains and losses he was making, and what outstanding contracts he had.[29] Unfortunately, however, he generally did not bother to read the documents he received from Maybank Securities.

29 Clauses 1.7(f), 1.34 and 4.25 of the December 2021 General Terms & Conditions ("2021 GT&C") are pertinent:[30]

> 1.7(f) Maybank may send to the Client a Confirmation (if required) after its receipt of an order. The Client shall be responsible for reviewing the Confirmation to ensure that an order has been transmitted, received, processed and duly executed, and shall immediately notify Maybank of any failure to receive an appropriate Confirmation that the order has been received and executed.
>
> …
>
> 1.34 **Service of Documents**
>
> Any documents and notices served on the Client by Maybank may be in writing and addressed to the Client's address stated in the Account Application Form or any agreements entered into between the Client and Maybank or any other address as the Client may notify Maybank in writing from time to time and shall be deemed to have been duly served and effective 48 hours after posting or, if sent by telex, facsimile or any other electronic means, upon dispatch or, if served by hand, upon delivery. Whenever the Client receives any statements of account or any document in connection with the Account, the Client agrees that he will inform Maybank of any mistake, omission or disagreement within fourteen (14) days from the date the same was posted/delivered or such other duration as may be stipulated in the said document. If the Client fails to do this, he

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28 2 April 2025 Transcript at pp 120:20 – 121:13.

29 1 April 2025 Transcript at p 149:9–23.

30 4AB at pp 825, 830 and 846.

Version No 1: 24 Oct 2025 (15:33 hrs)

> agrees he no longer has the right to dispute the accuracy of the statement or document. Accordingly, Maybank has the right to treat the Client's silence as the Client's representation that the statement or document is accurate. However, should Maybank discover at any time that the statement or document is inaccurate, Maybank can still amend the same.
>
> …
>
> **Notification by Client**
>
> 4.25 The Client shall promptly notify Maybank and in any event within forty-eight (48) hours:
>
> (a) of any failure to receive an appropriate response that an instruction initiated by the Client through The Online Trading Platform has been received and/or executed;
>
> (b) of any receipt of a confirmation of an instruction that the Client did not place or an inaccurate or conflicting report, account statement or information relating to the Client's account;
>
> (c) of any discrepancy between any information or report produced or made available to the Client by The Online Trading Platform on any medium (including electronic means), or in the Client's portfolio, or an information source, and any other such report or confirmation of a trade or order;
>
> (d) if there is a discrepancy in the account balance, security positions or order status reported to the Client through The Online Trading Platform; or
>
> (e) if there is any other type of discrepancy or suspicious or unexplained occurrence relating to the Client's The Online Trading Platform account.

30 At the bottom of each contract note, it was stated, "[i]f any of the information stated above is incorrect, please notify immediately and return the contract note for cancellation and claim of refund of stamp duty paid".[31]

31 At the end of each monthly statement, it was stated that the records are "deemed to be correct unless you notify us of any error within 14 days".[32]

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31 Bundle of Documents for Trial (Volume VIII) dated 19 March 2025 ("8AB") at p 618.

32 8AB at p 4.

Version No 1: 24 Oct 2025 (15:33 hrs)

32 Mr Lai's silence in relation to the documents he received from Maybank Securities precluded him from disputing the accuracy of the documents: *RHB-Cathay Securities Pte Ltd v Ibrahim Khan* [1999] 1 SLR(R) 857 at [98]–[104]; *Jiang Ou v EFG Bank AG* [2011] SGHC 149 at [85]–[89].

Mr Lai's claim against Maybank Securities – damages

33 Mr Lai complained about:[33]

(a) authorised but unexecuted trades;

(b) unauthorised but executed trades; and

(c) provision of information.

Authorised but unexecuted trades

34 Clause 1.7(a) of the 2021 GT&C provides that:[34]

> … Maybank shall have the discretion to refuse to accept or act on any orders, instructions or requests of the Client without having to assign any reason for such refusal and Maybank shall bear no liability whatsoever for failing to comply with any orders, instructions or requests of the Client or for exercising or failing to exercise any discretion, power or authority conferred upon Maybank by this Agreement.

35 That clause precluded Mr Lai from maintaining a claim against Maybank Securities for allegedly failing to comply with his instructions to execute the "authorised but unexecuted trades".

36 Further, none of the "authorised but unexecuted trades" was reflected in the contract notes, monthly statements, or other documents from Maybank

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33 1AB at pp 32–80.

34 4AB at p 824.

Version No 1: 24 Oct 2025 (15:33 hrs)

Securities, but Mr Lai did not raise any disagreement with that; and that precluded him from disputing the accuracy of the documents. See [25]–[32] above.

37 The "authorised but unexecuted trades" were listed in Annex A to Mr Lai's statement of claim, but the preparation of Annex A was shrouded in some mystery. Annex A had a certain correlation to the trades in red font ("red trades") in the MBKE Spreadsheet (a document which Maybank Securities had prepared as an audit trail, to aid its investigation into Ms Teo's conduct), but not all the red trades were listed in Annex A.

38 Who decided which red trades to include in Annex A, and which to omit? Mr Lai said that Annex A would have been derived by his accounting witness Mr Barslev as well as Mr Lai's solicitors; Mr Lai added that Mr Barslev did not run through the Annex A trades with Mr Lai to check if Mr Lai had authorised those trades.[35] When asked about why Annex A did not include all of the red trades, Mr Barslev could not explain;[36] he also said that he was not the one who had derived Annex A.[37] That leaves Mr Lai's solicitors as the ones who decided which red trades should be included in Annex A, and which to omit – but they offered no explanation of this.

39 The red trades were not a reliable basis for alleging that the trades in Annex A had been authorised by Mr Lai (his case being that he had specifically authorised each of them beforehand). The red trades had never been executed, but had been keyed into Mr Lai's portfolio on the Online Trading Platform (by

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35 3 April 2025 Transcript at pp 40:18 to 41:18.

36 9 April 2025 Transcript at pp 77:4 to 79:7.

37 8 April 2025 Transcript at pp 138:1 to 139:4.

Version No 1: 24 Oct 2025 (15:33 hrs)

Ms Teo) using the manual entry function.[38] That however said nothing about whether Mr Lai had specifically authorised those trades beforehand.

40 The evidence showed that Mr Lai gave Ms Teo a broad discretion to trade using his accounts with Maybank Securities. In relation to his complaint about "authorised but unexecuted trades", he gave no convincing evidence that he had specifically authorised any of those trades. Rather, the evidence showed that Ms Teo represented to Mr Lai what she had supposedly bought for him, and she reinforced the impression created by editing his portfolio as viewed by him through the MBKE App.[39] She was able to make such edits as Mr Lai had (contrary to the terms of the contract between him and Maybank Securities) provided her with his user name and password – see [57]–[77] below.

41 In so far as Mr Lai's complaint was about not receiving IPO allotments that he had paid money to the 2nd defendant (Ms Teo) for:

(a) none of the supposed allotments was reflected in contract notes, monthly statements, or other documents from Maybank Securities, but Mr Lai did not raise any disagreement with that, and that precluded him from disputing the accuracy of the documents; and

(b) Ms Teo was not authorised to collect payment or handle Capital Markets Products on behalf of Maybank: clause 1.10 of the 2021 GT&C (set out below).[40]

> **Payment/Handling of Client's Properties**
>
> 1.10 Trading representatives are not authorised to collect payment or handle Capital Markets Products on

38 Mr Chai's AEIC at para 112(c).

39 Mr Lai's AEIC at [55].

40 4AB at p 826.

Version No 1: 24 Oct 2025 (15:33 hrs)

> behalf of Maybank. The Client acknowledges that if the Client chooses to effect payment or to deposit Capital Markets Products by delivering a cheque or Capital Markets Products to his trading representative, payment or deposit of the Capital Markets Products shall be deemed to be made only when Maybank receives the cheque or Capital Markets Products from the trading representative and not when the cheque or Capital Markets Products are delivered to the trading representative. The Client agrees that in the event where payments are made prior to the date for settlement of purchases, Maybank shall deposit such amounts into the Client's trust account and shall only withdraw monies from such trust account for the purposes prescribed in the relevant provisions of the Securities Regulation.

42 If, in the face of clause 1.10 of the 2021 GT&C, Mr Lai chose to transfer money to Ms Teo so that she could apply for IPOs for him, he did so at his own risk. The money he paid Ms Teo was not money paid to Maybank Securities, and it was not money that Maybank Securities was obliged to account to Mr Lai for. In receiving money from Mr Lai supposedly for IPO applications, Ms Teo was not acting as Maybank Securities' agent or representative, she was acting as Mr Lai's agent or representative. Maybank Securities was not vicariously liable for her actions.

43 It follows that Mr Lai's claim for "authorised but unexecuted trades", including his claim for IPO allotments, fails.

Unauthorised but executed trades

44 The "unauthorised but executed trades" were reflected in contract notes and monthly statements from Maybank Securities, but Mr Lai did not contemporaneously raise any disagreement with those trades.

Version No 1: 24 Oct 2025 (15:33 hrs)

45 Moreover, Mr Lai provided no convincing evidence about those trades being unauthorised.[41]

46 His case on those trades appeared to have been premised on them not being reflected in the MBKE Spreadsheet. However, Mr Gee Yen Heng explained that this was due to technical issues (code mapping),[42] and that there were no deleted entries.[43]

47 Mr Lai's case on the "unauthorised but executed trades" was not based on contemporaneous identification by him of unauthorised trades. Instead, his case was entirely constructed after the fact, from the MBKE Spreadsheet (which Maybank Securities had generated to aid its investigation into Ms Teo's conduct), on the supposition that if a trade was not reflected in the MBKE Spreadsheet, then it must have been an unauthorised trade.

48 The fallacy of this approach was neatly illustrated by Mr Lai having included the buy leg of a pair of contra trades as an unauthorised trade, but not also the sell leg. He listed as an unauthorised trade, the purchase of 700,000 Hang Seng warrants on 4 May 2012 at $0.12, at a cost of $84,298.85. There was then a contra sale of the same warrants the same day at $0.122, with proceeds of $85,096.16. From this pair of contra trades, Mr Lai made a profit of $797.31. The purchase transaction, sale transaction, and contra gain, were all duly reflected in the monthly statement dated 31 May 2012.[44] On Mr Lai's case, there was an *unauthorised* purchase of the warrants, but an *authorised* contra sale of the same warrants the same day (at a profit). But how could he have authorised

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41 17 April 2025 Transcript at pp 103:20 to 104:6.

42 15 April 2025 Transcript at p 65:19–23.

43 15 April 2025 Transcript at pp 93:21 to 94:1.

44 8AB 42–43, 4 May 2012 ref 726524/021/01, 726532/521/01, 7 May 2012 ref 4873865.

Version No 1: 24 Oct 2025 (15:33 hrs)

the sale of warrants that he did not know had been purchased (because his case was, the purchase was unauthorised, and he had not known about it)? Mr Lai could provide no sensible explanation, other than to further speculate that the sale too might have been unauthorised – but he acknowledged that that was "pure speculation".[45] In the event, Mr Lai never amended his pleadings to plead that the sale too was unauthorised, and so his case rested with an allegedly unauthorised purchase followed by an authorised sale, which made no sense.

49 Mr Lai's evidence was also telling, in that he said that the "reason that [he] disputed the purchase of these warrants is because they appear on the missing – on the missing trades [*ie*, trades which were not listed in the MBKE App]"[46] for the "unauthorised but executed trades". That confirmed that his case was based entirely on the MBKE Spreadsheet coupled with baseless speculation that if the trades were not listed in the Spreadsheet (an audit trail which Maybank Securities generated in or around early 2022 while investigating into Ms Teo's conduct), then the trades must have been unauthorised and Ms Teo must have been trying to hide them from him.

50 The assertion that Ms Teo was trying to hide such trades was itself quite mystifying, because all of the "unauthorised but executed trades" were duly stated in the documents Mr Lai received from Maybank Securities – none of those trades was hidden from him in any way. Moreover, some of those trades appeared in MBKE App screenshots[47] and/or in portfolio summaries provided to Mr Lai by Ms Teo.[48] The fact that Ms Teo had updated Mr Lai of some of the

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45 2 April 2025 Transcript at pp 80:11–82:19.

46 2 April 2025 Transcript at p 82:1–3.

47 3 April 2025 Transcript at pp 11:17–15:12.

48 3 April 2025 Transcript at pp 14:10–15:6.

Version No 1: 24 Oct 2025 (15:33 hrs)

trades that he now says are unauthorised (but which he did not dispute at the time) is an indication that those trades were not unauthorised.

51 Mr Lai said that when he saw the trades which appeared in screenshots or portfolio summaries, "it did not strike [him] at that time" that they were unauthorised;[49] he claimed that if only he had opened the monthly statements and sighted the contract notes, he would have been able to detect that the trades were unauthorised.[50] This explanation was wholly untenable and I rejected it: there was nothing in the nature of the securities, the timing of the transactions, or the prices transacted, from which Mr Lai (or anyone) could deduce that some of the trades in the monthly statements and contract notes were unauthorised while the rest were authorised.

52 Put another way, if Maybank Securities had not generated the MBKE Spreadsheet, or if that had not been provided to Mr Lai, Mr Lai would never have come up with his Annex B list of "unauthorised but executed trades". That claim was pure conjecture, based only on the limitations of the MBKE Spreadsheet – limitations which Maybank Securities had explained (see [46]).

53 Further, Mr Lai's silence in relation to the contract notes and monthly statements from Maybank Securities precluded him from disputing the accuracy of the documents. See [25]–[32] above.

54 In any event, I did not accept that any of the "unauthorised but executed trades" was *unauthorised*. The evidence indicated, rather, that they were *authorised* and executed trades.

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49 3 April 2025 Transcript at p 21:10–17.

50 3 April 2025 Transcript at pp 21:3–22:3.

Version No 1: 24 Oct 2025 (15:33 hrs)

55 It followed that this claim failed.

56 For completeness, I also accepted Maybank Securities' contention that Mr Lai's breach of contract claim in relation to the "unauthorised but executed trades" was time-barred in so far as it was in respect of trades prior to 2017, *ie*, S/Nos 1–103 of Annex B to the statement of claim.

Provision of information

57 Maybank Securities provided Mr Lai with ample information through the years, none of which he took issue with at the time.

58 His complaint about provision of information was really about what *Ms Teo* represented to him, such as (a) by messages from her; (b) by documents that she created for him, and (c) by edits to his portfolio that she made (using his password) through the Online Trade Platform, which were in turn reflected in what he viewed through the MBKE App.

59 Ms Teo had neither actual nor apparent authority to ask Mr Lai to disregard the documents provided by Maybank Securities and instead rely on what she communicated to him, or to vary or waive the terms of the contract between Maybank Securities and Mr Lai in any other way.

60 On the terms of the contract between Maybank Securities and Mr Lai, the documents provided by Maybank Securities prevailed, not anything Ms Teo may have communicated to Mr Lai.

61 In so far as Mr Lai's complaint was about what he saw of his portfolio through the MBKE App (which Ms Teo had edited), Ms Teo was only in a

Version No 1: 24 Oct 2025 (15:33 hrs)

position to make those edits because Mr Lai had provided her with his user name and password (which he ought not to have done).

62 The evidence showed that Mr Lai collected from Maybank Securities the password to the Online Trading Platform and the MBKE App, and provided it to Ms Teo. In particular, there were signed e-forms (Exhibit D1, which I admitted into evidence) bearing Mr Lai's signature in relation to the collection of the password.[51]

63 Mr Lai's evidence, ultimately, was that he did not recall collecting the password;[52] he did not admit that it was his signature on the e-forms, although he did not say that it was <u>not</u> his signature; and he suggested that a handwriting expert's evidence be sought.[53]

64 If Mr Lai wanted to adduce evidence of a handwriting expert (to confirm that the signatures which appeared to be his, were his), he could have asked to reopen his case. But he declined to do so. In the event, he was recalled as a witness by Maybank Securities, and gave evidence that was equivocal at best. Maybank Securities was not obliged to call a handwriting expert as part of its case.

65 I was satisfied that it was Mr Lai's signature on the e-forms, and that it was he who collected the password and provided it to Ms Teo.

66 In any event, Ms Teo had obtained Mr Lai's password from some other source, it was nevertheless clear that Mr Lai knew she had his password, and he

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51 Mr Chai's Second Supplemental AEIC at Exhibit CCYD-30.

52 8 April 2025 Transcript at p 47:9.

53 17 April 2025 Transcript at p 88:9–12.

Version No 1: 24 Oct 2025 (15:33 hrs)

did nothing to change the password to something known only to him. Instead, Mr Lai asked Ms Teo what his user name and password were on more than one occasion, and she reminded him of them.[54] Moreover, she sent him screenshots showing that she had logged into his account using the Online Trading Platform.[55]

67 Mr Lai's conduct of sharing his password with Ms Teo was contrary to the 2021 GT&C, in particular clauses 4.1 and 4.4:[56]

> **Online Trading Platform**
>
> 4.1 The Client agrees that for trading in Capital Markets Products or other products through the Internet, the Client shall access and use the system provided by Maybank and/or any other relevant party, at the website designated by Maybank ("Online Trading Platform"). The Client shall be issued a unique User Name and unique Password by Maybank or such other form of approved user identification (the "ID") to provide access and use by the Client to the Online Trading Platform for the purpose of trading in Capital Markets Products. The Client shall be the sole authorised and exclusive person using the ID and shall be fully responsible for the use protection and confidentiality of the ID as well as all Transactions executed through the ID. Maybank shall not be responsible for any loss, damage, cost and expense in respect of or in connection with the Client's failure to maintain the confidentiality of the ID or arising from any unauthorised access of the Online Trading Platform. Any use of the Online Trading Platform by the Client shall be in accordance with and subject to this Agreement. Maybank reserves the right to amend, modify, suspend or terminate the operation of the Online Trading Platform at any time for any reason whatsoever and in any manner it deems fit, without giving any prior notice thereof to the Client and without being responsible in any way for any loss or damage whatsoever resulting therefrom.
>
> .....

54 DCB at pp 683 and 687.

55 2DCB at pp 37 and 44.

56 4AB at pp 843–844.

Version No 1: 24 Oct 2025 (15:33 hrs)

> 4.4 The Client shall use the Online Trading Platform strictly in accordance with this Agreement, and shall not in any way permit, enable or cause any person (including the Client) to:
>
> (a) gain unauthorised access or use of the Online Trading Platform;
>
> (b) make any modifications, adjustments or alterations to any information or services available on the Online Trading Platform;
>
> (c) tamper, restrict or otherwise interfere with any part, function or operation of the Online Trading Platform;
>
> (d) use the ID or any equipment/software in a manner inconsistent with this Agreement or detrimental to the functions of the Online Trading Platform;
>
> (e) access, use, store, modify or redistribute in any manner any information material or data obtained from the Online Trading Platform whether through any other system equipment or software linked to the Client's computer or otherwise; or
>
> (f) cause any failure, interruption, error, defect in, misuse of, impairment or corruption any part of the Online Trading Platform or any information or services provided therein;
>
> and the Client shall be liable for and fully indemnify Maybank from and against any and all Losses in respect of or in connection with any breach of the foregoing.

68 The PIN mailer also told Mr Lai to: "[p] lease ensure that the password is kept strictly private & confidential, to be used only by yourself."[57]

69 Having acted as Mr Lai did, as a matter of contract he, not Maybank Securities, was responsible for any loss, damage, cost and expense in respect of or in connection with his failure to maintain the confidentiality of the ID, *ie*, his user name and password.

70 Relatedly, in using Mr Lai's password to access the Online Trading Platform, Ms Teo was not acting as Maybank Securities' agent or

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57 DCB at p 71.

Version No 1: 24 Oct 2025 (15:33 hrs)

representative, she was acting as Mr Lai's agent or representative. Maybank Securities had declined to give Mr Lai's password to Ms Teo, and the agreement between Maybank Securities and Mr Lai was that Mr Lai was "the sole authorised and exclusive person using the ID and shall be fully responsible for the use protection and confidentiality of the ID".

71 Further, the 2021 GT&C obliged Mr Lai to promptly notify Maybank Securities and in any event within forty-eight hours "of any discrepancy between any information or report produced or made available to the Client by The Online Trading Platform on any medium (including electronic means), or in the Client's portfolio, or an information, source, and any other such report or confirmation of a trade or order": clause 4.25(c).[58] Mr Lai was obliged to check what he saw from the MBKE App against the documents Maybank Securities sent him, such as the contract notes and monthly statements, and notify Maybank Securities of any discrepancy, but he did not do so. See further [25]–[32] above.

72 In the circumstances, it was Mr Lai's act of providing Ms Teo with his user name and password that was the cause of her being able to edit his portfolio as viewed by him through the MBKE App; and he, not Maybank Securities, is responsible for the consequences of that.

73 Mr Lai, however, sought to blame Maybank Securities for an alleged lack of disclaimers, for the portfolio in the MBKE App being editable, and for Maybank Securities not detecting through surveillance what Ms Teo had done. None of this had merit.

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[58] 4AB at p 846.

Version No 1: 24 Oct 2025 (15:33 hrs)

74 On disclaimers:

(a) the 2021 GT&C which obliged Mr Lai to promptly notify Maybank Securities of any discrepancies between what he might see from the Online Trading Platform (and by extension the MBKE App), and documents Maybank Securities sent him, such as contract notes and monthly statements, was in effect a disclaimer warning him that he could not simply rely on what he might see from the Online Trading Platform / MBKE App and ignore the documents from Maybank Securities. This was reinforced by the documents from Maybank Securities precluding Mr Lai from disputing their accuracy, if Mr Lai did not promptly dispute the documents (as discussed at [25]–[32] above);

(b) Mr Lai was warned not to share his password with anyone – indeed, this was a term of the contract, with him accepting responsibility for the consequences if he should breach that term: see [67]–[69] above;

(c) there was a disclaimer on the face of the "portfolio" view on the Online Trading Platform, evident from the screenshot Ms Teo sent Mr Lai on 9 February 2021 at 19:07:32,[59] which made it clear that Mr Lai should not be relying on the completeness and/or accuracy of the information shown in his portfolio, that Maybank Securities did not accept any liability if he should do so, and that "Manual Entry" to the portfolio was possible:

> The shares shown under your portfolio is not a reflection of your share holdings in CDP / CPF investment bank / SRS operator.
>
> ……

[59] 2DCB at p 44; DCB at p 741.

Version No 1: 24 Oct 2025 (15:33 hrs)

> The "Unrealized P/L" does not take into account (a) transaction charges; (b) amendments made after a trade is done; (c) revocation of cash/CPF trades or transfer to/from margin account; (d) corporate actions such as stock splits, bonus issues, rights or entitlement of any form; and (e) share delisting. You will need to update your portfolio under Portfolio – "Manual Entry", if you wish to have the above changes to be reflected.
>
> …
>
> Maybank Kim Eng Securities Pte Ltd. does not warrant the completeness and/or accuracy of the information provided under "Account Management" and "Portfolio" and we do not accept any liability whatsoever for any loss, damage, costs and/or expenses resulting from reliance on the information provided.

(d) there was a disclaimer in the MBKE App but its contents are ultimately irrelevant, for Mr Lai never clicked on the link to see what the disclaimer said: the language of that disclaimer was thus of no consequence to how Mr Lai acted;

(e) in any event, I accepted that the MBKE App disclaimer at the relevant time was (at least in substance) in the terms as contended for by Maybank Securities, as set out below:

> The shares shown under your portfolio is not a reflection of your share holdings in CDP/CPF Investment bank / SRS operator.
>
> For detailed notes refer to portfolio in Maybank Trade.
>
> Please refer to Maybank Trade > "Account Management" > Daily Custody Balance" for your foreign shares holdings. Maybank Securities Pte Ltd. Does not warrant the completeness and/or accuracy of the information provided under "Account Management" and "Portfolio".[60]

[60] DCB at p 492; 2DCB at p 218.

Version No 1: 24 Oct 2025 (15:33 hrs)

(this was confirmed by an email from Market Simplified, an Indian company which had programmed the MBKE App[61] but declined to give evidence, which email Maybank Securities could rely on by an exception to the hearsay rule – as a statement made by a person who cannot be produced as a witness under s 32(1)(j) of the Evidence Act 1893);

(f) while the portfolio view in the Online Trading Platform had a fuller disclaimer; the MBKE App disclaimer itself made it clear that Mr Lai should not be relying on the completeness and/or accuracy of the information shown in his portfolio, and that Maybank Securities did not accept any liability if he should do so.

75 There was nothing wrong with Maybank Securities allowing editing of the portfolio as displayed in the Online Trading Platform and MBKE app:

(a) there were benefits from being able to edit the portfolio, as explained by Mr Poh Ban Song,[62] and also mentioned in the Online Trading Platform disclaimer in relation to "Unrealised P/L" (see [74(c)] above);

(b) the editable portfolio function was a common feature among local brokerages;[63] and

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61 Mr Gee Yen Heng's AEIC at para 7.

62 Affidavit of Evidence-in-Chief of Mr Poh Ban Song dated 25 March 2025 ("Mr Poh's AEIC") at [10]–[13].

63 Mr Poh's AEIC at [9].

Version No 1: 24 Oct 2025 (15:33 hrs)

(c) given the terms and conditions as between Maybank Securities and Mr Lai, Mr Lai should be the only one using his password, and thus the only one editing his portfolio.

76 In all the circumstances, it was quite unreasonable to expect Maybank Securities to conduct surveillance to protect its customers like Mr Lai from their own wrongful conduct in providing their user name and password to others to use. There was neither a duty nor a breach of duty on the part of Maybank Securities in this regard.

77 For the above reasons, Mr Lai's claim in relation to provision of information (including his claim of misrepresentation) fails.

Quantum of damages

78 For completeness, I add my views on the quantum of damages Mr Lai had claimed.

79 As pleaded in his statement of claim, Mr Lai sought an account and an order for payment of all sums found to be due to him on the taking of that account, and further and/or alternatively, damages to be assessed. He pleaded at para 82 that the authorised but unexecuted trades, and the unauthorised but executed trades, caused him to suffer loss and damage as follows:[64]

(a) the sum of S$12,410,633.87 or, in the alternative, the market value of the Authorised Open Positions (referred to at para 71);

[64] 1AB at pp 63–64.

Version No 1: 24 Oct 2025 (15:33 hrs)

(b) the appreciation in price of the relevant securities which he would have earned but for the failure to execute authorised but unexecuted trades;

(c) the sums received or the cash value arising out of the authorised sale of shares, including, but not limited, to the sale of shares listed at para 72 (in the sums of US$2,680,000, HK$2,635,000, HK$890,000, US$340,000, and US$218,000);

(d) the brokerage fees, commissions and/or other charges paid in connection with the unauthorised but executed trades and further and/or in the alternative, the interest, lending fees and/or other charges paid in connection with loans purportedly taken to finance the unauthorised but executed trades via leveraged or margin trading; and

(e) further and/or in the alternative, the sum of S$9,595,284.20, being the net sum of monies that Mr Lai transferred to Maybank Securities and Ms Teo to purchase and sell various securities that have been lost.

80 The premise of Mr Lai's claim for loss, however, was that Maybank Securities was bound by what Ms Teo had done, *eg*:

(a) if Ms Teo asked him for money to apply for IPOs, and he deposited money into her personal bank account, then that should be regarded as money which Maybank Securities had received – although this was contrary to the terms of the contract between Mr Lai and Maybank Securities;

(b) if Ms Teo told him that she had bought certain securities (although those trades did not appear in the documents sent to Mr Lai

Version No 1: 24 Oct 2025 (15:33 hrs)

by Maybank Securities), then Mr Lai could claim against Maybank Securities for lost profits from the notional appreciation of those non-existent securities;

(c) if Ms Teo told him that he had certain sums of money standing to his credit with Maybank Securities, then Maybank Securities owed Mr Lai those sums – although the documents which Maybank Securities sent to Mr Lai showed that actually it was Mr Lai that owed Maybank Securities money (and this was the subject of Maybank Securities' counterclaim which I discuss below at [93]–[97]).

81 The true state of affairs, however, was stated in the documents which Maybank Securities sent to Mr Lai contemporaneously, which Mr Lai did not dispute at the time.

82 The evidence of Mr Barslev, Mr Lai's accounting witness, suffered from the same defects as Mr Lai's claim, in that it relied on information and documents which *Ms Teo* had provided to Mr Lai, and/or the MBKE Spreadsheet (which was incomplete), rather than on the documents which Maybank Securities had sent to Mr Lai contemporaneously.

83 I would mention three other aspects of Mr Lai's damages claim.

84 First, Mr Lai pointed to a difference of some US$620,000 in his CFD account between the last entry on 3 July 2013, and the first presently available statement in October 2013.[65] He said that difference was unaccounted for, and so Maybank Securities owed him that US$620,000.[66] I rejected that. The fact

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65 Claimant's skeletal closing submissions at [33].

66 24 April 2025 Transcript at pp 68:15–69:4.

Version No 1: 24 Oct 2025 (15:33 hrs)

that Maybank Securities could not *now* provide statements for Mr Lai's CFD account for transactions prior to the first presently available statement (for October 2013) did not mean Maybank Securities had *contemporaneously* failed to account for Mr Lai for the earlier transactions, or that Maybank Securities owed Mr Lai any money thereby. On the evidence, Maybank Securities had provided Mr Lai statements from the time the CFD account was opened in 2012, but today neither Maybank Securities nor Mr Lai could produce those statements (which related to a period more than ten years before Mr Lai commenced this action). Given that Mr Lai never disputed the statements that he received for the period prior to October 2013, nor did he say he had received no such statements, he cannot now dispute the October 2013 statement (which took into account the transactions prior thereto). Maybank Securities did not owe Mr Lai US$620,000 (or any sum) just because no one can now produce statements for the CFD account prior to October 2013.

85 Second, at the hearing of oral submissions on 24 April 2025, after the evidence had concluded, Mr Lai's counsel informed that court that Mr Barslev was still working on calculations which would show that Maybank Securities owed Mr Lai some S$1 million.[67] Presumably, the bulk of that sum would comprise the US$620,000 mentioned above. However, the evidence (including Mr Barslev's testimony) had already concluded, and Mr Lai had made no attempt to reopen his case to introduce further evidence. Indeed, as I observed above (at [64]), Mr Lai declined to reopen his case to call a handwriting expert (on whether he had signed the acknowledgments of his password collection).

86 I regarded Mr Barslev's further calculations to be in the nature of further *evidence*, rather than *submissions*. It would not be right to allow those

[67] 24 April 2025 Transcript at pp 42:19–43:18.

Version No 1: 24 Oct 2025 (15:33 hrs)

calculations to be introduced without Maybank Securities having the opportunity to question Mr Barslev about them, and without Maybank Securities' corresponding witness Ms Yeo being able to give evidence on them (with both Mr Barslev and Ms Yeo having testified in relation to accounting entries in the course of the trial). But this would be reopening the claimant's case – when Mr Lai had not asked to do so. In the event, on 24 April 2025 I directed that the further calculations Mr Barslev was still working on should not be put in, pending the court's decision on liability. In the event, I dismissed Mr Lai's claim, and the quantum of Mr Lai's claimed losses – which is what Mr Barslev was still working on – was thus moot. If, however, I had decided liability in favour of Mr Lai in some way, I would not have been minded to allow him to introduce Mr Barslev's further calculations belatedly.

87 Third, Mr Lai mentioned a S$38,545.75 deduction from his cash trading account.[68] In correspondence prior to trial, Maybank Securities' lawyers had informed Mr Lai's lawyers that Maybank Securities had received a cheque dated 14 January 2020 from Ms Teo for S$38,545.75, and Maybank Securities had in turn refunded the same sum to Ms Teo by its cheque of 16 January 2020. Maybank Securities' lawyers explained that Ms Teo had informed Maybank Securities that Mr Lai's fund transfer to settle a certain trade was delayed, and so she made payment first on his behalf – that is why the same sum was refunded to her thereafter.[69]

88 From this, Mr Lai contended that Maybank Securities had not alleged nor provided evidence that he had consented to Ms Teo being refunded what

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68 Mr Lai's AEIC at [77(c)].

69 Mr Lai's AEIC at [77(d)].

Version No 1: 24 Oct 2025 (15:33 hrs)

she had paid first on his behalf, and he stated "categorically" that he had not consented to the refund to Ms Teo.[70]

89 Mr Lai was being opportunistic, taking a wholly unmeritorious position. As the sum of S$38,545.75 came from Ms Teo in the first place, when Maybank Securities refunded the same sum to her there was no net impact on Mr Lai's account.

90 What Ms Lai suggested, in effect, is that Ms Teo should have been left to pay his bill of S$38,545.75 to Maybank Securities, which he did not consent to her being refunded, and so he should have been enriched by the sum of S$38,545.75 (at Ms Teo's expense). That is unbelievable. Nothing in the evidence supports a finding that Ms Teo would make a gift of S$38,545.75 to Mr Lai (by paying his bill to Maybank Securities), or that she would give him an indefinite loan of that sum – which Mr Lai intended never to repay.

91 Moreover, the transaction was documented in the January 2020 monthly statement which Maybank Securities sent to Mr Lai, which he never disputed at the time.[71]

92 This transaction was mentioned in Maybank Securities' lawyers' letter of 10 January 2025, after which Mr Lai amended his statement of claim on 14 January 2025. However, Mr Lai did not plead in his amended statement of claim that Maybank Securities had made a wrongful deduction of S$38,545.75, and so there was no specific claim in that regard which Maybank Securities had to plead a defence to. Had Mr Lai pleaded such a claim, it would have been open to Maybank Securities to plead defences such as: (a) that Mr Lai had consented

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70 Mr Lai's AEIC at [77(b)]–[77(c)].

71 11AB at p 281.

Version No 1: 24 Oct 2025 (15:33 hrs)

to Ms Teo being refunded what she had paid first on his behalf; and/or (b) the defence recognised in *Liggett v Barclays Bank* [1928] 1 KB 48 – that the refund to Ms Teo had discharged a liability of Mr Lai's to Ms Teo, and so Maybank Securities was not liable to Mr Lai for the sum. To start with, however, Mr Lai did not plead such a claim.

Maybank Securities' counterclaim

93 Maybank Securities had proved its counterclaim.

94 Of the underlying trades giving rise to the contra losses, Mr Lai only disputed two: S/Nos. 209 and 210 of Annex B, disputed only on 14 January 2025 by amendment to the statement of claim.[72] None of the trades was disputed contemporaneously. See again [25]–[32] above.

95 In any event, I rejected Mr Lai's contention that the trades in Annex B were unauthorised. See [44]–[55] above.

96 Maybank Securities sent Mr Lai not only documents such as contract notes and monthly statements in respect of the trades in question, but it also sent him reminder letters about the contra losses being overdue. One of these letters (dated 5 January 2022) Mr Lai sent to Ms Teo on 11 January 2022 at 22:21:47.[73] Her response on 12 January 2022 at 02:53:35 is noteworthy: "…interests never charged as that is guaranteed by my side. These are previous losses but covered by our gains which is not deducted yet." The following may be noted:

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72 1AB at p 80.

73 2DCB at p 75; DCB at p 787.

Version No 1: 24 Oct 2025 (15:33 hrs)

(a) Ms Teo confirmed that the losses that Maybank Securities had written to Mr Lai about *were losses* (and Mr Lai did not dispute that);

(b) Ms Teo purported to waive the interest that Maybank Securities had demanded from Mr Lai, but she had neither actual nor apparent authority to do so;

(c) Ms Teo confirmed that the losses *were outstanding*, as Maybank Securities had said they were, but she claimed that the losses were "covered by our gains which is not deducted yet" – from the evidence, that representation was false, but it was a representation that Ms Teo had no actual or apparent authority to make; the true position was as stated in the documents that Maybank Securities had sent to Mr Lai.

97 I thus entered judgment in favour of Maybank Securities against Mr Lai as claimed, for:

(a) the sums of US$126,261.06, HK$360,997.47 (being contra losses incurred) and S$52,972.13 (being contractual interest accrued on the losses up to 31 January 2024); and

(b) continuing interest on the sums in US$ and HK$ at the prevailing contractual rate of HSBC's prime rate + 3.5% from 1 February 2024 to the date of payment in full.

Version No 1: 24 Oct 2025 (15:33 hrs)

Mr Lai's claim against Ms Teo

98 On 7 February 2024, Mr Lai obtained judgment against Ms Teo for failing to file a notice of intention to contest or not contest, for the following relief:[74]

(a) Ms Teo shall give an account of all the money, securities and property as have been possessed or received by Ms Teo or by any person on her behalf or to her order, and an order for payment by Ms Teo of all sums found to be due to Mr Lai on the taking of the account;

(b) Ms Teo shall pay Mr Lai damages to be assessed; and

(c) interest and costs to be reserved to the court hearing the taking of accounts and assessment of damages.

99 Mr Lai stated in his opening statement at para 3 that the trial of this action was thus also in respect of quantification as between Mr Lai and Ms Teo. In his closing submissions dated 7 May 2025 at para 50, he said that he sought his pleaded relief for damages to be assessed, and that he was prepared to assist in further submissions if so required on such quantification.

100 I left it to Mr Lai to make the usual application for directions in relation to the taking of an account, and assessment of damages. That aspect of the matter is now in progress as between Mr Lai and Ms Teo.

Conclusion

101 For the above reasons:

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74 Judgment for Failing to File A Notice of Intention to Contest or Not Contest (HC/JUD 38/2024) dated 7 February 2024.

Version No 1: 24 Oct 2025 (15:33 hrs)

(a) I dismissed Mr Lai's claim against Maybank Securities; and

(b) I allowed Maybank Securities' counterclaim against Mr Lai for principal sums and interest, as claimed by it.

Costs

102 On costs, Maybank Securities sought a declaration that Mr Lai was liable to indemnify Maybank Securities for any and all legal fees and expenses as incurred, and an order that he do pay the same forthwith.[75] Maybank Securities relied on (among others) clauses 1.36 and 1.37 of the 2021 GT&C:[76]

> 1.36 The Client will indemnify Maybank and hold Maybank harmless against any Losses to which Maybank may become subject, and reimburse Maybank for any expenses (including legal fees and expenses) incurred by Maybank in connection therewith, insofar as such Losses arise out of or are based upon or are in any way related to this Agreement (including Client's breach of this Agreement, any exposure to financial losses by Maybank in relation to the Transactions, and any Losses incurred by Maybank if an insolvency event occurs in respect of the Client), the Transactions, the Client's access or use of the internet trading platform, the provisions of any agreement entered into between the Parties, or any action taken by Maybank to enforce its rights.
>
> 1.37 Without limiting the generality of the foregoing indemnification, Maybank shall be indemnified for all costs and expenses, including legal fees, for Maybank's successful defense against claims by Client that Maybank was grossly negligent or engaged in willful misconduct. This indemnification obligation in Clauses 1.36 and 1.37 shall survive the termination of this Agreement.

103 After giving my decision on the merits on 28 May 2025, I received written submissions on costs from Maybank Securities and Mr Lai, and gave

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75 The 1st Defendant's Costs Submissions dated 20 June 2025 ("1st Defendant's Costs Submissions") at [2], [4]–[10] and [18]–[22].

76 4AB at p 802.

Version No 1: 24 Oct 2025 (15:33 hrs)

my decision on costs in August 2025. My costs decision, and my grounds for it, are as follows.

104 Maybank Securities sought costs on a full indemnity basis pursuant to clause 1.36 and/or 1.37 of the 2021 GT&C, alternatively costs on an indemnity basis, alternatively costs on a standard basis.[77]

105 Mr Lai did not dispute that on their terms, clause 1.36 and/or 1.37 would apply to the present case, but he submitted that the court retained a discretion to override the effect of contractual indemnity clauses in relation to costs.[78]

106 I was satisfied that on the contractual terms as between Mr Lai and Maybank Securities, Maybank Securities had a contractual entitlement to costs on a full indemnity basis (subject to the court's discretion whether to override this).

107 I agreed with Mr Lai's submission that the court did retain a discretion whether to override a contractual agreement on costs. Order 21 rule 2(1) of the Rules of Court 2021 provides that:

> Subject to any written law, costs are in the discretion of the Court and the Court has the power to determine all issues relating to the costs of or incidental to all proceedings in the Supreme Court … at any stage of the proceedings or after the conclusion of the proceedings.

108 The court's overriding discretion as to costs has been recognised in cases such as *Abani Trading Pte Ltd v BNP Paribas and another appeal* [2014] 3 SLR 909 ("*Abani*") at [93]–[95]. The court in *Abani* stated (at [93]) that the court had to have the power to override the parties' agreement as to costs "in order to

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77 1st Defendant's Costs Submissions at [2].

78 Claimant's Costs Submissions dated 20 June 2025 at [3]–[7].

Version No 1: 24 Oct 2025 (15:33 hrs)

preserve the integrity of the administration of justice"; that where the contractual claim for costs was "manifestly unjust", the court could and should disallow it; and that " in the absence of manifest injustice, the court will tend towards upholding the contractual bargain entered into by both parties". In the event, however, the court in *Abani* upheld the contractual claim for costs (at [95]).

109 Mr Lai's costs submissions also cited *Abani* for the proposition that the court could decline to give effect to a contractual claim for costs "where the counterparty is a consumer, and the contract was not made on a commercial basis between two corporate entities". That however stemmed from a misreading of *Abani*. Mr Lai's submissions cited [86] of *Abani*, which was not about the court's discretion, but rather was about whether the contractual term in question had to be specifically pleaded (which was the subject of [70]–[89] of the decision). Thereafter, at [90]–[95] of the decision, the court considered whether the contractual right to indemnity costs ought to be upheld by the court. The court never suggested that if the party against whom costs was sought were a consumer, that would be sufficient for the court to override a contractual claim for costs; indeed, that would be inconsistent with what the court said at [90]–[95] about the court only intervening in cases of manifest injustice, and holding consumers to enforceable contracts signed by them is not manifestly unjust.

110 It would not be manifestly unjust if Mr Lai were required to fully indemnify Maybank Securities for costs, as he had contracted to (subject to the possibility of the court disallowing some items). In particular, I rejected Mr Lai's submission that Maybank Securities had acted unreasonably or misconducted itself in the conduct of the proceedings:

Version No 1: 24 Oct 2025 (15:33 hrs)

(a) Mr Lai sought to fault Maybank Securities for not cooperating more fully in providing him with information in the lead up to the trial. This needs to be viewed in the context of my finding that Maybank Securities had already provided a proper account to Mr Lai contemporaneously, but Mr Lai had failed to review the documents provided to him, or to raise issues with them at the time. Maybank Securities was not obliged to engage in a further accounting exercise thereafter, but it nevertheless voluntarily provided some information and documents to Mr Lai.

(b) Mr Lai complained about documents being used at trial which were not disclosed prior to trial. Most of these were publicly available or available to Mr Lai. Maybank Securities did provide audio recordings of calls to its helpdesk, and Mr Lai's password collection acknowledgment forms, but those were prompted by developments at trial. Some further affidavits were filed, but those too were in response to developments in the matter.

(c) Mr Lai also complained about what he said was a late change of position concerning the MBKE Spreadsheet and the disclaimers. It appears that Maybank Securities did not immediately realise that the MBKE Spreadsheet was incomplete, but when it did, it consistently maintained that position. Mr Lai, on the other hand, latched onto the differences between the MBKE Spreadsheet and the documents he had been sent by Maybank Securities, to contend that the trades "missing" from the MBKE Spreadsheet were unauthorised and Ms Teo had tried to hide them from him. Mr Lai persisted in that to the bitter end, but the claim was wholly speculative, and I rejected it. As for the disclaimers, Mr Lai himself had no evidence what the disclaimers were at the

Version No 1: 24 Oct 2025 (15:33 hrs)

relevant time – he had not bothered to read them. Maybank Securities had to try to reconstruct what the disclaimers would have been at that earlier point in time, and along the way reached certain incorrect conclusions which it then corrected – but I regarded that as part and parcel of the litigation process.

(d) Finally, Mr Lai complained about allegedly irrelevant cross-examination about his personal and professional affairs, but that cross-examination was quite relevant. Maybank Securities was also well entitled to question Mr Lai about why he started keeping statements from a certain date (but not before), and about him obtaining a letter from Ms Teo stating what money he supposedly had with Maybank Securities.

111 The matters raised by Mr Lai provided no reason for me to override the contractual clauses entitling Maybank Securities to a full indemnity in relation to costs.

112 More specifically, though, Mr Lai sought costs of his application by Summons 2801 of 2024 to call Mr Duran as an expert witness. I had allowed Mr Lai to call Mr Duran as an expert witness (which Maybank Securities had resisted), and reserved costs. With the benefit of hindsight, Mr Duran's evidence did not contribute materially to the determination of any issue in the case (in the language of Order 12 rule 2 of the Rules of Court 2021).

113 Mr Lai pointed to Mr Duran agreeing with Mr Poh's position that the editable portfolio function was a common feature among local brokerages, but that hardly justified Mr Lai getting costs for calling Mr Duran. Mr Lai failed in his contention that Maybank was somehow in breach of contract towards him,

Version No 1: 24 Oct 2025 (15:33 hrs)

for how Maybank had designed the MBKE App, and in particular that the portfolio function should not have been editable. I accepted Mr Poh's evidence that this was a common feature among local brokerages (see [75(b)] above). As Mr Duran agreed with that position,[79] his evidence did not help Mr Lai advance his claim on that point. In the circumstances, I decided that Mr Lai should pay Maybank Securities costs in respect of Mr Lai's application to call Mr Duran as an expert witness.

114 As a matter of discretion, though, I made no order as to costs in relation to two items:

(a) Maybank Securities' application to dispense with an AEIC from Ms Teo (if she were a witness), which was sought as part of SUM 2802 of 2024 – this was not proceeded with as Maybank Securities eventually decided not to call Ms Teo as a witness; and

(b) consequential costs of amendment of pleadings (with both sides having amended their pleadings).

115 In its costs submissions, Maybank Securities stated that if the court did not grant its contractual claim for a full indemnity as to costs, there should be no order as to costs in relation to these two items (whether costs were awarded on a standard or indemnity basis).[80]

116 The court's discretion not to award costs on a contractual basis extends to instances where the court considers that – as between parties to the litigation – the incidence of costs should be reversed, or there should be no order as to

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79 9 April 2025 Transcript at pp 160:23–161:7.

80 The 1st Defendant's Costs Submissions at [39(b)] and [39(c)].

Version No 1: 24 Oct 2025 (15:33 hrs)

costs. Here, Maybank Securities itself acknowledged that, if not for the contractual terms as to costs, it would have been appropriate for the court to make no order as to costs for these two items. I was not persuaded that Maybank should get a full indemnity for items for which the court would ordinarily make no order as to costs.

Version No 1: 24 Oct 2025 (15:33 hrs)

117 I accepted Maybank Securities' estimates that those two items accounted for $5,015.94 and $7,280.79 of the $1,162,731.02 which Maybank Securities had sought on the basis of a full indemnity.[81] Accordingly, I deducted $12,296.73, *ie*, $5,015.94 + $7,280.79 and awarded Maybank Securities costs of $1,150,434.29.

Andre Maniam
Judge of the High Court

Sarbjit Singh Chopra, Loh Weijie Leonard and Wong Hoi Leng Chloe (Selvam LLC) for the claimant and defendant in the counterclaim;
Ong Tun Wei Danny, Teo Jason and Mah Hao Ran Ian (Setia Law LLC) for the first defendant and claimant in the counterclaim;
The second defendant absent and unrepresented.

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[81] Letter dated 31 July 2025 from Setia Law LLC to the Court at [3] and [5].

Version No 1: 24 Oct 2025 (15:33 hrs)