

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC(A) 35

Civil Appeal No 8 of 2022

Between

Gangadhara Brhmendra
Srikanth Maroju

... Appellant

And

Epoch Minerals Pte Ltd

... Respondent

In the matter of Suit No 79 of 2018

Between

Epoch Minerals Pte Ltd

... Plaintiff

And

- (1) Raffles Asset Management (S)
Pte Ltd
- (2) AKS Consultants Pte Ltd
- (3) Kamil Bin Jumat
- (4) Gangadhara Brhmendra
Srikanth Maroju

... Defendants

GROUNDS OF DECISION

[Tort — Conspiracy — Unlawful means]

[Restitution — Failure of consideration — Total failure of consideration]

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Gangadhara Brhmendra Srikanth Maroju

v

Epoch Minerals Pte Ltd

[2022] SGHC(A) 35

Appellate Division of the High Court — Civil Appeal No 8 of 2022
Belinda Ang Saw Ean JAD, Woo Bih Li JAD and Quentin Loh JAD
15 July 2022

12 October 2022

Belinda Ang Saw Ean JAD (delivering the grounds of decision of the court):

1 This was an appeal by Mr Gangadhara Brhmendra Srikanth Maroju (“Mr Maroju”), against the decision of a judge in the General Division (“the Judge”) in *Epoch Minerals Pte Ltd v Raffles Asset Management (S) Pte Ltd and others* [2021] SGHC 288 (“the Judgment”). The Judge found Mr Maroju jointly and severally liable with two other defendants for conspiring to injure the plaintiff, Epoch Minerals Pte Ltd (“EMPL”), by unlawful means in respect of a total payment of US\$600,000 that was given for a purpose that turned out to be untrue. Mr Maroju was also found to be liable for dishonest assistance in aiding the second defendant, AKS Consultants Pte Ltd (“AKS”), in breach of trust in respect of monies from EMPL. The Judge also found that there was total failure of consideration in respect of a sum of US\$100,000 that EMPL paid to Mr Maroju, who was consequently made personally liable to repay a sum of US\$100,000 to EMPL.

2 We heard the appeal on 15 July 2022 and dismissed it. We now give our reasons.

The background facts

3 We begin by briefly setting out the background facts. EMPL was part of the “Lotus” group of companies, in which one Mr Madan Sharma (“Mr Sharma”) was a director. In 2014, Mr Sharma’s business associate introduced him to Mr Maroju, who was at that time a private banker with Standard Chartered Bank. Both individuals subsequently met and Mr Sharma told Mr Maroju that the Lotus group was looking to obtain financing from third parties to expand its business operations. Mr Maroju then informed Mr Sharma that he had extensive contacts and would keep a lookout for potential investors for the Lotus group.

4 Sometime in September 2016, Mr Maroju informed Mr Sharma that he found a Singapore-based investor for EMPL. This “investor”, which was later ascertained to be Raffles Asset Management (S) Pte Ltd (“RAM”), agreed to provide financing to EMPL. Mr Veerappan Subramaniam (“Mr Veerappan”), a consultant at AKS, had introduced RAM to Mr Maroju. AKS was said to be in the business of providing business and management consultancy services. Mr Veerappan’s wife, Amirthavalli d/o Lekshmanan, was an 80% shareholder of AKS. The remaining 20% shares in AKS were held by Mr Kamil bin Jumat (“Mr Kamil”). Mr Kamil was also the sole director and 100% shareholder of RAM.

5 EMPL arranged for payments totalling US\$700,000 to be made for the purported financing transaction. EMPL pleaded that the payments were made pursuant to the following representations by Mr Maroju around September

2016: (a) the investor will make an investment of US\$5m by end-2016 through the issuance of a convertible bond; and (b) the payments were a pre-condition to EMPL securing the financing. The payments comprised the following: (a) US\$100,000 as personal commission to Mr Maroju, because the financing was “as good as secured”; (b) US\$200,000 in “margin money”, a sum that EMPL had to first put up in order to obtain the required financing; and (c) US\$100,000 in fees payable to AKS for AKS’s preparation of a due diligence report for the investor. The margin money was also to be held by AKS as an independent custodian. Sometime in October 2016, the investor agreed to increase the investment in EMPL from US\$5m to US\$10m. The initial sum of US\$200,000 in margin money was therefore also increased to US\$500,000, and EMPL subsequently arranged for a further US\$300,000 to be paid for the purported financing transaction.

6 Although Mr Maroju denied making these representations, it appeared from his pleadings that he did actually inform Mr Sharma of the following: (a) the investor was able to provide the required financing; (b) the investor required the payment of a sum of “margin money” for that financing and the margin money was to be placed with it as a deposit; and (c) AKS could assist with a due diligence exercise, for which AKS required advance fees of US\$100,000. This followed from Mr Maroju’s claim that he had been informed of these matters by AKS, and he had forwarded the same information to Mr Sharma. It was Mr Maroju’s position that the “investor” referred to in communications with AKS and Mr Sharma between September 2016 and December 2016 was RAM, although it appeared that, at this stage, RAM had not been identified as the “investor” to EMPL (see [7] below). In addition, from the averments in the pleadings, it did not appear to be in dispute that Mr Maroju, who was without doubt EMPL’s only point of contact in the initial stages of the

purported financing transaction, did make some representations about an investor (which turned out to be RAM), that the investor required the payment of “margin money” for the transaction, and that AKS required the payment of due diligence fees.

7 The purported financing was initially promised to come through by end of 2016, but in the event, it did not. Mr Sharma then chased Mr Maroju to expedite the financing and eventually Mr Maroju informed him that the investor would provide the financing in three tranches in January 2017, with payments to be made on the 9th, 16th, and 23rd. Then, on or around 2 January 2017, Mr Maroju e-mailed Mr Sharma a draft version of the term sheet for the financing transaction. The draft term sheet provided for different payment timelines from what Mr Maroju had earlier promised Mr Sharma. It provided for payment to be made in two equal tranches, with the first payment made by or on 31 January 2017, and the second payment to be made on or after 30 days from the first payment. The draft term sheet was also the first document identifying RAM as the investor. Later, on or around 13 January 2017, a copy of this term sheet signed by Mr Kamil on behalf of RAM was provided to Mr Sharma through Mr Maroju (“the Term Sheet”). The Term Sheet was largely similar to the draft term sheet save that it provided for a slightly different payment timeline. It stated that: (a) RAM would provide financing of US\$5m to EMPL by 31 January 2017 and a further US\$5m by 24 February 2017; and (b) the margin money (which had since been increased to US\$500,000) would be set off against EMPL’s repayment of the financing. In connection with the purported financing, Mr Kamil also visited offices of the Lotus group to perform a due diligence exercise.

8 In early March 2017, the promised financing was still not provided. Mr Sharma (on behalf of EMPL) then gave instructions to Mr Maroju for the financing transaction to be cancelled and for the margin money to be refunded. However, the margin money was never refunded. Mr Sharma then repeated his instructions to Mr Maroju on two further occasions (7 March 2017 and 10 March 2017). On the latter occasion, Mr Maroju informed Mr Sharma that the refund would be made by 15 March 2017. Another of the Lotus group’s director, Mr Amarpreet Singh (“Mr Singh”), who was based overseas, arranged to travel to Singapore on 15 March 2017 to oversee the refund. However, at the last minute, Mr Maroju told Mr Amarpreet to hold off his visit until 17 March 2017.

9 On 17 March 2017, RAM informed EMPL by way of a letter signed by Mr Kamil that RAM was withdrawing from the financing transaction, and that it was applying to its “principal” for a refund of the margin money (“the 17 March 2017 Letter”). RAM’s stated reason for its withdrawal was EMPL’s inability to fulfil the conditions as set out in the Term Sheet. EMPL pleaded that this was the first time it came to know that the margin money was no longer held by AKS and that it had been transferred to a third party without EMPL’s notice and consent. It would also have been at this time that EMPL learnt for the first time that the funding was to be provided by some entity other than RAM itself, contrary to what EMPL learnt from the Term Sheet, which identified RAM (and there was no reference to any “principal”) as the investor. In any event, despite the 17 March 2017 Letter, the margin money was never refunded.

10 As it turned out, AKS had, on 9 November 2016, transferred the margin money to one Michael J Schiff (“Mr Schiff”), who was the escrow agent of a Nevada-incorporated company called Clear Point Enterprise Inc (“Clear

Point”). The transfer of the margin money to Mr Schiff was pursuant to a contract entered into between AKS and Clear Point on 4 November 2016 (“the Clear Point Contract”), under which AKS agreed to provide Clear Point with US\$500,000 in escrow in exchange for Clear Point paying AKS a guaranteed sum of US\$1.75m per week for 40 weeks starting from the date Mr Schiff receives AKS’s payment. Later, on 27 January 2017, the margin money was transferred from Mr Schiff to one H Cy Schaffer (“Mr Schaffer”), who was the escrow agent for another company, Salt Lake Ore AG (“SLO”). This was done pursuant to a contract entered between AKS and SLO on 26 January 2017 (“the SLO Contract”), under which AKS was to transfer the margin money to Mr Schaffer as SLO’s escrow agent in exchange for SLO providing financing of US\$13.5m to AKS.

11 EMPL sued RAM, AKS, Mr Kamil and Mr Maroju on 24 January 2018. EMPL’s action against the first defendant, RAM, was stayed on account of an arbitration clause found in the Term Sheet. EMPL therefore continued with the proceedings against the other three defendants, AKS, Mr Kamil and Mr Maroju. EMPL contended that Mr Maroju had made representations to it in connection with the purported financing transaction, all of which were untrue, as part of a conspiracy with the other defendants to defraud it of the US\$700,000 that it had arranged to be paid. EMPL also contended that there was never any legitimate financing transaction in existence, that the due diligence exercise had merely been a façade, and the purpose of the defendants’ scheme had simply been to defraud EMPL of the margin money and the due diligence fee. EMPL pleaded that AKS held the margin money on trust, and that AKS had acted in breach of trust by transferring the margin money to unrelated third parties for its own benefit, and further, that Mr Kamil and Mr Maroju had dishonestly assisted in such breach of trust. EMPL also pleaded that Mr Maroju was personally liable

to return the sum of US\$100,000 in personal commission because, since the purported financing transaction did not materialise, the consideration for the commission had wholly failed.

12 The defence of AKS and Mr Kamil, put simply, was that the purported financing transaction was legitimate. AKS's respective contracts with Clear Point and later SLO were legitimate transactions, pursuant to which the promised US\$10m in financing for EMPL was to be obtained, and the margin money had been transferred to their respective escrow agents for the purpose of obtaining the funds required for the promised financing. According to them, it had always been part of the purported financing transaction that the margin money would be transferred to Mr Schiff, and then Mr Schaffer, as the respective escrow agents of RAM's "ultimate principals", and this was a fact that Mr Maroju knew of from the outset. In the event, the financing transaction fell through because of EMPL's inability to satisfy the requirements of the due diligence exercise. Attempts were made to obtain a refund of the margin money, but that too failed because Mr Schaffer had absconded with those monies.

13 On the other hand, the defence of Mr Maroju was that whatever scheme the other defendants had intended to perpetrate on EMPL, he was not a party to the same since his role was limited to that of introducing investors to EMPL, and at all times, he had simply been coordinating communication between AKS/RAM and EMPL. Mr Maroju accepted that he knew of the involvement of a third-party "funding principal", but his position was that he never specifically knew of the involvement of Clear Point and SLO in the financing transaction, and that he never knew that the margin money had already been transferred to third parties by AKS until he saw the 17 March 2017 Letter. Moreover, it was Mr Maroju's case that the US\$100,000 paid to him had been

remuneration promised to him by Mr Sharma for the time and expense that he had incurred in assisting Mr Sharma up to that point in time, and was not commission for the financing transaction, and so he was not liable to return the same to EMPL.

The Judge’s decision

14 The Judge accepted EMPL’s case that it had made payments amounting to US\$600,000 to AKS for obtaining the promised US\$10m financing from a Singapore-based investor, later ascertained to be RAM, as described in the Term Sheet. The payments to AKS comprised the margin money, which was to be held as a “deposit”, and the remaining US\$100,000 were fees for the due diligence exercise (see the Judgment at [3]). The Judge found that those were not the purposes to which EMPL’s payments to AKS had been applied. The purpose for paying the US\$600,000 to AKS was untrue as it was based on a lie (see the Judgment at [8]). The margin money of US\$500,000 was not retained as a “deposit” but had been transferred by AKS to third parties for AKS’s own financial gain (see the Judgment at [24]). The Judge therefore disbelieved AKS’s and Mr Kamil’s defence that Clear Point and SLO were RAM’s “funding principals” from which the US\$10m financing promised to EMPL was to be obtained. As for the due diligence fee of US\$100,000, the Judge found that no due diligence exercise had in fact been carried out and that the due diligence fee was part of the fraud (see the Judgment at [19]). Equally, since the purported financing transaction did not materialise and the margin money was used for AKS’s own financial gain, the Judge found that the US\$100,000 in commission to Mr Maroju, which had been paid in connection with that transaction (see the Judgment at [14]), was part of the overall conspiracy to defraud EMPL (see the Judgment at [23]).

15 Given the Judge’s finding of fraud – namely, that the purposes to which EMPL’s payments had been applied were not those that had been told to Mr Sharma – the Judge found it unnecessary to consider if the Clear Point Contract and the SLO Contract were legitimate contracts for the obtaining of financing, and also because neither Clear Point nor SLO was a party to the proceedings (see the Judgment at [22]). In any case, for completeness, we note that, on the face of the Clear Point Contract and the SLO Contract, which were entered into as between AKS and Clear Point/SLO (respectively), there was nothing to suggest that there had been any relationship between Clear Point/SLO on the one hand and RAM on the other, nor was there any suggestion in those contracts that Clear Point/SLO was RAM’s “funding principal”. Importantly, there was also nothing in the Clear Point Contract and the SLO Contract obliging AKS to provide the funds obtained thereunder to EMPL for the purposes of the purported financing transaction, or any mention that EMPL was the ultimate entity to be funded under those contracts.

16 For the reasons set out above (at [14]), the Judge accepted EMPL’s case that AKS, Mr Kamil and Mr Maroju had conspired to defraud it of a total sum of US\$700,000 and found them all jointly and severally liable to EMPL for that sum (see the Judgment at [23]). The Judge did not believe Mr Maroju’s claim of non-involvement in that he was merely a conduit to pass on information. The Judge found that Mr Kamil and Mr Maroju were “enjoined at the stem” in connection with the fraud, and specifically, that Mr Maroju was the “lead actor, the man at the heart of the fraud” (see the Judgment at [21] and [25]). The Judge also accepted that a trust had arisen when the margin money was transferred to AKS, or alternatively, a *Quistclose* trust had arisen in respect of the monies (see the Judgment at [24]). AKS had therefore acted in breach of trust by transferring the margin money first to Mr Schiff and later to Mr Schaffer, for AKS’s own

investments promising bigger gains. The Judge therefore found both Mr Maroju and Mr Kamil liable for dishonest assistance in the aid of AKS's breach of trust (see the Judgment at [23]). Given the Judge's finding that the US\$100,000 paid to Mr Maroju had been commission for the purported financing transaction, the Judge held that Mr Maroju was personally liable to return that sum for total failure of consideration as the transaction had fallen through, contrary to Mr Maroju's assurance that it was "as good as done" (see the Judgment at [23]).

17 Finally, the Judge noted that it did not matter that the action against RAM had been stayed in so far as the claims before the Judge were concerned. RAM's corporate veil was pierced because the fraud in this case was so obvious that Mr Kamil (who was the sole director and 100% shareholder of RAM) could not hide behind RAM's corporate veil (see the Judgment at [20]). RAM was to be regarded as Mr Kamil and *vice versa*.

Mr Maroju's appeal

18 AKS and Mr Kamil did not appeal against the Judge's decision. Mr Maroju was the sole appellant. He made the following contentions in his Appellant's Case:

(a) The Judge erred in finding that there had been fraud in connection with the margin money and due diligence fee.

(i) On the margin money, Mr Maroju reiterated Mr Kamil's and AKS's evidence that the Clear Point Contract and the SLO Contract were legitimate financing transactions and that the margin money had been lost only because AKS itself had been defrauded by Mr Schaffer (see also [12] above). Mr Maroju also pointed out that both the Term Sheet, as well as another

document referred to as the “Macro Terms”, did not impose restraints on what RAM could do with the margin money and also did not state that the holder of RAM’s “nominated bank account” (which was not disputed to be AKS) into which the margin money was to be deposited was subject to any duties to EMPL for the margin money, and thus the transfer of the margin money by AKS to third parties did not amount to fraud. To explain, the Macro Terms was a one-page document dated 14 October 2016 carrying RAM’s letterhead setting out RAM’s financing proposal to EMPL. Mr Maroju claimed that he had handed to Mr Sharma a printed copy of the Macro Terms at a meeting on 14 October 2016. This was however denied by Mr Sharma in his evidence, and he maintained that he had never seen a copy of the Macro Terms. We will elaborate on the significance of this point later (see [34] below).

(ii) On the due diligence fee, Mr Maroju argued that, since AKS had agreed to pay the due diligence fee, and it being undisputed that AKS did perform some work for the due diligence fee it had received, there could be no fraud.

(b) The Judge erred in finding that the US\$100,000 was received by him as commission for the financing transaction. The US\$100,000 was in fact his remuneration for the time and expenses he had incurred in assisting Mr Sharma at his requests, and hence he was not liable to return it to EMPL. Alternatively, EMPL was estopped from recovering it because Mr Sharma had assured him that that sum was his to keep.

(c) The Judge erred in finding that he had been a party to the conspiracy with the other defendants to injure EMPL by unlawful means, because his role had been limited to that of a conduit of information between EMPL and the other defendants.

(d) The Judge erred in finding that the margin money was held on trust by AKS. First, the Term Sheet and the Macro Terms did not state that the margin money was subject to a trust. Secondly, the Term Sheet did not impose any restraints on what RAM or AKS (as the holder of RAM's "nominated bank account" under the Term Sheet and the Macro Terms) could do with the margin money. Finally, he did not dishonestly assist in any such breach of trust in connection with the margin money. There was no evidence of his involvement in AKS's decision to transfer the margin money to Clear Point's and then later SLO's respective escrow agents.

19 For the purposes of the appeal, we focused first on Mr Maroju's contentions that were made in connection with the Judge's findings on the existence of a fraud in relation to the margin money and the due diligence fee, and that the margin money had been held on trust by AKS. We then turned to Mr Maroju's remaining contentions, in which he disputed his personal liability to return the US\$100,000 paid to him by Mr Sharma and challenged the Judge's findings pertaining to his personal liability derived from his participation in the fraud or AKS's misappropriation of the margin money, namely, that he had been a party to the conspiracy to defraud EMPL and that he had dishonestly assisted AKS's breach of trust.

Mr Maroju’s challenge against the Judge’s findings on fraud and the existence of a trust over the margin money

20 We considered the Judge’s finding on the existence of a fraud in relation to the margin money with reference to Mr Maroju’s pleaded case and evidence as well as the arguments that he made before the Judge. This approach was required to review the Judge’s findings and determine whether they were correctly made.

21 Before the Judge, Mr Maroju simply put EMPL to strict proof of fraud in relation to the margin money and the due diligence fee. He aligned himself with the other defendants who took the position that the evidence adduced by EMPL was insufficient to prove EMPL’s case in law (see the Judgment at [23]).

22 On the evidence, according to Mr Maroju, it was Mr Veerappan from AKS who informed him about RAM’s interest to participate in the purported financing transaction, and RAM’s requirement for the payment of “margin money” as a precondition to it providing the required financing (see [6] above). Mr Maroju then communicated this to Mr Sharma, and in doing so, his role was “limited to that of a conduit” between Mr Sharma and AKS, in that he “only conveyed what had been told to [him] by either party”.

23 On the pleadings, at para 43C of EMPL’s Statement of Claim (Amendment No 2), it stated that the transfer of the margin money to Mr Schiff and then Mr Schaffer show that the margin money had been misappropriated by AKS and Mr Kamil for their “own wrongful use and benefit” and that the Clear Point Contract and the SLO Contract were unrelated to the purported financing transaction. Mr Maroju’s response, as set out at para 40D of his Defence (Amendment No 2) (“the Defence”), was that this “[did] not relate to matters

within [his] knowledge”. He stated at para 44 of the Defence that, at all material times, his role was limited to that of “introducing potential investors or potential financiers to the Lotus Group entities, at Mr Sharma’s request”. Mr Maroju also reiterated at para 44 that, at all material times, his role was limited to that of “acting as a conduit between [EMPL], [RAM] and/or [AKS] to coordinate communications between them, at Mr Sharma’s request”. Also, Mr Maroju claimed that he never knew that Mr Kamil (a director of RAM) was also a director of AKS, until Mr Sharma and Mr Singh discovered that that was the case and informed him about the same.

24 In closing submissions, Mr Maroju raised two arguments on fraud in relation to the margin money. First, Mr Maroju argued that, even if he had made the representations about the purported financing transaction to Mr Sharma which the latter alleged he made (see [5] above), those representations were not fraudulent because Mr Maroju did not make them with the knowledge that they were false. The alleged representations, according to Mr Maroju, “convey[ed] no more than ... what Mr Veerappan and Mr Kamil had represented to Mr Maroju”. Mr Maroju also claimed that he was not involved in the Clear Point Contract and the SLO Contract, or indeed, in whatever RAM and/or AKS was doing in connection with the purported financing transaction. The second point made by Mr Maroju was a repeat of that which Mr Kamil and AKS also made (see [6] above), namely, that the Clear Point Contract and the SLO Contract were legitimate transactions which show that “RAM was trying to obtain the US\$10[m] to finance EMPL” and that the margin money only became unrecoverable because RAM itself had been scammed.

25 Drawing everything together – the evidence, pleadings and closing submissions – it was clear that in the appeal, Mr Maroju’s denial of fraud in

relation to the margin money was founded on two grounds. First, he believed whatever had been told to him by Mr Veerappan/AKS about the financing transaction to be true, and that was also why he believed the financing transaction as not to constitute a fraud. Second, in any case, whatever scheme the other defendants intended to perpetrate on EMPL, he had no part to play in it and he also had no knowledge of the same, and thus even if fraud had been perpetrated on EMPL, he could not have been aware of it. Inferentially, this also meant that Mr Maroju had no way of knowing if the financing transaction was *actually* legitimate as Mr Veerappan's representations would have informed him, and as Mr Kamil and AKS claimed it was (see [12] above), because his knowledge about the transaction was only as good as what others had told to him. Mr Maroju led no other evidence to show that the margin money had *not* been used for a fraudulent purpose. As it turned out, the Judge rejected (and rightly so) the evidence of AKS and Mr Kamil. We will elaborate on this below. Suffice to say for now that it would be an uphill task for Mr Maroju to persuade us to interfere with the Judge's finding on fraud in relation to the margin money.

26 Mr Maroju faces the same difficulty in respect of the Judge's finding on the due diligence fee. According to Mr Maroju, it was Mr Veerappan who informed him about of the need for a due diligence exercise, and that AKS would be able to provide the due diligence service at a fee of US\$100,000. During the due diligence process, Mr Maroju again "acted as the conduit between [EMPL], RAM and/or AKS" and "only conveyed what had been told to [him] by either party". Where issues had arisen in the due diligence process, his role was limited to that of "assisting in the communication between the parties" and to "facilitate the conversation between [them]" to resolve those issues. Mr Maroju was not personally involved in the due diligence process and he was also not given specific details on how the due diligence exercise would

be conducted. Mr Maroju also stated that the signing of the Term Sheet was not conclusive of the financing transaction and EMPL still had to satisfy the due diligence process in order for the transaction to proceed. Mr Maroju also pleaded that he understood EMPL's failure to satisfy the due diligence exercise as the reason why the purported financing transaction eventually fell through. We noted that Mr Maroju had also argued that Mr Sharma had voluntarily agreed to pay the due diligence fee at AKS's proposal, but that submission was just as good as saying that the due diligence exercise had been legitimate and was not fraudulent.

27 Again, Mr Maroju's denial of fraud in connection with the due diligence fee was founded on grounds similar to those that he had relied on in denying fraud in relation to the margin money. First, he believed the due diligence exercise to be genuine and legitimate as it appeared to him on its face, and as what had been told to him by Mr Veerappan and Mr Kamil (the latter was involved in performing the due diligence exercise and had visited the Lotus group's offices and requested from Mr Sharma financial information on EMPL), which he believed. Secondly, he was never personally involved in the due diligence exercise and thus, inferentially, it meant that he had no way of knowing if it was actually legitimate. Again, Mr Maroju led no other evidence of his own to show that the due diligence exercise had *not* been part of the fraud. As it turned out, the Judge rejected (and rightly so) the evidence of AKS and Mr Kamil. We will elaborate on this below. Suffice to say for now that it would also be an uphill task for Mr Maroju to persuade us to interfere with the Judge's finding on fraud in relation to the due diligence fee.

28 We now turn to the Judge's finding that the margin money was held on trust by AKS. Before the Judge and also before this court, Mr Maroju tried to

argue that AKS did not hold the margin money on trust because the evidence showed no restraints on what RAM or what the holder of RAM’s “nominated bank account” (which was not disputed to be AKS) could do with the margin money. It is however important to note that EMPL’s case on trust was founded on the fact that AKS held the margin money as an ‘independent custodian’ for the purposes of the purported financing transaction. It was also on the basis of AKS’s role as such an ‘independent custodian’ that the Judge accepted EMPL’s case that AKS held the margin money on trust (see the Judgment at [24]).

29 On that point, AKS accepted at paras 14(2) and 46 of its Defence (Amendment No 2) that it held the margin money as a “custodial agent” or “initial custodian” for the purposes of the purported financing transaction, and that it was at Mr Maroju’s request that the margin money was kept separately, though it denied the existence of a trust. Mr Maroju denied giving the said instructions, but his position was that it had been RAM that appointed AKS to “hold the [margin money] pending transfer to RAM’s funding principal at RAM’s instruction”. Mr Maroju did not deny or object to AKS’s acceptance that it held the margin money as a custodian, save that the circumstances in which AKS came to hold the margin money did not concern him because he was “not privy to the contractual arrangements between RAM and AKS”.

30 In order for Mr Maroju to challenge the Judge’s finding on trust, he must show that the Judge erred in concluding that a trust existed from the fact that AKS held the margin money as an independent custodian for the purposes of the purported financing transaction (see also [33] below). However, given Mr Maroju’s position that it was RAM that appointed AKS to hold the margin money, and that he was himself not privy to the contractual arrangements between RAM and AKS, he necessarily also put forth no material before the

Judge contradicting AKS's acceptance in its defence that it was a "custodian" of the margin money. On the issue of whether a trust existed over the margin money, Mr Maroju therefore effectively also aligned himself to the positions taken by AKS and Mr Kamil (whom the Judge had regarded as RAM and *vice versa*: see [17] above) and led no evidence to the contrary. As it turned out, the Judge found (and rightly so) against AKS on the existence of a trust over the margin money. We will also elaborate on this below. Suffice to say for now that it would also be an uphill task for Mr Maroju to persuade us that the Judge's finding on trust should be interfered with, as it was the case with the Judge's findings on fraud.

31 We now elaborate on why, in our view, the Judge's findings that fraud had been committed on EMPL in relation to the margin money and due diligence fee and that AKS held the margin money on trust, were correctly made. Specifically, in connection with the margin money, it is not in dispute that the actual purpose to which the margin money had been deployed was simply inconsistent with the purpose which EMPL believed it was putting up the margin money for. The margin money had been put up as a "deposit" for the purpose of the purported financing transaction and Mr Sharma could never have known, from the representations which Mr Maroju accepted he had made to Mr Sharma (see [6] above), that the margin money might eventually come to be transferred to third parties, whatever purpose for which such a transfer was to be made. It followed from that inconsistency in and of itself that a fraud had been perpetrated on EMPL in connection with the margin money. The documentary evidence before us also shows that the Judge's finding that the purported financing transaction was a fraud was not against the weight of the evidence. There is nothing on the face of the Clear Point Contract and the SLO Contract which suggests that Clear Point and/or SLO were RAM's "funding

principal” or that the entity to be ultimately funded under those contracts was EMPL (see [15] above). Those contracts had been entered into between Clear Point/SLO and AKS, and RAM was never a party to those contracts. There was also no suggestion that EMPL was to be a party to any funding arrangement involving Clear Point and/or SLO. This leads to the second point which is on due diligence.

32 Assuming for the sake of argument, as AKS and Mr Kamil had maintained before the Judge (see [12] above), that the Clear Point Contract and the SLO Contract were indeed contracts with RAM’s “funding principal” and from which the promised financing was to be obtained for the purported financing transaction, it was not stipulated in these contracts that a “due diligence” exercise had to be performed nor that EMPL was to be the subject of such an exercise. As counsel for Mr Maroju accepted at the hearing before us, there was also no evidence that RAM’s “funding principals” (whoever they were) had requested for a due diligence to be performed on EMPL, and neither was any such due diligence report prepared. Therefore, on the available evidence, there was also no justification for AKS to charge any such due diligence fee in connection with the purported financing transaction and so the Judge was correct to regard the due diligence fee as being part of the fraud.

33 Turning to the issue of trust over the margin money, we were satisfied on the evidence that the margin money was not meant to be freely at AKS’s disposal as it had been put up specifically as a deposit for the purported financing transaction, and the Term Sheet also stated that the margin money was to be used to set off the eventual repayments due from EMPL. The evidence of exclusivity of purpose for a *Quistclose* trust to arise was also satisfied (see generally *Wei Ho-Hung v Lyu Jun* [2022] SGHC(A) 30 at [35]–[52]).

Mr Maroju had therefore not demonstrated to us that the Judge had erred in concluding, on the evidence before him, that the transfer of the margin money was impressed with a trust or that there was sufficient evidence to meet the relevant legal threshold for establishing the existence of a *Quistclose* trust over the margin money.

34 As we mentioned earlier, Mr Maroju relied on the Macro Terms, a printed copy of which Mr Maroju claimed he handed to Mr Sharma on 14 October 2016, but which Mr Sharma denied ever receiving (see [18(a)(i)] above). The Judge did not deal with the issue of whether Mr Sharma did ever receive a printed copy of the Macro Terms. That is understandable since the Marco Terms are irrelevant. First, it was undisputed that the purported financing transaction was governed by the Term Sheet, and *not* the Macro Terms – it was the Term Sheet that Mr Kamil had signed, and the promised financing was also to be disbursed according to the schedule as set out in the Term Sheet (see [7] above). That being the case, so far as the purported financing transaction was concerned, the purported Macro Terms which were chronologically earlier would logically have been superseded by the Term Sheet. Second, and in any case, nothing in the Macro Terms suggested that the Judge’s findings on fraud and trust was wrong. According to the Macro Terms, the funds which EMPL had to provide as the margin money (described as a “margin” or “margin funds” in that document) was for the specific purpose of EMPL obtaining financing, and nothing in that document would have intimated to Mr Sharma (assuming he had seen the Macro Terms) that the funds might eventually come to be transferred to third parties for other uses. It was also clear from the Macro Terms that the funds were to be provided for the limited purpose of the financing transaction, and nothing in that document suggested that they were to be at the

free disposal of the holder of RAM’s “nominated bank account” into which the funds were to be deposited.

Other issues in Mr Maroju’s appeal

35 We now turn to the part of the appeal that pertains to Mr Maroju’s personal liability derived from his participation in the fraud and/or AKS’s misappropriation of the margin money, namely, whether he had been a party to the conspiracy to defraud EMPL and whether he had dishonestly assisted in AKS’s breach of trust. The other remaining issue in the appeal relates to the sum of US\$100,000 paid to Mr Maroju, namely, whether Mr Maroju received this sum of money as advance commission for the purported financing transaction, and not as personal remuneration for past services and expenses, as the Judge had found.

Whether the Judge correctly found that Mr Maroju was a party to the unlawful means conspiracy

36 We first set out the legal principles applicable to this question. First, an appellate court’s power of review with respect to findings of fact made in the course of trial is limited especially where oral evidence is concerned, but the appellate court can and should overturn any such finding if it can be established that the trial judge’s assessment is plainly wrong or against the weight of the evidence (see *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [41]). Second, in order to establish a combination between Mr Maroju and the other defendants, it must be shown that there was an agreement amongst them to defraud EMPL and that concerted action had been taken pursuant to that agreement (see *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at

[112]–[113]). By its nature, such an agreement or combination is rarely expressed; the unlawful acts themselves taken together with the relevant surrounding circumstances can justify the inference that their commission was the product of concert between the alleged conspirators (see *The “Dolphina”* [2012] 1 SLR 992 at [262]–[264]).

37 Mr Maroju’s *main* contention before the Judge and in this appeal was that he had simply assisted as a conduit of communication between EMPL and the other defendants, and he was not involved in whatever scheme the other defendants might have had in mind, and so the Judge erred in finding that he was a party to the conspiracy to defraud. In considering if there was any merit in this contention, it was important to first determine *what* Mr Maroju actually knew about the purported financing transaction, because it is in the light of that knowledge that Mr Maroju’s actions can be assessed, with a view to determining if those actions indeed show that he had been acting as a mere conduit, or if they could justify the inference that there was a combination between him and the other defendants to defraud EMPL.

38 Mr Maroju’s position was that, while he knew of the existence of a “funding principal”, in that the funding was not to be provided by RAM itself, he did not know that this “funding principal” was to be Clear Point and/or SLO, and he also did not know of the existence of the Clear Point Contract and/or the SLO Contract. Also, Mr Maroju claimed that he did not know that the “margin money” had been transferred to Clear Point and/or SLO, and he had been under the belief that the “margin money” remained to be held by AKS, until he saw the 17 March 2017 Letter.

39 The Judge rejected Mr Maroju’s evidence. He found that Mr Maroju was “fully aware that the margin money was transferred from AKS to Mr Schiff, and from Mr Schiff to Mr Schaffer, as the e-mail communications from Mr Schiff and Mr Schaffer to AKS were forwarded to him” (see the Judgment at [25]). It is common ground that these e-mail communications which the Judge referred to were *three* e-mails sent by Mr Veerappan to Mr Maroju and which had been admitted into the evidence. Their contents were as follows.

(a) On 3 November 2016, Mr Veerappan sent an e-mail to Mr Maroju titled “Timeline for US Client funding” in which mention is made of how a loan of US\$10m can be made available to the “client”. This e-mail attached a copy of the Clear Point Contract.

(b) On 7 February 2017, Mr Veerappan forwarded to Mr Maroju an e-mail from Mr Schaffer about the release of monies under the terms of the SLO Contract. In this e-mail, Mr Veerappan told Mr Maroju, “[p]lease refer to the e-mail below [referring to the e-mail from Mr Schaffer] for the dates and so on from the Escrow Attorney”.

(c) On 10 February 2017, Mr Veerappan sent to Mr Maroju another e-mail, informing Mr Maroju that “[w]e have just finalised the trip to LA and Las Vegas to finalise the payout for the funding from Paymaster since the funds are moving into account of the PayMaster as per the confirmation from the Escrow Attorney”. In that e-mail, Mr Veerappan also informed Mr Maroju about the total estimated travel costs incurred for the trip.

40 Mr Maroju was cross-examined on the contents of these e-mails. In connection with the 3 November 2016 e-mail attaching a copy of the Clear Point

Contract, Mr Maroju's evidence was that this e-mail did not relate to EMPL's financing transaction, and he did not know that Clear Point was the "funding principal" for that transaction. As for the 7 February 2017 e-mail, Mr Maroju explained that it had been sent to him to inform him of the progress that had been made in respect of securing the funds required for EMPL's financing – in his words, Mr Veerappan was trying to tell him by this e-mail "it is under process, please wait". However, Mr Maroju denied that this e-mail showed that he had been aware of the role that SLO played in the financing transaction, and that he was being updated by Mr Veerappan as to the status of the procurement of funds from SLO. Finally, as for the 10 February 2017 e-mail, Mr Maroju explained that Mr Veerappan was simply keeping him updated about the efforts that AKS was taking to procure the funds required for the US\$10m financing promised to EMPL.

41 The Judge found that Mr Maroju's explanations for these e-mails were "utterly lacking in credibility" (see the Judgment at [25]). Having reviewed the relevant evidence, we agree. Mr Maroju's evidence on these e-mails were internally inconsistent, and to some extent, contradicted the position which he had taken in these proceedings.

42 Mr Maroju has not been able to provide a consistent explanation of the 3 November 2016 e-mail in these proceedings. In Mr Maroju's affidavit of evidence-in-chief, he said that he did not give much thought or attention to that e-mail because he was busy during that period. In his Answers to Interrogatories, however, Mr Maroju stated that this e-mail was an update on another of AKS's proposed financing transaction, known as the "Humanitarian Project Funding". Mr Maroju was questioned on this during cross-examination, and this time he said that there was no such "Humanitarian Project Funding":

Q: Now, it was at the material time that you thought that it was another financing transaction. So, is it your position that there was another transaction with AKS that is also relating to a Humanitarian project with Clear Point that you were dealing with?

A: No, I had in fact---

Q: Was there another contract or is there another project in relation to that?

A: No. It was part of another proposal, not a project.

Q: ... Listen to my question and answer it. Yes or no? Is there another project called the "Humanitarian Funding" project with Clear Point as the counterparty to AKS? Is there another such transaction that you have confused with?

A: So he was mentioning about the Humanitarian---

Q: Yes or no? Yes or no first, Mr Maroju?

A: Oh, it is not related to even one of my client which are ---

Q: No. So, yes or no? Is there another such contract? Is there another contract? Yes or no?

A: It was not a contract, it was another proposal, yes.

...

Q: ... your answer [in the Answers to Interrogatories] is that you thought [the 3 November 2016 e-mail] was an update on other financing transactions. So I'm asking you: Is there another such project with the same name?

A: *No. Client project name is not "Humanitarian Funding".*

...

Q: Is there another contract with the name, "Humanitarian" project or another transaction---

A: There is the other transaction

Q: ---that is different from the one that Mr Veerappan was talking about?

A: Yes, other contract ... but *not under Humanitarian project. That is not a project with our client.*

[emphasis added]

43 As for Mr Maroju’s explanations about the 7 February 2017 and 10 February 2017 e-mails, they contradict the position that Mr Maroju had taken in these proceedings and punctured the entirety of his defence. In connection with the 7 February 2017 e-mail, Mr Maroju explained that Mr Veerappan had sent him this e-mail to show him that progress was being made in obtaining the funding required for the financing transaction for EMPL. This was in response to his chasing Mr Veerappan for an update, as he faced tremendous pressure from Mr Sharma to provide a status update. As for the 10 February 2017 e-mail, Mr Maroju explained this was an update from Mr Veerappan that progress had been made in respect of obtaining the requisite funding for the financing transaction with EMPL.

44 However, Mr Maroju’s position in these proceedings was that, while he knew that the promised financing would come from RAM’s “funding principal”, he never knew *who* that was, and he never knew of Clear Point’s and/or SLO’s involvement as the “funding principal”. If that were the case, then Mr Veerappan’s e-mail on 7 February 2017, which made reference to the release of monies under the SLO Contract from “the [e]scrow [a]ttorney”, would not have made any sense to Mr Maroju, and most certainly would not have been understood by Mr Maroju as an “update” about the purported financing transaction with EMPL, *unless Mr Maroju knew of the involvement of SLO as the “funding principal”*. Similarly, Mr Maroju could only have seen the 10 February 2017 e-mail – which made reference to a “[p]aymaster” and “[e]scrow [a]ttorney” – as an update about the requisite funding for the financing transaction, *if he knew that an escrow agent (not AKS) was involved in the steps taken for obtaining the required funding for the financing transaction*. In other words, this meant that Mr Maroju *knew* more than what he had claimed, contrary to the position taken in these proceedings. The inconsistencies in Mr Maroju’s

evidence that we have referred to substantially affected his credibility as a witness and the Judge’s conclusion that Mr Maroju lacked credibility as a witness was undoubtedly correct.

45 We now turn to the significance of these e-mails and what they show, without doubt, was that Mr Maroju *knew* about the Clear Point Contract and the SLO Contract. For the moment, we put aside the point about whether those contracts were *bona fide* or legitimate transactions pursuant to which the promised financing to EMPL was to be obtained – though we note that the payment terms under those contracts (see [10] above) would have raised some red flags, and that is to put it quite mildly. However, it was clear on the face of those e-mails that Mr Maroju knew all along about the involvement of Clear Point and SLO in the purported financing transaction, and that a sum of US\$500,000 was to be transferred to the escrow agents of Clear Point and SLO. The proximity in time of these e-mails with the relevant timeline of events in the purported financing transaction was also significant, and they are coincident with the attempts taken by the other defendants at various stages to obtain the requisite funding for EMPL’s promised financing. Most importantly, the unchallenged evidence of both Mr Kamil and Mr Veerappan was that Mr Maroju knew about the Clear Point Contract and the SLO Contract and of Clear Point’s and/or SLO’s role as the “funding principal” in the purported financing transaction. Mr Kamil’s evidence was that Mr Maroju had been aware that the margin money was to be transferred to the escrow agents (namely, Mr Schiff and Mr Schaffer) in return for obtaining the required funding. Mr Veerappan’s evidence was that Mr Maroju had given the *confirmation* or *go-ahead* for the transfer of the monies to Mr Schiff, and then later to Mr Schaffer.

46 Therefore, all the evidence, taken together, gave rise to the irresistible inference that: (a) Mr Maroju knew of the existence of the purported “funding principals” like Clear Point and SLO; and (b) Mr Maroju knew that the margin money was to be transferred to the alleged escrow agents of Clear Point and SLO purportedly in return for obtaining the required funding for the financing transaction and yet Mr Maroju did not seek clarification as to how this would tie in with the Singapore-based investor (later ascertained to be RAM) itself providing financing to EMPL, contrary to what he accepted he had represented to Mr Sharma (see [6] above). Mr Maroju also knew that the margin money from EMPL had not been retained by AKS as an ‘independent custodian’ but was being used by AKS for some other purpose that did not seem connected with EMPL’s funding requirements. We reiterate our earlier observation that there is nothing in the Clear Point Contract and the SLO Contract indicating that Clear Point and SLO were RAM’s “funding principal” for the purposes of the purported financing transaction, or that the entity to be ultimately funded under those contracts was EMPL (see [31] above). Alternatively, the references to some funding from Clear Point or SLO were simply fictitious creations to try and give the impression that they were part of a genuine attempt to secure some sort of funding.

47 Given what Mr Maroju knew, it becomes clear that he was not merely acting as a conduit or facilitating communications when he passed on information between Mr Kamil and Mr Veerappan (on the one hand) and Mr Sharma (on the other). Rather, he was actively working to maintain a veneer of legitimacy in the financing transaction, keeping the appearances consistent with what EMPL would have understood from his representations. In other words, Mr Maroju’s efforts were directed at ensuring that EMPL believed what the other defendants (and himself) wanted EMPL to believe, and this shows that

he was acting in concert with them. Indeed, given the *extent* of what Mr Maroju knew, and the impressions which his actions would have conveyed to EMPL (which were entirely opposed to that state of knowledge), the Judge's conclusion that Mr Maroju was the man at the heart of the fraud is not plainly wrong in the light of the evidence.

48 Before concluding, we address one further argument raised by Mr Maroju, which was that he could not have been a party to the conspiracy because he had no control over the margin money. We did not find any merit in this submission. It is not a requirement that all the conspirators must all join the conspiracy at the same time, and it suffices that they were sufficiently aware of the surrounding circumstances and share the same object for it to be properly said that they were acting in concert (see *EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2013] 1 SLR 1254 at [63]). The fact that Mr Maroju had no direct control of the margin money was therefore neither here nor there. That was especially so, given that his actions made it clear that they were done in combination with those of the other defendants, directed at the common end of defrauding EMPL.

49 Thus, for the above reasons, we agreed with the Judge's finding that Mr Maroju was a co-conspirator with AKS and Mr Kamil to defraud EMPL of the margin money, as well as the due diligence fee of US\$100,000 and the commission of US\$100,000, both of which had also been paid in connection with the purported financing transaction (see the Judgment at [23]).

Whether Mr Maroju had dishonestly assisted in AKS's breach of trust

50 We now turn to the question of whether Mr Maroju had dishonestly assisted in AKS's breach of trust. We begin with the applicable principles. The

elements of a claim in dishonest assistance are: (a) the existence of a trust; (b) a breach of that trust; (c) assistance rendered by the third party towards the breach; and (d) a finding that the assistance rendered by the third party was dishonest (see *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 (“*George Raymond Zage III*”) at [20]).

51 As alluded to earlier, we were not persuaded that Mr Maroju has demonstrated that the Judge had erred in concluding that AKS held the margin money on trust (see [33] above). Since the margin money was eventually transferred for some other purpose unconnected with EMPL’s funding requirements, it also could not be seriously disputed that the transfer of the margin money had been in breach of trust and that EMPL never knew of these transfers in the first place, and so could not have consented to them.

52 Given our agreement with the Judge’s finding that Mr Maroju had acted in concert with AKS and Mr Kamil to defraud EMPL, it follows that Mr Maroju had rendered “assistance”. The only question remaining is whether Mr Maroju’s “assistance” had been dishonest. The test for dishonesty combines an objective standard of honesty with subjective elements of the individual’s personal characteristics and knowledge (*George Raymond Zage III* at [20]–[22]). Whether a person has acted dishonestly is determined by reference to what he subjectively knew or believed and the standards of ordinary decent people; there is no requirement that a person must subjectively appreciate that what he has done is, by those standards, dishonest, before he may be found to have acted dishonestly (see, for example, *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2018] AC 391 at [74]).

53 From what we have explained in respect of EMPL’s conspiracy claim, Mr Maroju had assisted in AKS’s breach of trust. Also, the way in which Mr Maroju acted was nothing but dishonest in the context of the representations that were made to EMPL to maintain a veneer of legitimacy in the purported financing transaction, the truth of which was inconsistent with what he had represented to Mr Sharma (see [47] above). We therefore agreed with the Judge’s finding that Mr Maroju had dishonestly assisted in AKS’s breach of trust in the transfer of the margin moneys to the escrow agent of Clear Point and then later that of SLO.

Whether Mr Maroju had received the US\$100,000 as commission for the financing transaction

54 We turn now to the last issue in the appeal. The Judge had accepted Mr Sharma’s evidence that the US\$100,000 had been paid as commission to Mr Maroju for the purported financing transaction, which Mr Maroju said was “as good as done” (see the Judgment at [14]). Mr Maroju advanced various arguments as to why the Judge erred but the main contention which he relied on at the hearing before us was that Mr Sharma had in fact informed him on three different occasions (namely, in a text message on 28 March 2017 and later in two e-mails dated 13 and 27 April 2017), *after* RAM wrote in the 17 March 2017 Letter to cancel the purported financing transaction, that the US\$100,000 was Mr Maroju’s to keep. Mr Maroju argued that, having reassured him that the US\$100,000 was his to keep, EMPL was estopped from asking for the repayment of this sum.

55 In our view, the Judge’s finding is not against the weight of the evidence, and we did not see any reason to disturb it. The US\$100,000 was paid to Mr Maroju just two days before payment of part of the margin money took place

(which was transferred in two tranches to AKS). This suggested that the US\$100,000 had been paid to Mr Maroju in connection with the purported financing transaction, and the evidential burden was on Mr Maroju to establish that the US\$100,000 had been paid by Mr Sharma to compensate him for other work that he had done and the expenses that he had incurred in assisting Mr Sharma up until that point in time and so was unrelated to the purported financing transaction. Mr Maroju had not discharged that burden. He only made bare assertions and pointed to various e-mails in which Mr Sharma apparently promised to pay and cover his travel expenses, but he did not adduce further evidence to demonstrate the link between the payment of US\$100,000 and those travel or other expenses. On the other hand, there was evidence before the Judge of a clear link between that payment and the purported financing transaction.

56 We also did not find any merit in Mr Maroju’s argument about Mr Sharma having reassured him that the US\$100,000 was his to keep. First, the reassurances provided by Mr Sharma must be seen in their proper context. In EMPL’s Reply to Mr Maroju’s Defence, EMPL accepted that Mr Sharma had reassured Mr Maroju’s entitlement to retain the US\$100,000, but that was premised upon the margin money and the due diligence fee being “refunded immediately” and also because Mr Sharma had intended then to still pursue other financing opportunities through Mr Maroju, because Mr Sharma had not yet discovered that Mr Maroju was engaged in a conspiracy with the other defendants. When Mr Sharma was cross-examined by counsel for Mr Maroju on this point, his evidence was consistent with what EMPL had pleaded, and while he accepted that he had reiterated on three occasions Mr Maroju’s entitlement to keep the US\$100,000, he emphasised that those reassurances had been made before he discovered that the purported financing transaction was a fraud. Mr Sharma also readily agreed that, on those occasions when he reassured

Mr Maroju's entitlement to keep the US\$100,000, he also wanted Mr Maroju to help chase for the return of the margin money and the due diligence fee, because Mr Maroju was EMPL's only point of contact with AKS and RAM.

57 Seen in that context, Mr Sharma's reassurances were not an unequivocal representation about Mr Maroju's entitlement to the US\$100,000 because it would have been clear, from the context in which those reassurances were given, that Mr Maroju's entitlement to the US\$100,000 was premised on his assisting EMPL with obtaining the refund of the margin money and due diligence fee, and above all, Mr Sharma's reassurances were given before Mr Sharma learnt of Mr Maroju's impropriety in connection with the purported financing transaction. Given the context in which Mr Sharma's reassurances had been given, they are also not inconsistent with the Judge's finding that the sum of US\$100,000 had been paid in connection with the purported financing transaction.

58 Second, and more fundamentally, it had never been Mr Maroju's case below that EMPL was estopped from seeking a return of the US\$100,000 by virtue of Mr Sharma's representations. This argument was raised for the first time in the appeal and it was neither pleaded nor raised by Mr Maroju in his submissions before the Judge. Mr Maroju's case below was that the sum of US\$100,000 had been paid to him in compensation for his time and expenses, and that in and of itself entitled him to retain that sum. Accordingly, in our view, Mr Maroju was precluded from relying on the estoppel argument in the appeal, which in any event, as we have explained, is without merit and would not have made a difference.

59 Thus, for the above reasons, we agreed with the Judge's finding that the US\$100,000 was paid as an advance commission to Mr Maroju by EMPL in connection with the purported financing transaction, and it was therefore also part of the losses suffered by EMPL as a result of the fraud perpetrated on it. Accordingly, we also affirm the Judge's finding that Mr Maroju was personally liable to return the US\$100,000 for total failure of consideration, given that it had been paid on the understanding that Mr Maroju was to ensure the success of the purported financing transaction, which in the event, was called off.

Conclusion

60 We therefore dismissed Mr Maroju's appeal and ordered costs in favour of EMPL fixed at \$40,000 (all-in) with the usual consequential orders.

Belinda Ang Saw Ean
Judge of the Appellate Division

Woo Bih Li
Judge of the Appellate Division

Quentin Loh
Judge of the Appellate Division

Chong Chi Chuin Christopher and Josh Samuel Tan Wensu (Drew &
Napier LLC) for the appellant;
Jeremy Gan Eng Tong, Tan Eu Shan Kevin and Liew Min Yi, Glenna
(Rajah & Tann Singapore LLP) for the respondent.
