IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2021] SGHC(I) 11

Suit No 5 of 2020

Between

(1) The Micro Tellers Network Limited
(2) Michael Lin Daoji
(3) Rio Lim Yong Chee
(4) Wong Zhi Kang, Clement

… *Plaintiffs*

And

(1) Cheng Yi Han (Zhong Yihan)
(2) Ling Hui Andrew
(3) Providence Asset Management
(4) Then Feng

… *Defendants*

Suit No 8 of 2020

Between

(1) Providence Asset Management
(2) 5 and 2 Pte Ltd

… *Plaintiffs*

And

(1) Then Feng
(2) Lee Moon Young

… *Defendants*

JUDGMENT

[Tort] — [Deceit]

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The Micro Tellers Network Ltd and others
v
Cheng Yi Han and others and another suit

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Singapore International Commercial Court — Suit Nos 5 and 8 of 2020
Simon Thorley IJ
14–16, 21–24 June 2021; 6 August 2021

22 September 2021 Judgment reserved.

Simon Thorley IJ:

Introduction

The trial of Suit 5 and Suit 8

1 These two actions, SIC/S 5/2020 and SIC/S 8/2020 ("Suit 5" and "Suit 8" respectively), raise similar causes of action based on facts which, to a certain extent, overlap. They were therefore ordered to be tried together. The trial commenced on 14 June 2021 and was scheduled to last for 10 working days.

2 In the days leading up to the trial, the Plaintiffs in Suit 5 reached a settlement with the 2nd and 3rd Defendants in Suit 5. The 3rd Defendant, Providence Asset Management ("PAM"), is a company incorporated in the Cayman Islands. Its Managing Partner is the 2nd Defendant in Suit 5, Ling Hui Andrew ("Mr Ling"), who is a Singapore citizen.

3 This resulted in the 1st Defendant in Suit 5, Cheng Yi Han ("Mr Cheng"), who is also a Singapore citizen, seeking leave to issue a Third Party Notice against the 2nd and 3rd Defendants, PAM and Mr Ling. Leave was granted on the basis that any issues arising on the Third Party Notice would not be raised at the trial and that any necessary directions on the Third Party Notice would be given after judgment following the trial.

4 The 3rd Defendant in Suit 5, PAM, is also the 1st Plaintiff in Suit 8. The 2nd Plaintiff in Suit 8, 5 and 2 Pte Ltd ("5&2"), is a Singapore company of which Mr Ling is a director.

5 The 4th Defendant in Suit 5, Then Feng ("Mr Then"), is a Singapore citizen who is also the 1st Defendant in Suit 8. The 2nd Defendant in Suit 8 is Mr Then's wife but the action against her was discontinued on 29 September 2020. Mr Then was thus the only remaining defendant in Suit 8.

6 At the start of the trial, oral opening submissions were first made by counsel for the Plaintiffs in both actions, followed by counsel for Mr Cheng, and then by Mr Then, who was at that time a litigant in person. The first witness to give evidence was Frederic Willy Gaillard ("Mr Gaillard"), a Swiss national resident in Singapore. Mr Gaillard provided an affidavit of evidence-in-chief ("AEIC") in each action which were then supplemented by further AEICs in each action. He was cross-examined by Mr Then on his evidence given both in Suit 5 and in Suit 8. Following the conclusion of his oral evidence, counsel for the Plaintiffs in Suit 5 informed the court that settlement negotiations between the Plaintiffs in Suit 5 and Mr Cheng, the 1st Defendant in Suit 5, were at an advanced stage, and that he was hopeful that an agreement could be reached if the trial was adjourned until the following day. This was not opposed.

7 The following day, 15th July 2021, the court was informed that settlement had indeed been reached and that Mr Cheng and his counsel would play no further part in the trial. The Third Party Notice also fell away. Mr Then was thus also the sole remaining defendant in Suit 5 as he had become in Suit 8.

8 This change of events raised a number of considerations. First, Mr Then was acting in person and the original trial schedule envisaged that the next four witnesses to be called on behalf of the Plaintiffs in Suit 5 would be cross-examined first by counsel for Mr Cheng and then by Mr Then. The time estimate provided for cross-examination indicated that the bulk of the cross-examination would be carried out by counsel for Mr Cheng with only a small amount of time being allocated thereafter to Mr Then. As counsel for Mr Cheng would now play no further part in the trial, this meant that Mr Then would have to conduct the cross-examination himself. Since this new development only happened part way through trial, Mr Then was understandably not in a position to conduct all the cross-examination that day.

9 Second, the pleadings in Suit 5 were complex, involving, *inter alia*, an allegation of conspiracy involving Mr Then, Mr Ling and Mr Cheng, and it was unclear precisely what case would now be advanced by the Plaintiffs in Suit 5 against Mr Then following the settlement of the actions against the other Defendants in Suit 5.

10 Third, Mr Then indicated that although he had prepared himself to carry out his part of the cross-examination of the four Plaintiff's witnesses in Suit 5, he was not at that time properly prepared to carry out the cross-examination of Mr Ling who was only scheduled to give evidence the following week.

11 Following submissions, I concluded that it was necessary that the Statement of Claim in Suit 5 should be amended so as to make clear what case was being raised against Mr Then, now the only defendant, and that the AEICs served on behalf of the Plaintiffs in Suit 5 should be amended so as to exclude matters which were now irrelevant. This necessarily meant that the trial of Suit 5 could not continue as planned.

12 Counsel for the Plaintiffs in Suit 8 however invited the court to continue with the trial of Suit 8. This was not opposed by Mr Then, provided that he had a proper opportunity to prepare his cross-examination of Mr Ling. This was a course that was acceptable to counsel for the Plaintiffs in Suit 5. Accordingly, I directed that Suit 5 should be adjourned and that a case management conference for further directions in that action should be held after Judgment in Suit 8 but that Suit 8 should proceed after an appropriate adjournment to enable Mr Then to prepare the cross-examination of Mr Ling.

13 The remainder of this Judgment is therefore directed solely to the facts and issues arising in Suit 8. It is based and based only on the evidence adduced in Suit 8 and nothing that I say or conclude can have any effect on the now separate trial of Suit 5. Whilst separate trials are undesirable, in the circumstances, this was the only way forward that was fair to all parties.

The Continued Trial of Suit 8

14 The trial of Suit 8 resumed the following Monday, 21 June 2021. Mr Then had retained new counsel, Mr Tan Hee Joek ("Mr Tan"), to act on his behalf. Mr Tan made it plain that his involvement was limited to cross-examining Mr Ling in relation to what has been referred to as the "Walkers Professional Services Issue" (see [35] below) and that Mr Then would otherwise

be conducting his own defence. Counsel for the Plaintiffs (in Suit 8) did not object to this course.

15 Mr Ling then gave evidence by way of his AEIC in Suit 8 and was cross-examined by Mr Tan and Mr Then for a period of some 2.5 days finishing in the evening of Wednesday 23 June 2021. This concluded the Plaintiff's evidence. Mr Then was scheduled to give evidence on the following two days.

16 However, on the morning of Thursday 24 June 2021, Mr Then (by then acting in person again) submitted that the Plaintiffs had not made out a case that he was required to answer on the basis of the evidence that had been adduced on their behalf. There were then adjournments during which the authorities on "No case to answer" in a civil trial were reviewed so that the court could be satisfied that Mr Then was fully aware of the consequences of the decision he was proposing to make.

17 Following those adjournments, Mr Then confirmed that he was submitting that there was no case to answer and gave an undertaking that he would not call any evidence in support of his case. Thereupon, the trial was adjourned for written closing submissions to be prepared.

No Case to Answer in Civil Cases

18 Civil disputes are determined in relation to any cause of action pleaded by a plaintiff on the basis of the pleadings and the evidence adduced before the court. The legal burden of proof lies on the plaintiff and will only be discharged if the court is satisfied that the plaintiff has proved its case.

19 In a trial where evidence is adduced both by the plaintiff and by the defendant, the evidential burden, which is initially placed on the plaintiff to

adduce sufficient evidence to prove its case, may shift to the defendant to adduce evidence to rebut the plaintiff's evidence. The court then assesses all the evidence to determine whether, on the balance of probabilities, the plaintiff has proved its case.

20 It is however always open to a defendant, having heard the evidence adduced on behalf of the plaintiff, to elect to call no evidence on the basis that the plaintiff's evidence is insufficient to transfer the evidential burden onto the defendant so that the plaintiff has failed to prove its case. Hence the expression "No case to answer": see O 35 r 4(3) and O 110 r 3(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC").

21 This is plainly a bold step for a defendant to take and is not a frequent occurrence in civil proceedings. Once made, the defendant cannot thereafter seek to call evidence. The ultimate decision rests on the judicial assessment of the plaintiff's evidence alone.

22 The authorities in relation to "No case to answer" are summarised in Jeffrey Pinsler, *Singapore Court Practice* (LexisNexis, 2021) at para 35/4/10:

> **Submission of no case**. At the conclusion of the plaintiff's case, the defendant may submit that there is no case to answer. In other words, the defendant alleges that the plaintiff has not adduced the requisite evidence to establish the legal elements of his claim. The judge would sustain a plea of no case to answer if the plaintiff's case has no basis or is 'so unsatisfactory or unreliable that the court is able to find that the burden of proof on the plaintiff has not been discharged'. See *Lim Eng Hock Peter v Lin Jian Wei* [2009] 2 SLR(R) 1004, at [209]; *Central Bank of India v Hemant Govindprasad Bansal* [2002] 1 SLR(R) 22, at [21] and [25]; *Hemant Govindprasad Bansal v Central Bank of India* [2003] 2 SLR(R) 33 and *Sukhpreet Kaur Bajaj d/o Manjit Singh v Paramjit Singh Bajaj* [2008] SGHC 207, at [10]. Such a submission is rarely made because the judge will require the defendant to undertake not to call any evidence in the event that the submission is not upheld. In *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018]

> SGCA 33, at [70], the Court of Appeal explained reason for this approach: 'The rationale underlying the requirement that a defendant who makes a 'no case to answer' submission must undertake not to call evidence is that it is inappropriate for a judge to make any ruling on the evidence until it has been completely presented. Further, the imposition of such an undertaking avoids the prospect of the evidence being supplemented depending on the outcome of the court's evaluation of the plaintiff's case, as well as the expense and inconvenience that would arise from possibly having to recall witnesses in such circumstances.' …
>
> …
>
> In *Lena Leowardi v Yeap Cheen Soo* [2015] 1 SLR 581, at [23], the court ruled that it is established law that a submission of no case to answer by a defendant will only succeed if the plaintiff's evidence, at face value, does not establish a case in law or is so unsatisfactory or unreliable that the plaintiff has not discharged its burden of proof. Also see *Sakae Holdings Ltd v Gryphon Real Estate Investment Corp Pte Ltd and others (Foo Peow Yong Douglas, third party) and another suit* [2017] SGHC 73, at [22], where this proposition is confirmed. The following principles were laid down in *Lena Leowardi*, at [24]:
>
> > (a) First, the plaintiff only has to establish a *prima facie* case as opposed to proving its case on a balance of probabilities;
> >
> > (b) Second, in assessing whether the plaintiff has established a *prima facie* case, the court will assume that the evidence led by the plaintiff is true, unless it is inherently incredible or out of common sense; and
> >
> > (c) Third, if circumstantial evidence is relied on, it does not have to give rise to an irresistible inference as long as the desired inference is one of the possible inferences.

23 The impact of the first of these principles was considered recently by the Court of Appeal in a judgment of Andrew Phang Boon Leong JA in *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 ("*Ma Hongjin*") at [22]–[33]:

> ***Issue 1: the applicable test upon a submission of no case to answer***
>
> 22 As alluded to above, this particular issue (relating to the applicable test to be applied upon a submission of no case to answer by a defendant) did not really arise in the present appeal. However, as it raises an important point of general

importance, and sets the context for the rest of the present discussion, we will make some general observations for guidance in future cases.

23 In the court below, after the appellant had closed her case (as the plaintiff), counsel for the respondent (the defendant) made a submission of no case to answer, *coupled with* the usual election not to call evidence if the submission failed (such election being *obligatory* pursuant to the rule laid down by this court in *Ho Yew Kong* ([17] *supra*) at [70]). As we shall see, this *obligatory* election is a matter (or factor, rather) of the first importance.

24 It is important, in the first instance, however, to note that, under general law, the plaintiff bears the legal burden of proving its case against the defendant in a civil case on a *balance of probabilities*.

25 However, in the situation where the defendant has made a submission of no case to answer, local case law suggests that the plaintiff need only satisfy the court that there is a *prima facie* case on each of the essential elements of the claim in order to defeat the defendant's submission of no case to answer and secure judgment in its favour (see, for example, *Central Bank of India* ([17] *supra*) at [21] as well as the decisions of this court in *Tan Juay Pah* ([17] *supra*) at [37] and *Lena Leowardi* ([17] *supra*) at [24]).

26 It might, at first blush, therefore, appear that in a situation where the defendant has made a *submission of no case to answer*, the standard of proof is different and this was indeed the view that the Judge took in the court below. He was therefore of the view that he had to choose one standard over the other (and chose the former, *viz*, proof on a balance of probabilities). *However*, on closer analysis, this is *not* the case and the Judge was, with respect, mistaken in thinking he had to make a choice when, in fact, *none* was required. Let us elaborate.

27 The starting point in our analysis is the concept of the legal burden. A plaintiff in a civil claim bears the *legal* burden of proving the existence of any relevant fact necessary to make out its claim on a balance of probabilities (assuming, of course, that the defendant cannot prove any applicable defences). This flows from the Evidence Act (Cap 97, 1997 Rev Ed) ('the EA'), and in particular s 103, which requires that a person desiring a court to give judgment as to any legal right or liability dependent on the existence of facts prove that those facts exist. Though the EA does not, on its face, distinguish between the *civil* and *criminal* burdens of proof, it has long been established that the legislation retains the traditional common law

distinction between the two (see the decision of the Judicial Committee of the Privy Council (on appeal from the Federal Court of Malaysia) in *Public Prosecutor v P Yuvaraj* [1970] AC 913 at 920H–921B). Although there has been, on occasion, controversy over the possible existence of a third standard of proof, this court's decision in *Tang Yoke Kheng (trading as Niklex Supply Co) v Lek Benedict and others* [2005] 3 SLR(R) 263 at [14] clarified that there are only two such standards of proof - proof on the balance of probabilities for civil cases and proof beyond a reasonable doubt for criminal cases.

28 A closely related (though distinct) concept is that of the *evidential* burden (or tactical burden). This is borne by the person on whom the responsibility lies to 'contradict, weaken or explain away the evidence that has been led' (see the decision of this court in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 ('*Britestone*') at [59]). While the legal burden is determined by considering the pleadings of the parties and determining the material facts relied on by the parties to establish the legal elements of a claim or defence, the evidential burden can shift between the parties based on the state of the evidence (see the decision of this court in *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [30]–[31]).

29 The following passage from *Britestone* illustrates the operation of these concepts (at [60]):

> … [A]t the start of the plaintiff's case, the legal burden of proving the existence of any relevant fact that the plaintiff must prove and the evidential burden of adducing some (not inherently incredible) evidence of the existence of such fact coincide. Upon adduction of that evidence, the evidential burden shifts to the defendant, as the case may be, to adduce some evidence in rebuttal. If no evidence in rebuttal is adduced, the court may conclude from the evidence of the plaintiff that the legal burden is also discharged and making a finding on the fact against the defendant. If, on the other hand, evidence in rebuttal is adduced, the evidential burden shifts back to the plaintiff. If, ultimately, the evidential burden comes to rest on the defendant, the legal burden of proof of that relevant fact would have been discharged by the plaintiff.

30 Crucially, a party's establishment of a *prima facie* case on a particular fact on which it bears the legal burden denotes the point at which the evidential burden will shift to the defendant. In the decision of this court in *Anti-Corrosion Pte Ltd v Berger Paints Singapore Pte Ltd and another appeal* [2012] 1

SLR 427, the issue was whether defects in paint supplied by a paint manufacturer caused discolouration on a building. The appellant's evidence in that case was found to have demonstrated *prima facie* that the defective paint was likely the cause of the discolouration, which caused the evidential burden to shift to the respondent. As the respondent adduced no evidence on this point, it was found that the appellant had proven that the discolouration was more likely than not caused by defects in the paint (at [37]–[38]).

31 This, in our view, explains why the applicable test following a submission of no case to answer has been expressed as requiring the plaintiff to prove a *prima facie* case. Where a submission of no case to answer is coupled with an election not to call evidence (which is *obligatory* following *Ho Yew Kong* ([17] *supra*)), the establishment of a *prima facie* case on each of the relevant facts in issue essentially results in a finding that the plaintiff has proved those facts on a balance of probabilities. This is because, following the shifting of the evidential burden to the defendant, there is simply no evidence forthcoming from the defendant to disprove the plaintiff's position or weaken it such that the court can return a finding that the fact in issue is either 'disproved' or 'not proved' within the meaning of s 3 of the EA (see the decision of this court in *Loo Chay Sit v Loo Chay Loo, deceased* [2010] 1 SLR 286 at [20]). Seen in this light, the distinction between a *prima facie* case on the one hand and proof on a balance of probabilities on the other does not mean, as the parties argued below, that the court applies a laxer standard of proof in the former.

32 In *summary*, the plaintiff does indeed bear the legal burden of proving its case against the defendant in a civil case on a *balance of probabilities*. *Where the defendant has made a submission of no case to answer*, this particular standard of proof is *met* or *discharged* by the plaintiff satisfying the court that there is a *prima facie* case on each of the essential elements of its claim. This is because in a situation where the defendant has made a submission of no case to answer, such a submission must (as we have already noted at [23] above) be *coupled with* an election *not to call evidence* (pursuant to the principle laid down in *Ho Yew Kong*), with the result being that if the plaintiff has established a *prima facie* case on the facts in issue (that are essential to its claim), this would *essentially* result in the court finding that the plaintiff has discharged its burden of proving the aforementioned facts *on a balance of probabilities*. This is due to the fact that, upon the plaintiff establishing a *prima facie case* with respect to the relevant facts in issue, the *evidential burden* will *shift* to *the defendant*. *However*, because the defendant *has had (in the situation of a submission of no case to answer) to elect to call no evidence, it*

> *would be unable to adduce (any) evidence to either disprove the plaintiff's position or weaken it such that the facts that the plaintiff relies upon are 'not proved'*. Put another way, where a defendant elects not to call any evidence upon making a submission of no case to answer, there is simply no contrary evidence from the defendant for the court to consider. The court is only left with the evidence of the plaintiff and if, on a *prima facie* basis, the evidence satisfies all the ingredients or essential elements of the cause of action, judgment will be entered against the defendant. Because there is simply *no* balancing exercise of evidence to speak of, it might appear somewhat anomalous to describe the plaintiff as having proven its case on a balance of probabilities. However, such an anomaly is more apparent than real – in such a situation (concerning a submission of no case to answer), provided that it can establish a *prima facie* case on the facts in issue (that are essential to its claim), the plaintiff has (*simultaneously*) proved its overall case on a *balance of probabilities*.
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> 33 We therefore affirm that, in the situation where the defendant has submitted that it has no case to answer and has (as it legally must) also elected to call no evidence if it fails in this submission, *the plaintiff* would *succeed* if it can establish that it has a *prima facie* case on each of the essential elements of its claim. For the avoidance of doubt (and also for the reasons stated above), the plaintiff would (*simultaneously*) have *necessarily proved* its (*overall*) case against the defendant *on a balance of probabilities*.
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> [Emphases in the original]

24 The duty of the court is therefore clear. Once a submission of "No case to answer" has been made and is coupled with an election not to call evidence, as is the case here, the court must assess the evidence which has been called by the Plaintiffs to see whether they have established a *prima facie* case on each of the essential elements of the claims made by them against Mr Then. To the extent that they have, the action will succeed since the Plaintiffs would necessarily also have proved their case against Mr Then on a balance of probabilities (see *Ma Hongjin* at [33]).

The Pleadings

The Statement of Claim

25 The starting point therefore is to review the pleadings to determine what are the essential elements of the claim made by the Plaintiffs against Mr Then. The claim is based upon on three pleaded causes of action: deceit; unjust enrichment; and claims in partnership on the basis that Mr Then was in partnership with the Plaintiffs ("The Partnership Claim").[1]

26 The Plaintiffs seek to recover misappropriated moneys by Mr Then totalling US$5,268,000 and S$1,223,000 ("the Sums"). Although a higher sum was pleaded in the Statement of Claim, the Plaintiffs reduced it in their Written Closing Submissions.[2] The Plaintiffs claim that they transferred the Sums to a bank account in the name of Walkers Professional Services Ltd ("WPS"), on the understanding that this was an escrow account owned and controlled by Walkers Solicitors, a global law firm ("Walkers").[3] in which Mr Then, a solicitor, had formerly been employed as a "Counsel" in Walker's Singapore office.[4]

27 In or around February 2018, Mr Then was introduced to Mr Ling as a solicitor with Walkers who could arrange for Walkers to provide transactional support and escrow services for business deals by Mr Ling's companies.[5] In mid-2018, Mr Ling and Mr Then explored the possibility of purchasing an

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1 Statement of Claim (Amendment No 2) dated 26 August 2020 ("SOC") at paras 8,

2 Plaintiff's Closing Submissions dated 23 July 2021 ("PCS") at para 2(c)(i); SOC at para 7A.

3 SOC at paras 7,8, 16 and 21.

4 SOC at para 3.

5 SOC at para 11.

offshore bank to further those deals, and Mr Then represented to Mr Ling that Walkers would act as the solicitors for Mr Ling's associates, the purchasers for this purpose.[6] A candidate bank was identified but the proposed purchase did not go through. Subsequently, Mr Then informed the Plaintiffs of the possibility of purchasing two other banks, Banco Provincial Overseas NV ("BP Bank") in Curacao and Freelance Bank Ltd ("Freelance Bank") in Comoros, for US$8.5 million (US$4 million for Freelance Bank and US$4.5 million for BP Bank).[7] Mr Then represented to the Plaintiffs that Walkers would act as their solicitors and represent them on the proposed purchase, that Mr Then would be the solicitor negotiating the purchase and that Mr Then would also be a "partner in the new venture".[8]

28 In reliance upon the representation that WPS' bank account was owned and controlled by Walkers and that Mr Then was acting in his capacity as a solicitor employed by Walkers, the Plaintiffs transferred the Sums into WPS' bank account to be held in escrow pending the release of the monies for the purchase of BP and Freelance Banks. The Plaintiffs aver that they would not have transferred the money to the WPS bank account had they known that WPS was not affiliated with Walkers.[9]

29 Thereafter Mr Then represented to the Plaintiffs that Freelance Bank was duly purchased for US$4 million and that its name was then changed to "Royal Eastern Bank Ltd" (company number 12398).[10] The Plaintiffs contend

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6 SOC at paras 13 to 16.

7 SOC at paras 15 to 20.

8 SOC at paras 16 to 20.

9 SOC at paras 26-28.

10 SOC at para 31.

that this is a misrepresentation and claim that Mr Then had completed the purchase of Freelance Bank for less than US$4 million but dishonestly informed them of an inflated purchase price.[11] To avoid confusion, I shall continue to refer to this bank as Freelance Bank.

30 Further, unknown, it is said, to the Plaintiffs, once Freelance Bank had been purchased, without informing the Plaintiffs, Mr Then agreed to return ownership of Freelance Bank to the vendor in exchange for a different bank, also called Royal Eastern Bank Ltd, but which carried a different company number 16214 ("Royal Eastern Bank").[12]

31 The Plaintiffs' understanding was that the vehicle that was to own Freelance Bank was Star Dust Developments Ltd ("Star Dust").[13] However Mr Then pleaded that the Royal Eastern Bank was wholly owned by Gestalt Group Limited ("Gestalt")" but that it held the bank on trust for Star Dust.[14]

32 The Plaintiffs pleaded that they were unaware of this "switch" in banks. While they believed that Gestalt owned a banking licence, they had thought that this was the licence owned by Freelance Bank, and not Royal Eastern Bank.[15] They claimed that this "switch" had deprived them of the entirety of the intended benefit of the purchase of Freelance Bank,[16] or, alternatively, that Mr Then had paid a lower price for Royal Eastern Bank so that he could pocket the

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11 SOC at para 31.

12 SOC at para 31A and see 1st Defendant's Defence (Amendment No 2) dated 19 September 2019 ("Defence") at para 23.

13 SOC at para 31A

14 Defence at para 23.

15 SOC at para 31A.

16 SOC at para 31A.

difference between US$4 million (which Mr Then claimed was the purchase price of Freelance Bank) and the purchase price of Royal Eastern Bank.[17] In a further alternative they claimed that Freelance Bank was never purchased and that the Royal Eastern Bank was the only vehicle purchased.[18]

33 Mr Then then informed the Plaintiffs that there was no longer a need to purchase BP Bank as the banking licence belonging to Royal Eastern Bank was fit for their desired purpose of providing offshore banking services.[19] When Mr Ling requested that the balance of the Sums ("the Remaining Sums") be returned to the Plaintiffs, Mr Then eventually confessed that WPS was not owned and controlled by Walkers but was his own personal vehicle.[20] Mr Then later further confessed in June 2019 that WPS no longer had the moneys and that he had misappropriated them and used them for his own purposes.[21] The Remaining Sum has not been repaid.[22]

34 The claims in deceit[23] and unjust enrichment[24] are based on the pleaded false representations. The claim in partnership arises out of an alleged implied partnership between Mr Then and the Plaintiffs which arose out of the course of their dealings and that Mr Then was in breach of the fiduciary duties owed by him to the other partners by acting as he did.[25]

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17 SOC at paras 31A and 31C.

18 SOC at para 31D.

19 SOC at para 32.

20 SOC at para 34.

21 SOC at para 37.

22 SOC at para 38.

23 SOC at paras 40 to 42B.

24 SOC at paras 53 to 56.

25 SOC at paras 44 to 47B.

35 In essence, the action in deceit and unjust enrichment is founded on two alleged misrepresentations. First, the representation that WPS was owned and controlled by Walkers and that any sums deposited in the WPS bank account would be held in escrow to the Plaintiffs' order. I shall refer to this as "the WPS Representation". The Plaintiffs pleaded that they would not have deposited those sums had they known that the WPS Representation was false.[26] Second, the representation that Freelance Bank was to be (and then had been) purchased for US$4 million when in fact Mr Then had dishonestly informed them of an inflated price, if he purchased the bank at all.[27] I shall refer to this as "the 4 Million Representation".

The Defence

36 I turn next to consider the Defence to identify matters which are admitted by Mr Then, the matters which are denied, as well as facts positively asserted by him as part of his defence. The Plaintiffs rely upon s 105 of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") for the proposition that Mr Then bears the burden of proving the facts positively asserted by him in his defence. Whilst this is correct, it does not follow that Mr Then's election not to call any evidence means that he cannot discharge that burden. This could be done in an appropriate case, for example, on the basis of the evidence given by a witness called on behalf of the plaintiff in cross-examination, including any admissions made by that witness.

Admissions by Mr Then

37 Mr Then admits the following:

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[26] SOC at para 27.

[27] SOC at paras 31 and 31D.

(a) that he was previously employed by Walkers;[28]

(b) that PAM became a client of Walkers in late 2017 or early 2018;[29]

(c) that the Sums were deposited in the WPS bank account, *except* that:[30]

(i) S$400,000 was transferred to WPS's *Singapore* dollar bank account and not the *US* dollar bank account;[31]

(ii) US$2,9***48***,000 and not US$2,9***84***,000 was deposited around 23 April 2018[32]

(iii) Mr Then disputes who sent the S$573,000 that was received in the WPS Singapore dollar bank account around 1 November 2018;

(iv) while Mr Ling did pass Mr Then some cash on 11 October 2018, Mr Then disputes that this was US$120,000 and S$250,000 as claimed by Mr Ling, and also disputes whether these moneys were for the purpose of acquiring Freelance or BP Bank;[33]

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28 Defence at para 4.

29 Defence at paras 8 to 9.

30 Defence at paras 20 and 20B.

31 SOC at para 7, 26(c); Defence at para 20(a).

32 It is accepted that the latter figure is correct

33 Defence at para 20B; DCS at para 25.

(d) that Mr Then had become aware that BP Bank was available for purchase at US$8.5 million and that he informed Mr Ling that Walkers would represent PAM as solicitors for the transaction;[34]

(e) that it was thereafter agreed that PAM would seek to purchase BP and Freelance Banks for US$4.5 million and US$4 million respectively and that Mr Then would assist as a lawyer employed by Walkers in respect of the legal aspects of the acquisition but would also invest in his personal capacity for a 15% share;[35]

(f) that Mr Ling informed Mr Then that 5&2 was an affiliate of PAM.[36]

Denials by Mr Then

38 The primary denials made by Mr Then relate to Mr Ling's claims that he did not have knowledge of various matters. Mr Then contends that Mr Ling was at all times aware that Walkers had no relationship with or control over WPS[37] and that Mr Then managed WPS and used it as his personal vehicle. He further contends[38] that Freelance Bank was purchased in November 2018 for US$4 million and that Mr Ling was at all times aware that Freelance Bank was exchanged for Royal Eastern Bank.[39] Mr Then relies on a Statutory Declaration

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34 SOC at paras 15 and 16; Defence at paras 16 and 17(a).

35 Defence at paras 16 and 18.

36 Defence at para 20A.

37 Defence at para 6.

38 Defence at para 6(a).

39 Defence at paras 23, 25A and 27.

sworn by Mr Ling on 14 June 2019 ("Statutory Declaration") to support the fact that Mr Ling was aware that WPS was Mr Then's personal vehicle.[40]

Positive assertions made by Mr Then

39 There are two primary positive assertions made by Mr Then. The first relates to the ownership of Royal Eastern Bank by Gestalt. Whilst Mr Then avers that Royal Eastern Bank is wholly owned by Gestalt and not by Star Dust, he asserts that Gestalt holds its shares on trust for Star Dust.[41] The second relates to Mr Then's dealings with the Remaining Sums which he asserts were loaned to Mr Gaillard with Mr Ling's knowledge. Mr Then also asserts that Mr Ling agreed that no steps would be taken to recover the funds from WPS or Mr Then pending the repayment of the loan by Mr Gaillard.[42]

The Reply

40 The following pleas in the Reply should be noted:

(a) The Plaintiffs admit that Mr Ling signed the Statutory Declaration but claims that it contained materially false statements "concocted by Mr Then" and that following the taking of legal advice, Mr Ling had asked Mr Then to destroy it and assumed that it had been destroyed.[43]

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40 Defence at para 6(a).

41 Defence at para 23.

42 Defence at paras 26 to 32.

43 Reply dated 16 September 2020 ("Reply") at para 6.

(b) Mr Then always represented that he was acting in his capacity as a Walkers' solicitor and had never stated that he was acting in a personal capacity save in respect of his 15% investment.[44]

(c) The Plaintiffs never knew that Mr Then had exchanged Freelance Bank for Royal Eastern Bank.[45]

(d) The business of Royal Eastern Bank has not been able to progress due to the misappropriation of the Remaining Sums.[46]

(e) The Plaintiffs had never given permission for Mr Then to loan their funds to Mr Gaillard.[47]

Deceit

The Law

41 I propose to consider first the cause of action in deceit. There is no dispute as to the essential elements of that cause of action. Both parties referred me to the decision of the Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee* and another [2001] 2 SLR (R) 435 at [13]–[14] where the law was stated to be as follows:

> 13 The law as regards fraudulent representation is clear. Since the case of *Pasley v Freeman* (1789) 3 TR 51, it has been settled that a person can be held liable in tort to another, if he knowingly or recklessly makes a false statement to that other with the intent that it would be acted upon, and that other does act upon it and suffers damage. This came to be known as the tort of deceit. In *Derry v Peek* (1889) 14 [AC] 337 the tort was further developed. It was held that in an action of deceit the plaintiff must prove actual fraud. This fraud is proved only

44 Reply at paras 13 to 14.

45 Reply at para 19.

46 Reply at para 22.

47 Reply at para 23.

> when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.
>
> 14 The essentials of this tort have been set out by Lord Maugham in *Bradford Building Society v Borders* [1941] 2 All ER 205. Basically there are the following essential elements. **First,** there must be a representation of fact made by words or conduct. **Second**, the representation must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which includes the plaintiff. **Third**, it must be proved that the plaintiff had acted upon the false statement. **Fourth**, it must be proved that the plaintiff suffered damage by so doing. **Fifth,** the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.
>
> [Emphasis added in bold]

42 I shall therefore turn to the facts in relation to these essential elements, on each of which the Plaintiffs have to establish the necessary *prima facie* case.

The Facts

43 Evidence was given on behalf of the Plaintiffs by Mr Ling and Mr Gaillard. The major part of the evidence was given by Mr Ling and I shall focus on this. I shall consider Mr Gaillard's evidence and the weight that can be attached to it at the appropriate place.

44 Mr Ling is, as indicated above, the managing partner of PAM and a director of 5&2. Both companies provide investment management and consultancy services with Mr Ling as their representative. In 2017, Mr Ling was looking for companies to provide escrow services for business deals.

45 He was first introduced to Mr Then by a mutual friend in late 2017 and first met Mr Then in February 2018. Mr Then was introduced to him as being a solicitor in Walkers and Mr Then "told [Mr Ling that] he could arrange for

Walkers to provide transactional support and escrow services for business deals".[48]

46 Hence began the relationship between Mr Then and Mr Ling which led to the matters in dispute in this action and they became personal friends.[49]

47 Mr Ling was cross examined at length on his AEIC both by Mr Tan, then counsel for Mr Then, and by Mr Then himself. During the course of this, he remained focused and was clear and consistent in the answers he gave. There were aspects of his evidence in relation to his actions subsequent to the time when he contends that he first became aware of the fact that WPS was not controlled by Walkers, where he accepted that he had lied to his investors, but gave reasons for doing so. I shall have to take this into account when assessing the weight to be attached to the evidence which is central to the case. The fact that a witness lies when involved in commerce for what he considers to be commercially sound reasons, does not mean that he will also lie on oath. It does, however, mean that an element of caution must be applied in assessing that evidence and that particular notice should be taken of relevant contemporaneous documents which relate to that evidence.

48 Overall, however, Mr Ling struck me as a man who was acutely embarrassed as to the position in which he and his investors found themselves, but who was trying to assist the court; not a man who was seeking to mislead the court through what would have to be a pack of lies. In many respects, the contemporaneous documents support the thrust of his evidence.

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48 Ling Hui Andrew's affidavit of evidence in chief dated 24 May 2021 ("Ling's AEIC") at para 7.

49 Ling's AEIC at para 12.

49 In his Supplementary Written Closing submissions, Mr Then drew attention to the fact that in giving judgment in HC/SUM 6207/2019 which was an application for a Mareva injunction in Suit 5 (before it was transferred to the SICC), Audrey Lim J held that the Plaintiffs in Suit 5 had established a *prima facie* case that Mr Ling, the 2nd Defendant in that action, was liable to the Plaintiffs in deceit and that, in doing so, she had questioned the veracity of some of Mr Ling's evidence (see *The Micro Tellers Network Ltd and others v Cheng Yi Han and others* [2020] SGHC 130 ("the Mareva judgment")).[50] Mr Then submits that this casts grave doubts on Mr Ling's lack of probity and veracity.[51] However, that application was based on affidavit evidence only without cross-examination. Furthermore, at [35] of the Mareva judgment Lim J referred to the fact that Mr Ling sought to pin all the blame on Mr Then when she said:

> 35. In conclusion, I found there to be a good arguable case for P1's claim for fraudulent misrepresentation against the Defendants. Whilst D1 and D2 (Mr Ling) have attempted to pin all the blame on Feng (Mr Then), this did not change my analysis. At this stage, the court has only to consider if the plaintiff has a good arguable case on the merits of its claim. It bears noting that Feng's version of events (set out in Suit 653) (i.e. this action) contradicted material allegations of D1 and D2. He alleged that D3 (and D2) knew that WPS was his personal vehicle and that his investment in the Bank Acquisition was in his personal capacity; and that D3 knew and had agreed to Comoros Bank (or REB) being returned to the seller who would provide Feng and D3 with another entity of a similar name to REB. Therefore, whether Feng did or did not defraud the Defendants is a live issue.

50 As can be seen, the Judge identified that in HC/S 653/2019 (which was later transferred to SICC as this action) Mr Ling's and Mr Then's version of events differ and it is that difference that caused Her Honour to question the

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50 Mr Then's Supplementary Written Closing Submissions dated 6 August 2021 ("DSCS") at para 8.

51 DSCS at para 8.

veracity of Mr Ling's evidence. In these circumstances, it would be inappropriate for me to place any weight on her concerns. I have to reach conclusions on the weight to be attached to Mr Ling's evidence on the basis of the evidence given at this trial.

The WPS Representation

51 It is convenient to consider first the facts relating to WPS. The cornerstone of the Plaintiffs' case is that Mr Then falsely represented that WPS was a company owned and controlled by Walkers which would hold money in escrow to the Plaintiffs' order. This was relied upon by Mr Ling. Had he known it was false then the Plaintiffs would not have placed money in WPS' bank account. Mr Then, on the other hand, contends that Mr Ling was at all times aware that WPS was Mr Then's vehicle and that no false representation was made.

52 I shall consider first the evidence given by Mr Ling in his AEIC and the cross-examination in relation to it. Thereafter, I shall consider the other matters relied upon by Mr Then as calling into question the reliance that can be placed upon Mr Ling's evidence.

53 Mr Ling attested that following the initial meeting in February 2018, Mr Then told him that Walkers could provide escrow services to support their legal transactional practice.[52] This aspect of Mr Ling's evidence was challenged in cross-examination:[53]

> Q. Now, after you got acquainted with Mr Then Feng, you had previously asked if Walkers Singapore could assist the 1st

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52 Ling's AEIC at para 8.

53 Transcript 21 June 2021 at page 41:2-page 42:24

> plaintiff to review contractual documents for Bitcoin transactions; correct?
>
> A. I asked Walkers -- if Walkers Singapore could represent me for an escrow service for my Bitcoin transaction deals.
>
> Q. And you had provided Walkers Singapore with copies of the 1st plaintiff's certificate of incorporation, memorandum of articles of association, register of members and register of directors, and certificate of incumbency; correct?
>
> A. Yes.
>
> Q. My instructions is that you had also represented to my client that the 1st plaintiff was transacting US$5 million per day. Do you agree or disagree? That's what you told my client?
>
> A. Yes, we were -- we were expecting potential transactions of $5 million a day. I did tell him that. I expected potential transactions.
>
> Q. My client's instructions to me is that while the 1st plaintiff would engage Walkers Singapore for legal advice for its transactions, my client would assist the 1st plaintiff, in his personal capacity, on non-legal matters and the provision of services that Walkers Singapore did not provide. Do you agree with this statement?
>
> …
>
> A. … I disagree completely. At all times, Mr Feng [T]hen was Walkers -- was representing Walkers Singapore, the law firm.
>
> [Q]: My client's instructions are that, at all times, you know that Walkers Professional Services was separate and distinct from Walkers Singapore, and Walkers Singapore had no relationship with or control over WPS.
>
> A. No, that's completely false. There are so many instances that has -- that made me believe that Walkers Professional Services is basically Walkers Singapore, the law firm. Very much -- a lot of it is in my AEIC already, statements from Walkers Professional Services with the Walkers logo, his name card, his reply from his Walkers Global email, just to name a few.

54 In support of his position, Mr Ling exhibited an extract from a WhatsApp chat between him and Mr Then dated 9 March 2018 in which Mr Then indicated that "we" have a USD account in Singapore, in response to a

request from Mr Ling: "Hi Feng, sg acc for escrow accepts usd?".[54] Later in the exchange, Mr Then identified the account as being in the name of WPS and gave the account details following which he said "I have one off clearance to facilitate this for you".[55] Mr Ling suggests that this is consistent, and consistent only, with a representation that the account was controlled by Walkers (hence the need for clearance) and that any moneys paid into the account would be held in escrow. The answers which Mr Ling gave in cross-examination are consistent with the WhatsApp chat extract.[56] Mr Ling ends this part of the cross-examination by saying:

> … Thirdly, if I had known that Feng was representing in his own personal capacity, like I said, only banks, law firms, or custodians have their licence to do escrow services, and the insurance, for that matter, to do that, to provide that service, I would have asked Feng what nonsense is going on. Obviously, when I mentioned Feng here, in many other instances, not just -- not just this sentence, it's just that Feng was our lawyer from Walkers, representing Walkers. He is my lawyer from Walkers, and that's what I meant by "Feng".

55 On 21 March 2018, Mr Ling emailed Mr Then some documents relating to PAM which Mr Then had requested, and Mr Ling understood that they were required for due diligence checks. The e-mail was sent to feng.then@walkersglobal.com.[57]

56 It was following this that the issue of purchasing an offshore bank arose. Mr Ling explained that the reason why he wanted to purchase an offshore bank was because he wanted to set up a cryptocurrency friendly bank in Singapore. He and some business partners, Mr Shawn Lin and Mr Cheng, proposed that

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54 Ling's AEIC at Tab 2.

55 Ling's AEIC at Tab 2.

56 Transcript of 21 June 2021 at pp 71:15-75:13

57 Ling's AEIC at para 11, Tab 3.

they would raise money for this venture and Mr Then indicated that he would be interested in being an investor.[58]

57 Mr Ling understood that Walkers would act as their lawyers for the venture, with Mr Then representing them in his capacity as a solicitor at Walkers.[59] Mr Ling's understanding was reinforced by an e-mail dated 16 April 2018 from Mr Then again using the e-mail address feng.then@walkersglobal.com, which was signed as follows:[60]

Feng Then
Counsel
Walkers (Singapore) Limited Liability Partnership

WALKERS

T [redacted] | F [redacted] | M [redacted] E feng.then@walkersglobal.com | vCard | Biography
[redacted]
www.walkersglobal.com

Secretary
Jasmine Phua | T [redacted] E jasmine.phua@walkersglobal.com

Bermuda* | British Virgin Islands | Cayman Islands | Dubai | Guernsey | Hong Kong | Ireland | Jersey | London | **Singapore**

58 Mr Ling attests that the reference to Walkers and its Singapore address, the naming of Mr Then's secretary and the "WALKERS' DISCLAIMER" reinforced his belief that "Walkers were my lawyers".[61]

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58 Ling's AEIC at para 16.

59 Ling's AEIC at paras 17 and 18.

60 Ling's AEIC Tab 5.

61 Ling's AEIC at para 18 and Tab 5.

59 Mr Ling was cross-examined on Mr Then's position that Mr Ling was aware that Mr Then acted in two capacities: first as a lawyer for Walkers; and second in a personal capacity where he used WPS. Mr Ling rejected this suggestion:[62]

> Q. My instructions are that Mr Then Feng had dealt with you in different capacities; namely, his capacity when he deals with you as a lawyer from Walkers Singapore, but he has a separate capacity where he deals with you, for his personal capacity, where he uses WPS. Would you agree with that?
>
> A. No, not completely, I wouldn't agree with that. Yes, he deals with me definitely as a lawyer from Walkers Singapore. Never did he ever say that he was a -- never did he ever say, prior to him admitting to me in 2019, that he would act in his personal capacity and using WPS as an escrow or receiving funds. The only other time I can recall he said that he act personally was as an investor to the bank that we were going to buy.
>
> …
>
> Q. My question is: my client's case is that in that extract of the WhatsApp chat in paragraph 8 of your AEIC, he was dealing with you in his capacity for WPS and not Walkers Singapore.
>
> A. Absolutely not. First, let's look at the date of the extract. It's March 2018. At this point of time, I know Mr Feng then as a lawyer with Walkers, providing me escrow services. Nowhere in this extract or in this chat does he explicitly say, I am a separate entity with a company that suspiciously looks exactly like Walkers global law firm. In fact, when he provided me the name, "Walkers", if you can see my extract of the chat here, 9 March 2018, at 14:52, Feng then says: "Account Name: WALKERS PROFESSIONAL SERVICES LIMITED" I went to Google that to make sure. And guess what, if you Google today, I don't know about today, but I think two or three days ago when I Google it, it is there, Walkers -- the law firm's website, and Walkers Professional Services is in the same site. So I had no reason, even with a chat, to know that WPS is a separate entity, or whatever that Feng said, because he never said it.

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[62] Transcript of 21 June 2021 pp 89/3-17 and see Transcript of 21 June 2021 pp 90/8-92/5.

> Q. Nowhere in this extract on a WhatsApp chat did Mr Then Feng say that this WPS account belongs to Walkers; right? Do you agree?
>
> A. … Yes, that's true, nowhere in this chat does he explicitly say Walkers Professional Services is from Walkers, the law firm, but it didn't need to. In the first place, 9 March, I already been working with him for so many -- for at least a month before that already, and we always been discussing about it being an escrow that Walkers provide. This chat further reinforces my belief that Walkers is working for me because Walkers Professional Services is there. It didn't need him to say, just like I didn't need Daniel to say that, "Pay Morgan Lewis", for example, to a Morgan Lewis account, because it's the Walkers Professional Services Limited. And if I were to pay that bank account, it would be paid to Walkers Professional Services Limited, and if you Google that, it's also the law firm, Walkers Global law firm. So I don't think he needs to tell me because he was my lawyer from a prestigious law firm. So while I agree with your statement, I think the context is completely off.

60 Mr Ling also attested that a due diligence report sent to him by Mr Then bore Walkers' corporate logo, and this reinforced his belief that he was represented by Walkers:[63]

WALKERS

190 Elgin Avenue, George Town
Grand Cayman KY1-9001, Cayman Islands
T +1 345 949 0100 F +1 345 949 7886 www.walkersglobal.com

63 Ling's AEIC at Tab 5, p 139, and para 18.

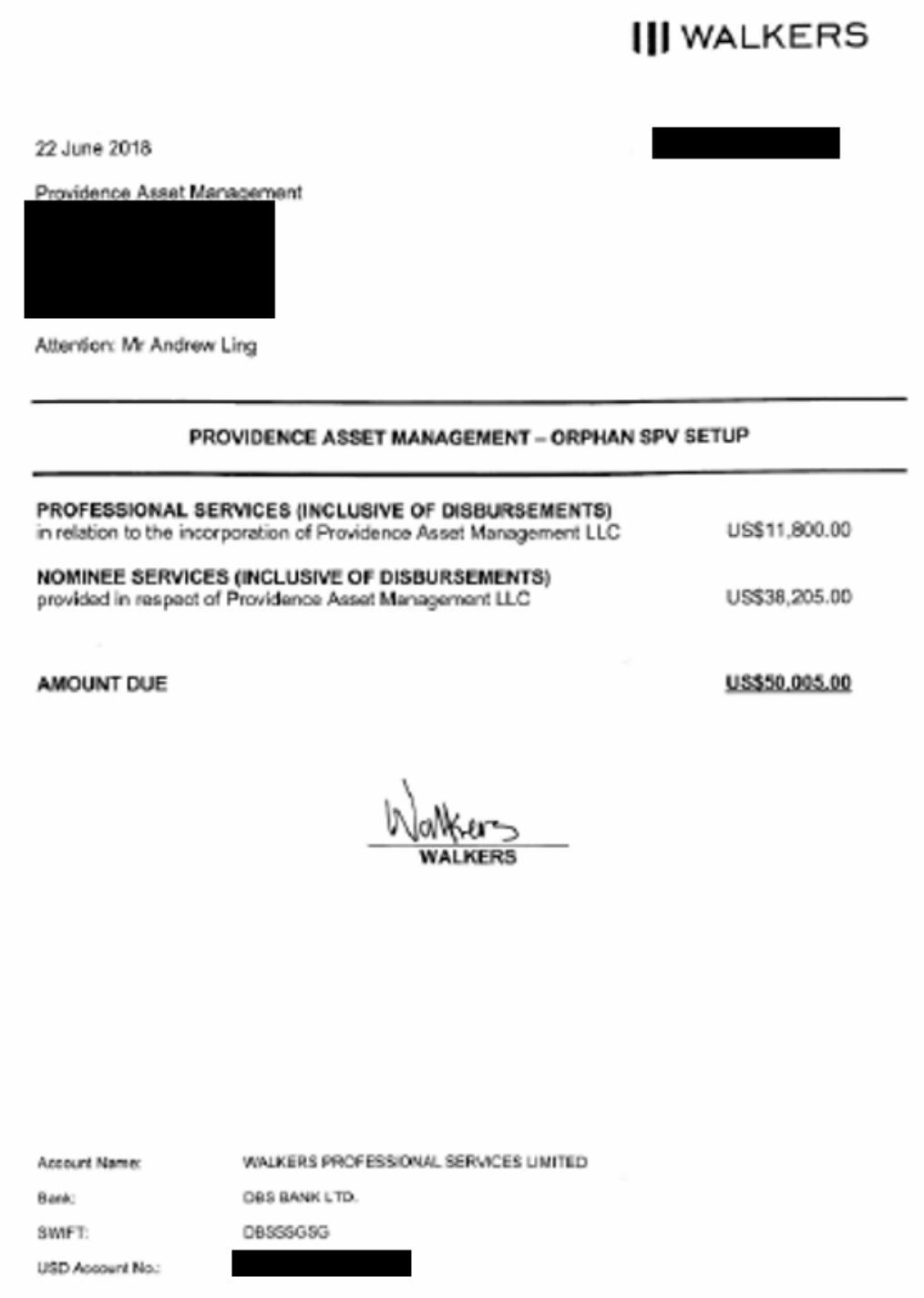
61 Mr Ling stated that in order to move matters further, on 23 April 2018, PAM transferred US$2,948,000 to the WPS bank account.[64] Matters then progressed with further e-mails from Mr Then's Walkers' e-mail address.[65] On 25 June 2018, Mr Then sent Mr Ling an invoice for work done by Walkers in setting up a US company.[66] This is an important document as, on its face, it ties Walkers in with WPS:[67]

64 Ling's AEIC at para 20.

65 Ling's AEIC at para 31.

66 Ling's AEIC at para 36.

67 Ling's AEIC at p 22.



WALKERS

[redacted]

22 June 2018

Providence Asset Management

[redacted]

Attention: Mr Andrew Ling

PROVIDENCE ASSET MANAGEMENT – ORPHAN SPV SETUP

PROFESSIONAL SERVICES (INCLUSIVE OF DISBURSEMENTS) in relation to the incorporation of Providence Asset Management LLC	US$11,800.00
NOMINEE SERVICES (INCLUSIVE OF DISBURSEMENTS) provided in respect of Providence Asset Management LLC	US$38,205.00
AMOUNT DUE	**US$50,005.00**

Walkers

WALKERS

Account Name:	WALKERS PROFESSIONAL SERVICES LIMITED
Bank:	OBS BANK LTD.
SWIFT:	OBSSSGSG
USD Account No.:	[redacted]

62 Mr Then challenged the authenticity of this invoice when it was disclosed during discovery. In his AEIC, Mr Ling explains that he had obtained this invoice from Mr Then and exhibited a screenshot taken on his phone which shows that Mr Then had sent him the invoice on WhatsApp at 10.17am on 25 June 2018.[68] Mr Ling was not challenged on the issue of the authenticity of the invoice during cross-examination.

63 However, in cross-examination, it was suggested to Mr Ling that Mr Then was dealing with the Plaintiffs in a personal capacity when setting up the US company. Again, Mr Ling rejected this and gave reasons for doing so.[69]

64 Mr Ling attested that on 3 August 2018, when he was making preparations for commencing the banking business, he asked Mr Then if he could use WPS' Singapore address as a temporary service address to be listed on the bank's namecards to which Mr Then responded: "Let me check and get a response overnight". Mr Ling attested that he understood this to mean that Mr Then was consulting Walkers for permission.[70] In cross-examination, it was put to Mr Ling that he understood that Mr Then was acting in a personal capacity at this time, but he roundly rejected this suggestion.[71]

65 Mr Ling further stated that on 8 August 2018, he sought confirmation from Mr Then that the purchase of BP Bank was imminent, so that he could show the confirmation to his investors in order that funds could be deposited into a Walkers' trust account. In response, Mr Then suggested that it "Will be good to have it on firm letterhead yes?". Mr Ling replied "yes, most imp[ortan]t

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68 Ling's AEIC at para 36 and Tab 10.

69 Transcript 21 June 2021 at pp 94/6-96/3.

70 Ling's AEIC at para 44.

71 Transcript of 21 June 2021 pp 96/4-97/20.

is call for funds to walkers trust acc[ount]" [*sic*].[72] Again, Mr Ling attested that he took this as confirmation that Walkers was representing the plaintiffs.[73]

66 Mr Ling next stated that on 25 September 2018, he again sought confirmation that WPS' address could be used on the proposed bank's namecards to which Mr Then responded "Yes bro I think should be fine. Walkers (Singapore) LLP 3 Church Street [XXXXXXXXXX]".[74]

67 On 10 October 2018, Mr Ling caused 5&2 to transfer US$2,200,000 to the WPS bank account but before doing so, asked Mr Then to confirm the bank details.[75] In response, Mr Then sent the details of the WPS bank account with the comment "You don't want it to go to the wrong place".[76] Mr Ling then advised Mr Then that the money had been transferred to which Mr Then replied "Thanks bro I'll advise accounts accordingly",[77] which Mr Ling states that he understood to be a representation that the WPS account was a trust account controlled by Walker.[78] Again, in cross-examination, Mr Ling rejected the suggestion that Mr Then was acting in his personal capacity.[79]

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72 Ling's AEIC at paras 45 to 46.

73 Ling's AEIC at para 47.

74 Ling's AEIC at para 52 and Tab 13 at p 181.

75 Ling's AEIC at p 183.

76 Ling's AEIC at p 183.

77 Ling's AEIC at p 183.

78 Ling's AEIC at para 57 and Tab 13.

79 Transcript 21 June 2021 at pp 97/21-98/18.

68 Mr Ling attested that thereafter further sums were deposited in the account and that Mr Then repeated his reference to the involvement of "accounts".[80]

69 Finally, Mr Ling exhibited a document entitled Account - Client Summary which he claims was sent to him by Mr Then in late October 2018. This document is reproduced here:[81]

WALKERS

Account - Client Summary

Escrow No.	Beneficiary Name	Product Type	Business Date	Currency	Opening Balance	Ledger Balance	Available Balance
[redacted]	PROVIDENCE ASSET MANAGEMENT	ESCROW / CLIENT ACC / POF	23-Oct-2018	USD	7,811,505.00	7,811,505.00	7,811,505.00
				SGD	400,000.00	400,000.00	400,000.00

Notes:

FILE REF NO [redacted]

ESCROW AMOUNT OF USD 9,500,000.00 TO BE HELD ON ACCOUNT FOR ACQUISITION PURPOSES

END OF REPORT

70 As can be seen, this document contains the Walkers logo, refers to the beneficiary as PAM and to the fact that it is an escrow client account and that the moneys were held on account for acquisition purposes. Mr Ling relies on these details as confirming his belief that Walkers was holding the moneys stated in escrow with PAM as the beneficial owner. He was not cross-examined directly on this document but Mr Ling referred to it in the course of his answers

80 Ling's AEIC at paras 62 to 64.

81 Ling's AEIC at para 65 and Tab 18.

to a different question relating to the sum of S$573,300, referred to below at [72].[82]

71 This passage of his cross-examination concluded:[83]

> … And you'll see below the escrow amount of US$9.5 million to be held on acquisition purposes. I will explain later why. I think 9.5 million is a typo or it could be a reference to the term sheet that was previously sent. Because of this, I wholeheartedly believe that all the monies were in Walkers, the law firm's account, after I have transferred on four separate occasions to a Walkers Professional Services Limited DBS account.

72 Mr Ling gave evidence that he then arranged for the transfer of a further sum of S$573,000 to the WPS account on 2 November 2018[84] and that, in total, the Plaintiffs had transferred US$5,268,000 and S$1,223,000 to WPS (the Sums).[85] Mr Ling stated that sometime later that month, Mr Then told him that the purchase of Freelance Bank had been completed for US$4 million.[86] Thereafter, Mr Then advised him that they should discontinue attempts to purchase BP Bank as that was no longer necessary.[87] When Mr Ling was cross-examined in relation to this, his attention was drawn to the fact that the Credit/Debit advice[88] contained reference to the address of WPS as being Mr Then's home address and not that of Walkers' Singapore office. It was suggested that this would have alerted the reader to the fact that WPS was Mr

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82 Transcript 23 June 2021 at pp 73/9–74/22.

83 Transcript 23 June 2021 at pp 74/14-22.

84 Ling's AEIC at para 66.

85 Ling's AEIC at para 67.

86 Ling's AEIC at para 70.

87 Ling's AEIC at para 72.

88 12 Agreed Bundle at p /6184.

Then's vehicle and not related to Walkers. Mr Ling gave evidence that he:[89] "never saw the address in such detail. If [he] did [he] would have raised the red flags".

73 The cross-examination in relation to those paragraphs of the AEIC concluded with the following exchange:[90]

> MR TAN HJ: Now, Mr Ling, I have earlier shown you those various parts of your affidavits where I had put my client's case to you that those were actually instances where he dealt with you in his personal capacity, and you disagreed; right?
>
> A. Yes.
>
> Q. And you would also agree with me that there's nothing explicit in those extracts where he said WPS belonged or was owned by Walkers Singapore; right?
>
> A. Yes, nothing explicitly said, and I maintain that he didn't need to.

74 Thereupon, Mr Ling sought to have the Remaining Sums which he believed remained in the WPS account remitted to him.[91] Between 6 and 9 December 2018, there was a WhatsApp exchange between Mr Ling and Mr Then which on its face demonstrates a request for Mr Then to: "drop a message to walkers? still no sign of the funds" followed by two further reminders each referring to "Walkers" which resulted on 9 December 2018 with a message from Mr Then which stated "Escrow release done".[92]

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89 Transcript of 23 June 2021 at pp 69/5-73/12.

90 Transcript of 21 June 2021 at pp 102/14-24.

91 Ling's AEIC at para 64.

92 Ling's AEIC at para 75.

75 However, no money was transferred and matters progressed without payment until February 2019.[93] Mr Ling deposes that on 17 February 2019, Mr Then asked to meet him at Changi airport before Mr Ling was due to take a flight out of Singapore.[94] At this meeting, for the very first time, Mr Then admitted to Mr Ling that WPS was his own personal vehicle and that it was not affiliated with or controlled by Walkers.[95] This meeting was the subject of an extensive piece of cross-examination.[96] There was no dispute that the meeting took place and that Mr Then made the admission about WPS. The substance of Mr Ling's answers in cross-examination was that Mr Then had represented to him that the Remaining Sums were safe and had requested him not to tell his fellow investors about this so as not to jeopardise the relationship with them. Mr Ling had agreed, provided that the money was remitted to him before he returned from his business trip, as he did not want to jeopardise the return of the Remaining Sums, and he was seeking to repress his feelings of shock, anger and embarrassment about the admission that Mr Then had made about WPS.

76 However, the money was not repaid, and Mr Ling gave evidence that although he was angry and embarrassed, he decided to work with Mr Then so as to do his utmost to have the Remaining Sums restored to him.[97] I do not propose to enter into too much detail of what passed between Mr Then and Mr Ling and between Mr Ling and his co-investors between February and June 2019. In essence, a number of schemes were proposed by Mr Then to arrange for repayment, some involving Mr Gaillard. Mr Ling accepted that during this

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93 Ling's AEIC at para 82.

94 Ling's AEIC at para 89.

95 Ling's AEIC at paras 91 and 92.

96 Transcript of 21 June 2021 at pp 106/18-148/1.

97 Transcript of 21 June 2021 pp 171/5-175/4.

time, he knew that a fraud had been perpetrated, yet, he did not file a police report until June or July 2019,[98] and in the meantime, he told lies to his co-investors on a number of occasions.[99]

77 These are factors which do not reflect well upon Mr Ling and it was clear when he was in the witness box that he considered that, with hindsight, he should have acted differently. He was overly trusting of Mr Then whom he regarded as a friend and showed business naivety in the latitude and support he gave Mr Then. But the issue I have to decide is whether Mr Then made the representations that are alleged with regard to WPS and whether Mr Ling acted upon those representations or whether, in truth, Mr Ling was at all times aware that WPS was Mr Then's vehicle and that he knew that Mr Then held the funds in the WPS bank account to his order and not in escrow. The details of what happened in the period between February and June 2019 do not throw any light on this save that Mr Ling has "no qualms to tell lies to further his interests".[100] This, I accept, does impact upon his credibility as a witness and, taken in isolation, does give a measure of support to the assertion that he was lying because, at all times, he knew that WPS was Mr Then's vehicle.

78 In his written closing submissions, Mr Then primarily relied and relied heavily on the Statutory Declaration (see [38] above) as demonstrating that Mr Ling was at all times aware that WPS was Mr Then's vehicle and had nothing to do with Walkers.

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98 Transcript of 21 June 2021 at pp 184/15-185/25.

99 See eg Transcript of 22 June 2021 at pp 23/23-25, 36/1-37/6, 55/6-16 and 82/15-84/2.

100 DCS at para 23.

79 Mr Ling does not dispute that he signed the Statutory Declaration (see [40(a)] above). It is contained in his AEIC and I now set it out in full:[101]

[101] Ling's AEIC at Tab 25.

STATUTORY DECLARATION

I, **LING HUI ANDREW** (NRIC No. [redacted], of [redacted], [redacted], do solemnly and sincerely declare as follows:

1. I am the Executive Chairman of Royal Eastern Bank Limited and the Managing Partner of Providence Asset Management Limited ("**PAM**").

2. I have known Then Feng, who I call Feng, since the middle of 2017. We were introduced by a mutual friend, Darryl Tan. Both of us have a shareholding in the Royal Eastern Bank Limited, an offshore bank.

3. When I was introduced to Feng, I knew that he was a lawyer with an international law firm. I had initially wished to engage his legal services to review contractual documents for potential Bitcoin transactions through PAM, but none of these transactions eventually materialised.

4. After being introduced to Feng, I discussed business opportunities overseas that I was interested in with him. I asked Feng to assist with the setting up of Providence Asset Management LLC, a special purpose vehicle in the United States for bitcoin trading, and to obtain an offshore banking license. On these issues, I knew that I was not dealing with Feng as a lawyer in the international law firm. I dealt with Feng in his personal capacity and as a business partner.

5. Feng told me that he managed an offshore entity known as Walkers Professional Services Limited and used this entity for his consultancy business. On Feng's request, I made payments of approximately USD 5.5 million to a bank account

held by Walkers Professional Services Limited through PAM and 5 and 2 Pte Ltd (another company controlled by me). I also arranged for further payment of S$400,000 through a third party business associate. These payments were for consultancy fees and for the purchase of the offshore banking license.

6. At all times, I understood that Walkers Professional Services Limited was Feng's personal vehicle. Feng never represented himself as offering legal services to me through Walkers Professional Services Limited.

AND I make this solemn declaration by virtue of the provisions of the Singapore Oaths and Declarations Act (Cap 211), and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

LING HUI ANDREW

Declared in Singapore this 14th day of June 2019.

Before me,

COMMISSIONER FOR OATHS Amy Wong C2019J0458 1 Apr 2019 – 31 Mar 2020 SINGAPORE

A COMMISSIONER FOR OATHS

80 On its face, paragraphs 4, 5 and 6 of the Statutory Declaration are wholly consistent with Mr Then's case that Mr Ling knew at all times that WPS had

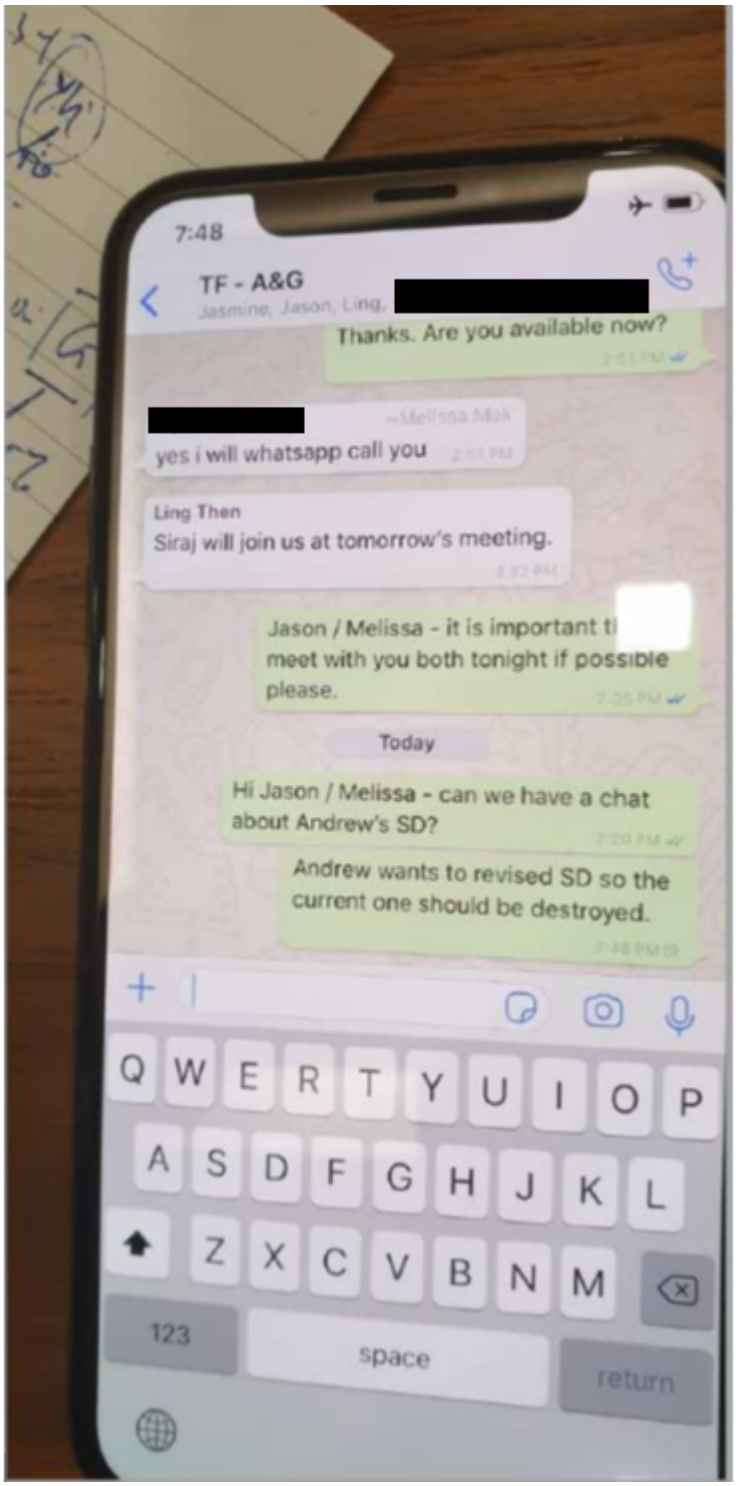
nothing to do with Walkers and that Mr Then was acting in a personal capacity in relation to their venture.

81 However, Mr Ling gives evidence about the circumstances in which he came to sign the Statutory Declaration in paragraphs 104–109 of his AEIC:

> 104. In mid-June 2019, [Mr Then] approached me for help to buy time to pay off his creditors, including the Plaintiffs. He told me that [Mr Cheng] had threatened to sue him for the return of the monies to [Mr Cheng's] investors (the money transferred by the Plaintiffs was money raised from my and [Mr Cheng's] investors). He told me that monies were coming in that would allow him to repay the monies owed to his creditors, including the Plaintiffs, and he just needed some time to make the arrangements.
>
> 105. He asked me to sign a false Statutory Declaration that would state that I had always known that WPS was his personal vehicle, and that I was never under the impression that WPS was associated with Walkers. He told me that this would buy time to get the funds to repay the Plaintiffs, and that this would help him ensure that [Mr Cheng] could not cause any further trouble with him with regards to WPS.
>
> 106. He also told me that if I did not sign this false Statutory Declaration, then he would have to expend more time and effort to fight his creditors and [Mr Cheng], and would take more time to repay the Plaintiffs.
>
> 107. I was quite troubled at the time that [Mr Then] wanted me to sign a false Statutory Declaration. However, I really needed [Mr Then] to repay the monies to the Plaintiffs, as our investors were chasing us. I told [Mr Then] that I was imposing two further conditions: (a) that [Mr Then] refunded the Plaintiffs the outstanding amount owed to them immediately from whatever monies he had coming in; and (b) that he would inform [Mr Cheng] and all other investors in our bank venture that WPS was his private vehicle. [Mr Then] agreed.
>
> 108. I weighed the pros and cons and decided that I would sign the Statutory Declaration. The tipping factor was [Mr Then]'s promise that if I signed the Statutory Declaration, he would be able to get funds to repay the Plaintiffs.
>
> 109. He told me that his lawyers from Allen & Gledhill LLP would draft the Statutory Declaration. For the avoidance of doubt, I am not alleging in any way that Allen & Gledhill LLP knew that the contents were false.

Mr Ling then took legal advice and his AEIC continues in paragraphs 112–114:

> 112. I remained uncomfortable after doing this. Shortly after, I approached Clasis LLC for legal advice on what I had done and the actual implications to me for signing the statutory declaration. Feng accompanied me to Clasis LLC. After getting legal advice at a private meeting without [Mr Then] ([Mr Then] was waiting outside), on 20 June 2019, I told [Mr Then] there and then that I no longer wanted to be part of this and told him that the Statutory Declaration was to be destroyed. He agreed.
>
> 113. He told me that he had told his lawyers from Allen & Gledhill LLP to destroy the Statutory Declaration. I took a picture of a WhatsApp chat with his lawyers from Allen & Gledhill LLP (his lawyers are called Jason and Melissa), which I reproduce below:



> 114. He had said to his lawyers: 'Hi Jason / Melissa- can we have a chat about Andrew's SD? Andrew wants to revised (sic) SD so the current one should be destroyed'. …

82 Mr Ling was cross-examined extensively on these passages of his evidence.[102] He repeated on a number of occasions his reasons for signing it which are encapsulated in a passage in the transcript:[103]

> That is not entirely accurate. As I said before, I knew that WPS was -- at this point of time, he has already confessed to me from February that WPS was not an entity that is controlled by the Walkers law firm. His reason to me to sign the statutory declaration, and I'll be short in point form, was that, one, many people are going after him because he misrepresented WPS as a Walkers law firm escrow account, the same way he did so before 17 February, when we met, when he confessed. And his reason to me was that PAM was the biggest amount that was placed in WPS bank account as an escrow, and if PAM, as the biggest amount -- I took it to mean the biggest client then -- would sign a statutory declaration to state that PAM knew all this while that WPS was not an entity from Walkers, then he would have a good defence against all his troubles. If not, he will have many legal problems and many people coming after him, and he would not be able to pay me back my 4.51. Excuse me. He would not be able to pay me back my 4.51 if I did not help him. That is the sole reason, actually, or really the compelling reason that made me want -- or made me sign that false statutory declaration. And might I add, lastly, that signing that statutory declaration is not the end of this whole episode. I realised that it was not right, and I told him that I would like it to be destroyed, and he gave instructions to his lawyers, to be destroyed, and there is evidence there in the photographs. As to why it is not destroyed, why his lawyers did not follow his instructions, that is something that is troubling me as well. That is all I have to say about it.

83 The authenticity of the screenshot which I have set out at [81] above was not challenged, and in cross-examination Mr Ling said this:[104]

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102 Transcript 22 June 2021 pp 60/10-86/5 and Transcript 23 June 2021 pp 6/18-35/23.

103 Transcript 23 June 2021 at pp 17:5–18:13.

104 Transcript 23 June 2021 at pp 31:3-35:22.

Q. So which of the messages in that picture shows that he gave instructions to Allen & Gledhill to destroy the statutory declaration?

A. Right at the bottom: 'Andrew wants to revised SD so the current one should be destroyed.'

Q. It merely says you want to revise the SD, so the current one should be destroyed. He's saying what you want.

A. I'm no lawyer. At this point of time, I'm in a law firm of his friends. After his friend, Junxiang, the lawyer, told me that, 'You should not have signed the stat dec", he came in the room. I told him, 'The statutory declaration, I don't want – I want it resigned. Destroy it, get rid of it.' 'Okay, okay, I will, I will do it.' I said, 'Show me that you have messaged your lawyers.' He took out his handphone and he messaged his lawyers. I said, 'Wait, I want to take a picture of that message', and I took a picture of his message. And then after that, I think Fred and somebody else came into the room. No, Fred came in the room, and he took back his phone. I don't know how it can mean otherwise. It basically is 'TF', Then Feng, and 'A&G' chat, it says: 'Hi Jason/Melissa', who I assume was his lawyers. I didn't have a time to get it checked. '... can we have a chat about Andrew's SD?' Which I assume is mine. He's quite smart to have slyly put in 'Andrew wants to revised [the] SD ...' I didn't say I want to revise the SD, by the way. I said I want it destroyed, so that the current one should be destroyed. I was sufficiently -- I was happy enough, because it says: '... the current one should be destroyed.' I wasn't intending to sign any other -- any other SD, as long as the current one was destroyed, the false one was destroyed. That was my objective.

Q. So you're saying that you didn't want a revised SD?

A. No, I didn't want a revised SD. I didn't want any SD.

Q. So you're saying this message is inaccurate?

A. This message is what Mr Then Feng, now in hindsight, quite slyly phrased it that way, but this message is correct. The current SD at that point of time, there should be have only one SD, the false SD which I signed. And he said I want that – 'Andrew wants that SD', the current one, 'to be destroyed.'

Q. No, the line says: 'Andrew wants to revised SD ...'

A. '... so the current one should be destroyed.'

Q. Did you want to amend the SD?

A. I don't want to amend the SD. I want the SD destroyed. Your Honour and Mr Tan, I also just noticed

something. I bring it to your attention. I just realised this. In the picture, Mr Then Feng's phone is on aeroplane mode. You can see the airplane symbol right at the top. At 7.20, the chat clearly shows -- the chat says: 'Hi Jason/Melissa - can we have a chat about Andrew's SD?' There's two ticks there, and in WhatsApp, the two ticks means the message has been sent and delivered to the recipient party. And this is in a group chat, so definitely it will be. You can't hide that function. Under the second chat -- the second line which he sent: 'Andrew wants to revised SD so ... current one should be destroyed.' At seven -- I can't really make it out, but it looks like 7.46 pm, 26 minutes later, you realise -- you will realise that there is no two ticks there. It's a bit blur but it's quite obvious there is no similar two ticks there. It looks like a sign -- a stop sign. This happens when you don't have a connection, a viable data or WiFi connection, so the message cannot go through. I just realised that that might have been a sly move not to let the message go through at all.

MR KER: Your Honour, a clearer version of the picture can be found at page 255 of Mr Ling's AEIC.

A. In 26 minutes, he decided to off his data.

COURT: Just stop. Counsel said there was a better picture somewhere. Where is that, Mr Tan, sorry?

MR KER: Your Honour, it's at page 255 of Mr Ling's AEIC. It's exhibit AL-26.

COURT: Thank you very much.

MR KER: Obliged, your Honour.

COURT: Would you like to look at that, please, Mr Ling?

A. Thank you, your Honour. As I said, yes, based on -- it's very much clearer now. At 7.20 pm, the message went through with two ticks, as per all the other messages that were sent from this phone, which is on the right-hand side. The message at 7.48 pm has that -- has no two ticks. It has a circular sign that looks like a clock with hands. This happens when you don't have a internet or data connection. So at 7.20, he messages his lawyers to say that 'I would like' -- that he wants to have a chat about my statutory declaration. At this point, I was probably talking to him about destroying it, 'It's not right, get rid of it, I don't want it there,' and I asked him, 'Show me proof.' That talk probably lasted 28 minutes, and at 7.48, he sends this message: '... the current one should be destroyed.' But sometime between 7.20 to 7.48, he has managed to activate aeroplane mode which, at the top right-hand corner, beside the battery symbol, your Honour, you can see an airplane symbol.

> Why would you, in a chat group with your legal advisors from A&G, turn on airplane mode, and in such a coincidence at the point of time where, 'I asked you to show me proof that it has been destroyed'? Unfortunate, your Honour, I was in a very bad state that day. I didn't catch this then. In fact, I just caught this now, looking at this. I would like to point that out. …

84 Mr Then elected to call no evidence on this issue and the Plaintiffs in their written closing submissions asserted that in assessing the evidence given on behalf of the Plaintiffs I should assume that all the evidence is true unless it is incredible (see [22] above at [b]). Such a submission has to be considered with a measure of caution. As with any aspect of evidence, the court is seeking to assess the weight that can be attached to it, taking all relevant factors into account. The relevant standard where a party has elected to call no evidence is as stated in [18] to [24] above. It may be, in a particular case, that the evidence given following cross-examination when considered in the context of other material is insufficiently plausible for sufficient weight to be placed upon it to meet the required standard of proof.

85 In reaching a conclusion as to the weight to be placed on any given piece of evidence the court is guided both by the provisions of s 105 of the Evidence Act (see [36] above) and by illustration (*g*) to s 116 of the Evidence Act which provides:

> **116.** The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> **…**
>
> *(g)* that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;
>
> …

86 In *Ma Hongjin v SCP Holdings Pte Ltd and another* [2019] SGHC 277 at [57], Vinodh Coomaraswamy J held that this principle was applicable in the case where a party elected to call no evidence. The incident with regard to the screenshot is, to my mind, a case in point. The existence of the screenshot is not in dispute. The evidence given by Mr Ling cries out for comment by Mr Then and I consider that I am entitled to place weight on the fact that he elected not to assist the court on this matter.

87 Before I seek to draw all the evidence together on this representation, I should mention some further matters that Mr Then brought to my attention as being: (a) matters on which the Plaintiffs sought to rely on but which I should place no weight on; as well as (b) other areas that did not reflect well upon Mr Ling, such as to bring his veracity into question.

88 The first matter is an alleged recording of a telephone conversation between Mr Then and an individual identified both by Mr Ling and Mr Gaillard as "Kamil", which the Plaintiffs seek to rely on. Kamil was not identified further and was not called to give evidence. I shall say nothing further about this incident save to put on record that without direct evidence, I do not feel that it is possible to place any weight on the alleged incident. The hearsay evidence given was insufficient and this is therefore not an issue on which any adverse inference can be drawn on Mr Then's election not to give evidence.

89 The second matter is Mr Then's submission that little or no weight should be attached to Mr Gaillard's evidence. Mr Gaillard is a former friend of Mr Then's who played a part in the acquisition of Freelance Bank. He was also involved in some of the alleged schemes developed in early 2019 to enable repayment of the Remaining Sums. He gave evidence under a subpoena. Plainly at the time he gave evidence on behalf of the Plaintiffs, his relationship with Mr

Then had soured and this is a matter which I accept should be taken into account in assessing the weight to be attached to his evidence.

90 The court was requested to hear Mr Gaillard's evidence at the outset of the trial as Mr Gaillard was due to start a prison sentence (for an offence of dishonesty which Mr Gaillard had admitted to) later that week. I was not given any further details.

91 The cross-examination of Mr Gaillard was carried out both in relation to Suit 5 and Suit 8 but regard can only be had to the cross-examination conducted on behalf of Mr Then in relation to the issues arising in Suit 8.[105] Mr Gaillard was not cross-examined on the subject of WPS or Mr Gaillard's understanding of the relationship between the Plaintiffs and Mr Then.

92 In Suit 8, he provided two AEICs which covered three aspects. The first relates to the Kamil incident and I need say no more about this.

93 The second aspect concerned the issue relating to the alleged loan by the Plaintiffs to Mr Gaillard referred to in paragraphs [39] and [40(e)] above. Since this is a discrete defence by Mr Then to the claim by the Plaintiffs for the return of the Remaining Funds, s 105 of the Evidence Act applies. Mr Gaillard denied borrowing the Plaintiffs' money and his evidence was not shaken in cross-examination.[106] If therefore Mr Then wished to substantiate his plea, it was incumbent upon him to adduce the requisite evidence which he has not.

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105 Transcript of 14 June 2021 at pp 78-127.

106 Transcript 14 June 2021 pp 79/1-21, 100/5-12 and 107/24-109/19; see also Transcript of 22 June 2021 7-18.

94 The third aspect raised by Mr Gaillard concerns the purchase of Freelance Bank. In his AEICs, Mr Gaillard gives evidence as to his involvement in this transaction and confirms that it was effected by Mr Then, but asserts that the purchase price was EU$130,000, not US$4 million.[107] It is appropriate to review that evidence and the cross-examination in relation to it when I come to consider the issue relating to whether any bank was purchased and, if so, at what price. It does not relate to the WPS Representation.

95 Returning to the matters raised at [87] above, the third matter which Mr Then brought to my attention is that Mr Ling had previously forged a bank statement. Mr Ling was cross-examined on this issue,[108] where he admitted that he had created a forged document indicating that PAM held a balance of US$78,835,980.70 in its DBS account as at 31 January 2018. He explained why this was done and testified that the document was never deployed. This does not reflect well on Mr Ling and is an example of an incident in commerce which is reprehensible, but does not of itself indicate that the witness will be prone to lie on oath.

96 Finally, Mr Then sought to suggest that this was not the only time that Mr Ling had resorted to the use of false bank statements but Mr Ling denied any knowledge of the document which Mr Then relied upon.[109] Mr Then has not given evidence to prove the document.

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107 Gaillard Frederic Willy's Affidavit of Evidence In Chief dated 24 May 2021 ("Gaillard's AEIC") at [8] and Gaillard Frederic Willy's supplementary Affidavit of Evidence In Chief dated 10 June 2021 ("Gaillard's Supplementary AEIC") at [6]-[8].

108 Transcript of 21 June 2021 at pp 32/5-37/10.

109 Transcript of 21 June 2021 at pp 37/23-41/1

Conclusion on the WPS Representation

97 The task facing the court in a case where a defendant has submitted that there is no case to answer is to determine whether the plaintiff has adduced sufficient evidence to satisfy the court that it has established a *prima facie* case on each of the essential elements of its claim. In the present case, the question is whether Mr Then misrepresented to Mr Ling that WPS was part of Walkers and whether Mr Ling relied on that misrepresentation in transferring the Sums to WPS' bank account.

98 I am in no doubt that the Plaintiffs have, on the basis of the evidence I have reviewed above, established such a case. The evidence given by Mr Ling concerning the way in which the relationship between the Plaintiffs and Mr Then developed and the reasons for Mr Ling wishing to have a relationship with a firm of solicitors which could offer escrow services is cogent and is consistent with the contemporaneous documents. No reason has been given by Mr Then for using the name "Walkers" as part of the name of WPS, far less for using the Walkers logo in relation to a bank account which was not controlled by Walkers. The only proper inference is that it was done to induce a connection with Walkers, to instil confidence that Mr Then was a solicitor with Walkers and induce Mr Ling to deposit money with WPS. The alternative, that Mr Ling full well knew of the subterfuge being indulged in by Mr Then and was party to a conspiracy to induce others to entrust them with their money, is not in accordance with the contemporaneous documents, and was rejected by Mr Ling.

99 Mr Then's point of substance to the contrary, which is a significant point, resides in the Statutory Declaration. This is a document sworn on oath. It is not the equivalent of commercial document containing a falsehood. The courts and the public are entitled to rely on the contents of such documents as

being true. But this does not mean that they are always true. In the present case, Mr Ling in the face of sustained but eminently fair cross-examination explained why he did what he did, knowing that what he was doing was wrong, and why he subsequently took legal advice and asked for the document to be destroyed. He had good reason to believe that this had been done. The contents of the Statutory Declaration are at odds with the antecedent documents which came into existence during the course of the relationship between Mr Ling and Mr Then. Mr Ling was naive in acting as he did but I accept that he did so for what seemed to him at the time to be in the best interests of the Plaintiffs and their investors. I am satisfied that he was not lying to the court when he gave this evidence and that the contents of his Statutory Declaration were materially false.

100 Accordingly, I hold that the contents of the Statutory Declaration do not undermine the conclusion that I have reached that the Plaintiffs have established the necessary *prima facie* case in relation to the WPS Representation.

101 Further, the evidential onus is on Mr Then to establish that the Remaining Sums were loaned to Mr Gaillard and that Mr Ling consented to that. He has not discharged this burden.

102 Reverting then to the five essential elements of the tort of deceit: I hold that the Plaintiffs have established the following in relation to the first three and the fifth elements (see [41] above) needed to establish the WPS Representation:

(a) Mr Then falsely represented by words and conduct that WPS was owned and operated by Walkers and that the WPS bank account would hold money in escrow to the Plaintiffs' order;

(b) the representation was made by Mr Then with the intention that Mr Ling should act on it and deposit money into the WPS bank account;

(c) Mr Ling acted on the false representation by depositing money into the account; and

(d) the representation was made by Mr Then knowing full well that it was false.

103 As far as the fourth element is concerned (see [41] above), Mr Then did not dispute that US$5,148,000 and S$973,000 were received from the Plaintiffs.[110] However, Mr Then does dispute whether a further US$120,000 and S$250,000 were transferred to the WPS account by or on behalf of the Plaintiffs and raises issues concerning the purchase of Freelance Bank and as to the effect in law of the substitution of this bank for Royal Eastern Bank. These disputes are tied in with the issue of the 4 Million Representation to which I shall now turn.

The 4 Million Representation

104 Mr Ling gave evidence that sometime in November 2018, Mr Then told him that he had completed the purchase of Freelance Bank for US$4 million and that Mr Then handled all the documentation for this acquisition. Mr Ling states that he was comfortable with this as "I believed [Mr Then] and Walkers were our lawyers and would have carried out all necessary steps".[111]

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110 DCS at para 25.

111 Ling's AEIC at para 70.

105 In cross-examination, Mr Ling confirmed that he had signed a Sale and Purchase agreement to purchase the "Comoros" bank at the request of Mr Then but that the original document(s) were taken back by Mr Then. The passage of cross-examination contained the following extract:[112]

> Q. Thank you. Mr Ling, if I can just refer you to the second half of the page on 28, and I'll just read it out so everybody is on the same page as well. Yi Han is asking you a question: 'So it was transacted, then got receipt?' 'It was transacted', Mr Ling, can I confirm, from your understanding, 'it' was the purchase of the bank, the Comoros bank?
>
> A. Yes.
>
> Q. Thank you. And this is your response, Mr Ling: 'I remember specifically after, I remember specifically after that breakfast or lunch that we had at Shangri La, [that] we said that, okay, you know what, let's not waste time, because Reiner put it such a way that, you know, that Comoros is contingent on us buying the Curacao... but we say 'Why not? We just execute the Comoros first, and then when it's time to execute the Curacao, we just say, 'Yeah, we know, just, it takes so long, I don't care about you [and this bit is inaudible] and just return the 4.5 now, right?' Do you remember saying those words to [Mr Cheng] on that date?
>
> A. Yes.
>
> Q. Thank you. Yi Han's response is: 'Mmm.' And then you say: 'So we say, "Let's just execute the ...' And this part, unfortunately, is inaudible: '... and that's when I executed - in fact I still remember [inaudible] was there and then on that day that I sent the executed SPA?' Mr Ling, when you refer to 'SPA', what do you mean by 'SPA'?
>
> A. 'SPA' is sales and purchase agreement. I think there's something wrong with the transcript here. I mean it shouldn't be the day that I sent the executed SPA. I think it should be the day I signed it, if I'm not wrong.
>
> Q. Understood. So you confirm that the reference to 'SPA' is a sale and purchase agreement, and you also confirm, then, that you signed this sale and purchase agreement; correct?
>
> A. Correct.

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112 Transcript of 23 June 2021 pp 92:4-97:16.

Q. And this sale and purchase agreement was in respect of which company or which purchase, Mr Ling?

A. To purchase the Comoros bank.

Q. To purchase the Comoros bank. So did you sign one SPA in respect of the Comoros bank, or did you sign one SPA in respect of the purchase of the Comoros and the Curacao bank, or did you sign two SPAs, one for Comoros and one for Curacao? Three possibilities here.

A. If I remember correctly, it was one SPA for the Comoros bank, but it is very hazy, because when I signed that SPA on that day at Shangri-La, I -- you took back all the hard copies. I don't have any records of this SPA from that day onwards. I cannot really remember.

Q. All right. So we can at least agree that one sale and purchase agreement in respect of the Comoros bank was signed by you at Shangri-La; is that correct?

A. That's right.

Q. Thank you. And it is your position that I took the originals back?

A. I believe so, yes.

Q. You believe so or you're sure --

A. Yes.

Q. That I took the originals back?

A. Yes.

Q. Thank you, Mr Ling. Did you make a copy of the signed SPA, Mr Ling?

A. No.

Q. Then let me refer you to the last sentence of that extract, and I'm just reading on, your Honour: 'I will find the WhatsApp chats once we get back, I'll have a look there, yeah.' What do you mean by that, Mr Ling?

A. I think I was looking for the SPA, a copy of the SPA, as in a picture of the SPA in the WhatsApp chat, which I didn't find.

Q. Understand. So at that point in time on 17 June, you were of the opinion that you had a signed copy or executed copy of the SPA of the Comoros bank and that you kept a copy of it somewhere in your WhatsApp chats?

A. Rather, what I meant here was that I told [Mr Cheng] that I would take a look at my chats and see if I could find a picture of that executed SPA.

Q. Okay, I understand. The next line is [Mr Cheng]'s response: 'Yeah. Sure, sure, sure. But if we buy something...' And your response, Mr Ling, is: 'But remember I signed it on that... I can't remember, near that period of time, and we, I signed it, with the knowledge that it was for 4 bucks ...' Can you explain this sentence for us, Mr Ling?

A. I signed it for $4 million, '4 bucks' meaning $4 million.

Q. All right. Thank you, Mr Ling. Mr Ling, just to confirm again, you agree that you signed at least one sale and purchase agreement in respect of the Comoros bank; correct?

A. Yes.

Q. And you also agree that you had authorised the purchase of the Comoros bank for $4 million, correct, because that would have been referred to in the sale and purchase agreement?

A. I think I signed on behalf of the three of us, as the potential partners, yes, and we all agreed to buy.

Q. Right, I understand. And at that point in time, you thought that you still retained a copy of this signed agreement?

A. At that point of time, I thought I might have a picture of it in my WhatsApp chats. That's why I asked -- I told [Mr Cheng] I would go back and look. But I did not.

Q. So you confirm that you have gone through your records, and for whatever reason, a signed copy of a sale and purchase agreement, which was probably the most significant investment that you had made for the three of us, you, for whatever reason, do not have a copy of that document?

A. Not 'for whatever reason'. I remember very clearly it was in your good hands, all the paper was in your good hands.

Q. I understand that's what you're implying, Mr Ling, but from the way that you have conducted yourself, you like to take photos of things, after they have been done, for your own records. That is evidenced in your AEIC and in your pleadings. So I am just trying to confirm, and you are under oath, that you have no records of this signed sale and purchase agreement.

A. Yes, I have no records of it.

106 Mr Ling later amplified on his reasons for signing the SPA:[113]

> Q. Thank you. And, Mr Ling, when you authorised the acquisition of the Comoros bank for $4 million, pursuant to the sale and purchase agreement that you signed at Shangri-La, what were your thoughts as to the price tag or at least the agreed price of $4 million? What was your view?
>
> A. My view at that point of signing -- buying at $4 million this Comoros bank, was that I had a good partner and a general counsel, who was -- from a lawyer from a top law firm, who has advised me that it's a good deal to go ahead, and that was you.
>
> Q. So –
>
> A. I trusted your opinion, I trusted your advice, and I thought that we were just -- let me put some context here. We were eager to move and carry on business.

107 The Plaintiffs have therefore established a *prima facie* case that they agreed to purchase Freelance Bank on the representation that the purchase price was US$4 million, in reliance upon Mr Then's advice.

108 In paragraph 67 of his AEIC, Mr Ling identifies the Sums credited to the WPS account as follows:

> In total, relying on [Mr Then]'s representations and the matters pleaded above, the Plaintiffs transferred the total sum of US$5,268,000 and S$1,223,000 to WPS:
>
> a. On 23 April 2018: US$2,948,000;
>
> b. On 22 October 2018: US$2,200,000;
>
> c. On 11 October 2018: US$120,000 and S$250,000;
>
> d. On 18 October 2018: S$400,000; and
>
> e. On 2 November 2018: S$573,000.

109 Mr Then disputed that the US$120,000 and S$250,000 were ever received. However, Mr Ling was not cross-examined on this issue. The

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113 Transcript 23 June 2021 at pp 105:25-106:15.

Plaintiffs have therefore established a *prima facie* case that the Sums were credited to the WPS account for the benefit of the Plaintiffs.

110 In his AEIC, Mr Ling gives evidence about moneys paid out from the WPS bank account:[114]

> I first address the WPS bank statements, which are annexed hereto at 'AL-27' (the redactions were done by [Mr Then] and/or his solicitors as they were disclosed in this form). According to [Mr Then], who claims the statements reflect the use of the Plaintiffs' monies, this is how the Plaintiffs' monies were applied:

[114] Ling's AEIC at para 125.

Plaintiffs' transfer to WPS	Transfers out of WPS	Date
US$2,948,000 on 23 April 2018	US$ 2,000,101.85	24 April 2018
	US$ 206.29	24 April 2018
	US$ 200,005.85	24 April 2018
	US$ 15	24 April 2018
	US$ 25.97	24 April 2018
	US$ 251,000 (cheque)	30 April 2018
	US$ 149,300 (cheque)	30 April 2018
	US$ 55,000 (cheque)	8 May 2018
	US$ 104,068	9 May 2018
	US$ 203.64	9 May 2018
	US$ 15	9 May 2018
	US$ 182,537.38	8 June 2018
	US$ 204.55	8 June 2018
	US$ 15	8 June 2018
	US$ 64,000	8 June 2018
Sub-total	**US$ 3,006,698.53**	
US$ 2,200,000 on 10 October 2018	US$ 685,000 (cheque)	15 October 2018
	US$ 300,899.89	19 October 2018
	US$ 198.11	19 October 2018
	US$ 119,802.14	24 October 2018

	US$ 197.86	24 October 2018
	US$ 1,101,000 (cheque)	29 October 2018
	US$ 239,802.94	31 October 2018
	US$ 197.06	31 October 2018
	US$ 51,600	31 October 2018
Sub-total	**US$ 2,498,698**	
US$120,000 and S$250,000 in cash transferred on 11 October 2018	NA – Feng has refused to admit that this cash was for the bank	
S$400,000 transferred on 18 October 2018	S$100,000 (withdrawal in cash)	30 October 2018
	S$298,000 (cheque)	31 October 2018
Sub-total	**S$398,000**	
S$573,000 transferred on 1 November 2018	S$1,980	2 November 2018
	S$570,000 (cheque)	5 November 2018
Sub-total	**S$571,980**	

111 The accuracy of this table was not disputed in cross-examination. It can be seen that by 5 November 2018, the bank account was practically empty. The US$4 million necessary to purchase Freelance Bank was not available. Mr Ling states that "It appears that [Mr Then] was treating WPS as his personal piggy bank and the Plaintiffs' monies as his own".[115] I agree, at least to the extent that I accept that the Plaintiffs have established a *prima facie* case that this was the position.

115 Ling's AEIC at para 130.

112 The Plaintiffs have therefore discharged the evidential burden upon them to show that Mr Then's representation that the purchase price for Freelance Bank was US$4 million was untrue. Freelance Bank could not have been purchased for US$4 million on or around 6 November 2018, as pleaded by Mr Then,[116] when the WPS account was practically empty at that time. This transfers the burden onto Mr Then to demonstrate what moneys, if any, were expended in the purchase of the bank. He has elected not to adduce any evidence on this.

113 The only evidence is that of Mr Gaillard where he attested to the fact that he was told by one Mr Lazarov that the price was about EU$130,000 (see [94] above). The evidence of Mr Gaillard on this issue has to be viewed with considerable caution since it is hearsay evidence and is not supported by any contemporaneous documents. His evidence was challenged in cross-examination,[117] and as a result, there is significant uncertainty as to whether the sum of EU$130,00 related to the price of Freelance Bank or another offshore entity.

114 But the fact remains that Mr Then did not dispute that he was the prime participant in the purchase of Freelance Bank, yet he adduced no evidence of what was paid for the bank and no relevant documents were produced on discovery. The Plaintiffs accepted, during trial, that the bank was in fact purchased[118] and it was they who subpoenaed Mr Gaillard. The price paid was not, on the evidence, US$4 million and the only evidence of what might have been paid is Mr Gaillard's evidence.

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116 Defence at para 23.

117 T14/111/1-117/1 and 125/1-127/16

118 Transcript 23 June 2021 at pp 122/10-123/13

115 As against this, Mr Then sought to raise in cross-examination an issue concerning the apparent sale of a shares in Star Dust to a Mr Riady Tjandra in February 2019[119] for a sum of US$3,400,000.[120] Objection was taken to this line of cross-examination on the basis that any potential relevance to any issue in this action of the value apparently paid by Mr Tjandra for shares in Star Dust in February 2019 was not pleaded in the Defence[121].

116 I allowed the cross-examination to proceed on the basis that Mr Then was seeking to satisfy the court that because of the deal being done with Mr Tjandra, Mr Ling was well aware that Royal Eastern Bank existed. The cross-examination did not continue to consider the value placed on the shares in Star Dust and the relevance of that to the price paid for Freelance Bank. Had it done so, the objection taken by the Plaintiffs would have been well founded. The apparent sale of shares in Star Dust in February 2019 thus does not enable any light to be thrown on the price paid for Freelance Bank.

117 Whilst the evidence in relation to the price actually paid for Freelance Bank is unsatisfactory, this is primarily due to Mr Then's election not to call evidence. I am therefore left with no option other than to rely on the evidence adduced by the Plaintiffs through Mr Gaillard as establishing a *prima facie* case that the price was EU$130,000, not US$4 million.

118 Reverting then to the five essential elements of the tort of deceit: I hold that the Plaintiffs have established the following in relation to the 4 million Representation:

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119 Transcript 23 June 2021 at pp 168/16-169/3

120 9 AB 4353-4355

121 Transcript 23 June 2021 at pp 158/25-159/16 and 165/18-168/14.

(a) Mr Then falsely represented that the purchase price of Freelance Bank was US$4 million;

(b) the representation was made by Mr Then with the intention that Mr Ling should act on it and agree to the purchase of the bank for US$4 million;

(c) the Plaintiffs acted on this representation in authorising the purchase and relied on Walkers to release the relevant sums to the vendors from the WPS escrow account;

(d) the Plaintiffs suffered damage because the purchase price was not US$4 million and was instead no more than EU$130,000;

(e) the representation was made by Mr Then well knowing that it was false.

Conclusion on Deceit

119 The Plaintiffs are therefore entitled to succeed in their claim in deceit in relation to both false representations.

120 In reaching this conclusion, I have not found it necessary to consider or place weight upon the issue of the relationship between Star Dust and Gestalt. The evidence as to the Plaintiffs' knowledge of this is unsatisfactory and inconclusive. This is particularly so in relation to the difference, if any, between the banking licence they would have received with the purchase of Freelance Bank as opposed to that actually received from Royal Eastern Bank and the Plaintiffs did not dispute in their pleadings that Royal Eastern Bank had a licence.

Unjust Enrichment

121 In their written closing submissions, the Plaintiffs accepted that the relief available under the causes of action in deceit and unjust enrichment was the same and thus accepted that if the court acceded to the claim in deceit, it need not find for the Plaintiffs in unjust enrichment. They went on, however, to invite the court nonetheless to decide the claim in unjust enrichment. In the light of my findings of fact, I am satisfied that no useful purpose would be served by considering the additional cause of action in unjust enrichment and I therefore decline the Plaintiffs' invitation.

The Partnership Claim

122 If successful, the relief available for a claim under the Partnership Act (Cap 391, 1994 Rev Ed) ("Partnership Act") or for breach of fiduciary duties arising from a partnership may differ from that available for deceit.

123 However, before one reaches the question of relief, it is first necessary to reach a (*prima facie*) conclusion as to whether the relationship between the Plaintiffs and Mr Then constituted a partnership in the sense that they were carrying on a business in common with a view to a profit (s 1(1) of the Partnership Act).

124 The business in question here is the running of an offshore bank. The question of whether a partnership exists raises a mixed question of fact and law and all the surrounding circumstances have to be taken into account (see *Miller Freeman Exhibitions Pte Ltd v Singapore Industrial Automation Association and another* [2000] 3 SLR(R) 177 at [34]).

125 Whilst I accept that it is unnecessary for trading to have commenced before a partnership is established, it is necessary to identify a joint enterprise in which the parties have agreed to engage. In the present case, the facts before me do not in my judgment establish such a joint enterprise.

126 Mr Then was engaged as a solicitor experienced in international business matters to assist in the purchase of an offshore bank. The bank's office in Singapore was to be set up and operated by the Plaintiffs, more specifically, by Mr Ling. It was he who was travelling to generate business for the bank. It was he who obtained premises and engaged staff. Mr Then did nothing in furtherance of the business and was not expected to do so. He was to contribute capital towards the purchase of the bank for which he would receive a 15% shareholding but, in so far as the trading of the business is concerned, that was all.

127 This does not, to my mind, constitute a joint venture in the form of a partnership. He was an investor who also provided (or was expected to provide) legal services and nothing more. The claim in partnership accordingly fails.

Conclusion

128 Since the Plaintiffs have established a *prima facie* case in relation to deceit and Mr Then has elected not to call any evidence, it follows that the action in deceit succeeds and that the Plaintiffs are entitled to an award of damages.

129 The measure of damages for deceit seeks to put a plaintiff in the position he would have been in if the fraudulent representation had not been made.

130 The correct legal approach is set out by Andrew Phang Boon Leong JA in *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [28] where he said:

> 28. However, before proceeding to do so, one (more general) point needs to be noted because it will also figure in our application of the relevant law to the facts of this appeal. The point is a straightforward one and relates to the different objectives of awarding damages in contract and in tort, respectively. Indeed, it is yet another specific distinction underlying the more general difference between contract on the one hand and tort on the other. And it is effectively put in a leading textbook, as follows (see Edwin Peel, *Treitel on The Law of Contract* (Sweet & Maxwell, 12th Ed, 2007) at para 20-018):
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> > The object of damages for ***breach of contract*** is to put the victim 'so far as money can do it … in the same situation … as if the contract had been performed' [citing the leading decision of *Robinson v Harman* (1848) 1 Ex 850 at 855 154 ER 363 at 365]. ***In other words, the victim is entitled to be compensated for the loss of his bargain, so that his expectations arising out of or created by the contract are protected. This protection of the victim's expectations must be contrasted with the principle on which damages are awarded in tort: the purpose of such damages is simply to put the victim into the position in which he would have been, if the tort had not been committed.*** Of course, in many tort actions the victim can recover damages for loss of expectations: e.g. for loss of expected earnings suffered as a result of personal injury, or for loss of expected profits suffered as a result of damage to a profit-earning thing. But these expectations exist ***quite independently of*** the tortious conduct which impairs them: it is the nature of most torts to destroy or impair expectations of this kind, rather than to create new ones. ***Tortious misrepresentation does, indeed, create new expectations, but the purpose of damages even for that tort is to put the victim into the position in which he would have been, if the misrepresentation had not been made, and not to protect his expectations by putting him into the position in which he would have been, if the representation had been true.*** Such damages may be awarded in respect of losses which the victim could have avoided if he had been told the truth, and here again there is a sense in which the victim will recover damages for 'loss

> of a chance', but it is the chance of avoiding loss rather than that of making a profit for which he will be compensated. He may even be compensated for loss of profit if the tort impairs expectations which exist independently of it. In *East v Maurer* [1991] 1 WLR 461] the claimant was interested in buying a hairdressing salon and was induced to buy one belonging to the defendant by the latter's fraudulent representation. It was held that the claimant could recover (inter alia) damages in respect of *another* such business in which he would have invested his money if the representation had not been made, but not the profits which he would have made out of the defendant's business, if the representation relating to it had been true. In a contractual action, on the other hand, damages are recoverable as a matter of course for loss of the expectations created by the very contract for breach of which the action is brought. That is why damages of this kind are the distinctive feature of a contractual action.
>
> …
>
> [emphasis in original]

131 The issue of quantum was not addressed in detail in the Plaintiffs' Written Closing Submissions where the claims were put in the alternative[122] and was not considered at all in the Defendant's Written Closing Submissions. Both parties should therefore be given an opportunity to address the question of quantum in the light of the findings in this Judgment.

132 The Plaintiffs seek an award of interest on any sum awarded at 5.33% per annum. *Prima facie* they would appear to be entitled to this but Mr Then did not make any observations in his closing submissions and he should tender his submissions on this issue in the further written submissions if he wishes to do so.

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122 Plaintiffs' Written Closing Submissions para 2(c)

133 The parties should also include in their further written submissions any issues on ancillary relief and their arguments on costs, if not agreed. These further written submissions should be submitted within 21 days of the release of this judgment with an indication of whether the parties consent to those issues being decided on paper without an oral hearing.

Simon Thorley
International Judge

Tan Gim Hai Adrian, Hari Veluri and Feng Chong We (TSMP Law Corporation) for the plaintiffs in SIC/S 5/2020;
Lim Mingguan and Ngo Wei Shing (Providence Law Asia LLC) for the first defendant in SIC/S 5/2020;
Daniel Chia and Ker Yanguang (Morgan Lewis Stamford LLC) for the second and third defendants in SIC/S 5/2020 and the plaintiffs in SIC/S 8/2020;
the fourth defendant in SIC/S 5/2020 and the first defendant in SIC/S 8/2020 in person;
Tan Hee Joek (Tan See Swan & Co) for the first defendant in SIC/S 8/2020;
the second defendant in SIC/S 8/2020 unrepresented.