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

[2024] SGHC 200

Suit No 296 of 2021

Between

Baizanis, Georgios

… *Plaintiff*

And

(1) Snap Innovations Pte Ltd
(2) Ong Hock Fong, Bernard

… *Defendants*

JUDGMENT

[Agency — Implied authority of agent]
[Agency — Third party and principal's relations — Tortious liability]
[Contract — Breach]
[Evidence — Admissibility of evidence]
[Evidence — Proof of evidence — Onus of proof]

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v
Snap Innovations Pte Ltd and another

[2024] SGHC 200

General Division of the High Court — Suit No 296 of 2021
Christopher Tan JC
27–30 November, 1, 4–7 December 2023, 23 February 2024

2 August 2024 Judgment reserved.

Christopher Tan JC:

1 The Plaintiff, Georgios Baizanis, is a cryptocurrency investor. The 1st Defendant ("D1"), Snap Innovations Pte Ltd, is a company providing information technology and computer-related services, with a focus on technological solutions for brokers and traders. Its sole shareholder is Dr Ting Shang Ping ("Dr Ting"). At the material time, the 2nd Defendant ("D2"), Bernard Ong, was reflected on D1's website as a "director" of D1, although he was not registered as such with the Accounting and Corporate Regulatory Authority ("ACRA").

2 This case arose from the Plaintiff's investment in a scheme known as "Cryptotrage", which involved arbitrage trading in cryptocurrencies on the Binance Exchange. According to the Plaintiff, the Cryptotrage scheme was operated by D1 through its employees in Vietnam. The Plaintiff claimed that pursuant to the scheme, he deposited cryptocurrencies into accounts on the

Binance Exchange that were operated by D1's office in Vietnam. The Plaintiff professed that he initially invested only small amounts in the scheme, as he wanted to limit his exposure should any governance failures within D1 occasion the misappropriation of client funds. The Plaintiff alleged that he was nevertheless enticed into increasing his investments by one Wu Zhongyi ("Zee"), who was reflected on D1's website at the material time as D1's director in Vietnam. Zee did so by offering the Plaintiff what appeared to be a corporate guarantee by D1, which would indemnify the Plaintiff against losses arising from fraud. The corporate guarantee was embodied in a document called the "Service Agreement", which was allegedly signed on D1's behalf by both D2 and Zee. After obtaining the comfort of the Service Agreement, the Plaintiff then increased his investments in the Cryptotrage scheme.

3 On 9 February 2021, Zee disappeared, apparently after having misappropriated the cryptocurrencies deposited by investors (including the Plaintiff) in the Cryptotrage scheme. When the Plaintiff attempted to call on D1's indemnity under the Service Agreement, D1 denied responsibility for the Cryptotrage scheme (which D1 claimed was entirely Zee's operation). D1 also disavowed the Service Agreement, saying that D2 and Zee were both "independent contractors" of D1 with no authority to sign the Service Agreement on D1's behalf. As for D2, he denounced the Service Agreement as a forgery, claiming that his signature had been copy-pasted on it.

4 The Plaintiff commenced this action against D1 and D2 (whom I collectively refer to as the "Defendants") to recover the value of the cryptocurrencies which he claimed to have invested in the Cryptotrage scheme and lost through Zee's fraud. The Plaintiff raised various causes of action:

(a) He sued D1 for breach of the Service Agreement, claiming that the corporate guarantee therein obliged D1 to indemnify the Plaintiff for the losses arising from Zee's fraud. The Plaintiff's cause of action was premised on his contention that both D2 and Zee had actual, or at least ostensible, authority to enter into the Service Agreement on D1's behalf.

(b) In the event of the guarantee in the Service Agreement being unenforceable as against D1, the Plaintiff sought in the alternative to hold D2 liable for a breach of warranty of authority.

(c) The Plaintiff also sued both Defendants for allegedly breaching their duty to properly supervise Zee, thereby allowing the latter to perpetrate the fraud that led to the Plaintiff's loss.

5 I dismiss the Plaintiff's claims and set out my reasons for doing so.

The Facts

6 The bulk of the factual narrative below emanated from the Plaintiff. This is unsurprising, given the Defendants' position that they had no dealings with the Plaintiff prior to Zee's disappearance.

The Plaintiff's factual evidence

7 The Plaintiff's account of what transpired can be canvassed in three parts, namely:

(a) how he came to invest in the Cryptotrage scheme;

(b) how the Service Agreement came to be signed; and

(c) the theft of the Plaintiff's cryptocurrencies and the aftermath.

How the Plaintiff came to invest in the Cryptotrage scheme

8 The Plaintiff explained that he came to be acquainted with Zee sometime around the end of December 2018, through the messaging platform, Telegram.[1] Zee was based in Vietnam, where he and his team managed the Cryptotrage scheme. The scheme involved the generation of profits from arbitrage trades in cryptocurrencies. Those trades were performed by bots,[2] *ie*, trading programmes which communicated with the cryptocurrency exchange on which the trades were performed.[3] Traditionally, the process of searching for arbitrage opportunities was a manual one – this was both tedious and time-consuming.[4] With the advent of bots, the process became easier and incurred significantly reduced latency.[5] In the months following his acquaintance with Zee, the Plaintiff began investing small amounts in the Cryptotrage scheme.

9 The statement of accounts for the Plaintiff's investments in the Cryptotrage scheme came in the form of "daily reports". These reports comprised tabulated numbers that had apparently been prepared by Zee's team in Vietnam and were disseminated via Telegram messages.[6] The daily reports contained little by way of elaboration as to *what* the numbers in the tables meant, or *how* they were arrived at. However, this appeared to pose no issues for a seasoned cryptocurrency investor such as the Plaintiff.

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1 Plaintiff's AEIC at paras 34–35; see also the Telegram messages exhibited at p 162.

2 Affidavit of Evidence-in-Chief ("AEIC") of Georgios Baizanis dated 29 August 2023 ("Plaintiff's AEIC") at paras 36 and 40.

3 Plaintiff's AEIC at para 32.

4 Plaintiff's AEIC at para 11.

5 Plaintiff's AEIC at para 39.

6 Plaintiff's AEIC at paras 93–94.

10 The Plaintiff's initial foray into the Cryptotrage scheme seemed profitable, prompting him to contemplate increasing his investments[7] as well as bringing his friends on board as fellow investors in the scheme.[8] However, before embarking on that commitment, the Plaintiff thought it prudent to conduct due diligence on Zee and ascertain exactly who Zee worked for.[9] The Plaintiff thus posed his inquiries to Zee, who responded that he was a director of D1.[10] Zee explained that he and his team, which was known as "Snap Vietnam", operated out of Vietnam.[11] Zee also sent the Plaintiff a document called the "Deck", which contained a set of presentation slides[12] that listed Snap Vietnam's key personnel and explained the Cryptotrage scheme.[13] The first substantive page of the Deck,[14] which described the credentials of both Zee and one Rick Nguyen ("Rick"), is extracted below:

> ***Zee Wu, Director Vietnam***
> - ***Oversees a team of 20 Developers, 6 Traders***
> - 4 Years Experience in Crypto Mining, Crypto Trading
> - 11 Years Experience in Software Development
> - Holds COO Position in various ICOs
>
> Linkedin Profile: www.linkedin.com/in/zhongyi-wu-a5360722
>
> Rick Nguyen, General Manager Vietnam
> - Overseas Operation in Company
> - One of the Pioneers in Sake importing to Vietnam
> - 5 Years Experience in Business Management

[emphasis added in bold italics]

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7 Plaintiff's AEIC at para 37.

8 Plaintiff's AEIC at para 43.

9 Plaintiff's AEIC at para 44.

10 Plaintiff's AEIC at para 45.

11 Plaintiff's AEIC at para 50.

12 Exhibited in Plaintiff's AEIC at pp 224–235.

13 Plaintiff's AEIC at para 53.

14 Plaintiff's AEIC at p 225.

11 To confirm the veracity of the information within the Deck, the Plaintiff decided to reach out to D1 directly. On 7 February 2019, the Plaintiff called one Michael Lim, who was an employee of D1 at the time. Michael Lim verbally confirmed to the Plaintiff over the phone that Zee and Rick *were* working for D1.[15] That same day, the Plaintiff followed up with an e-mail to Michael Lim, attaching a copy of the Deck and providing Michael Lim with an explanation of what the Cryptotrage scheme was about.[16] In his e-mail, the Plaintiff expressed his concerns about how the Cryptotrage scheme was not mentioned anywhere on D1's websites and explained that he consequently wanted to ensure that the persons he was dealing with (*ie*, Zee and Rick) were indeed persons from D1's Vietnam office and not impersonators perpetrating a scam. The Plaintiff's e-mail also asked if the Cryptotrage scheme was indeed a product of D1. An extract of the Plaintiff's e-mail[17] to Michael Lim is set out below:

> Dear Michael
>
> Thank you for your time to take the call today about CRYPOTRAGE [*sic*].
>
> Cryptotrage is an Arbitrage trading product open to new investors/partners supposingly [*sic*] by your office in Vietnam. I know Vietnam is your developing center.
>
> Purpose of this communication to make sure fore [*sic*] me and a big group of investors I am representing, **whether the people behind "Cryptotrage" are indeed people in your branch in Vietnam and hence no problem or those "Cryptotrage" people impersonate Snap Innovations and they pretend they [*sic*] product is offered by your company while they may be scammers**.
>
> Nowhere in your 2 websites the product is mentioned there (www.snapbots.io www.snapinnovations.com).

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15 Plaintiff's AEIC at para 55.3.

16 Plaintiff's AEIC at para 55.4.

17 Exhibited in Plaintiff's AEIC at p 243.

> Cryptotrage community works thru Telegram app. I am connected to a guy in Telegram calling him self Zee Wu. He states is your COO in Vietnam. From discussions I have had with him I do believe that but the *majority of my investors want more solid proofs this telegram guy is indeed the legitimate same guy working for Snap Innovations* in [V]ietnam and no [*sic*] someone that impersonates him *and that Cryptotrage is indeed a Snap Innovations product since up to now if you google Cryptotrage nothing comes up*.
>
> I share with you the Deck, Zee Wu from Telegram sent me following my request. I plan to fly next month to meet those guys in [Ho Chi Minh City] as to me they appear legitimate so as I fill a due diligence report for my investors.
>
> Many thanks for your assistance to confirm the items in bold above.
>
> [emphasis in bold in original; emphasis added in italics]

12 Michael Lim replied to the Plaintiff's e-mail a few hours later, with a rather short response confirming that Zee and Rick were from D1's Vietnam office.[18] Michael Lim's e-mail[19] is extracted below:

> Hi George,
>
> I've checked internally and yes this is Zee Wu from our [Ho Chi Minh City] Office. Zee and Rick are both from our Vietnam office.
>
> Best Regards,
> Michael Lim, CFA
> Business Development
> Snap Innovations Pte Ltd

Michael Lim's e-mail also re-attached the first substantive page of the Deck which set out the credentials of Zee and Rick (the contents of which have been extracted at para 10 above), which the Plaintiff had sent to Michael Lim in the preceding e-mail.

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18 Plaintiff's AEIC at paras 55.5–55.6.

19 Exhibited in Plaintiff's AEIC at pp 241–243.

13 In March 2019, the Plaintiff visited Vietnam to conduct on-site due diligence in respect of Snap Vietnam's trading operations.[20] There, he met Zee and various other members of the Snap Vietnam team,[21] including Rick, one Fong Chee Keong ("CK"), who was allegedly Zee's right-hand man, and one Martin, who was allegedly Snap Vietnam's chief trader. The Plaintiff claimed that these persons could no longer be traced at the time of trial.[22]

14 According to the Plaintiff, he was told by Zee, Rick and CK that D1 was using a Vietnam-incorporated company, Click Staff Company Limited ("Clickstaff"), as a conduit for executing D1's operations in Vietnam.[23] The Plaintiff was introduced to the sole shareholder and director of Clickstaff,[24] Nguyen Thanh, who also served as Snap Vietnam's Human Resource Manager.[25] During the trial, Nguyen Thanh testified remotely from Vietnam, giving evidence on the Plaintiff's behalf. In doing so, Nguyen Thanh gave various examples of D1's involvement in Snap Vietnam's business, including the following:

(a) D1, through Snap Vietnam, ventured into and funded the development of trading bots for arbitraging cryptocurrencies.[26]

(b) Dr Ting facilitated D1's business in Vietnam by getting

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20 Plaintiff's AEIC at para 58.

21 Plaintiff's AEIC at para 60.

22 Plaintiff's Closing Submissions dated 26 January 2024 ("Plaintiff's Closing Submissions") at para 40.4.

23 Plaintiff's AEIC at paras 64–65.

24 Nguyen Thanh's AEIC dated 29 August 2023 ("Nguyen Thanh's AEIC") at para 4.

25 Plaintiff's AEIC at para 60.

26 Nguyen Thanh's AEIC at para 17.

Clickstaff to purchase various equipment to facilitate Snap Vietnam's operations.[27]

(c) D1 also used Clickstaff to recruit staff for Snap Vietnam,[28] with Zee personally negotiating the salaries of Vietnamese staff engaged by Clickstaff. While Clickstaff would pay those salaries, it was reimbursed by either Zee or CK, who made payment to Clickstaff on D1's behalf.[29]

15 The Plaintiff also claimed that Zee told him that D2 was Zee's "boss and CEO".[30] Following from this, the Plaintiff performed searches on the internet and discovered that:[31]

(a) D2 was listed on D1's website[32] as "Director", while Zee was listed as "Director, Snap Vietnam"; and

(b) D2 described himself in his LinkedIn profile[33] as (*inter alia*) D1's "Managing Director".

Signing of the Service Agreement

16 After a few weeks of investing in the Cryptotrage scheme, the Plaintiff was invited by Zee to increase his investments.[34] The Plaintiff was told that this

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27 Nguyen Thanh's AEIC at paras 21–22.

28 Nguyen Thanh's AEIC at para 9.

29 Nguyen Thanh's AEIC at paras 10–12; Transcripts Day 5 (1 December 2023) at p 18 line 22 to p 21 line 2.

30 Plaintiff's AEIC at paras 78 and 100.

31 Plaintiff's AEIC at paras 90 and 101.

32 Exhibited in Plaintiff's AEIC at pp 263–264.

33 Exhibited in Plaintiff's AEIC at p 291.

34 Plaintiff's AEIC at para 95.

would enhance his financial returns, as higher investment levels meant higher profit-sharing percentages.[35] However, the Plaintiff remained wary of doing so, as higher investment levels necessarily carried the risk of higher losses in the event of Snap Vietnam's staff absconding with his cryptocurrencies. Zee, Rick and Martin sought to assure the Plaintiff that safeguards were in place to prevent unauthorised withdrawals.[36] However, this did not suffice to assuage the fears of the Plaintiff, who refused to raise his investments unless D1 executed a corporate guarantee indemnifying him against losses which might arise from internal fraud.[37] The Plaintiff was eventually informed by Zee that Zee himself could sign such a corporate guarantee on D1's behalf. However, the Plaintiff told Zee that he also wanted an additional "authorised director" from D1 to sign the corporate guarantee. Zee thus informed the Plaintiff that he would get D2, who was his "boss" and "CEO", to sign on the corporate guarantee as well.[38]

17 The Plaintiff thus set about personally drafting the Service Agreement,[39] the key terms of which are extracted below:[40]

> **THIS AGREEMENT**, dated 24th May 2019, is made between **SNAP INNOVATIONS PTE LTD** … ("**Cryptotrage**"), and Georgios Baizanis … ("**The Client**").
> …
>
> 1. **Services from Cryptotrage to The Client**
>
> Cryptotrage agrees to perform for The Client thru their child company in Vietnam ([Clickstaff]) the following service:

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35 Plaintiff's AEIC at para 69.

36 Plaintiff's AEIC at para 87.

37 Plaintiff's AEIC at para 96.

38 Plaintiff's AEIC at paras 99–100.

39 Plaintiff's AEIC at para 102.

40 Exhibited in Plaintiff's AEIC at p 113.

> 1.1 To manage the funds of The Client or his Group under the scope of performing Cryptocurrency Arbitrage trades
>
> 1.2 For any Funds managed under Cryptotrage books (Accounts), a corporate guarantee is provided by Cryptotrage as following: in case of any internal fraud by any staff of the Cryptotrage group of companies, whereas any digital assets are stolen by fraud from The Client, the parent company is to substitute those assets within 5 business days. As inventory for those assets to be considered the daily report sent to the client the day before of such adverse event.
>
> …
>
> [emphasis in bold in original]

18 The operative clauses of the Service Agreement are highlighted below:

(a) Clause 1 contemplated that D1 (which was referred to by the Service Agreement as "Cryptotrage") owed various obligations that would be performed through Clickstaff (which was referred to by the Service Agreement as the "child company" of D1).

(b) Clause 1.1 set out D1's primary obligation, which was to "manage the funds" of the Plaintiff and "his Group" (*ie,* friends that the Plaintiff would co-opt to invest in the Cryptotrage scheme) through arbitrage trades in cryptocurrency.

(c) Materially, cl 1.2 embodied the corporate guarantee sought by the Plaintiff. This clause contemplated that in the event of "internal fraud" by any staff of the Cryptotrage group of companies, the "parent company" (which was presumably a reference to D1) had to replace any cryptocurrencies "stolen by fraud" within five business days.

19 The Plaintiff prepared a printed copy of the Service Agreement that he had drafted (which I will refer to as "the Original Draft") and brought the same

to Vietnam on 7 May 2019 to have it signed. At the Vietnam office, the Plaintiff met Zee, who scanned the Original Draft and printed out the scanned electronic file to produce what I will refer to as "the Scanned Draft". The Plaintiff and Zee appended their wet-ink signatures on *both* the Original Draft and the Scanned Draft,[41] with Zee signing in his capacity as "Director, Vietnam Operations".[42] The Plaintiff then took photographs of the signed Original Draft,[43] which he exhibited in his Affidavit of Evidence-in-Chief[44] ("AEIC"). As for the *Scanned* Draft, the Plaintiff surmised that after this was signed by Zee and himself, Zee had scanned the signed copy and sent the electronic copy to D2 via Telegram.[45]

20 The Plaintiff also explained that D2 had been travelling to various countries at the time, but D2 eventually returned to Singapore where he signed the Service Agreement:

(a) On 21 May 2019, D2 travelled to Vietnam where he discussed the Service Agreement with Zee.[46] The Plaintiff knew this because he had sent a Telegram message[47] to Zee that day, asking about the status of the Service Agreement's execution. Zee had replied that D2 was coming to Vietnam and would discuss the Service Agreement with Zee

41 Plaintiff's AEIC at paras 16 and 102(d).

42 Plaintiff's AEIC at para 103.

43 Plaintiff's AEIC at para 102(d); Transcripts Day 4 (30 November 2023) at p 72 line 14 to p 74 line 9.

44 Plaintiff's AEIC at pp 112–114; Plaintiff's Bundle of Documents dated 21 November 2023 ("Plaintiff's Bundle of Documents") at pp 91–93.

45 Transcripts Day 3 (29 November 2023) at p 139 lines 6 to 17 and p 140 lines 1 to 4; Plaintiff's AEIC at para 106.

46 Plaintiff's AEIC at para 200.

47 Exhibited in Plaintiff's AEIC at p 131.

that very evening.[48] Zee's reply was corroborated by D2's passport, which showed that D2 was in Vietnam on 21 May 2019.[49]

(b) On 24 May 2019, the Plaintiff sent another Telegram message to Zee[50] seeking a status update, to which Zee responded that he was following up with D2 on the matter. Zee further said that D2 was in Hong Kong and would sign the Service Agreement on Monday, 27 May 2019.[51] Again, Zee's response was corroborated by D2's passport, which showed D2 to be in China from 25 to 26 May 2019.[52]

(c) The Plaintiff's case was that D2 ultimately returned to Singapore on 27 May 2019, where he signed the Service Agreement in the early hours of the morning, before leaving again for Malaysia.[53] Again, this was consistent with D2's passport, which showed that D2 left Singapore for Malaysia on 27 May 2019.[54]

21 The Plaintiff contended that D2 *physically* executed the Service Agreement, by appending his wet-ink signature on it while he was in Singapore; there was no suggestion by the Plaintiff of D2 having signed the Service Agreement *electronically*. I will refer to the putative *paper copy of the Service Agreement bearing D2's wet-ink signature* as the "**Executed Paper Copy**".

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48 Plaintiff's AEIC at para 102(c).

49 AEIC of Ong Hock Fong Bernard dated 29 August 2023 ("D2's AEIC") at para 33(g).

50 Exhibited in Plaintiff's AEIC at p 135.

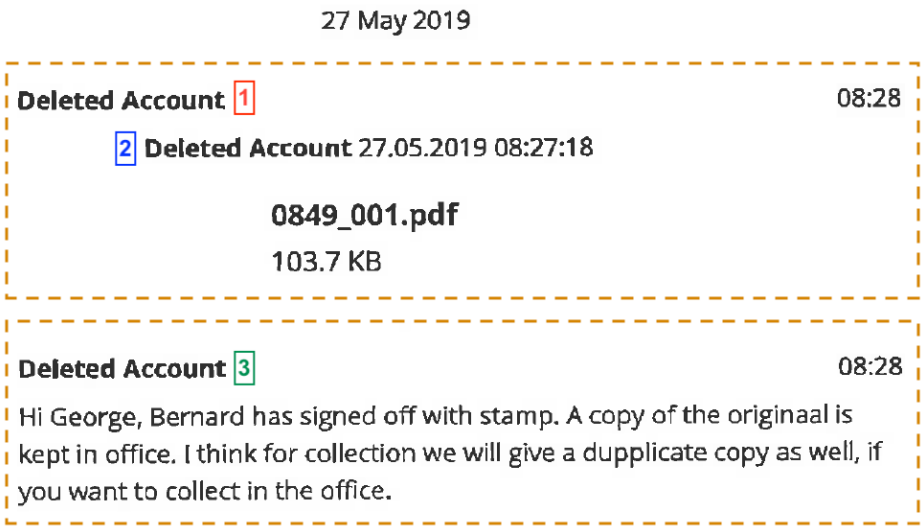
51 Plaintiff's AEIC at paras 102(f) and 201.

52 D2's AEIC at para 33(h); see also the extract of D2's passport exhibited at p 98.

53 Plaintiff's AEIC at para 202.

54 D2's AEIC at p 99.

22 On the morning that D2 purportedly executed the Service Agreement (*ie*, 27 May 2019), at 8.28am, Zee sent the Plaintiff a Telegram message forwarding what purported to be an electronic copy of the Executed Paper Copy bearing D2's signature and D1's corporate stamp, with an accompanying message that D2 had signed and stamped the Service Agreement. I will refer to this electronic copy of the Service Agreement, which bore D2's signature and D1's corporate stamp and which was forwarded by Zee that morning, as the "**E-Copy**". In his message, Zee also offered to let the Plaintiff collect a duplicate copy of the signed Service Agreement from D1's Singapore office.[55] An extract of the Telegram message sent by Zee to the Plaintiff[56] is set out below:



The foregoing extract shows two distinct messages in the chain, which I have demarcated into two separate boxes bounded by dashed lines – I refer to these as the "upper box" and "lower box". From the extract, one sees that:

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55 Plaintiff's AEIC at para 102(g).

56 Exhibited in Plaintiff's AEIC at p 116.

(a) The message in the upper box, sent to the Plaintiff at 8.28am, enclosed the document "0849_001.pdf" – this was the E-Copy.

(b) The message in the lower box, also sent to the Plaintiff at 8.28am, contained text beginning with the words "Hi George".

23 The words "Deleted Account" appeared at three points within the conversation chain – I have marked these in the extract above with the boxed numbers "1", "2" and "3". On the face of the extract, it is unclear if the three deleted accounts belonged to a single person. The Plaintiff's IT forensic expert, Wilfred Nathan, testified that while the term "Deleted Account" may appear at various points of a Telegram conversation chain, the deleted account denoted by that term could potentially belong to *different* persons (each of whom have deleted their respective Telegram accounts) at different points where that term appears in the chain. Relying on Wilfred Nathan's analysis,[57] the Plaintiff advanced the following positions:

(a) Deleted Account "1", which sent the message in the upper box to the Plaintiff at 8.28am, belonged to Zee.

(b) Zee had, by the message in the upper box, forwarded to the Plaintiff a message which Zee himself had received from Deleted Account "2". That message from Deleted Account "2", which had been sent to Zee just one minute earlier (as denoted by the timestamp "08:27:18"), enclosed the E-Copy.

(c) Deleted Account "3", which sent the message in the lower box to the Plaintiff (also at 8.28am) was the same as Deleted Account "1",

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57 Transcripts Day 2 (28 November 2023) at p 7 lines 7 to 23.

ie, both were Zee's account.

24 The key question thus arose as to whom Deleted Account "2" belonged. This was not a point that Wilfred Nathan was able to resolve by his analysis. However, it was the Plaintiff's evidence that when he first viewed the conversation chain on 27 May 2019, Deleted Accounts "1" to "3" had yet to be deleted. At that point, the Plaintiff had noticed an icon with the letter "B" appearing in relation to Deleted Account "2". The Plaintiff inferred that the icon denoted an account belonging to D2, whose first name ("Bernard") began with the letter "B".[58] On that hypothesis, Deleted Account "2" must have belonged to D2, meaning that D2 had sent a message enclosing the E-Copy to Zee on 27 May 2019 at 8.27am (as denoted by the timestamp "08:27:18"). About a minute after that, at 8.28am, Zee had:

(a) forwarded D2's message (with the E-Copy enclosed) to the Plaintiff by way of the message in the upper box; and

(b) sent the Plaintiff the message in the lower box, beginning with the words "Hi George, Bernard has signed off …".

25 While the Plaintiff did not *personally* witness D2 executing the Service Agreement,[59] he argued that the court should accept Zee's message (in the lower box) as evidence that D2 *did* sign it. This was because Zee's communications had all been corroborated by D2's passport entries (see para 20 above). That in turn meant that Zee had intimate knowledge of D2's travel itinerary[60] and must consequently have known if and when D2 signed the Service Agreement.

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58 Transcripts Day 4 (30 November 2023) at p 83 lines 8 to 20.

59 Plaintiff's AEIC at para 17.

60 Plaintiff's Closing Submissions at paras 44.29–44.33 and 79.

26 Zee and the Plaintiff then arranged for the Plaintiff to collect a hard copy of the Service Agreement from D1's office in Singapore.[61] In turn, the Plaintiff asked his friend, Frederic Schmidt ("Schmidt"), to do so on his behalf.

27 On 2 June 2019, Zee sent a Telegram message[62] to D1's employee, Kenneth Chan, enclosing an electronic copy of the Service Agreement purportedly bearing D2's signature. In that message, Zee asked Kenneth Chan to print the same and pass the printout to Schmidt.[63] Kenneth Chan complied and passed the printout to Schmidt, when the latter turned up at D1's office the next day.[64] Schmidt subsequently passed the printout to the Plaintiff,[65] who adduced the same in evidence as exhibit "P1".

28 The Plaintiff's position was that the E-Copy which Zee forwarded to him via Telegram on the morning of 27 May 2019 was *identical* to the electronic copy that Zee sent to Kenneth Chan on 2 June 2019.[66] This meant that P1, being a printout of the electronic copy sent to Kenneth Chan, was for all intents and purposes *also* a printout of the E-Copy sent to the Plaintiff on 27 May 2019. As the Defendants offered no credible evidence to challenge the Plaintiff's position on this point, I have proceeded on the basis that references to:

(a) the E-Copy sent by Zee to the Plaintiff on 27 May 2019;

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61 Plaintiff's AEIC at para 23.

62 Exhibited in AEIC of Kenneth Chan Kam Hung dated 29 August 2023 ("Kenneth Chan's AEIC") at pp 9–12.

63 Kenneth Chan's AEIC at para 9.

64 Plaintiff's AEIC at para 105.

65 Plaintiff's AEIC at para 133.

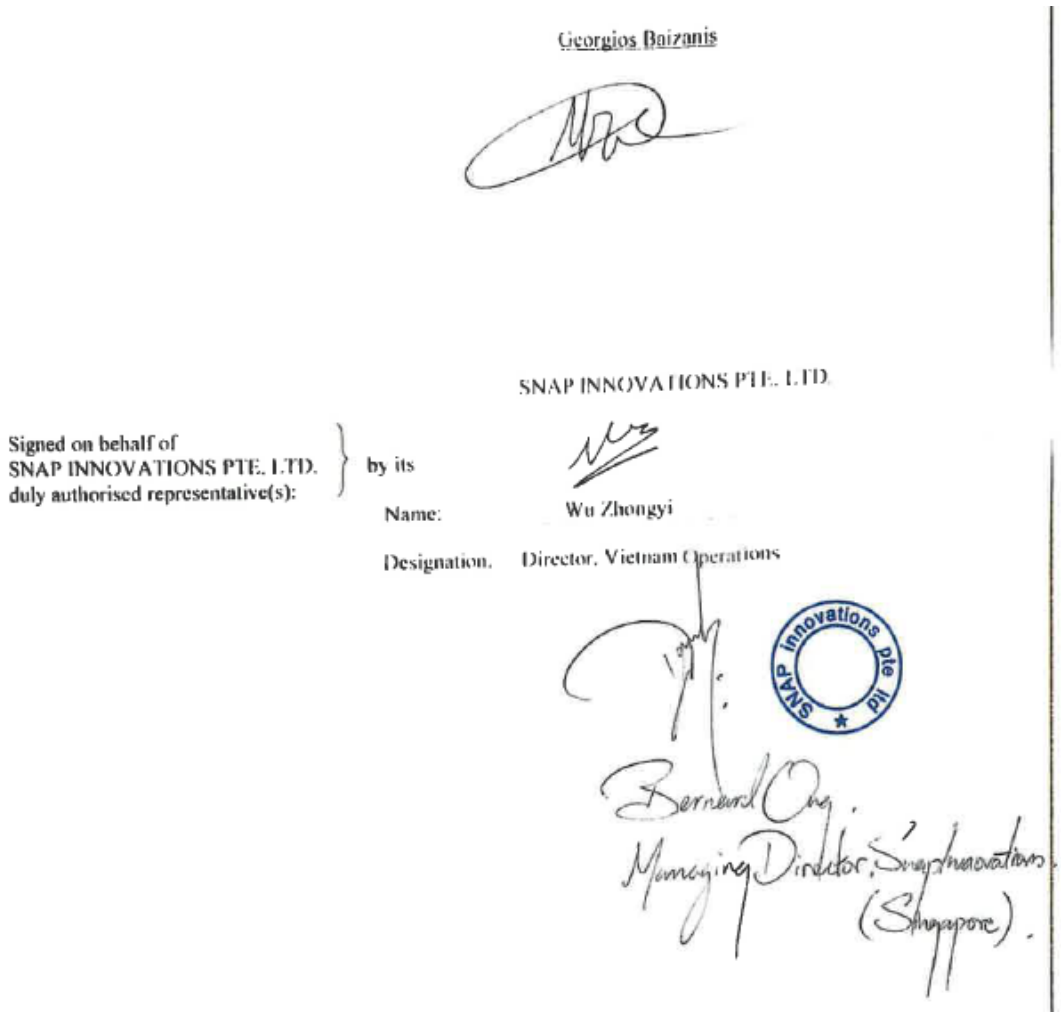
66 Transcripts Day 3 (29 November 2023) at p 156 lines 3 to 5; Transcripts Day 4 (30 November 2023) at p 68 line 23 to p 69 line 4; Plaintiff's Closing Submissions at para 41.11; Plaintiff's Reply Submissions at para 29.

(b) the electronic copy sent by Zee to Kenneth Chan on 2 June 2019; and

(c) the printout P1 prepared by Kenneth Chan,

are all *synonymous*. Subsequent references to P1 and the "E-Copy" should therefore be understood in that light.

29 The most crucial section of P1 was its third page, a snapshot of which is extracted below:



As seen from the extract above, the third page bore the signatures of the Plaintiff and Zee (with Zee signing off as "Director, Vietnam Operations") – the signatures would have been appended by Zee and the Plaintiff when the latter visited the Vietnam office on 7 May 2019 – see para 19 above. Critically, the third page also bore *what appeared to be D2's signature* and, to the right of that, D1's corporate stamp. The handwritten words "Bernard Ong. Managing Director, Snap Innovations (Singapore)" also appeared below D2's purported signature and the corporate stamp.

30 The Plaintiff claimed that he was initially under the impression that P1 was the Executed Paper Copy, *ie*, bearing D2's wet-ink signature,[67] as D1's corporate stamp was in colour and not black-and-white.[68] He claimed to have discovered that P1 was a printout of an electronic copy only after this suit was commenced.[69] The Plaintiff suspected that the Executed Paper Copy remains in the possession of either D1 or D2,[70] who have both refused to pass him the same.

31 The Plaintiff professed that he always expected to receive an "original" copy of the signed Service Agreement, *ie*, where the signatures therein were in wet ink. While at the Vietnam office on 7 May 2019, he and Zee had taken the trouble to append their wet-ink signatures on *both* the Original Draft and the Scanned Draft (see para 19 above).[71] This was to allow both the Plaintiff and D1

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67 Plaintiff's AEIC at para 24; Transcripts Day 7 (5 December 2023) at p 27 lines 8 to 13.

68 Transcripts Day 3 (29 November 2023) at p 142 lines 19 to 23; p 147 line 21 to p 148 line 2.

69 Plaintiff's Reply Submissions dated 23 February 2024 ("Plaintiff's Reply Submissions") at para 42; Plaintiff's AEIC at para 108.

70 Plaintiff's AEIC at para 22.

71 Transcripts Day 3 (29 November 2023) at p 142 lines 5 to 9.

to *each* have an "original" document, *ie*, where the signatures were in wet ink.[72] If D2 had thereafter appended his wet-ink signature on both these drafts, this would have given rise to *two* documents where the signatures of *all three* signatories (*ie*, Zee, the Plaintiff and D2) were in wet ink. From the Plaintiff's perspective, it was important for him to possess an "original" document for his records.[73] Thus, when Zee told the Plaintiff that he would send the signed Service Agreement to Singapore for execution by D2,[74] the Plaintiff presumed that Zee would courier both the Original Draft and Scanned Draft (each bearing the wet-ink signatures of Zee and himself) to Singapore,[75] where D2 could then pen *his* wet-ink signature and affix D1's wet-ink stamp. As it turned out, Zee did not do that but (as alluded to at para 19 above) merely scanned one of the two drafts and sent the scanned electronic copy to D2.[76] If D2 had printed that electronic copy and signed on the printout, the Executed Paper Copy would have borne the wet-ink signature of *only* D2 – the signatures of Zee and the Plaintiff would have merely been printed images. Unfortunately, the document which the Plaintiff eventually obtained (*ie*, P1) was not even that. It was a printout of an electronic copy where the signatures of *all* signatories (including *D2*) *and* D1's corporate stamp were merely printed images and not in wet ink.[77]

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72 Transcripts Day 3 (29 November 2023) at p 144 lines 10 to 16 and p 145 lines 5 to 25.

73 Transcripts Day 3 (29 November 2023) at p 142 lines 5 to 9; Transcripts Day 4 (30 November 2023) at p 53 line 4 to p 54 line 11.

74 Plaintiff's AEIC at para 18.

75 Plaintiff's Reply Submissions at para 36; Transcripts Day 3 (29 November 2023) at p 140 lines 1 to 4.

76 Transcripts Day 3 (29 November 2023) at p 146 lines 9 to 17; Transcripts Day 4 (30 November 2023) at p 72 line 14 to p 73 line 2.

77 Plaintiff's AEIC at para 24; Plaintiff's Closing Submissions at para 42.3.

Theft of the Plaintiff's cryptocurrencies and the aftermath

32 After the Service Agreement was purportedly executed, the Plaintiff and his friends began increasing their investments in the Cryptotrage scheme. The Plaintiff deposited three types of cryptocurrencies into the scheme: the first was USDt, followed by BUSD (from November 2019 onwards) and BNB (from July 2019 onwards).[78]

33 At the time, Snap Vietnam had two accounts on the Binance Exchange which respectively held what was termed "Tier 2" and "Tier 3" status.[79] Zee wanted to raise the quantum of BNB deposits in each of these accounts to 11,000 BNB, as crossing that threshold would qualify the accounts for upgrade to "Tier 9" status. Holders of Tier 9 accounts enjoyed large discounts on trading fees and received referral fees from the Binance Exchange.[80] At Zee's behest, the Plaintiff deposited a total of 22,000 BNB into the two accounts, thereby enabling them to reach Tier 9 status.[81] In return, the Plaintiff was paid half the Tier 9 benefits reaped.[82]

34 In the months that followed, the Plaintiff's Cryptotrage trades were profitable and he was able to make various withdrawals of his gains.[83] In October 2019, a company called Torque Group Holdings Limited ("Torque") was incorporated in the British Virgin Islands ("BVI"), with D2 as its registered

78 Plaintiff's AEIC at paras 112–115.

79 Plaintiff's AEIC at para 116.

80 Plaintiff's AEIC at para 117.

81 Plaintiff's AEIC at paras 120–123.

82 Plaintiff's AEIC at para 118.

83 Plaintiff's AEIC at para 129.

director and Chief Executive Officer ("CEO") and Zee as its Chief Technology Officer ("CTO").[84] Zee informed the Plaintiff that Torque was a "spinoff" from Cryptotrage that operated an online cryptocurrency trading platform employing the same arbitrage algorithm as that used in the Cryptotrage scheme.[85] The Plaintiff accordingly invested cryptocurrencies on the Torque platform as well.[86]

35 The Plaintiff alleged that Snap Vietnam had, unbeknownst to him, started to consolidate its Cryptotrage trades such that they would be conducted from only one of the two Tier 9 Binance accounts[87] – I refer to this remaining account simply as "the Binance Account". The Binance Account also came to be used for trades on the Torque platform,[88] meaning that cryptocurrencies invested by investors on the Torque platform were deposited into the Binance Account. The Plaintiff viewed this as "commingling" of the cryptocurrencies which he had invested in Cryptotrage with those invested by Torque's investors – something which he had neither consented to nor even been made aware of.[89] He surmised that the commingling was to allow Torque to reap the pecuniary benefits of the Binance Account's Tier 9 status[90] (referred to at para 33 above).

36 On 9 February 2021, Zee sent a Telegram message to D2,[91] in which Zee

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84 See affidavit of Jason Aleksander Kardachi (one of two joint liquidators of Torque) dated 19 March 2021 at paras 6–7, exhibited in Plaintiff's AEIC at p 568.

85 Plaintiff's AEIC at paras 156 and 158.

86 Plaintiff's AEIC at para 160.

87 Plaintiff's AEIC at para 166(a); Transcripts Day 3 (29 November 2023) at p 88 line 5 to p 89 line 6; p 93 line 23 to p 94 line 1.

88 Plaintiff's AEIC at para 169.

89 Plaintiff's Closing Submissions at para 60.

90 Plaintiff's AEIC at para 167.

91 Exhibited in Plaintiff's AEIC at p 564.

confessed to engaging in unauthorised futures trading using cryptocurrencies in the Binance Account. Zee explained that the bots were unable to sustain the profits, thereby prompting him to resort to futures trading which, though more profitable, was also risky and ultimately incurred losses that grew progressively bigger. The Plaintiff claimed that Zee had also absconded with the Plaintiff's cryptocurrencies from the Binance Account.[92] Following this development, D2 issued a statement to Torque's investors,[93] alerting them to significant trading losses incurred by Torque arising from Zee's trades. Zee has been untraceable since.

37 The Plaintiff claimed that up until the unravelling of Zee's fraud, he was able to make withdrawals from what he had deposited in the Cryptotrage scheme. This lulled him into thinking that there was nothing amiss and that the daily reports (mentioned in para 9 above) showing the daily balances of his cryptocurrency deposits were in order.[94] After Zee's actions came to light, the Plaintiff realised that those daily reports were "completely bogus",[95] as Zee had been using the Plaintiff's cryptocurrencies to engage in risky and highly-leveraged trades. The Plaintiff reckoned that Zee's fraud must ultimately have led to the depletion of all the cryptocurrencies which the Plaintiff had deposited under the Cryptotrage scheme.[96]

38 As investigations into Torque commenced, the Binance Account was frozen until further notice, thereby preventing the Plaintiff from withdrawing

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92 Plaintiff's AEIC at para 159.

93 Plaintiff's AEIC at p 514.

94 Plaintiff's AEIC at para 131.

95 Statement of Claim (Amendment No. 1) at para 32.

96 Statement of Claim (Amendment No. 1) at para 31(e).

whatever might have been left of his investments under both the Cryptotrage scheme and the Torque platform.[97] It was only at this point that the Plaintiff realised that the Binance Account had been used by Torque. The Plaintiff thus approached CK, urgently seeking redress. CK arranged a conference call with D2, which was held on 16 February 2021 and attended by D2, the Plaintiff and CK.[98] The call was secretly recorded by the Plaintiff,[99] who adduced transcripts of the call at trial.[100] The transcripts capture D2 saying that he could not recall signing the Service Agreement. The transcripts also reflect that when the Plaintiff persisted in pressing for a remedy, D2 capitulated and suggested that a repayment plan could be explored.[101]

39 On 26 February 2021, D2 applied to the BVI courts for an order to appoint liquidators for Torque on an urgent basis.[102] This led to the appointment of Torque's provisional liquidators who, on 3 March 2021, sent a circular[103] to Torque's creditors and customers notifying them of the appointment and informing them that the Binance Account was now under the liquidators' control.

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97 Plaintiff's AEIC at paras 166(a)–166(c).

98 Plaintiff's AEIC at para 164 (S/N 4).

99 Transcripts Day 4 (30 November 2023) at p 121 lines 7 to 9.

100 Plaintiff's AEIC at pp 869–875.

101 Plaintiff's AEIC at para 205.

102 See affidavit of Jason Aleksander Kardachi (one of two joint liquidators of Torque) dated 19 March 2021 at para 8, exhibited in Plaintiff's AEIC at p 568.

103 Exhibited in Plaintiff's AEIC at pp 520–529.

The Defendants' factual evidence

40 D2 maintained that he never executed the Service Agreement.[104] In other words, *the Executed Paper Copy never existed*, which in turn meant that the E-Copy (and hence P1) could not possibly have been derived from it. D2 maintained that the E-Copy (and hence P1) was forged and made the following points about the features in P1's third page (extracted at para 29 above):

(a) His purported signature was copy-pasted.[105]

(b) The handwritten words "Bernard Ong" and "Managing Director, Snap Innovations (Singapore)" were *not* in his handwriting.[106]

(c) He did not affix D1's corporate stamp.

41 D2 claimed that he came to learn about the Service Agreement only at the conference call with the Plaintiff on 16 February 2021 (referred to at para 38 above), after Zee's disappearance.[107] D2 also made a police report[108] about P1 having been forged.[109]

42 In relation to D1's corporate stamp, Dr Ting corroborated D2's position by explaining that D2 had no access to it, and thus could not have applied the stamp to the Service Agreement. D1's corporate stamp was always securely

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104 Defence (Amendment No 2) at para 11; D2's AEIC at para 11; 2nd Defendant's Closing Submissions dated 26 January 2024 ("D2's Closing Submissions") at para 22.

105 D2's AEIC at para 18; D2's Closing Submissions at para 5; Transcripts Day 9 (7 December 2023) at p 29 line 16 to p 30 line 8.

106 Transcripts Day 8 (6 December 2023) at p 97 lines 18 to 24.

107 D2's AEIC at para 12.

108 D2's AEIC at pp 27–29.

109 D2's Closing Submissions at para 41.

kept in the Operation Manager's room under lock and key, accessible only to two persons, being the Operation Manager and Dr Ting himself.[110] Dr Ting also added that the corporate stamp was an ordinary rubber stamp which could be procured in "a day or two",[111] meaning that anyone other than D2 could have made a similar-looking stamp and applied the same to the Service Agreement.

43 The Defendants also explained that while D2 and Zee may have been given the titles of "director", they were in truth merely independent contractors engaged by D1.[112] Dr Ting explained that it was D1's practice to give "nice-sounding corporate titles" to its independent contractors, so that they would "appear credible" when promoting D1's products and services to potential customers.[113] This was corroborated by D2, who explained that both he and Zee were independent contractors who had been conferred the title of "director" to enable them to perform their duties.[114]

Framing of the Issues

44 Having laid out the parties' respective versions of the facts, I now summarise the claims raised by the Plaintiff, and the Defendants' defences thereto. That will in turn set the backdrop for framing the issues in this case.

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110 Ting Shang Ping's AEIC dated 29 August 2023 ("Ting Shang Ping's AEIC") at para 27.

111 Transcripts Day 9 (7 December 2023) at p 105 lines 6 to 16.

112 D2's Closing Submissions at para 12; 1st Defendant's Closing Submissions dated 26 January 2024 ("D1's Closing Submissions") at para 60; Ting Shang Ping's AEIC at paras 6 and 14.

113 Ting Shang Ping's AEIC at para 13.

114 D2's Closing Submissions at paras 187–188.

The Plaintiff's claims against D1

45 The Plaintiff submitted that both D2 and Zee had both actual *and* ostensible authority to enter into the Service Agreement on D1's behalf and that D1 was consequently bound to honour its terms.

46 In relying on the Service Agreement, the principal clause which the Plaintiff sought to invoke was cl 1.2, the relevant portion of which read:[115]

> … a corporate guarantee is provided by Cryptotrage [*ie*, D1] as following: in case of any *internal fraud* by any staff of the Cryptotrage group of companies, whereas any digital assets are *stolen by fraud* from The Client, the parent company [*ie*, D1] is to substitute those assets within 5 business days. As inventory for those assets to be considered *the daily report sent to the client the day before of such adverse event.*
>
> [emphasis added]

As seen from the clause, D1's obligation to reimburse the Plaintiff would be triggered in the event of "internal fraud" by staff, where any cryptocurrencies were "stolen by fraud". The Plaintiff maintained that two occurrences in the present case amounted to fraud falling within the purview of cl 1.2:

(a) Zee's theft of the Plaintiff's cryptocurrencies.

(b) The commingling of cryptocurrencies invested in the Cryptotrage scheme with those of Torque's investors, within the Binance Account (as described at para 35 above).[116]

47 The Plaintiff claimed that following the events above, D1 was obliged

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115 Statement of Claim (Amendment No. 1) at para 33; see also the photograph of the Service Agreement exhibited in Plaintiff's AEIC at p 113.

116 Transcripts Day 3 (29 November 2023) at p 78 lines 19 to 23; Plaintiff's Closing Submissions at paras 61 and 65.

under cl 1.2 to indemnify him for the quantum of cryptocurrencies reflected in the daily report issued on "*the day before … such adverse event*". As Zee's fraud came to light on 9 February 2021, the Plaintiff took this to be the day on which the adverse event occurred, meaning that the daily reports to be used for ascertaining the size of D1's indemnity obligation were those issued the day before, *ie*, on 8 February 2021.[117] The 8 February 2021 daily reports in turn set out the Plaintiff's balances as at the end of 7 February 2021. According to these daily reports, the Plaintiff held balances in three cryptocurrencies: USDt, BUSD and BNB.[118] He listed the balance for each of these cryptocurrencies as at the end of 7 February 2021, as reflected in the 8 February 2021 daily reports, and ascribed a US dollar value to each balance, as per the table below.[119] He then summed up all three dollar values to peg his total loss at US$9,122,044:[120]

S/n.	Digital Asset in Cryptotrage	Balance	USD Equivalent
1.	**USDt**	656,422 USDt	656,422
2.	**BUSD**	3,073,178 BUSD	3,073,178
3.	**BNB**	21,772.06	5,392,443
		TOTAL:	9,122,044

*Based on exchange rate existing as at 2 March 2021.

The Plaintiff claimed that D1's refusal to honour cl 1.2 of the Service Agreement and indemnify him for this sum, being the Plaintiff's loss from the fraud, constituted a breach of contract.[121]

48 Apart from relying on D1's alleged breach of the Service Agreement,

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117 Plaintiff's AEIC at para 179.

118 Plaintiff's AEIC at paras 180–182.

119 Plaintiff's AEIC at para 183.

120 Plaintiff's Closing Submissions at para 69.

121 Plaintiff's Closing Submissions at paras 26–27.

the Plaintiff also claimed that D1 owed a "fiduciary, contractual or tortious duty" to the Plaintiff to supervise Zee. The Plaintiff claimed that D1 failed to do so, thereby allowing Zee's fraud to injure the Plaintiff.[122]

The Plaintiff's claims against D2

49 The Plaintiff also claimed against D2 for breach of warranty of authority. In this respect, the Plaintiff's case was that:

(a) D2, in holding himself out on his LinkedIn profile as D1's "Managing Director", as well as in allowing himself to be held out on D1's website as D1's "director", warranted that he had the authority to act on D1's behalf;[123]

(b) the Plaintiff entered into the Service Agreement in reliance on that warranty;[124] and

(c) D2 breached that warranty by now denouncing the Service Agreement.[125]

While not explicitly framed as such in his pleadings or submissions, this claim for breach of warranty of authority was advanced *as an alternative* to the Plaintiff's principal claims against D1. In other words, it would only be if the Plaintiff failed to establish that D2 (or Zee, for that matter) had the authority to bind D1 to the Service Agreement that the issue of breach of warranty of

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122 Statement of Claim (Amendment No. 1) at paras 42.1–42.2.

123 Statement of Claim (Amendment No. 1) at paras 38–39.

124 Statement of Claim (Amendment No. 1) at para 40.

125 Plaintiff's Closing Submissions at para 110.

authority by D2 would come into play.

50 As with D1, the Plaintiff similarly claimed that D2 owed the Plaintiff a duty to supervise Zee. The Plaintiff claimed that this was a "tortious duty", arising from D2's capacity as D1's managing director and Zee's supervisor in Snap Vietnam,[126] as well as from D2's capacity as CEO of Torque.[127] The Plaintiff claimed that D2 breached this duty by the following derelictions:

(a) D2 delegated to Zee the authority to run and manage Snap Vietnam,[128] thereby allowing Zee to surreptitiously misappropriate the Plaintiff's cryptocurrencies.[129]

(b) D2 allowed Zee to commingle the cryptocurrencies which the Plaintiff had deposited for the Cryptotrage scheme with those of Torque's investors.[130] As Torque's CEO, D2 should have suspected that something was amiss upon discovering cryptocurrencies in the Binance Account belonging to persons other than Torque's investors.[131]

The defences

51 In furtherance of their position that the Executed Paper Copy (bearing D2's wet-ink signature) never existed, the Defendants emphasised that the Executed Paper Copy was never adduced in court and argued that the Plaintiff

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126 Statement of Claim (Amendment No. 1) at paras 42–44.

127 Plaintiff's Closing Submissions at para 98.

128 Plaintiff's Closing Submissions at para 80.

129 Statement of Claim (Amendment No. 1) at para 44.1.

130 Statement of Claim (Amendment No. 1) at para 45.

131 Plaintiff's Closing Submissions at paras 83–85.

should consequently be regarded as having failed to prove it. As for P1, this was a printout of the E-Copy, which in turn purported to be a *copy* of the Executed Paper Copy. The Defendants argued that the Plaintiff failed to discharge his burden of establishing the E-Copy as an authentic copy of the Executed Paper Copy. With authenticity not having been established, the E-Copy (and hence P1) was consequently inadmissible as evidence of the Executed Paper Copy.[132]

52 D1 further submitted that even if D2 had executed the Service Agreement, neither D2 nor Zee possessed actual or ostensible authority to sign it on D1's behalf.[133] Notwithstanding their titles of "director", both men were in truth merely independent contractors with no authority to bind D1 to the Service Agreement.

53 As regards the Plaintiff's claim that D2 breached his warranty of authority, D2 maintained that he never professed to be an agent of D1.[134] In any case, no such warranty could have been made by him to the Plaintiff, given that both men never met prior to the signing of the Service Agreement.[135] D2 pointed out that while the Plaintiff may have culled some details about him from online sources, the Plaintiff made no serious effort to verify them with proper sources.

54 D1 also argued that even if the Service Agreement was validly concluded on its behalf, the guarantee in cl 1.2 was never triggered. This clause would have come into operation only in instances of "internal fraud by any staff

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132 D1's Closing Submissions at paras 10–13; 2nd Defendant's Reply Submissions dated 23 February 2024 ("D2's Reply Submissions") at para 16.

133 D1's Closing Submissions at para 52.

134 D2's Closing Submissions at para 145.

135 D2's Closing Submissions at para 139.

of the Cryptotrage group", where digital assets were "stolen by fraud". D1 argued that both instances of fraud alleged by the Plaintiff – (a) the commingling of the Plaintiff's cryptocurrencies with those of Torque's investors; and (b) Zee's theft of the cryptocurrencies – were insufficient to trigger cl 1.2, for the following reasons:

(a) As regards the commingling of cryptocurrencies, D1 argued that this was not an instance of "fraud" as there was no evidence of Zee having ever been prohibited from using the Binance Account to house deposits from investors outside the Cryptotrage scheme[136] (such as Torque's investors). In any case, the particulars of the alleged commingling were never pleaded.[137]

(b) As regards Zee's alleged theft of the cryptocurrencies, the Defendants argued that this did not constitute "internal fraud by any staff" of D1, given that Zee was not D1's "staff" but merely an independent contractor.[138] More importantly, there was no evidence to show just how much of the cryptocurrency deposits in the Binance Account had been depleted or withdrawn by Zee,[139] nor to indicate whether the cryptocurrencies allegedly depleted or withdrawn in fact belonged to the Plaintiff (as opposed to, say, Torque's investors).[140] That being the case, the Plaintiff's cryptocurrencies could not be regarded as having been "stolen by fraud".

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136 D1's Closing Submissions at para 125.

137 D1's Closing Submissions at paras 95–97.

138 D1's Closing Submissions at paras 99–101.

139 D1's Closing Submissions at para 112.

140 D1's Closing Submissions at paras 106–107; D2's Closing Submissions at para 181.

55 The Defendants also rejected the suggestion that they were under any duty to supervise Zee.[141] D1 argued that the Plaintiff's AEIC and submissions completely failed to disclose any legal basis for such a duty.[142] D2 argued that it was not incumbent on him to supervise Zee, as neither Zee nor D1's operations in Vietnam were under his charge.[143]

56 Finally, the Defendants contended that the Plaintiff failed to properly quantify his damages:

(a) Firstly, there was no evidence as to how much cryptocurrency deposits remained in the account after Zee's alleged fraud.[144] The Defendants contended that if substantial amounts remained, the Plaintiff's claim in this action would be premature. The Plaintiff had filed a proof of debt with Torque's liquidators in respect of his cryptocurrencies in the Binance Account. Allowing his claim against the Defendants at this juncture could result in him acquiring a windfall, should he eventually recover some or all of his cryptocurrencies from Torque's liquidators .[145]

(b) Furthermore, the Plaintiff had calculated his losses based on the cryptocurrency balances as set out in the daily reports for 8 February 2021. However, those daily reports were unreliable, given that the

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141 D1's Closing Submissions at paras 154–161; D2's Closing Submissions at para 185.

142 D1's Closing Submissions at paras 154–160.

143 D2's Closing Submissions at para 185.

144 1st Defendant's Reply Submissions dated 23 February 2024 ("D1's Reply Submissions") at para 8(3).

145 D1's Closing Submissions at para 151; D2's Closing Submissions at para 183.

Plaintiff himself pleaded that they were "completely bogus".[146]

Issues to be determined in this case

57 Against the backdrop of the parties' respective claims and defences, as set out above, the following issues arise for my determination:

(a) whether the Service Agreement was proven to have been signed by D2;

(b) assuming D2 in fact signed the Service Agreement, whether D2 and Zee possessed actual or ostensible authority to enter into the Service Agreement on D1's behalf;

(c) assuming D2 signed the Service Agreement but *lacked the authority* to do so on D1's behalf, whether D2 had thereby breached a warranty of authority to the Plaintiff;

(d) assuming D2 signed the Service Agreement and *was authorised* to do so on D1's behalf, whether the conditions for triggering D1's obligation under the Service Agreement to indemnify the Plaintiff had been met;

(e) whether the Defendants owed the Plaintiff a duty to supervise Zee and, if so, whether this duty was breached; and

(f) whether the Plaintiff had properly quantified his losses.

The following sections will address each of these issues in turn.

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146 D1's Closing Submissions at paras 4(4) and 153; D2's Closing Submissions at para 169.

Issue 1: Whether the Service Agreement was proven to have been signed by D2

58 The Executed Paper Copy was never adduced in court. The Plaintiff claimed that it remains within the possession of the Defendants,[147] who have refused to pass the same to him. The Plaintiff had served on D2 a notice to produce the Executed Paper Copy[148] but D2 (unsurprisingly) failed to do so. The Plaintiff thus resorted to proving the existence of the Executed Paper Copy by adducing P1, *ie*, a printout of the E-Copy sent by Zee. A fundamental premise of the Plaintiff's case was thus that the E-Copy (and hence P1) was a faithful reproduction of the Executed Paper Copy.

59 Having carefully considered the Plaintiff's evidence, I find that he has *failed* to establish that the Service Agreement was signed by D2. For the Plaintiff's case to succeed, he must at the very least show that the Executed Paper Copy, bearing D2's wet-ink signature, *exists*. I am not persuaded that the Plaintiff has succeeded in doing so, for the following reasons:

(a) Firstly, the Plaintiff failed to abide by the relevant evidential procedures for proving the Executed Paper Copy. Given that primary evidence of the Executed Paper Copy was not forthcoming, he needed to demonstrate that the statutory requirements for adducing *secondary* evidence of the same were fulfilled – this he failed to do.

(b) Secondly, even if the Plaintiff *is* entitled to adduce secondary evidence of the Executed Paper Copy, the putative secondary evidence in this case – the E-Copy (manifested in paper form as P1) – was *not*

147 Plaintiff's AEIC at para 22.

148 Transcripts Day 4 (30 November 2023) at p 67 lines 17 to 22.

shown to be authentic. The E-Copy and P1 were consequently inadmissible in evidence.

60 I explain these findings below.

Whether the Plaintiff failed to abide by the evidential procedures for proving the Executed Paper Copy

61 Section 66 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") provides that documents must be proved by way of *primary* evidence (unless an exception in s 67 of the EA applies, in which case the relevant document may be proved by way of *secondary evidence*). In this respect, s 64 of the EA explains what constitutes primary evidence:

> **Primary Evidence**
>
> **64.** Primary evidence means the document itself produced for the inspection of the court.

Thus, primary evidence of the Executed Paper Copy (and its contents) would have been the Executed Paper Copy itself.

62 If one accepts the Plaintiff's case that:

(a) D2 *did* sign the Service Agreement (thereby producing the Executed Paper Copy); *and*

(b) the E-Copy sent by Zee was derived by scanning the Executed Paper Copy,

that would mean that the E-Copy constitutes *secondary* evidence of the Executed Paper Copy. This much is clear from a reading of s 65 of the EA, which states:

> **Secondary evidence**
>
> **65.** Secondary evidence means and includes —
>
> …
>
> (*b*) except for copies referred to in Explanation 3 to section 64, copies made from the original by electronic, electrochemical, chemical, magnetic, mechanical, optical, telematic or other technical processes, which in themselves ensure the accuracy of the copy, and copies compared with such copies;
>
> …

63 The Plaintiff nevertheless sought to argue that the E-Copy is *primary* evidence. In doing so, he alluded to Explanation 3 to s 64 of the EA,[149] which states that:

> … if a copy of a document in the form of an electronic record ***is shown*** to reflect that document accurately, then the copy is primary evidence.
>
> [emphasis added in bold italics]

I reject this contention as Explanation 3 is clearly inapplicable to the present context. The E-Copy sent by Zee was, by the Plaintiff's case, a copy of the Executed Paper Copy. Yet, there was no evidence showing how Zee had derived the E-Copy from the Executed Paper Copy, and thus nothing to show that the E-Copy did "reflect" the Executed Paper Copy (whether "accurately" or at all).

64 The Plaintiff further submitted that the E-Copy was primary evidence by virtue of s 116A of the EA.[150] For ease of reference, the relevant parts of s 116A of the EA are set out below:

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149 Plaintiff's Reply Submissions at para 27.

150 Plaintiff's Reply Submissions at paras 16 and 27.

> **Presumptions in relation to electronic records**
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> **116A.**—(1) Unless evidence sufficient to raise doubt about the presumption is adduced, where a device or process is one that, or is of a kind that, if properly used, ordinarily produces or accurately communicates an electronic record, the court is to presume that in producing or communicating that electronic record on the occasion in question, the device or process produced or accurately communicated the electronic record.
>
> …
>
> (2) Unless evidence to the contrary is adduced, the court is to presume that any electronic record generated, recorded or stored is authentic if it is established that the electronic record was generated, recorded or stored in the usual and ordinary course of business by a person who was not a party to the proceedings on the occasion in question and who did not generate, record or store it under the control of the party seeking to introduce the electronic record.
>
> …
>
> (3) Unless evidence to the contrary is adduced, where an electronic record was generated, recorded or stored by a party who is adverse in interest to the party seeking to adduce the evidence, the court is to presume that the electronic record is authentic in relation to the authentication issues arising from the generation, recording or storage of that electronic record.
> …

65 I find the Plaintiff's argument difficult to comprehend. For a start, he did not attempt to explain *which* subsection in s 116A of the EA he was relying on. Given the dearth of elaboration, I can only assume that he was referring to subsection (1), given that subsections (2) and (3) appear to have no application to the present facts. Even on that premise, I find it difficult to see how subsection (1) has any bearing on the Plaintiff's contention that the E-Copy was primary evidence of the Executed Paper Copy. Applied to the present context, all subsection (1) does is to presume that the communication of the electronic record (*ie*, the E-Copy in this case) over Telegram was accurate. There is nothing controversial about this – even the forensic experts from both sides

found no reason to question the integrity of the transmission process over Telegram.[151] However, accurate transmission simply meant that the E-Copy received by the Plaintiff and Kenneth Chan over Telegram was the same as what Zee had sent over Telegram. That conclusion bears no relation to the crucial link which the Plaintiff must establish, as between the E-Copy sent by Zee over Telegram and the *Executed Paper Copy* from which the E-Copy was purportedly derived. Accurate transmission of the E-Copy from Zee over Telegram could not, in and of itself, transform the status of the E-Copy into primary evidence of the Executed Paper Copy. I fail to see how the operation of s 116A of the EA can possibly culminate in that result.

66 The upshot of the above is that the E-Copy was, *at best*, secondary evidence of the Executed Paper Copy. That being so, what would have been the appropriate route by which the E-Copy could be admitted (as *secondary* evidence) under the EA? Some guidance can be found in the remarks of Belinda Ang J (as she then was) in *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another* [2005] 4 SLR(R) 417 ("*Jet Holdings*") (at [146]):

> I begin with the best evidence rule, which is that the contents of documents must under s 66 of the Evidence Act be proved by primary evidence (*ie* the originals themselves) except in situations falling within s 67. The original documents are to be produced to the court for inspection: s 64 of the [Evidence] Act. ***Secondary evidence (eg photocopy) is, however, allowed only upon satisfaction of the existence of the circumstances mentioned in s 67***.
>
> [emphasis added in bold italics]

67 At first blush, it would appear that a *possible* pathway by which the

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151 Transcripts Day 2 (28 November 2023) at p 11 lines 14 to 17; James Tan's AEIC dated 25 August 2023 ("James Tan's AEIC") at para 13(a).

E-Copy could be admitted as secondary evidence of the Executed Paper Copy lies in s 67(1)(*a*) of the EA. That provision allows secondary evidence to be given of the existence, condition or contents of a document that is admissible in evidence, if the original appears to be in the possession or power of one of the following three categories of persons:

> (i) the person against whom the document is sought to be proved;
>
> (ii) any person out of reach of or not subject to the process of the court; or
>
> (iii) any person legally bound to produce it,

and that person does not produce the original despite having been served with a notice in s 68 of the EA. Given the Plaintiff's endeavour to use the Executed Paper Copy as evidence against the Defendants, whom he claims to be withholding the Executed Paper Copy from him,[152] the relevant limb of s 67(1)(*a*) of the EA would *potentially* have been limb (i). Alternatively, if the Executed Paper Copy was somehow sent to Zee, another *potentially* relevant limb would have been limb (ii) (on account of Zee being "out of reach").

68 I venture the observations above with a highly tentative tone because, apart from the fact that they are made without the benefit of argument, it was *not* the Plaintiff's case that s 67(1)(*a*) of the EA allowed the E-Copy to be admitted as secondary evidence. Rather, he insisted that ss 65 to 67 of the EA were "not relevant" because the E-Copy was conferred the status of primary evidence by operation of s 116A of the EA.[153] The Plaintiff declared that "once the Plaintiff satisfies the requirements of section 116A of the EA, sections 65 to

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152 Plaintiff's AEIC at para 22.

153 Plaintiff's Reply Submissions at para 16.

67 [of the] EA falls away."[154] In short, he had placed all his eggs in the s 116A basket and jettisoned any prospect of leveraging on s 67(1)(*a*) of the EA. In light of this, the evidence needed to establish the circumstances described in limbs (i) or (ii) of s 67(1)(*a*) of the EA was either not led or – if it had been led – lay buried in the documents without having been unearthed and deployed in aid of arguments that may have persuaded me to admit the E-Copy under those provisions. At this juncture, it is appropriate to echo one of the holdings in *Jet Holdings* (at [149]–[151]):

> 149 … a plaintiff, who seeks to adduce secondary evidence of the contents of a document, must discharge the burden of proving the existence of any circumstances bringing the case within any of the exceptions in s 67. In fact, the plaintiffs here did not address s 67 at all which means that there is nothing before the court to warrant the admission of secondary evidence of the contents of the documents …
>
> …
>
> 151 For these reasons, secondary evidence of contents of documents relied upon … has in my judgment clearly not been admitted. I am obliged to and do reject the documents tendered … .

69 Given the Plaintiff's misplaced reliance on s 116A of the EA to adduce the E-Copy as primary evidence, as well as his failure to demonstrate why the statutory requirements for admission of secondary evidence were satisfied, the conclusion must be that evidence for proving the Executed Paper Copy and its contents has not been properly admitted in this case.

Whether the Plaintiff's documentary evidence was authentic

70 If I am wrong in my conclusion above, and the Plaintiff *is* entitled to adduce secondary evidence of the Executed Paper Copy, that evidence would

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154 Plaintiff's Reply Submissions at para 27.

have to be the E-Copy (manifested in paper form as P1). Even then, the Plaintiff would in my view have failed to establish the *authenticity* of the E-Copy (and hence P1), meaning that that this piece of documentary evidence would have been inadmissible in any case.

71 The law draws a distinction between adduction and authentication of documentary evidence. Just because a document is adduced in court (whether by way of primary or secondary evidence), this does not mean that it must be regarded as authentic. In *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd and another appeal* [2021] 1 SLR 1217 ("*CIMB v World Fuel*"), the Court of Appeal held (at [52]–[54]):

> 52 It is clear that after primary or secondary evidence of a document is produced, the authenticity of the document still has to be established. …
> …
> 54 … A party who has the burden of proving the authenticity of a document first has to produce primary or secondary evidence thereof, *ie*, the alleged original or a copy, within the provisions of the EA. Thereafter, it also has to prove that the document is what it purports to be. This would include proving the authenticity of the signatures if authenticity was in dispute …

The Court of Appeal in *CIMB v World Fuel* also cited with approval (at [51]) the following remarks by Ang J in *Jet Holdings* (at [146]):

> Documents are not ordinarily taken to prove themselves or accepted as what they purport to be. There has to be an evidentiary basis for finding that a document is what it purports to be.

72 In the present case, the Defendants challenged the authenticity of P1 (and, by extension, the E-Copy), maintaining that D2 *never* signed the Service Agreement. In doing so, the Defendants put the authenticity of the E-Copy and

P1 into issue. As observed in *CIMB v World Fuel* (at [36] and [54]):

> 36 We are of the view that the authenticity of a document … may be put in issue in various ways. For example, the disputing party:
>
> (a) could allege specifically that the signatures were forgeries;
>
> (b) deny the authenticity of the document;
>
> (c) simply not admit the authenticity of the document either by a specific or a general averment in its pleadings; or
>
> (d) where the document is not pleaded but has only been produced in discovery, by a notice of non-admission.
>
> …
>
> 54 … [The appellant's] argument that the authenticity of a document and the authenticity of signatures therein are two distinct issues is incorrect. In the present case, they overlap. [The appellant] had assumed that the authenticity of a document and the authenticity of a signature were separate questions, similar to how the question of whether a document had been properly adduced would be analysed separately from the question of the authenticity of a signature therein. In truth, the authenticity of a document may be put in issue *because* the authenticity of the signatures was disputed.
>
> [emphasis in original]

Consequently, even if the E-Copy (and hence P1) is admitted as secondary evidence, the Plaintiff must still defend the challenge to its authenticity.

73 If the E-Copy (and hence P1) is found not to be authentic, it will *not* be admissible in evidence. In *Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) and another v Ayaz Ahmed and others and other appeals* [2024] SGHC(A) 17 ("*Mustaq Ahmad*"), the Appellate Division of the High Court stated (at [169]) that "authenticity is a necessary condition of admissibility". The Appellate Division also endorsed (at [169]) the following observations by Vinodh Coomaraswamy J in *Super Group Ltd v Mysore Nagaraja Kartik* [2018] SGHC 192 (at [53]):

> It is true that formal proof of authenticity is commonly dispensed with in civil cases. But that should not be allowed to obscure the fundamental evidential point that, until authenticity is established, admissibility has no meaning. Evidence which has been fabricated is no evidence at all: it is incapable of proving anything other than, perhaps, the very fact that it has been fabricated.

74 With the above principles in mind, I now assess the issue of authenticity of the E-Copy and P1.

The burden of proving authenticity versus the burden of proving forgery

75 In general, a party who asserts that a document is authentic bears the burden of proving that document's authenticity: see *CIMB v World Fuel* at [37] and [70]. In *Mustaq Ahmad*, the Appellate Division held (at [160(b)]):

> Where the authenticity of a document is disputed, the burden of proof is on the party seeking to rely on that document to prove that the document is authentic.

The basis for placing the burden of proof on the party advocating that the document is authentic lies in s 105 of the EA, which sets out the default rule that the burden of proof as to any fact lies on the person wishing the court to believe in that fact's existence: *CIMB Bank Bhd v Italmatic Tyre & Retreading Equipment (Asia) Pte Ltd* [2021] 4 SLR 883 at [73].

76 However, the practical application of that rule may prove challenging in a case such as the present, where authenticity has been challenged on the basis that the document concerned was *forged*. While the law is clear that the burden of proving authenticity lies on the party asserting that the document in question is authentic, it is also clear that the burden of proving forgery lies on the party asserting that the document was forged. In *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie Handoyo*"), the

Court of Appeal held (at [157]):

> … It is trite that the legal burden to prove an allegation lies on the party asserting the allegation. The true meaning of the rule is that where a given allegation forms an essential part of a party's case, the proof of the allegation rests on him … In the context of forgery specifically, this court accepted in *Yogambikai Nagarajah v Indian Overseas Bank* [1996] 2 SLR(R) 774 ("*Yogambikai*") at [39] that the burden of proof is on the party alleging forgery of a particular document. In the present case, it is Chan who has alleged that the Guarantee is a fabrication. The legal burden is therefore on him to prove that allegation.

77 Consequently, where authenticity is challenged on the ground that the document was forged (which I imagine is not an uncommon ground for challenging authenticity), the issue of the document's authenticity and the question of whether the document was forged are apt to be closely intertwined. That would in turn make it difficult to tell where the Plaintiff's burden (to prove authenticity) ends and where the Defendants' burden (to prove forgery) begins. This difficulty appears to have been recognised by the Court of Appeal in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 (at [42]):

> In respect of where the burden of proof lies, it is plain that the legal burden to prove an allegation lies on the party making the assertion: *Alwie Handoyo* at [157]. But this is sometimes more easily expressed than it is applied. Clearly, it falls on the appellant to prove the alleged forgery of her signature. But it is the respondent that brings the action asserting that the appellant is bound by the Deed and so it remains for the respondent to discharge its burden of proving that the appellant had in fact signed the Deed.

78 I would suggest that when a party seeks to tender a document which the opposing party alleges to be forged, the assessment of the competing evidence could possibly be structured according to the following steps, to ensure that the relevant burden of proof is properly allocated:

(a) One first needs to ask if the tendering party has adduced

sufficient evidence to establish the document's provenance. If there is such evidence and the evidence would – if uncontroverted – suffice to establish the document's provenance on a balance of probabilities, the tendering party will have established authenticity unless the same is challenged by the opposing party.

(b) If the opposing party challenges the document's authenticity, the initial area of focus should be on that portion of his case *which does not go toward alleging forgery*, *eg*, evidence which seeks to cast doubt on the tendering party's account of how he came to possess the document. At this stage of the analysis, the court should assess if, notwithstanding the countervailing evidence from the opposing party, the tendering party's evidence as to the document's provenance *still* suffices to discharge the latter's burden of proving authenticity on a balance of probabilities. If the answer is 'no', the tendering party's case on authenticity fails even without delving into the issue of forgery.

(c) If the answer to the question posed at step (b) above is 'yes', authenticity will be considered as having been *prima facie* established, *unless* the opposing party proves his allegation of forgery. Once the analysis reaches this stage, the opposing party must discharge his burden of proving forgery on a balance of probabilities. To do so, his evidence would have to go beyond merely "poking holes" in the tendering party's case on provenance – something which would already have been done at step (b) above without success. Rather, the focus must shift to that aspect of the opposing party's evidence which relates specifically to his allegation of forgery, *eg*, handwriting expert testimony indicating that a signature was irregular; computer forensic analysis showing that

tampering occurred; circumstantial evidence suggesting that someone had both reason and opportunity to manipulate the document; *etc*.

The practical application of the framework above may prove challenging, especially when it is not entirely clear whether the opposing party's evidence should be regarded as merely discrediting the claimant's case as to provenance, and therefore dealt with at step (b), or as alleging forgery and thus dealt with at step (c). Be that as it may, given how the burden of proof has been assigned at law, it remains necessary to properly earmark who needs to prove what.

79 Useful guidance can be gleaned from the Court of Appeal's decision in *Wibowo Boediono and another v Cristian Priwisata Yacob and another and other appeals* [2018] 2 SLR 481. In that case, the appellants alleged that the respondents owed a debt which was evidenced by a signed note and an undated cheque. The appellants claimed that one of the respondents signed the cheque as security for the debt. The respondents contested this, alleging (*inter alia*) that the signatures on the cheque and note were forgeries. The lower court dismissed the appellants' claims on this point, holding that they failed to discharge their burden of proving that the cheque and note were authentic. This finding was reversed on appeal, where the Court of Appeal remarked (at [52]–[54]):

> 52 **The Judge did not rely on these two documents because the appellants did not prove their authenticity. In our view, this reasoning was deficient because it wrongly placed the burden of proof on the appellants rather than on the [respondents]**. As the appellants correctly point out, the burden of proof is on the party alleging forgery of a particular document to prove it (see this court's decision in *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [157]). **Since the … cheque and the note that accompanied it appeared to have originated from [the second respondent] (it was not disputed that the cheque was from her cheque book), it was for the [respondents] to adduce evidence of forgery. Otherwise the cheque and the note would be taken to be**

> **authentic and they would be *prima facie evidence* that the debt existed**.
>
> 53 The [respondents] provided no such evidence. Indeed, they did not submit the signatures on the … cheque and the note for handwriting analysis even though they called on a handwriting expert for other documents such as the Letter of Authority. This made the omission troubling. …
>
> 54 Regardless of why the [respondents] failed to put the … cheque and the note through handwriting analysis, the fact is that they had the chance to do so but did not. The burden of proof is on them to prove forgery and they cannot disavow the burden by merely stating that they did not believe the burden was on them.
>
> [emphasis added in bold]

One sees from the passage above that the Court of Appeal spoke about the respondents' burden to prove forgery only *after* alluding to the appellants having adduced evidence as to the documents' provenance. The Court of Appeal observed that the cheque indisputably originated from the second respondent's chequebook. It is also evident from the case that the signature concerned *looked* like the respondent's.[155] On the back of those facts, the Court of Appeal found that the provenance of the cheque had been established to a *prima facie* standard. It was against this backdrop that the Court of Appeal proceeded to consider if the respondents had discharged their burden of proving forgery.

80 Reverting to the present case, I am of the view that even at step (a) of the framework in para 78 above, the Plaintiff has failed to discharge his burden of establishing the authenticity of the E-Copy. There was nothing to show how Zee got his hands on the E-Copy, and still less to show that the E-Copy was indeed derived from the (putative) Executed Paper Copy. The only evidence

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155 The respondents' alternative plea was that the signature did belong to the respondent but had been procured by fraud: see the judgment of the High Court in *Cristian Priwisata Yacob v Wibowo Boediono* [2017] SGHC 8 at [117]–[118].

tying the E-Copy to D2 was Zee's Telegram message (at para 22 above) in which Zee claimed that the Service Agreement had been signed by D2.[156] That statement by Zee was hearsay, but even if it could be admitted (*eg*, under the hearsay exception in s 32(1)(*j*)(ii) of the EA, on account of Zee being untraceable), the *weight* to be given to that statement would be negligible. By the Plaintiff's own account, Zee was a fraudster who had absconded with millions of dollars in digital assets. In my view, Zee's statements do not suffice to establish a *prima facie* case as to the provenance of the E-Copy.

81 Even if I am wrong and Zee's hearsay statement can be regarded as *prima facie* establishing the E-Copy's authenticity, I take the view that the Plaintiff still fails at step (b) of the framework in para 78 above. In other words, the Defendants have, quite *apart* from their evidence that the E-Copy was forged, successfully cast doubts on the E-Copy's provenance:

> (a) Firstly, I agree with D2's submission[157] that the Plaintiff's entire hypothesis of how P1 came to be handed to Schmidt made no sense. It was the Plaintiff's case that D2 was in Singapore during the early morning hours of 27 May 2019, during which he executed the Service Agreement. The Plaintiff postulated that after execution, the Executed Paper Copy was scanned to produce the E-Copy, which D2 sent to Zee over Telegram *that very morning* at 8.27am. About a minute after that, at 8.28am, Zee forwarded D2's message (which enclosed the E-Copy) to the Plaintiff over Telegram, via the message in the conversation chain extracted at para 22 above. This meant that the *very last location* of the

156 Plaintiff's Closing Submissions at para 41.6.

157 Transcripts Day 9 (7 December 2023) at p 39 line 21 to p 40 line 10.

Executed Paper Copy must have been D1's office in Singapore, where D2 allegedly appended his wet-ink signature. There was no suggestion of the Executed Paper Copy having been couriered to Zee in Vietnam after it was signed by D2, or to anywhere else for that matter. That being the case, when Schmidt came to D1's Singapore office to collect a copy of the signed Service Agreement on 3 June 2019, one would have expected Kenneth Chan to simply pass him the Executed Paper Copy bearing D2's wet-ink signature. *Why was that not done?* Instead, Kenneth Chan had to wait for the E-Copy to be sent via Telegram from Zee in Vietnam, notwithstanding that the Executed Paper Copy would already have been sitting in the Singapore office. There was no apparent reason for such contrived circularity. It was not as if D2 needed to keep the Executed Paper Copy (bearing D2's wet-ink signature) for his own records, given that record-keeping would have entailed D2 maintaining a copy of the contractual documents bearing the wet-ink signature of the *counterparty* (*ie*, the Plaintiff) rather than that of himself.

(b) Secondly, the evidence suggests that D2 could not have affixed D1's corporate stamp on the Service Agreement. D2's uncontroverted testimony was that he did *not* have access to D1's corporate stamp.[158] Dr Ting similarly testified that only Dr Ting and D1's Operation Manager had access to the corporate stamp, which was kept under lock and key.[159] I also note that it was not the Plaintiff's case that D2 had purchased a duplicate of D1's corporate stamp (which had a rather generic design) to apply to the Service Agreement.

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158 Transcripts Day 8 (6 December 2023) at p 118 at lines 8 to 10.

159 Ting Shang Ping's AEIC at para 27.

In light of these factors, the conclusion which I would draw at step (b) of the framework in para 78 above is that the Plaintiff's evidence as to the provenance of the E-Copy has been sufficiently discredited, to the point that the Plaintiff must be regarded as having failed to discharge his burden of proving the authenticity of the E-Copy (and hence of P1). That conclusion can be sustained without having to venture into the Defendants' evidence of forgery.

82 In seeking to establish the authenticity of the E-Copy, the Plaintiff (yet again) sought to rely on s 116A of the EA. As explained at para 65 above, I rejected the Plaintiff's attempt at using s 116A to confer upon the E-Copy the status of primary evidence. As regards his attempt to now invoke s 116A of the EA to establish the E-Copy's *authenticity*, I similarly find his arguments to be misconceived. He contended that s 116A of the EA creates a *presumption* that the Service Agreement is authentic,[160] submitting as follows:[161]

> After meeting the statutory requirements of section 116A [of the] EA, it is the Plaintiff's case that … P1 … is authentic and the presumption of authenticity arises in favour of the Plaintiff.

As alluded to above, I am prepared to accept that s 116A(1) of the EA operates to create a presumption that the electronic record was *accurately transmitted* over Telegram. However, that only meant that the E-Copy received by the Plaintiff and Kenneth Chan in their respective devices over Telegram faithfully corresponded to what was sent by Zee from his device. That had no bearing on the issue of the E-Copy's authenticity, which would centre on whether the E-Copy sent from Zee's device faithfully corresponded to the *Executed Paper Copy*, from which the E-Copy was allegedly derived.

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160 Plaintiff's Closing Submissions at para 41.12.

161 Plaintiff's Reply Submissions at para 24.

83 If I am wrong in my analysis above and the Plaintiff can be regarded as having established a *prima facie* case that the E-Copy is authentic, *notwithstanding* the doubts over its provenance, the next step would be to address the Defendants' claim of forgery, as per step (c) of the framework at para 78 above. At that stage, the burden would fall squarely on the Defendants to prove, on a balance of probabilities, that the E-Copy (and hence P1) was forged.

84 In that respect, I find that the Defendants have succeeded in establishing forgery. My finding is broadly premised on two grounds:

(a) the evidence of the documentary experts; and

(b) the circumstantial evidence, which is consistent with D2 being *unlikely* to have signed the Service Agreement.

I elaborate on each of these grounds in turn.

Evidence of the documentary experts on the issue of forgery

85 D2's documentary expert was James Tan, a Senior Forensic Consultant with Infinity Forensics Pte Ltd.[162] The Plaintiff's documentary expert was William Pang, a handwriting analyst from HFDE Services Pte Ltd.

86 Both experts approached the issue of whether the E-Copy was forged primarily by examining P1, being the physical manifestation of the E-Copy. Both experts focused heavily on features within the third page of P1, particularly (a) D2's signature; and (b) the handwritten words "Bernard Ong. Managing

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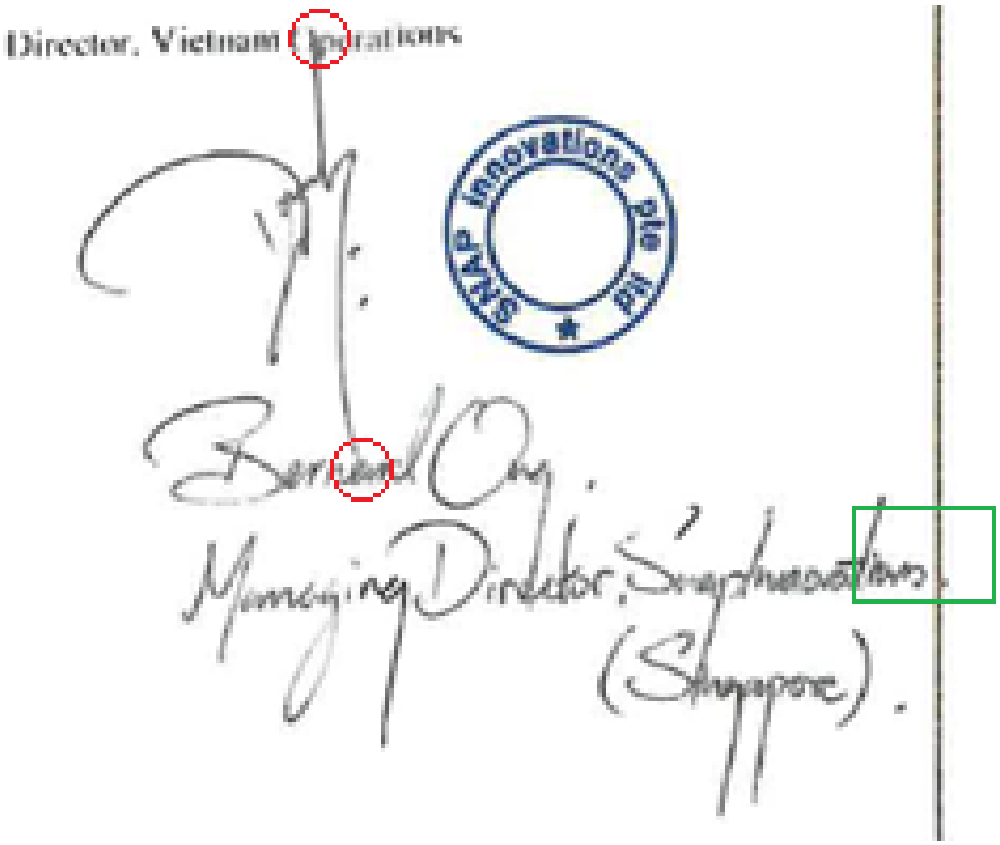
[162] James Tan's AEIC at p 1.

Director, Snap Innovations (Singapore)". The third page of P1 has been reproduced at para 29 above, but I set out below an enlarged snapshot of the relevant section of that page, for ease of visualisation:

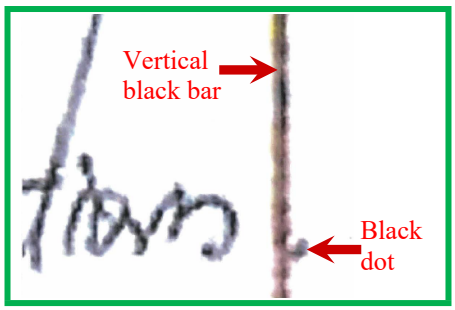


I have encased the ending portion of the handwritten word "Innovations" within the green rectangle, as this was the subject of some focus in the *Defendants*' expert evidence. As for D2's purported signature, one sees a stroke extending upwards and touching the letter "p" in the typed word "Operations" and another stroke extending downwards and touching the letter "a" in the handwritten word "Bernard". I have circled both these points of contact in red, as they were the subject of some focus in the *Plaintiff*'s expert evidence.

(1) James Tan's expert opinion

87 James Tan took the view that P1 was "modified",[163] with D2's signature and the purported handwritten words on the third page having been copy-pasted.[164] His conclusion was based principally on two observations.

88 Firstly, James Tan found it significant that the black dot situated to the right of the handwritten word "Innovations" fell on the *right side* of the vertical black bar, at the third page of P1. To him, this suggested that the black dot, and by extension the handwritten words and signature purportedly penned by D2, were copy-pasted. To illustrate James Tan's point, I have magnified the section encased within the green rectangle in the snapshot extracted at para 86 above:



James Tan took the view that the black dot was part of the handwritten word "Innovations" – this was evident from the similarity in colour between the handwritten word and the dot.[165] As such, if the Executed Paper Copy ever existed, it would have borne not only D2's wet-ink signature and the handwritten words, but the black dot as well – all of which, according to the Plaintiff's case, were penned by D2 on the third page. Critically, James Tan

163 James Tan's AEIC at p 21, para 8.2.

164 James Tan's AEIC at p 23, para 9.2.

165 Transcripts Day 7 (5 December 2023) at p 70 lines 2 to 12.

postulated that *it was the process of scanning the Executed Paper Copy to create the E-Copy which generated the vertical black bar* in the E-Copy, with that bar reflecting the *right-most edge* of the Executed Paper Copy's third page as the latter was being scanned. This meant that it would have been impossible for any feature on the third page of the Executed Paper Copy (such as the black dot) to manifest itself within the E-Copy as being situated to the *right* of the vertical black bar. The very fact that the black dot appeared in the E-Copy (and hence in P1) as lying to the right of the vertical black bar suggested that the black dot could *not* have been captured from scanning the Executed Paper Copy.[166] Rather, the black dot (and by extension the handwritten words and D2's signature) on the E-Copy must have been *pasted* on an electronic copy of the Service Agreement, as follows:[167]

> (a) A copy of the Service Agreement (*without* D2's signature and handwriting) must have first been scanned, thereby creating an electronic copy in which the vertical black bar was generated by the scanning process.
>
> (b) Thereafter, D2's signature, as well as the handwritten words and accompanying black dot, must have been pasted onto that electronic copy, thereby creating the E-Copy in which the black dot was positioned to the right of the vertical black bar.

89 Secondly, James Tan observed that the image of the corporate stamp in P1 was relatively sharp, while the signature of D2 was blurry in comparison.

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166 James Tan's AEIC at p 20, para 8.1.

167 James Tan's AEIC at p 23, para 9.1; Transcripts Day 7 (5 December 2023) at p 73 lines 2 to 7.

This further supported the inference that D2's signature in P1 was not authentic.[168]

(2) William Pang's expert opinion

90 In contrast, William Pang took the view that there was "no indicia of forgery"[169] in P1. He concluded that neither D2's signature[170] nor the handwritten words[171] on the third page of P1 was copy-pasted. He supported this conclusion with the following observations:[172]

(a) There were no "suspicious lines" suggestive of the signature having been copy-pasted.

(b) A signature that was copy-pasted would typically be transposed onto an area where it could be clearly displayed. However, D2's signature on the third page was appended at a spot where it overlapped with the typed word "Operations" above it and the handwritten word "Bernard" below it, as seen in the two red circles within the magnified image at para 86 above.

91 William Pang also sought to bolster his opinion by relying on what transpired when the Plaintiff's solicitors tried to procure specimens of D2's signature and handwriting from D2's solicitors. Specifically, during the

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168 Transcripts Day 7 (5 December 2023) at p 74 lines 2 to 14; p 77 lines 4 to 9; p 153 lines 14 to 18.

169 Pang Chan Kok William's AEIC dated 29 August 2023 ("William Pang's AEIC") at p 28, para 6.3.

170 William Pang's AEIC at p 27, under the heading "SUMMARY OF FINDINGS".

171 William Pang's AEIC at p 23.

172 William Pang's AEIC at p 22, para 3.3.

interlocutory exchanges, the Plaintiff's solicitors wrote a letter[173] to D2's solicitors asking for, *inter alia*:

> any documents and/or contracts before 27 May 2019 bearing [D2's] signature together with the words "Managing Director, Snap Innovations (Singapore)" and his initials.

The date 27 May 2019 is significant because that was the date on which, according to the Plaintiff's case, D2 had signed the Service Agreement (see para 20(c) above). Any specimen of D2's signature or handwriting existing as at that date would show what D2's signature and handwriting looked like when he allegedly executed the Service Agreement. However, D2's solicitors replied to this request in the negative, by way of a letter[174] stating that D2 did not have possession, custody or power over the documents sought. Given this negative reply, the Plaintiff had to procure samples of D2's signature from other sources. The Plaintiff ultimately managed to obtain copies of five documents signed by D2 on various dates post-27 May 2019, which were then furnished to William Pang as specimens for the latter's forensic analysis. In his expert opinion, William Pang referred to the negative reply from D2's solicitors and concluded that if D2 himself did not possess any specimens of his own signature that were penned before 27 May 2019, this meant that there would have been *no source* from which D2's signature could have been copied at the point the Service Agreement was signed,[175] thereby weakening the suggestion that his signature was copy-pasted on the E-Copy.

92 A substantial portion of William Pang's expert observations centred on

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173 Exhibited in William Pang's AEIC at p 56.

174 Exhibited in William Pang's AEIC at p 59.

175 William Pang's AEIC at para 9.

highlighting similarities between the specimens of D2's signature (procured by the Plaintiff) on the one hand, and what was alleged by the Plaintiff to be D2's signature *and handwriting* in P1 on the other.[176] In reliance on these similarities, William Pang drew the following conclusions:

(a) As regards the *signature* on the third page of P1, there was "very strong support" that it was penned by the person who signed the specimen signatures (*ie*, D2).[177] In particular, there were various similarities in characteristics exhibited by both the signature in P1 and the specimen signatures.[178]

(b) As regards the *handwritten words* "Managing Director, Snap Innovations (Singapore)", it was "likely" that those were also penned by the person who signed the specimen signatures (*ie*, D2).[179] William Pang drew support for this conclusion from two traits exhibited in D2's specimen signatures:

(i) The first was the signature's long descending stroke – looking at the signature in the extract at para 86 above, this would be the stroke dipping down and touching the word "*Bernard*" (see the lower red circle).

(ii) The second comprised the two dots to the right of the signature.

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176 William Pang's AEIC at p 18, para 2.2.

177 William Pang's AEIC at p 32, at para 8.

178 William Pang's AEIC at p 30.

179 William Pang's AEIC at p 31, para 7.4.

> William Pang noted that both traits could also be discerned in the handwritten words "Managing Director, Snap Innovations (Singapore)", in that the person writing these words *also* had a habit of using long descending strokes and ending each sentence with a dot.[180]

(3) My conclusion on the expert evidence

93 I begin with William Pang's evidence that D2's signature and the handwritten words on the third page of P1 were likely penned by the person who signed the specimen signatures, *ie*, D2.

94 I am prepared to agree that the *signature* on the third page of P1 *was* that of D2. However, that conclusion is beside the point, given that the thrust of D2's defence was *not* that the signature in P1 did not belong to him, but that it was copy-pasted.[181]

95 As for William Pang's suggestion that it was "likely" that the *handwritten words* "Managing Director, Snap Innovations (Singapore)" on the third page of P1 were penned by D2, I find this to be unpersuasive. I bear in mind the guidance offered by the V K Rajah JA in *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 (at [76]):

> What is axiomatic is that a judge is not entitled to substitute his own views for those of an uncontradicted expert's … Be that as it may, a court must not on the other hand unquestioningly accept unchallenged evidence. Evidence must invariably be sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts. …

To recapitulate, it was D2's position that the handwritten words on the third

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180 William Pang's AEIC at p 31, paras 7.1–7.4.

181 D1's Reply Submissions at para 28.

page of P1 were *not* in his handwriting. I agree with the Defendants' submission[182] that to test that position, the handwritten words in P1 should have been compared against samples of D2's *handwritten words*. However, that was not the approach taken by William Pang, who compared the handwritten words in P1 with samples of D2's *signature*. Given that it was difficult to discern any legible letter of the alphabet from D2's signature, what William Pang embarked on was clearly not a like-for-like comparison. Furthermore, the similarities were cursory at best. William Pang relied on two traits in D2's signature:[183] (a) the single stroke dipping downwards; and (b) the two dots at the end, observing that the handwritten words similarly had some characters with long descending strokes and ended with a dot after each line. In my view, it does not take an expert to appreciate that features such as long descending strokes and ending dots are generic handwriting traits. It might have been different if William Pang had offered his expert views not only on the *presence* of the descending strokes and ending dots in the handwritten words, but also on any *similarities in appearance* which these features, as they appeared in D2's specimen signatures, bore to the corresponding features in the handwritten words. No such analysis was performed, notwithstanding that William Pang embarked on such an analysis when comparing D2's specimen signatures with D2's purported signature in P1.[184] In my judgment, the parallels drawn between D2's specimen signatures and the handwritten words "Managing Director, Snap Innovations (Singapore)" fell far short of justifying William Pang's conclusion that the handwritten words were "likely" to have been written by D2.

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182 D1's Closing Submissions at para 44; D2's Closing Submissions at para 66.

183 William Pang's AEIC at p 31, paras 7.1–7.4.

184 William Pang's AEIC at p 30.

96 In any case, given D2's defence that his signature was copy-pasted, the more germane question is not whether the signature and handwritten words in P1 belonged to D2, but whether they could have been copied from other sources and then pasted on the third page of P1. William Pang reckoned that there was unlikely to have been any copy-pasting because of the absence of "suspicious lines", as well as the fact that D2's purported signature in P1 overlapped with the typewritten word "Operations". However, these attributes are, in my view, inconclusive. William Pang conceded in cross-examination that handwritten characters can be manipulated to render their background *transparent*, thus allowing them to be pasted *over* existing text on a document.[185] That being the case, his observations about the overlapping portions of D2's signature and the absence of suspicious lines were insufficient to rule out the possibility of copy-pasting having taken place.

97 I next move to William Pang's opinion that D2's signature could not have been copy-pasted because there were no samples of D2's signature in existence prior to 27 May 2019 (when D2 allegedly signed the Service Agreement), from which a copy could have been made. To recapitulate, the Plaintiff's solicitors had tried to procure specimens of D2's signature and handwriting by asking D2's solicitors for documents or contracts:

> before 27 May 2019 bearing the 2nd Defendant's signature ***together with the words*** "Managing Director, Snap Innovations (Singapore)" and his initials.
>
> [emphasis in bold italics added]

D2's solicitors replied by way of letter dated 30 March 2023 stating that D2 did *not* have such documents in his possession, custody or power. Focusing on that

185 Transcripts Day 1 (27 November 2023) at p 131 lines 11 to 16.

negative reply, William Pang opined as follows:[186]

> Reviewing the above correspondence and in particular, Messrs Sanders Law's statement in their reply letter dated 30 March 2023 that
>
> > "The 2nd Defendant does not have any possession, custody or power ("PCP") over any documents and/or contracts before 27 May 2019 bearing the 2nd Defendant's signature together with the words "Managing Director, Snap Innovations (Singapore) and his initials",
>
> I am further reinforced in my opinion that the signature of Ong Hock Fong Bernard on page 2 of the Service Agreement is very unlikely to be a cut and paste signature. I am instructed by the Plaintiff that the latest date that Ong Hock Fong Bernard signed the Service Agreement was on 27 May 2019. ***If Ong Hock Fong Bernard did not sign any documents before 27 May 2019, there was no possibility of his signature being "copy pasted" onto the Service Agreement***.
>
> [emphasis added in bold italics]

With respect, this was an entirely factual inference which lay squarely within the remit of the court, and not the expert. As a cautionary illustration of why experts should not stray beyond their designated remit, it is obvious that William Pang's inference above was based on a misapprehension of the facts. D2's solicitors did *not* say that there were no documents prepared before 27 May 2019 bearing D2's signature. They were instead saying that there were no documents prepared before 27 May 2019 bearing D2's signature that appeared *together with the words* "Managing Director, Snap Innovations (Singapore)" and his initials – this being what the Plaintiff's solicitors had requested for in the first place. If the Plaintiff's solicitors had phrased the documentary request more generically – by simply asking for specimens of D2's signature *without* any qualification as to what the signature should appear together with – the

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186 William Pang's AEIC at para 9.

response from D2's solicitors may well have been different.

98 I now move to James Tan's expert evidence. He concluded that P1 was modified, with a key plank of his assessment being that the black dot which formed part of the handwritten word "Innovations" fell to the right of the vertical black bar (see para 88 above). I do not accept this aspect of his opinion. It is apparent from James Tan's analysis that his conclusion rested on the twin assumptions that:

(a) the vertical black bar was *absent* from the paper copy of the Service Agreement which D2 allegedly penned his handwritten words and signed, meaning that the Executed Paper Copy did *not* have the vertical black bar; and

(b) the vertical black bar could only have been generated by the process of scanning the Executed Paper Copy to create the E-Copy.

Under those assumptions, it would admittedly have been impossible for any feature within the third page of the Executed Paper Copy captured by the scan (*eg*, the black dot) to show up to the right of the vertical black bar in the E-Copy, seeing as how that bar marked the right-most edge of the Executed Paper Copy's third page as it was being scanned.

99 However, there was another plausible factual permutation which James Tan failed to consider, under which the vertical black bar was *already present* on the paper copy of the Service Agreement which D2 physically executed. At trial, the Plaintiff proffered this very factual permutation as an explanation for why the black dot lay to the right of the vertical black bar. As described at para 19 above, the Plaintiff claimed that Zee had scanned the Original Draft of the

Service Agreement and printed the scanned electronic copy to produce the Scanned Draft, after which Zee and the Plaintiff appended their wet-ink signatures to *both* the Original Draft and Scanned Draft, in the Vietnam office. Building on this, the Plaintiff surmised that:

(a) the vertical black bar could have been present on the printout of the Scanned Draft, having been generated by the process of scanning the Original Draft;[187] and

(b) what was then sent to D2 via Telegram for the latter's execution was likely an electronic copy created by scanning the signed (as in, signed by the Plaintiff and Zee) *Scanned* Draft, which bore the vertical black bar, rather than by scanning the signed Original Draft, which had no black bars.[188]

Given the above, if D2 applied his pen to a printout of an electronic copy of the signed Scanned Draft, D2 could have inserted the black dot to the right of the vertical black bar.

100 It should be noted that the Plaintiff's explanations in the preceding paragraph were proffered *extremely late in the day*. They were not alluded to in the Plaintiff's pleadings, nor fleshed out in his AEIC. In fact, it was only after William Pang was extensively cross-examined by D2's counsel on the first day of trial,[189] as regards the complete absence of any black bars on the Original

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187 Transcripts Day 3 (29 November 2023) at p 139 line 6 to p 140 line 18.

188 Transcripts Day 4 (30 November 2023) at p 72 line 9 to p 76 line 6.

189 Transcripts Day 1 (27 November 2023) at p 71 lines 12 to 25; p 114 line 8 to p 115 line 22.

Draft,[190] that it became apparent to the Plaintiff that the presence of the black bars in P1 was going to pose an issue to his case. Consequently, on the third and fourth days of the trial, the Plaintiff provided the explanations in sub-paragraphs (a) and (b) of the immediately preceding paragraph. The Plaintiff sought to explain the belatedness of his explanation, saying that his insights arose only after "the very stark observations" made by counsel for D2 in the course of cross-examining William Pang.[191] Despite having been raised at the eleventh hour, I find the Plaintiff's explanation (that D2 may have applied his pen to a paper document which *already* bore the vertical black bar) to be plausible and I accept it. Accordingly, I agree with the Plaintiff that the black dot's location *vis-à-vis* the vertical black bar does not conclusively prove James Tan's copy-pasting hypothesis.

101 However, there was a further plank to James Tan's expert opinion, which I accept as being indicative of D2's signature on the Service Agreement being forged. As alluded to at para 89 above, James Tan took the view that D2's signature in P1 was blurry and of poor quality, in contradistinction to the sharpness of D1's corporate stamp. The difference in resolution is not particularly obvious from the snapshot extracted at para 86 above but would be obvious even to the naked eye upon examination of the physical exhibit P1. To me, this is significant. The Plaintiff's version of the facts could possibly explain why the sharpness of the image of D2's signature within P1 differed from the sharpness of, to take an example, *the Plaintiff's and Zee's signatures*: D2 did not sign on the physical copy of the Scanned Draft bearing the wet-ink

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190 The photographs of which are exhibited in Plaintiff's AEIC at pp 112–114 and in Plaintiff's Bundle of Documents at pp 91–93.

191 Transcripts Day 3 (29 November 2023) at p 139 lines 14 to 17.

signatures of Zee and the Plaintiff, but on a *printout of an electronic copy* of the Scanned Draft (which Zee sent to D2 over Telegram – see para 16 above). This meant that when the Executed Paper Copy (allegedly bearing D2's wet-ink signature) was scanned to create the E-Copy, the signatures of the Plaintiff and Zee would at the very least be undergoing a *second round of digitisation*, while D2's signature would be undergoing only its first. However, this could not be used to explain the difference in sharpness between D2's signature *and the corporate stamp*. The Plaintiff's case was that D2 executed the Service Agreement in the early morning of 27 May 2019 while he was in Singapore, before sending the E-Copy, bearing *both* D2's signature and the corporate stamp, to Zee via Telegram at 8.27am that same day – see the Telegram message extracted at para 22 above. This must mean that if the signature and stamp were indeed appended by D2, both must have been appended *at the same time*. Thereafter, the number of rounds of digitisation to which both D2's signature and the corporate stamp may have been subjected, before they were finally transposed to what is now seen in P1, would have been *no different*. In light of that, I agree with James Tan that the difference in resolution between D2's signature and the corporate stamp, as they appear in P1, is troubling.

102 The Plaintiff offered no explanation for this discrepancy in visual resolution. The best riposte that he could muster was a complaint as to how James Tan's observations on the sharpness of the corporate stamp was not raised in his expert report.[192] However, this was in my view an insufficient objection:

(a) Firstly, the main plank of James Tan's opinion centred on the location of the black dot *vis-à-vis* the vertical black bar. As observed at

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192 Plaintiff's Closing Submissions at para 42.9(a); Plaintiff's Reply Submissions at para 45.

para 100 above, it was extremely late in the day when the Plaintiff pulled the rug from under this aspect of James Tan's expert evidence. Specifically, the suggestion that D2 had signed on a printout of the *Scanned* Draft (which would have *already* contained the vertical black bar) was advanced by the Plaintiff only on the third and fourth days of the trial. No trace of that explanation could be found in the Plaintiff's pleadings or his AEIC, which meant that at the time James Tan was preparing his expert report and AEIC, a critical facet of the Plaintiff's case was missing. Under such circumstances, one would be hard put to deny the Defendants the opportunity to seek further elaboration from James Tan while he was on the stand, as regards the authenticity of D2's signature in P1.

(b) In any case, this aspect of James Tan's testimony (regarding the sharpness of the corporate stamp) did not emerge from questioning by the Defendants' counsel. Rather, it was the Plaintiff's counsel who elicited that evidence from James Tan during cross-examination.[193] At no point in the questioning did the Plaintiff's counsel object to the evidence that he was drawing from James Tan; nor did the Plaintiff seek the court's permission to recall William Pang so that the latter might contradict James Tan's evidence on this point.

103 Based on the above, I am inclined to accept James Tan's expert view that D2's signature on P1 was copy-pasted, meaning that P1 (and by extension the E-Copy) was consequently a forgery.

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193 Transcripts Day 7 (5 December 2023) at p 73 line 20 to p 74 line 14; p 76 line 19 to p 77 line 9.

Circumstantial evidence on the issue of forgery

104 My conclusion that the E-Copy (and hence P1) was forged is also premised on the circumstantial evidence, which I regard as consistent with D2 being unlikely to have signed the Service Agreement. The circumstantial evidence encompasses the following factors:

(a) There was no commercial rationale for D1 to have entered into, or for D2 to have signed, the Service Agreement.

(b) The terms of the Service Agreement were so ill-defined that a company director in D2's shoes would have been unlikely to simply execute it without first seeking legal advice.

(c) During the call between the Plaintiff and D2 on 16 February 2021, the Plaintiff's position was fully consistent with his case that he had no knowledge of the Service Agreement.

(d) D2 had filed a police report on 26 March 2021, in which he affirmed that his signature in P1 was forged – again, this was consistent with his claim that he never signed the Service Agreement.

I canvass each of these factors below.

(1) No commercial rationale to enter into the Service Agreement.

105 In assessing an allegation that a party's signature on a contract has been forged, one of the factors that the court will take into account is whether any commercial rationale existed for that party to have entered into the underlying transaction: *Alwie Handoyo* at [176]–[177]. In the present case, there was no

commercial rationale for D1 to have entered into, or for D2 to have signed, the Service Agreement:

106 From D1's perspective, the Service Agreement clearly embodied onerous obligations. It exposed D1 to unlimited liability for governance failures in relation to not only its own staff, but also staff from a wholly unrelated company (*ie*, Clickstaff, in which D1 owned no shares). The Plaintiff failed to point to any convincing *quid pro quo* that might explain why D1 would undertake such a burden. While the Plaintiff asserted that the Service Agreement was intended to entice him into increasing his investment in the Cryptotrage scheme, he offered no evidence to show how D1 benefitted from – or was even connected to – the scheme. There was no evidence of profits from the Cryptotrage scheme flowing back to D1.[194] The Plaintiff asserted that Dr Ting received substantial "unauthorised payments" from Torque,[195] but this was unsupported by any documentary proof.

107 From D2's perspective, it would similarly have made little commercial sense for him to sign the Service Agreement. D2 explained that signing the same would render him responsible for having bound D1 to serious obligations, in favour of someone whom D2 had never even met.[196] D2 reaped no personal benefit from exposing himself in that manner.[197] I find D2's contention to be a cogent one.

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194 Transcripts Day 9 (7 December 2023) at p 38 line 18 to p 39 line 11.

195 Plaintiff's Reply Submissions at para 61.

196 D2's Closing Submissions at para 51.

197 Transcripts Day 9 (7 December 2023) at p 38 line 18 to p 39 line 16; D2's Closing Submissions at para 222.

108 The Plaintiff contended that D2 *did* have an interest in concluding the Service Agreement with the Plaintiff, as this would provide the assurance needed by the Plaintiff to increase his cryptocurrency deposits in the Binance Account.[198] The increased deposit level would in turn allow the Binance Account to achieve Tier 9 status, thereby unlocking various financial benefits for the account holder (referred to at para 33 above). Given that Torque also used the Binance Account for its trading platform, the benefits from Tier 9 status would flow to Torque, and thereby benefit D2 personally (by virtue of his link with Torque).[199] I find this argument to be speculative. By the Plaintiff's own case, the Service Agreement was concluded in May 2019, which was some four months before Torque even came into existence. In any case, no evidence was provided to show how the benefits from the Binance Account's Tier 9 status had been shared with Torque.

(2) The ill-defined nature of the Service Agreement

109 Furthermore, it is clear from the face of P1 that its clauses were as scant on details as they were imprecise in terminology. Notwithstanding the hefty burdens which it purported to impose, the entire Service Agreement was embodied in a smattering of clauses spanning over two-thirds of a single page. It also curiously referred to Clickstaff as D1's "child company" when D1 in fact owned no shares in Clickstaff.

110 These features would have sounded a series of alarm bells, in the face of which one must then ask if a director in D2's shoes would, in the ordinary course of business, have simply signed off on the Service Agreement and thereby bind

198 Plaintiff's Closing Submissions at paras 44.34–44.36.

199 Plaintiff's AEIC at para 169.

his company to such ill-defined obligations, without even seeking the benefit of legal advice. It seems to me that the answer would very likely be "no".

(3) The call between the Plaintiff and D2 on 16 February 2021

111 I also find D2's conduct *after* the discovery of Zee's fraud to be consistent with D2's claim that he was unaware of the Service Agreement.

112 As I alluded to at para 38 above, the Plaintiff initiated a call with D2 and CK, on 16 February 2021, after Zee's disappearance. The Plaintiff claimed that during the call, D2 had agreed to explore a repayment plan with the Plaintiff. With respect, that only told part of the story. It is important to note that the call was recorded by the Plaintiff *secretly*, meaning that while the Plaintiff knew that D2's words were being captured for posterity, D2 did not. Evidently, the Plaintiff was hoping to catch D2 at his most candid. Despite this, the Plaintiff was unable to point to anything within the transcripts of the call supporting his allegation that D2 had signed the Service Agreement. Instead, what the transcripts showed was D2 repeatedly indicating that he had no recollection of ever signing the same. The following is an example of what D2 said:[200]

> Errr….So..so I understand that there was this agreement executed between…between us, Snap Innovations and…and yourself. I have to be very honest with you. ***I have zero recollection of this document that was executed***. However, because you have the document… … you know you are able, of course, able to file any lawsuits against the company for any mishandling of your funds.
>
> [emphasis added in bold italics]

When it became apparent during the call that D2 was unfamiliar with the Cryptotrage scheme, the Plaintiff had tried to explain, but the transcripts showed

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200 Plaintiff's Bundle of Documents at p 203.

no indication of the Plaintiff's explanation ringing any bells for D2:[201]

> P: … We are talking very quickly. U.S.D.T. last worth 660,000 B.U.S.D. about 3 million. And BNB a total about 21,600. For me and my group for BNB. The U.S.D.T., B.U.S.D. was purely my own money. ***Those were the projects under Cryptotrage***, then we have some, I have .....
>
> D2: ***Under what, sorry***?
>
> P: ***Under Zee. We call them Cryptotrage Project***. So, those were projects we invested with the company here. With Vietnam, with Zee, and those are under the corporate guarantee.
>
> D2: Okay. And the Corporate guarantee is the one that is with Snap Innovations Pte Ltd.
>
> P: Yeah, signed by you and Zee and both you are directors. As I found out from our records. Err ...
>
> D2: Okay.
>
> [emphasis added in bold italics]

113 Even after the Plaintiff's explanation, D2 maintained that he had no recollection of the Service Agreement and even queried if that document could have been forged by Zee. The following sets out D2's response:[202]

> To be honest, like I said, ***I cannot remember. I have no recollection about this agreement with Snap Innovations***. Firstly, let me tell you something. Alright? Although I'm appointed as the...the...as a director in...in er Snap Innovations, but ***I have zero employment contract with Snap Innovations. My name is not on the ACRA as well***. … I helped to manage Snap Innovations on the basis because Dr Ting is the owner of the company, and he is my partner for other companies. Therefore, you know, for somebody to stay in businesses and things like that, he got me to come in to help. To be honest with you, ***this contract on legal basis, I don't know. I mean it could be something that is either forged by Zee or, knowing right now, he is of such character***. I

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201 Plaintiff's Bundle of Documents at pp 205–206.

202 Plaintiff's Bundle of Documents at p 210.

> think…I mean to be honest, I am telling you the truth.....is that I have no idea about the projects that you all were doing. Or what Zee was doing with you So…so..like I said, you know, I am not trying to run away, or you know, trying to just ……

114 Notwithstanding D2's professed lack of knowledge about the Cryptotrage scheme, the Plaintiff *persisted* in pressing D2 for redress, saying:[203]

> Yeah, I understand that, Bernand [*sic*]. You don't run away. That's fine. We don't have that stress. But let's try to find a solution… … because the information you can get here from the team. If C.K. doesn't know something, Martin will tell. Rick will tell. There is people to give the info.

It was only at this point that D2 expressed openness to a repayment plan, saying:

> Yeah. At this stage, George, I only can tell you that..ermmm...you know, we can...we can try to work out something like a repayment plan. Right? But you know, it will definitely take time.

I note that despite the conciliatory tone struck by D2, there was still nothing in his words demonstrating any semblance of familiarity with the Cryptotrage scheme or the Service Agreement.

115 I am therefore of the view that the transcripts of the call do not support the Plaintiff's claim. If anything, they corroborate D2's case that he knew nothing about the Service Agreement.

(4) The police report filed by D2

116 D2's professed lack of knowledge about the Service Agreement was also consistent with his subsequent conduct in filing a police report on 26 March

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203 Plaintiff's Bundle of Documents at p 211.

2021, in which he affirmed that his signature in P1 was forged.[204]

Conclusion on whether the Plaintiff's documentary evidence was authentic

117 To summarize my findings above on the issue of authenticity, I am of the view that that the Plaintiff has failed to establish the authenticity of the E-Copy (and hence of P1). I further take the view, after having considered (a) the expert testimonies and (b) the circumstantial evidence, that the Defendants have successfully proven that D2's signature on the E-Copy was copy-pasted, meaning that the E-Copy (and hence P1) *was* forged.

118 Since the E-Copy and P1 have not been shown to be authentic, they are *inadmissible* in evidence.

Conclusion on whether the Service Agreement was proven to have been signed by D2

119 To recapitulate, the Plaintiff has failed to demonstrate why the E-Copy (and hence P1) may be adduced as secondary evidence of the Executed Paper Copy. Furthermore, even if he *was* entitled to adduce the E-Copy as secondary evidence, he has failed to establish the authenticity of the E-Copy (and hence of P1). Relatedly, the Defendants have succeeded in establishing that P1 (and by extension the E-Copy) was forged.

120 In light of these findings, both the E-Copy and P1, which were the very centrepieces of the Plaintiff's evidential display, are inadmissible. This created a massive gap in the Plaintiff's case that the Executed Paper Copy exists. As

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204 D2's Closing Submissions at para 25; Agreed Bundle of Documents dated 21 November 2023 ("Agreed Bundle of Documents") at pp 358–360.

such, the only conclusion which I can reasonably draw is that the Plaintiff has *failed* to prove that D2 signed the Service Agreement.

121 Before leaving this section, I should add that the difficulties associated with proving authenticity could have been avoided had the Plaintiff exercised greater diligence after he was informed by Zee (on 27 May 2019) that the Service Agreement had been signed by D2. As explained at para 31 above, it was evidently important to the Plaintiff that he be given an original of the Service Agreement (*ie*, one bearing the *wet-ink* signatures of D2, Zee and himself) for his records. That being the case, once the Plaintiff received P1 from Kenneth Chan, he should have properly examined the document to ensure that it contained D2's wet-ink signature. Had he done so, it would have been readily apparent to him that P1 was *not* the Executed Paper Copy. As James Tan rightly pointed out, the signatures, handwriting and initials in P1 were of poor quality.[205] Even the Plaintiff's own expert, William Pang, confirmed that "[v]isually, [P1] appears to be a reproduction"[206] and that P1 was a "low resolution document" with many rough edges which indicated that it had been photocopied a few times.[207] When D2's solicitors conducted an inspection of P1 at the Plaintiff's counsel's office, they too could see that the document was not an original[208] and had sent a letter to the Plaintiff's counsel[209] conveying that fact.

122 Given that P1 was obviously just a reproduction, the Plaintiff ought to have taken the simple step of verifying P1's authenticity with D2 or Dr Ting.

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205 Transcripts Day 7 (5 December 2023) at p 153 lines 14 to 18.

206 William Pang's AEIC at p 18, para 2.1.

207 Transcripts Day 1 (27 November 2023) at p 65 lines 2 to 20.

208 D1's Closing Submissions at para 19.

209 Agreed Bundle of Documents at pp 674–675.

Had that been done, this entire ordeal could have been avoided altogether. The Plaintiff's excuse for not doing so was that he had thought P1 was an original document, as it was in colour and not black-and-white. This excuse held no sway. In an age where colour printers are ubiquitous, the Plaintiff ought to have known better than to derive comfort solely from the fact that P1 was in colour. He was content to simply file P1 away and proceed to invest millions of dollars in the Cryptotrage scheme, purportedly on the faith of a highly questionable document. Throughout the many months that followed, while the Plaintiff was happily reaping profits from the Cryptotrage scheme, he could have paused at any juncture to take stock and check with D2 or Dr Ting about P1's authenticity. Again, he did not do so. The Plaintiff met with D2 for the very first time only in February 2021, *ie*, close to *21 months* after the Service Agreement was allegedly signed by D2, by which time the orchestrator of this debacle had long vanished. In the premises, it is clear to me that as between the parties to this suit, the Plaintiff must shoulder the consequences of his own inaction; I do not think that it is reasonable for him to now lay the blame at the Defendants' feet.

Issue 2: Whether D2 and Zee had the authority to enter into the Service Agreement on D1's behalf

123 In light of my finding that D2 has not been proven to have signed the Service Agreement, the issue of whether he and Zee had the authority to enter into the Service Agreement on D1's behalf falls away. Nevertheless, given the extensive submissions by the Plaintiff on how D2 and Zee possessed both actual *and* ostensible authority to enter into the Service Agreement on D1's behalf, as well as the Defendants' submissions in response, I make the observations below.

Actual authority

124 In *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 ("*Hely-Hutchinson*"), which was cited with approval by the Court of Appeal in *Banque Nationale de Paris v Tan Nancy and another* [2001] 3 SLR(R) 726 at [64], Lord Denning MR explained the concept of actual authority within the corporate context as follows (at 583):

> … actual authority may be express or implied. It is *express* when it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques. It is *implied* when it is inferred from the conduct of the parties and the circumstances of the case, such as when the board of directors appoint one of their number to be managing director. They thereby impliedly authorize him to do all such things as fall within the usual scope of that office. Actual authority, express or implied, is binding as between the company and the agent, and also as between the company and others, whether they are within the company or outside it.
>
> [emphasis in original]

125 In the present case, there was no resolution from D1's board of directors authorising D1's entry into the Service Agreement.[210] Nevertheless, the Plaintiff argued that both D2 and Zee possessed *actual* authority to enter into the Service Agreement on D1's behalf,[211] on account of their positions within D1. Specifically, the Plaintiff's contended that D2 and Zee were both "*unregistered* directors"[212] and consequently endowed with authority by two sources, namely:

(a) section 25B of the Companies Act (Cap 50, 2006 Rev Ed) ("CA"), which concerns the power of directors to bind the

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210 D1's Closing Submissions at para 59.

211 Plaintiff's Reply Submissions at para 57.

212 Plaintiff's Closing Submissions at para 44.5.

company;[212] and

(b) D1's constitution, which allowed its directors to, *inter alia*, borrow money on behalf of D1.[213]

126 In arguing that D2 and Zee were "unregistered directors" of D1, the Plaintiff highlighted that a person need not be registered with the ACRA as a director to be regarded as a director for the purposes of the CA.[214] The Plaintiff relied on the interpretation of the word "director" in s 4(1) of the CA:

> "director" includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are accustomed to act and an alternate or substitute director …

127 What s 4(1) of the CA means is that apart from individuals who are formally appointed by the company as *de jure* directors (with the appointment effected in accordance with the company's constitution and the individual being registered with the ACRA as a director), individuals not formally appointed as such may *under certain circumstances* still be treated as directors. Such individuals include "shadow directors" and "*de facto* directors". I note that the case law has drawn a distinction between these two categories of persons:

(a) I begin with the shadow director. The definition of "director" in s 4(1) of the CA includes individuals "in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are accustomed to act". This description has come to be understood as a reference to *shadow* directors. In *Raffles Town Club Pte*

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213 Plaintiff's Closing Submissions at paras 44.2–44.3

214 Plaintiff's Reply Submissions at para 175.

Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties) [2010] SGHC 163 ("*Raffles Town Club*"), Chan Seng Onn J explained (at [45]):

> It can thus be safely said that a "shadow director" is one "in accordance with whose instructions and directions the directors are accustomed to act". By "accustomed", this means that there must be a "pattern of behaviour" (per Lord Millet J in *Re Hydrodam (Corby) Ltd* [1994] BCC 161 … at 163) on the part of the rest of the directors in complying with the shadow director's directions or instructions. … For the directors of a corporation to be "accustomed to act" in accordance to the alleged shadow director's directions and instructions, a discernible pattern of compliance with the shadow director's instructions or directions would suffice. Even though there may be occasional departure from this pattern for whatever reason, the essence of shadow directorship may still remain intact. Ultimately, it is a question of fact to be determined by the court having regard to all the facts and circumstances in each case.

Shadow directorships are thus marked by "a pattern of behaviour" on the part of the board in complying with the relevant individual's directions. In *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 ("*Sakae Holdings*"), Judith Prakash JA (as she then was) described the shadow director as "the puppeteer pulling the strings from above" (at [33]).

(b) As regards the *de facto* director, Chan J explained in *Raffles Town Club* (at [50]) that such an individual:

> … is one who is not formally appointed as a director but in fact acts as a director by exercising the powers and discharging the functions of a director. He is therefore in substance a director.

> The notion of a *de facto* director is thus conceptually distinct from a shadow director, in that the former exerts his influence on the company by the assumption of directorial responsibilities, while the latter exerts his influence on the company through the *de jure* directors: Hans Tjio, Lee Pey Woan & Pearlie Koh, *Corporate Law* (Academy Publishing, 2015) ("*Corporate Law*") at para 08.062. Whether an individual falls into one category or the other "is a question of fact and degree": *Sakae Holdings* at [33].

128 In the present case, the Plaintiff did not explain what he meant by the term "unregistered directors", which he used to describe D2 and Zee. There was nothing in the pleadings, evidence or submissions alluding to any pattern of behaviour by D1's board in acting on the directions of either D2 or Zee, such that both men should be considered *shadow* directors. The Plaintiff's submission could therefore be construed, at least by the process of elimination, as meaning that D2 and Zee were *de facto* directors of D1.

129 In *Raffles Town Club*, Chan J (at [58]–[59]) endorsed the guidelines laid out in *Gemma Ltd v Davies* [2008] BCC 812 for determining if *de facto* directorship exists. These guidelines can be summarised as follows:

> (a) To establish that an individual is a *de facto* director of a company, it is necessary to plead and prove that he undertook functions in relation to the company which could properly be discharged only by a director.
>
> (b) It is not necessary for an individual to be held out as a director in order for him to be regarded as a *de facto* director. "Holding out" is not a sufficient condition, as what matters is not what the individual

called himself but what he did. However, "holding out" may be important evidence supporting the conclusion that the individual acted as a director in fact.

(c) It is necessary for the individual alleged to be a *de facto* director to have participated in directing the affairs of the company on an equal footing with the other director(s), and not in a subordinate role.

(d) The individual in question must be shown to have assumed the status and functions of a company director and to have exercised "real influence" in the corporate governance of the company.

(e) If it is unclear whether the acts of the individual are referrable to an assumed directorship or to some other capacity, the individual is entitled to the benefit of the doubt, but the court must be careful not to strain the facts in deference to this observation.

130 Bearing the above guidelines in mind, it is clear that the evidence fell far below what was needed to establish D2 and Zee as *de facto* directors of D1. The fact that D1's website "held out" D2 and Zee as directors was insufficient, as it was also necessary to consider what both these individuals did *vis-à-vis* D1. In this respect, there was nothing to show that D2 or Zee served any functions within D1 falling within the purview of a formally appointed director.

131 I begin with why I think D2 could not have been a *de facto* director. Firstly, both the Plaintiff[215] and his witness, Nguyen Thanh,[216] claimed to have

215 Plaintiff's AEIC at para 100.

216 Nguyen Thanh's AEIC at para 44.

been told by Zee that D2 was Zee's "boss". However, putting aside the point that Zee's statements constituted hearsay (as well as the fact that those statements, even if admissible, would likely hold little weight given that the Plaintiff himself maintained that Zee was a fraudster), Zee's alleged statements were bereft of details that could explain exactly which matters D2 was supposed to have been the "boss" of. Secondly, while the Plaintiff suggested that D2 was in D1's office regularly,[217] this shed no light on whether D2 had performed any directorial duties in D1 while at the office. In any case, D2 explained that his regular presence in D1's office was the result of an office-sharing arrangement between D1 and D2's other unrelated business.[218] Thirdly, there was little to no evidence on the extent of D2's involvement in D1's operations in Vietnam. The lack of clarity as to what transpired in Vietnam is seen in the following:

(a) Nguyen Thanh testified that he had once been invited by Zee to attend a meeting with D2, when the latter visited Snap Vietnam's office.[219] However, there was nothing in Nguyen Thanh's evidence about whether the meeting (which lasted for all of 20 minutes) demonstrated D2's alleged *de facto* directorship in D1.

(b) Snap Vietnam's technical lead, Basu, had also seen D2 in Vietnam "a few times".[220] However, Basu did not explain what responsibilities were discharged by D2 in Vietnam. In his Telegram chats with the Plaintiff,[221] Basu confirmed that all his communications

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217 Plaintiff's Closing Submissions at paras 13 and 44.23.

218 D2's Reply Submissions at para 49.

219 Nguyen Thanh's AEIC at paras 43-45.

220 Plaintiff's AEIC at para 203.

221 Exhibited in Plaintiff's AEIC at p 882.

were with Zee, while his interactions with D2 were social in nature.

(c) Crucially, both Nguyen Thanh and Basu had never seen any documents bearing D2's signature.[222]

Clearly, the evidence fell far short of establishing D2's status as a *de facto* director. I should add that there was also no evidence of D2 ever having signed an employment contract with D1, or of D2 ever having been remunerated by D1 for his alleged directorial services.[223] The Plaintiff claimed that D2 received "some kind of profits"[224] but adduced no evidence to support that assertion.

132 As for Zee, I similarly do not think that he was a *de facto* director of D1. The Plaintiff claimed that Zee made business decisions relating to D1's operations in Vietnam, including the acceptance of deposits, negotiating "profit-cut fees", and approving withdrawals of investors' funds.[225] Nguyen Thanh also testified on the Plaintiff's behalf to say that Zee was in charge of engaging (through Clickstaff) Vietnamese staff for D1's operations in Vietnam and approving their monthly salaries and expenses.[226] However, I am not convinced that those activities may be regarded as having been conducted by Zee on D1's behalf (as opposed to Zee acting on his own account). While D1 admitted to having made *some* payments to Clickstaff, it explained that those payments were for D1's "crypto mining rig business and software development services",

222 Plaintiff's AEIC at para 197.

223 Transcripts Day 6 (4 December 2023) at p 20 lines 19 to 22.

224 Transcripts Day 6 (4 December 2023) at p 20 line 23 to p 21 line 1.

225 Plaintiff's Closing Submissions at para 8.

226 Nguyen Thanh's AEIC at para 10.

and *not* for the Cryptotrage scheme.[227] In fact, D1 disclaimed *any* involvement with the Cryptotrage scheme. In my view, D1's denial on this front was consistent with the evidence:

(a) There was no documentary evidence establishing the flow of funds from the Cryptotrage scheme back to D1.

(b) As the Plaintiff himself had observed in his e-mail to Michael Lim (extracted at para 11 above), D1's websites contained no mention of the Cryptotrage scheme whatsoever.

(c) The Cryptotrage scheme entailed the management of investor deposits, for which D1 had no regulatory licence to engage in.[228]

As such, the operation of the Cryptotrage scheme in Vietnam could not be conclusively attributed to D1. I am therefore unable to confidently ascribe the full extent of Zee's managerial activities in Vietnam (which, according to the Plaintiff, had been heavily centred on administering the Cryptotrage scheme) to D1's business. There being insufficient evidence to even link Zee's activities in Vietnam to D1, questions as to whether Zee orchestrated those activities as a *de facto* director of D1 fall away.

133 If I am wrong in my analysis above and both D2 and Zee may be regarded as *de facto* directors of D1, the next step would be to consider the Plaintiff's submission (at para 125 above) that both men had been endowed with actual authority to bind D1 to the Service Agreement, by virtue of:

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227 D1's Closing Submissions at para 64(2).

228 D1's Closing Submissions at para 66(2).

(a) s 25B of the CA; and

(b) D1's constitution.

134 I begin with the Plaintiff's argument that as (*de facto*) directors of D1, both D2 and Zee were statutorily clothed with authority by the operation of s 25B of the CA.[229] I set out the relevant portions of this provision below:

> **Power of directors to bind company**
>
> **25B.—**(1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.
>
> (2) For the purposes of subsection (1), a person dealing with a company —
>
> (*a*) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so; and
>
> (*b*) is presumed to have acted in good faith unless the contrary is proved.
>
> (3) The references in subsection (1) or (2) to limitations on the directors' powers under the company's constitution include limitations deriving —
>
> (*a*) from a resolution of the company or of any class of shareholders; or
>
> (*b*) from any agreement between the members of the company or of any class of shareholders.
>
> …

135 I do not think that s 25B of the CA assists the Plaintiff's submission on actual authority. At the threshold, the Plaintiff failed to explain why s 25B of the CA should be interpreted as applying not only to *de jure* directors but to *de facto* directors as well. In any event, that is not something which I need to

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229 Plaintiff's Closing Submissions at para 44.5.

comment on given that *substantively*, the Plaintiff's reliance on s 25B of the CA is flawed. That provision serves to relieve parties transacting with a company from having to check whether the directors' authority to transact on the company's behalf is curtailed by the company's constitutional documents or processes. It is evident from a plain reading of this provision that it is directed at powers to bind the company which are already *in place*, with subsection (1) focusing on *precluding those powers from being negated* by restrictions internal to the company (at least so far as the third party is concerned). Contrary to the Plaintiff's suggestion, s 25B of the CA does not purport to be a *standalone source* of power that endows directors with authority to bind their companies to all manner of contracts, when no such authority is discernible at law to begin with.

136 In this regard, an analogy can be drawn with the "indoor management rule" (also referred to as the "*Turquand* rule", having been derived from the case of *Royal British Bank v Turquand* (1856) 6 E&B 327), which s 25B of the CA "partially reflects": *Corporate Law* at para 07.096. The indoor management rule essentially entitles an outsider to assume that the company's internal processes have been duly complied with unless he has been put on enquiry to the contrary: *Corporate Law* at para 07.091. The rule thus relieves outsiders transacting with a company from the burden of having to check for non-compliance with the company's internal processes that might otherwise defeat the authority of the agent transacting on the company's behalf. The indoor management rule similarly does *not* function as a standalone source of authority – the authority which the indoor management rule seeks to shield from defeat must *still* be independently derived from the legal principles of agency. As observed by Dawson J in the Australian High Court's decision of *Northside Developments Pty Ltd v Registrar-General and others* (1990) 93 ALR 385 (at

420):

> The correct view is that the indoor management rule *cannot be used to create authority where none otherwise exists*; it merely entitles an outsider, in the absence of anything putting him upon inquiry, to presume regularity in the internal affairs of a company when confronted by a person apparently acting with the authority of the company. …
>
> In other words, the indoor management rule only has scope for operation *if it can be established independently that the person purporting to represent the company had actual or ostensible authority to enter into the transaction*. The rule is thus dependent upon the operation of normal agency principles; it operates only where on ordinary principles the person purporting to act on behalf of the company is acting within the scope of his actual or ostensible authority.
>
> [emphasis added]

Similarly, I take the view that s 25B of the CA cannot be relied upon by the Plaintiff as the *basis* for imputing actual authority to D2 and Zee.

137 The final argument raised by the Plaintiff for establishing actual authority rested on D1's constitution. Specifically, Article 74 of D1's constitution reads:

> The director may exercise all the powers of the company to borrow money and to mortgage or charge its undertaking, property, and uncalled capital or any part thereof, and to issue debentures and other securities whether outright or as security for any debt, liability, or obligation of the company or of any third party.

The Plaintiff relied on this article to argue that D1's directors (including what he termed as "unregistered directors" such as D2 and Zee) had the power to bind D1 to the Service Agreement.[230]

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230 Plaintiff's Closing Submissions at paras 44.3–44.5

138 I fail to see how Article 74 is relevant to the Service Agreement. That article refers to the raising of funds by D1's directors and makes no mention of directors having the power to grant broad indemnities against unlimited losses, such as those expressed in the Service Agreement.

139 For the reasons above, I reject the Plaintiff's contention that D2 or Zee were endowed with actual authority (implied or otherwise) to bind D1 to the Service Agreement.

Apparent or ostensible authority

140 I turn now to the Plaintiff's submission that D2 and Zee were also clothed with apparent or ostensible authority to sign the Service Agreement on D1's behalf.[231]

141 The terms "apparent authority" and "ostensible authority" are synonymous and have on occasion been used interchangeably: see *Next of kin of Ramu Vanniyar Ravichandran v Fongsoon Enterprises (Pte) Ltd* [2008] 3 SLR(R) 105 at [16], citing *Walter Woon on Company Law* (Tan Cheng Han SC gen ed) (Sweet & Maxwell, 3rd Ed, 2005) at para 3.24. Rather than having to keep spelling out both terms in this judgment, I have employed only the term "ostensible authority" in the discussion that follows.

142 In *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 ("*Freeman & Lockyer*"), Lord Diplock (at 505–506) laid out four conditions that must be fulfilled for a contract to be enforceable against a company, notwithstanding the putative agent of the company having no actual

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231 Plaintiff's Closing Submissions at para 45.12.

authority to enter into that contract on the company's behalf. The four conditions, which were cited by the High Court in *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 (at [80]), are restated below:

(a) A representation must have been made to the contracting party that the agent was authorised to enter (on the company's behalf) into a contract of the kind sought to be enforced.

(b) That representation was made by someone who had "actual" authority to manage the business of the company, either generally or in respect of those matters to which the contract related.

(c) The contracting party was induced by that representation to enter into the contract, *ie*, he had in fact relied on the representation.

(d) The company's constitution did not deprive it of the capacity to enter into, or delegate to the agent the authority to enter into, contracts of the kind sought to be enforced.

In *Guy Neale and others v Ku De Ta SG Pte Ltd* [2015] 4 SLR 283 ("*Guy Neale*"), the Court of Appeal remarked that taxonomically, the doctrine of ostensible authority is a species of estoppel (at [93]):

> The doctrine in effect estops a principal from asserting that an agent acted without authority even though this is in fact the case. The basis of such an estoppel is a representation by the company that the agent does have that authority.

143 As regards the first of the four *Freeman & Lockyer* conditions (*ie*, the making of a representation), the principal's very act of appointing an agent to a

specific office carries the potential to constitute a representation by the principal that the agent has the relevant authority. Specifically, when the agent is appointed to an office which *usually* carries with it actual authority to bind the principal to the transaction in question, the world at large would naturally assume that the agent – by virtue of holding that office – possesses that authority. One may then imply from that appointment a *representation* by the principal that the agent is now endowed with actual authority to bind the principal to the transaction. In *Hely-Hutchinson*, Lord Denning MR made this point in relation to the office of a managing director (at 583):

> Ostensible or apparent authority … often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director.

144 In the present case, the Plaintiff contended that such a representation was in fact made by D1, via the following platforms:

(a) D1's website,[232] which held out both D2 and Zee as having been appointed to the office of "director".[233]

(b) D2's LinkedIn profile,[234] which represented that D2 had been appointed to the office of "Managing Director". As D2's evidence was that the LinkedIn profile had been created with inputs from D1's "marketing guys",[235] the Plaintiff contended that the representation

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232 Exhibited in Plaintiff's AEIC at p 263.

233 Transcripts Day 8 (6 December 2023) at p 2 line 20 to p 3 line 24.

234 Exhibited in Plaintiff's AEIC at p 291.

235 Transcripts Day 8 (6 December 2023) at p 4 line 5 to p 6 line 6.

could be regarded as having emanated from D1 itself.

145 I will examine the Plaintiff's claim of ostensible authority in respect of D2, before considering the same in respect of Zee.

Whether D2 had apparent or ostensible authority

146 Although D2's LinkedIn profile had stated that he was D1's managing director, that could not in my view constitute a representation sufficient to ground a finding of ostensible authority. It is well-established that "an agent who has no authority (whether actual or ostensible) to perform a certain act cannot confer upon himself authority to do that act, by representing that he has such authority": *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2011] 3 SLR 540 ("*Skandinaviska (CA)*") at [38]. That principle flows as a matter of course from the second of the *Freeman & Lockyer* conditions, laid out in para 142 above. LinkedIn profiles are typically under the control of the account holder, and not the company that the account holder professes to work for or represent. There is nothing to stop an individual from using his LinkedIn profile to portray himself to the world as holding all sorts of high-sounding positions. It was not open to the Plaintiff to blissfully assume that D2's LinkedIn profile was a representation *emanating from D1* (or anyone else other than D2, for that matter). If one is planning to undertake a significant investment to the tune of millions of dollars, on the faith that the purported agent holds the office which his LinkedIn profile professes him to hold, the sensible thing to do would be to call the organisation (in which the office is purportedly held) to seek confirmation. The Plaintiff took no such precautionary steps.

147 The Plaintiff nevertheless argued that the representation in D2's

LinkedIn profile could be attributed to D1 on account of D2's testimony that the profile had been created with the *input* of D1's "marketing guys"[235] – for completeness, I should add that D2's evidence on this point was denied by D1.[236] In my view, this did not advance the Plaintiff's submission that D2 had ostensible authority:

(a) Firstly, the revelation about the involvement of D1's "marketing guys" in crafting D2's LinkedIn profile emerged only at trial. At the point when the Plaintiff entered into the Service Agreement, purportedly in reliance on the LinkedIn profile's contents, there was nothing within the Plaintiff's field of view to suggest that those contents had been blessed in any way by D1. Indeed, the LinkedIn profile alluded to D2's positions in *multiple* organisations, and not just D1.

(b) Furthermore, D2's evidence that the profile had been created with inputs from D1's "marketing guys" was scant. His evidence, which was given in the course of his cross-examination, contained no elaboration as to who the "marketing guys" were, or whether they were even D1's employees. More crucially, there was nothing to shed light on the extent of the authority (if any) conferred on the "marketing guys" to act on D1's behalf, in relation to providing input on D2's LinkedIn profile. Plaintiff counsel also did not seek further details. The second of the *Freeman & Lockyer* conditions (laid out at para 142 above) is clear: for a representation to found ostensible authority, it must be made by someone with "actual" authority to manage the principal's business. The evidence relating to the involvement of the "marketing guys" fell far

236 D1's Reply Submissions at para 73.

short of what was required to make out that condition.

148 I next move to D1's website, which held out both D2 and Zee as holding the office of "director". D1 argued that a representation on the principal's website, to the effect that an agent holds a specific office within the principal's organisation, cannot constitute a representation by the principal as to the agent's authority. D1 argued that that there are no authorities suggesting that such reliance can be placed on a principal's website, for the purposes of establishing ostensible authority.[237] In my view, D1's objection needs to be unpacked, as it calls *two* possible representations into question:

(a) that the agent was appointed to a specific office within the principal; and

(b) that the agent, by virtue of that office, had the authority to enter into the transaction at issue on the principal's behalf.

149 As regards the first possible representation, I am of the view that if the principal's official website states that the agent holds a certain office within its organisational structure, that is a representation made to the world and which the principal must be held to. D1 argued that there was no evidence as to who was responsible for D1's website.[238] I would roundly reject this as an unacceptable position. There was no dispute that the website belonged to D1, nor any suggestion of the relevant webpages having been uploaded without authorisation. Under such circumstances, D1 should not be allowed to shirk responsibility for the contents of its own website.

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237 D1's Reply Submissions at para 76.

238 D1's Reply Submissions at para 77.

150 As regards the second possible representation – *ie*, that the agent had the authority by virtue of his office to bind the principal to the transaction at issue – whether such a representation can be implied from the facts requires careful consideration of various factors. A representation that an agent is a director in a company does not necessarily equate to a representation that he has the authority to enter into the transaction at issue. Much will depend on whether the office which the agent occupies (*eg*, director), or which the principal holds the agent out as occupying, can reasonably be perceived as *usually* possessing the authority to bind the principal to the kind of transaction at issue.

151 In *Blasco, Martinez Gemma v Ee Meng Yen Angela and another and another matter* [2021] 3 SLR 1360 ("*Blasco*"), the High Court had occasion to consider the scope of the authority attendant upon the office of managing director. Kannan Ramesh J (as he then was) cited (at [23]) the remarks of Lord Denning MR in *Hely-Hutchinson* (at 583) that when a person is appointed as a managing director, that person:

(a) has the implied *actual* authority "to do all such things as fall within the *usual scope* of that office"; and

(b) also has *ostensible* authority, in that "[o]ther people who see him acting as managing director are entitled to assume that he has the *usual authority* of a managing director".

Thus, the fact that a person is appointed to the office of managing director does not mean that he is cloaked with ostensible authority to bind the company to every conceivable class of transactions (see also *Guy Neale* at [89]). Rather, subject to any other representations that may have emanated from the company, ostensible authority covers only those contracts which a managing director

would *usually* have the authority to transact on the company's behalf.

152 Thus, in *Blasco*, one of the issues was whether a senior company officer had the authority to borrow money on the company's behalf from certain private investors. On the issue of actual authority, Ramesh J rejected the notion that the office of managing director would, *as a universal proposition*, confer implied actual authority to borrow money or give security on behalf of the company. Instead, he opined that whether such authority existed hinged on a context-driven inquiry that would turn on a range of factors (at [32]):

> … Further, it is difficult to accept that a managing director has implied authority to borrow money and give security on behalf of the company as a general or universal proposition. This must, at best, be a context-driven inquiry depending on a variety of factors such as, for example, the constitution of the company, the nature of the company, the nature of the transaction, and the conduct of the company.

Ramesh J was further of the view that since the office held by the agent could not be regarded as carrying *actual* authority to borrow money or give security on the company's behalf, it followed that the appointment of the agent to that office could not confer upon him *ostensible* authority to perform such tasks: see *Blasco* at [44].

153 It is thus clear that just because the principal appoints an agent to, or holds out an agent as occupying, an apex office within the principal's organisation, this cannot in and of itself imply a representation by the principal that the agent is cloaked with authority to bind the principal to every conceivable class of transactions. It is important to juxtapose the transaction at issue against the office held by the agent and ask whether that transaction can reasonably be understood as falling within a class of transactions which someone holding that office would *usually* be authorised to conclude on the principal's behalf. If the

answer is in the negative, potential counterparties cannot (in the absence of any other relevant indicators emanating from the principal) blithely construe the agent's holding of that office as a representation by the principal that the agent has the authority to enter into the transaction at issue.

154 The Plaintiff insisted that a representation by D1 that D2 held the office of director was sufficient *in and of itself* to constitute a representation that D2 had the authority to bind D1 to the Service Agreement. In support of this, the Plaintiff referred to the case of *Heperu Pty Ltd v Morgan Brooks Pty Ltd (No 2)* [2007] NSWSC 1438 ("*Heperu*"). In that case, the principal, Morgan Brooks Pty Ltd ("Morgan Brooks"), was a mortgage originator which had appointed one Mr Cincotta as its manager to source for borrowers seeking mortgage loans. Morgan Brooks' website listed its various officeholders and specifically named Mr Cincotta as one of its managers. Notably, Morgan Brooks issued a name card to Mr Cincotta describing him as "*Director*" – this name card was later furnished by Mr Cincotta to the plaintiff, when both men met. Mr Cincotta successfully persuaded the plaintiff to invest funds through Morgan Brooks, after which the plaintiff signed what he thought was an investment contract with Morgan Brooks. Unfortunately, the funds that the plaintiff thought were being invested through Morgan Brooks were misappropriated by Mr Cincotta (who was ultimately made a bankrupt). When the plaintiff sued Morgan Brooks for the return of his investment funds, the latter contended that Mr Cincotta had no authority to enter into the investment contract on Morgan Brooks' behalf. Morgan Brooks maintained that it was a mortgage originator and, as such, the provision of investment advice or the arrangement of deposits of investor funds were patently beyond its ordinary course of business (at [43]). Notwithstanding, the court held that Mr Cincotta had ostensible authority to enter into the investment contract on behalf of Morgan Brooks (at [84]).

155 *Heperu* was endorsed by the High Court in *Viet Hai Petroleum Corp v Ng Jun Quan and another and another matter* [2016] 3 SLR 887, which observed (at [35]) that the stipulation of an agent's office on his name card could potentially constitute a representation by his principal (which issued the name card to him) as to the agent's authority to enter into the transaction concerned. The Plaintiff sought to extrapolate this observation into a broader proposition that "the usual scope of authority of a "director" is the authority to enter into a contract and bind the company".[239]

156 With respect, the Plaintiff's submission failed to attribute proper weight to a critical aspect of the decision in *Heperu*. In that case, a key submission by the company was that the investment contract which had ostensibly been entered into on its behalf patently fell outside of its ordinary business of mortgage origination. However, the court observed (at [29] and [76]) that this argument was undermined by the company's own website, which described itself as "an established Fund Manager within the Banking & Finance Industry". To the world at large, someone in the position of the agent, who held the office of "Director" within a company that had styled itself as a "Fund Manager within the Banking & Finance Industry", could very reasonably be perceived as having the authority to bind the company to the investment contract at issue (at [77] to [79]). The court had thus scrutinized the nature of the business which the company held itself out as conducting, to see if the contract purportedly entered into on the company's behalf was of a kind typical to the ordinary course of that business. The court did *not* – contrary to what the Plaintiff's submission envisaged – mechanistically latch on to the title of "director" (as reflected in the agent's name card) as the basis for finding the existence of ostensible authority.

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239 Plaintiff's Closing Submissions at paras 43.17–43.18.

157 To recapitulate, I had observed (at para 153 above) that in assessing if the principal's act of appointing an agent to a specific office, or of holding the agent out as occupying that office, suffices to constitute a representation cloaking the agent with ostensible authority to enter a transaction, one needs to juxtapose that transaction against the nature of the office. In particular, one needs to ask if the transaction belongs to a class which someone holding that particular office would *usually* be authorised to conclude on the principal's behalf. The case of *Heperu* is instructive in demonstrating that when one embarks on that assessment, a relevant factor to consider would be the *nature of the business* which the principal carries out, or at least professes to carry out. If the transaction clearly falls *outside* the ordinary course of that business, then subject to any other relevant factors, this could make it *less* reasonable for outsiders to simply assume that the transaction (being out of the ordinary) is one which someone holding the agent's office has the *usual* authority to conclude. In turn, that could militate against the conclusion that the appointment of the agent to the office concerned sufficed to constitute a representation cloaking him with ostensible authority to enter into the transaction at issue.

158 Applying the above principles to the present facts, it is clear to me that while D1's website may have represented to the world that D2 was a director of D1, this fell far short of cloaking D2 with ostensible authority to enter into the Service Agreement on D1's behalf:

(a) Firstly, the nature of the Service Agreement was exceptional, to say the least. It embodied a corporate guarantee by D1 that would expose it to unlimited liability,[240] by obliging D1 to replace any cryptocurrencies

[240] D1's Closing Submissions at para 66(1).

which had been stolen, with no cap on quantum. Furthermore, the replacement had to be effected within an extremely tight turnaround timeframe of five business days. This bespoke obligation clearly posed tremendous business risk, with the potential to jeopardise D1's very viability. The commercial hazard was compounded by the fact that the corporate guarantee required D1 to underwrite losses flowing from the fraud of not just its own employees, but the employees of the "Cryptotrage group of companies". This would cover fraud by any employee of Clickstaff – a company in which D1 held no ownership stake (Clickstaff was wholly owned by Nguyen Thanh) but which had nevertheless been curiously termed by the Service Agreement as the "child company" of D1. Crucially, there was no evidence showing what benefit D1 stood to gain from providing such a corporate guarantee. The Plaintiff claimed that the Service Agreement was meant to induce him to deposit more cryptocurrencies into the Cryptotrage scheme, as this would facilitate the attainment of Tier 9 status by the Binance Account and thereby allow the Cryptotrage scheme to enjoy the financial benefits attendant upon that status (alluded to at para 33 above). Yet, there was nary a wisp of a paper trail linking the operation of the Cryptotrage scheme to D1.

(b) Secondly, unlike in the case of *Heperu*, the Service Agreement centred on an activity that patently fell *outside* the scope of D1's ordinary business. D1 provided information technology services, with particular focus on solutions assisting brokers and traders in their brokerage and trading activities. At the material time, D1's website stated that it dealt with "AI Products", "Blockchain Products",

"Software" and "Trading Software".[241] D1's focus on technology was echoed in its ACRA business profile, which described D1's activities as "Other Information Technology and Computer Service Activities (*eg*, Disaster Recovery Services)".[242] The Plaintiff sought to capitalise on the fact that D1's website[243] also indicated that it offered products such as "Broker Solution", "Trading Solution" and "Crypto Solution".[244] However, I fail to see where this submission led to. It is true that D1's technological solutions had focused on a specific business sector, *ie*, that involving brokerage, trading, arbitrage and cryptocurrency transactions. However, the Cryptotrage scheme entailed a fundamentally different business proposition, involving as it did the onboarding of investor deposits, as well as the management of and trading in client funds. There was no digital or physical publication which the Plaintiff could point to that described D1 as being in the business of accepting (or being licensed by any financial regulator to accept) funds from investors or engaging in trades on their behalf. The Plaintiff himself had been alive to the dearth of any links between the Cryptotrage scheme and D1. It was clearly not lost on him that this was a red flag, given how he was prompted to reach out to Michael Lim to surface his concerns about the absence of any mention of the Cryptotrage scheme on D1's website (see para 11 above). It is also noteworthy that despite the Plaintiff's e-mail to Michael Lim explicitly seeking confirmation that the Cryptotrage scheme was indeed D1's product, the latter's e-mail in reply (extracted

241 Plaintiff's Bundle of Documents at p 1507.

242 Plaintiff's Bundle of Documents at p 128.

243 Agreed Bundle of Documents at p 320.

244 Plaintiff's Reply Submissions at para 60.

at para 12 above) completely sidestepped any mention of the scheme.

159 In light of the unusual obligations that the Service Agreement placed on D1 and the fact that the Cryptotrage scheme clearly fell beyond D1's ordinary course of business, I take the view that D1's act of holding out D2 as a "director" could not, without more, imply a representation that D2 had the usual authority to execute the Service Agreement. Under the circumstances, it would not be reasonable for a counterparty to unthinkingly take an individual's appointment as a director to imply that the individual possessed the usual authority to enter into a transaction such as the Service Agreement. This was not a run-of-the-mill commercial deal. Any prudent person looking to extract an indemnity of this order from a company would have sought confirmation from the company's board of directors. The conclusion must be that D2 had *no* ostensible authority to execute the Service Agreement on D1's behalf.

Whether Zee had apparent or ostensible authority

160 I next consider whether *Zee* had ostensible authority to enter into the Service Agreement on behalf of D1.

161 In seeking to establish Zee's ostensible authority, the Plaintiff relied on the e-mail exchange with Michael Lim on 7 February 2019. As explained at para 11 above, the Plaintiff had written an e-mail to Michael Lim asking if Zee and Rick were indeed from D1's Vietnam office. The Plaintiff's e-mail set out a description of the Cryptotrage scheme and enclosed the Deck in which Zee was described as "Director Vietnam" who "Oversees a team of 20 Developers, 6 Traders" (see extract of the Deck's slide at para 10 above). In response to the Plaintiff's e-mail, Michael Lim replied with an e-mail confirming that:

> … this Zee Wu is from our [Ho Chi Minh City] Office. Zee and Rick are both from our Vietnam office.

The Plaintiff relied on the fact that Michael Lim's e-mail reply (extracted at para 12 above) had re-attached the first substantive page of the Deck, which set out the credentials of Zee and Rick, as meaning that Michael Lim had effectively confirmed that Zee was a director of D1.[245]

162 In my view, Michael Lim's reply e-mail adds little value to the analysis. While the e-mail may have re-attached the first substantive page of the Deck, it said nothing to elaborate on the contents thereof. All that Michael Lim's e-mail *did* say was that Zee was from D1's Vietnam office. I find it difficult to comprehend how such a terse response could be extrapolated into a representation that Zee had the authority to sign the Service Agreement. No insights could be gleaned from Michael Lim's e-mail as to whether Zee had any authority to enter into transactions relating to the Cryptotrage scheme on D1's behalf, or whether the scheme was even part of D1's business to begin with. I should add for completeness that as at the point of trial, Michael Lim could not be found[246] and could thus not be called to testify.

163 The Plaintiff also relied[247] on D1's website, on which Zee was held out to be "Director, Snap Vietnam".[248] I have explained at para 158 above why the fact that D1's website held out *D2* as a director did not suffice to clothe him with ostensible authority to enter into the Service Agreement on D1's behalf. Those reasons apply with equal force to Zee.

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245 Plaintiff's Closing Submissions at para 44.17.

246 Plaintiff's Closing Submissions at para 40.4.

247 Plaintiff's Closing Submissions at para 44.8.

248 Plaintiff's AEIC at p 263.

164 I conclude with the observation that any notion of Zee having possessed ostensible authority by virtue of D1 holding out Zee as one of its directors is somewhat undermined by the Plaintiff's testimony that he was uncomfortable with Zee being the only signatory to the Service Agreement (see para 16 above). It was precisely to placate the Plaintiff's concerns that Zee offered to co-opt his "boss" (*ie*, D2) into signing the same. As explained at para 142 above, the third of the *Freeman & Lockyer* conditions requires that the contracting party be *induced* by the representation to enter into the contract. By the Plaintiff's own admission, the representation that Zee held the title of director was not enough to induce the Plaintiff to enter into the Service Agreement.

165 In light of the analysis in this section, I find that Zee, like D2, had no ostensible authority to enter into the Service Agreement on D1's behalf.

Issue 3: Whether D2 was liable for breach of warranty of authority

166 I next consider the Plaintiff's claim that D2 was liable for breach of warranty of authority.

167 The nub of the Plaintiff's cause of action can be summarised as follows. By way of his LinkedIn profile, D2 held himself out as D1's managing director, thereby effectively warranting that he was authorised to act on D1's behalf.[249] On the faith of that warranty, the Plaintiff executed the Service Agreement, while under the impression that he was transacting with D1 through the agency of D2. Thereafter, thinking that he had obtained the security of the corporate guarantee under the Service Agreement, the Plaintiff was emboldened to

[249] Plaintiff's Closing Submissions at para 30.

increase his exposure to the Cryptotrage scheme,[250] which naturally caused him to suffer larger losses when Zee perpetrated his fraud. If D2's warranty is found to be untrue, such that D1 is not bound by the Service Agreement, the Plaintiff would have lost his right to be indemnified by D1 for those losses. In that eventuality, the Plaintiff contended that his losses may properly be attributed to D2's breach of warranty.

168 In response, D2 argued that he *never* made any representations to the Plaintiff as to his authority to act on behalf of D1.[251] Both he and the Plaintiff were complete strangers, having never met prior to the conference call on 16 February 2021 (alluded to at para 38 above). This meant that D2 could not have made any representations to the Plaintiff prior to the latter signing the Service Agreement.[252]

169 The elements required to establish an action for breach of warranty of authority are stated in Peter Watts & F.M.B. Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 22nd Ed, 2021) ("*Bowstead and Reynolds*") at para 9-060. In *Fong Maun Yee and another v Yoong Weng Ho Robert* [1997] 1 SLR(R) 751 ("*Fong Maun Yee*"), the Court of Appeal endorsed those elements (at [53]), which I cite below:

> (1) Where a person, by words or conduct, represents that he has authority to act on behalf of another, and a third party is induced by such representation to act in a manner in which he would not have acted if that representation had not been made, the first-mentioned person is deemed to warrant that the representation is true, and is liable for any loss caused to such third party by a breach of that implied warranty, even if he

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250 Plaintiff's Closing Submissions at para 109.

251 D2's Closing Submissions at para 212.

252 D2's Closing Submissions at para 217.

> acted in good faith, under a mistaken belief that he had such authority.
>
> (2) Every person who purports to act as an agent is deemed by his conduct to represent that he is in fact duly authorised so to act, except where the nature and extent of his authority, or the material facts from which its nature and extent may be inferred, are fully known to the other contracting party, or the purported agent expressly disclaims any present authority.

170 Reverting to the present case, the Plaintiff's claim for breach of warranty of authority is in my view without merit.

171 The typical factual matrix under which a cause of action for breach of warranty of authority may arise is when the purported agent warrants that he is authorised to transact on the putative principal's behalf and this induces the claimant to transact with the purported agent, during which the claimant labours under the impression he is actually transacting with the putative principal (through the purported agent). If the warranty is unfounded and the purported agent was *not* empowered to bind the putative principal to the transaction after all, the claimant may seek recourse against the purported agent for loss arising from the transaction with the purported agent (as was the case in *Fong Maun Yee*). The present case is nevertheless atypical, in that the Plaintiff was not induced by the warranty of authority from the purported agent (*ie*, D2) to transact with the latter. In fact, there was *never* any such transaction between the Plaintiff and D2: while the Plaintiff executed the Service Agreement, that document was never signed by D2 (whose signature on P1 was forged). The only person whom the Plaintiff *did* transact with was Zee.

172 The Plaintiff sought to rely on *Chu Said Thong and another v Vision Law LLC* [2014] 4 SLR 375; [2014] SGHC 160 ("*Chu Said Thong*") (at [230]). That case involved a fraudster who claimed to have been assigned an option to

purchase a property. In truth, the option was fabricated and the property owner had never granted any such option. Under the guise of various fake personalities, the fraudster approached the plaintiffs and offered to assign the option to them. He also set the stage by approaching the defendant law firm to engage them to act in the transfer of the property to the plaintiffs. When one of the plaintiffs called the defendant law firm to seek verification, the latter (through its secretary) made two crucial representations (at [50(b)]), *ie*:

(a) the defendant law firm acted for the property owner; and

(b) the property owner had issued the "option" to the fraudster.

Both representations, having been issued by the defendant law firm on the faith of the fraudster's story, were false. In reliance on those representations, the plaintiffs transacted with the defendant law firm by paying the latter the stakeholding monies for the sale. The plaintiffs also *transacted with the fraudster* by directly handing him a cheque of $105,200 for the option. By the time the fraud was uncovered, the fraudster had cashed the cheque and disappeared. The plaintiffs sought to recover not only the sums paid pursuant to their dealings with the defendant law firm, being the stakeholding monies paid to the defendant law firm (which was ultimately refunded to the plaintiffs), but also sued the defendant law firm for what the plaintiffs had lost when dealing directly with the fraudster (being the $105,200 paid for the option). The High Court upheld the plaintiffs' claim against the law firm for the $105,200 paid to the rogue.

173 The Plaintiff did not explain how the factual matrix in *Chu Said Thong* supported his claim for breach of warranty of authority. It is unclear if the Plaintiff was seeking to draw any parallels, *eg*, by relying on how the purported agent in *Chu Said Thong* (*ie*, the defendant law firm) was held liable to make

good the loss sustained by the plaintiffs not only from the latter's dealings with the purported agent, but also from their direct dealings with a third-party fraudster (the latter being the $105,200 that the plaintiffs paid directly to the fraudster for the option). In the present case, the Plaintiff is similarly seeking to make D2 (as the purported agent of D1) liable for loss sustained by the Plaintiff in dealing directly with an alleged third-party fraudster (*ie*, Zee).

174 It is apt at his juncture to highlight that a claimant can bring an action against the purported agent for breach of warranty of authority, in respect of loss suffered through the claimant's dealings with a party *other than the purported agent*, if the purported agent's warranty pertained to the authority of *that other party*: *Bowstead and Reynolds* at para 9-064. Thus, if the purported agent falsely warrants to the claimant that a *third party* was authorised to transact on the putative principal's behalf, and this induces the claimant to deal with that third party on the faith that the claimant is actually dealing with the putative principal (through the third party), the purported agent is potentially liable to the claimant for loss flowing from those dealings. Nevertheless, that is not a principle which the Plaintiff can avail himself of on the facts of this case, where there was no warranty of any sort emanating from D2 (whether in his LinkedIn profile or otherwise) touching on *Zee's* authority. There was no warranty from D2 that could be said to have induced the Plaintiff into thinking that in transacting with Zee, the Plaintiff would be transacting with D1 (or D2 for that matter). In that respect, the case of *Chu Said Thong* is entirely distinguishable. In that case, the representations emanating from the purported agent (being the defendant law firm) alluded not only to the authority of the purported agent itself but *also to the authority of the third-party fraudster* – the defendant law firm expressly represented to the plaintiffs that the fraudster had been issued the option by the property owner (see paragraph 172(b) above).

175 The Plaintiff's claim for breach of warranty of authority could thus not be sustained.

176 Before leaving this section, I should point out that even if the claim was well-founded, the Plaintiff did not sufficiently prove the full extent of his loss purportedly arising from D2's breach of warranty of authority. While this observation could have been canvassed in the section below touching on the Plaintiff's failure to properly quantify his loss (under the heading "Issue 6"), it would be more convenient to deal with it here. The objective of awarding damages for a breach of warranty of authority is to put the innocent party, as far as possible, in the position which he would have been in *had the warranty of authority been true*: *Ku Yu Sang v Tay Joo Sing and another* [1993] 3 SLR(R) 226 at [51]. The warranty at issue thus pertains to the purported agent's authority to bind the putative principal to the contract and *not* the putative principal's ability to fulfil that contract. As such, if the putative principal would *in any event* have been unable to perform the contract to any significant degree and also lacks the resources to satisfy any judgment for breach of contract, the innocent party may potentially not be allowed to recover the full extent of what he expected to reap from the principal performing the contract: see also Tan Cheng Han SC, *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) at paras 09.067–09.068. In the present case, there was no evidence to indicate the extent to which D1 would have been able to honour the corporate guarantee in the Service Agreement. There was no evidence as to D1's balance sheet or cash flow to establish that D1 was in any position to make good on such a large payment.

Issue 4: Whether D1's obligation to indemnify was triggered

177 Given my finding that the Service Agreement was not authentic, it is not strictly necessary for me to determine whether its clauses could be construed as supporting the Plaintiff's claim. I will nevertheless state my opinions on this, given the substantial arguments advanced by the parties.

178 The principal clause in the Service Agreement relied upon by the Plaintiff in seeking an indemnity from D1 is cl 1.2, which reads:

> For any Funds managed under Cryptotrage books (Accounts), a corporate guarantee is provided by Cryptotrage [*ie*, D1] as following: in any case of any ***internal fraud by any staff*** of the Cryptotrage group of companies, whereas any digital assets are ***stolen by fraud*** from The Client [*ie*, the Plaintiff], the parent company is to substitute those assets within 5 business days.
>
> [emphasis added in bold italics]

The Plaintiff contended that the following two occurrences could be regarded as "fraud" within the meaning of cl 1.2, thereby triggering D1's obligation under that clause to indemnify the Plaintiff for the ensuing losses:[253]

(a) Zee's commingling of the cryptocurrencies belonging to that of the Plaintiff (which were meant for the Cryptotrage scheme) with that of Torque's investors, which occurred when Zee allowed the Binance Account to be used in connection with the Torque trading platform. This ultimately led to the Plaintiff being unable to withdraw whatever remained of his cryptocurrencies in the Binance Account when the account was frozen pending investigations into Torque's affairs.

(b) Zee's depletion of the cryptocurrencies invested by the Plaintiff

253 Plaintiff's Closing Submissions at paras 48–54.

in the Cryptotrage scheme, either through Zee's fraudulent trades or his outright theft.

179 I begin with the first alleged occurrence of fraud, pertaining to the commingling of cryptocurrencies. To be clear, the Plaintiff's case was that the very act of commingling his cryptocurrencies in the Binance Account with that of Torque's investors would, in and of itself, constitute "fraud" under cl 1.2.[254]

180 D1 objected to the Plaintiff's assertion that his digital assets in the Cryptotrage scheme had been commingled with that of investors under the Torque platform as that point was not sufficiently pleaded.[255] In response, the Plaintiff contended that the allegation clearly emerged from paras 31(b) and (c) of his amended Statement of Claim, which read as follows:

> b. On 9th February 2021, the 2nd Defendant made an announcement that Zee had used Torque Funds (another product supported by Snap Vietnam) to engage in unauthorised trades in the derivative markets and those trades were facing massive losses. On the same day, Rick confirmed that also all "Cryptotrage" project funds had been used by Zee for unauthorised trades.
>
> c. Subsequently, the Plaintiff was informed by Rick and [CK] that from sometime on or about end October 2019, unknown quantities of the Plaintiff's Cryptotrage funds were being transferred fraudulently without the Plaintiff's knowledge or consent to an external company's Binance Digital exchange account not belonging to the Cryptotrage project but managed by a company incorporated/formed by the 2nd Defendant (Torque Platform of the Torque Group Holding Ltd a BVI Entity).

I am inclined to agree with D1 on this point. I do not think that these sub-paragraphs within the Plaintiff's pleadings provided sufficient particulars

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254 Transcripts Day 3 (29 November 2023) at p 78 lines 19 to 23; Plaintiff's Closing Submissions at para 65.

255 D1's Closing Submissions at paras 95–97.

of the allegation of commingling. All that sub-paragraph (b) stated was that Zee had used the assets in the Cryptotrage scheme to engage in unauthorised trades. Sub-paragraph (c), on the other hand, spoke of unauthorised transfers of the funds from the Cryptotrage scheme *into accounts managed by Torque* – this was inconsistent with the Plaintiff's current position that cryptocurrencies from Torque's investors had been deposited into the Binance Account, which was by then *already* in use for the Cryptotrage scheme.[256]

181 In any case, the Plaintiff failed to demonstrate why the commingling of cryptocurrencies was in any way wrong, much less a "fraud". There was no indication – whether in the Plaintiff's AEIC, the Service Agreement, or in any other document – of any restriction prohibiting Zee from depositing the cryptocurrencies of Torque's investors (or of anyone else, for that matter) into the Binance Account.[257] So long as the deposits were properly segregated into sub-accounts within the Binance Account, with clear records to track the balances belonging to different investors, it seems that there would have been no harm arising from the sharing of the Binance Account. On the contrary, depositing the cryptocurrencies of Torque's investors into the Binance Account appeared to be a natural step forward because:

(a) Torque was supposedly a "spin-off" from Cryptotrage;[258] and

(b) Increasing the level of cryptocurrency deposits in the Binance Account helped to maintain the Tier 9 status that it enjoyed. As explained at para 33 above, that status conferred financial benefits such

256 Plaintiff's AEIC at para 166(a).

257 D1's Closing Submissions at para 125.

258 Plaintiff's AEIC at para 156.

as lower trading fees, which would result in lower costs to investors of the Cryptotrage scheme (including the Plaintiff himself).[259]

182 I thus agree with the submission of D1[260] that the Plaintiff cannot rely on the commingling of cryptocurrencies as an instance of fraud that triggered cl 1.2 of the Service Agreement.

183 Next, I examine whether the acts by which Zee had allegedly depleted the Plaintiff's cryptocurrencies in the Binance Account amounted to "internal fraud by any staff" which resulted in those cryptocurrencies being "stolen by fraud". D1's submissions on this point were as follows:

(a) There could not have been any "internal fraud by any staff" as Zee was not "staff" but an independent contractor of D1.[261]

(b) There was no evidence that the cryptocurrencies allegedly depleted by Zee's unauthorised trades[262] or theft[263] were those invested under the Cryptotrage scheme (as opposed to those of Torque's investors).

D2 similarly argued that cl 1.2 was never engaged because the fraud committed by Zee was in relation to only the digital assets managed by Torque and not those invested under the Cryptotrage scheme.[264]

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259 D1's Closing Submissions at para 125.

260 D1's Closing Submissions at para 125.

261 D1's Closing Submissions at paras 99–101.

262 D1's Closing Submissions at paras 106–107.

263 D1's Closing Submissions at para 112.

264 D2's Closing Submissions at para 181.

184 Even if I accept the Plaintiff's argument and adopt a broad interpretation of the word "staff" to include Zee (notwithstanding D1's contention that Zee was nothing more than an independent contractor), the Plaintiff still failed to show how cl 1.2 of the Service Agreement would have been brought into play. In particular, the Plaintiff failed to offer sufficient particulars of the alleged "internal fraud" and explain how his cryptocurrencies had been "stolen by fraud", these being the triggers specified in cl 1.2. As D1 pointed out, there was no evidence showing just how much of the cryptocurrency deposits within the Binance Account had been depleted or withdrawn by Zee,[265] or demonstrating that any cryptocurrencies misappropriated by Zee were indeed attributable to the Cryptotrage scheme (rather than Torque's investors).[266] The Plaintiff did not even see fit to call Torque's liquidators as witnesses to shed light on these important questions. I thus agree with the Defendants that there is insufficient evidence for me to affirmatively rule that the Plaintiff's cryptocurrency deposits in the Cryptotrage scheme had been the subject of fraud.

185 For the reasons above, I find that even if the Service Agreement were valid and binding upon D1, the Plaintiff would nevertheless have failed to prove that cl 1.2 of the Service Agreement came into operation. D1 would thus have been under no obligation, by virtue of that clause, to indemnify the Plaintiff for the sum which the latter now claims.

186 For completeness, I do not find that cl 1.1 was breached as no contractual obligation appears to be housed within that clause.

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265 D1's Closing Submissions at para 112.

266 D1's Closing Submissions at paras 106–107; D2's Closing Submissions at para 181.

Issue 5: Whether the Defendants owed the Plaintiff a duty to supervise Zee

187 The Plaintiff's alternative claim was that the Defendants each owed him a duty to supervise Zee, which they breached by not exercising proper oversight, thereby allowing Zee to perpetrate the fraud which caused the Plaintiff loss.

Whether D1 had a duty to supervise Zee

188 The Plaintiff submitted that D1 had a duty to put in place safeguards to supervise Zee's activities in Vietnam[267] and to prevent commingling of the Plaintiff's cryptocurrencies in the Binance Account with those belonging to Torque's investors.[268] According to the Plaintiff's Statement of Claim, that duty was a "fiduciary, contractual or tortious duty owed to the Plaintiff in law and in fact".[269]

189 I begin with the observation that the Plaintiff seemed to have *abandoned* this submission in his Closing Submissions, where he stated rather cryptically:[270]

> With regard to the Plaintiff's alternative cause of action against the 1st Defendant that the 1st Defendant failed in its duty to supervise Zee and the 2nd Defendant, *the plaintiff makes no submission* on the same.
>
> [emphasis added]

However, in his subsequent *Reply* Submissions, the Plaintiff resuscitated this head of claim by asserting that the "authorities are clear" that D1 owed a duty to third parties in tort, and that this duty was breached by D1's neglect in

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267 Plaintiff's AEIC at paras 170–171.

268 Plaintiff's AEIC at para 169.

269 Statement of Claim (Amendment No. 1) at para 42.1.

270 Plaintiff's Closing Submissions at para 112.

allowing Zee to misappropriate the digital assets in the Binance Account.[271] In reply, D1 maintained that it was under no duty to supervise Zee because the latter was merely an independent contractor and not a member of D1's staff.[272]

190 In *Skandinaviska (CA)*, an argument similar to that canvassed by the Plaintiff was raised and rejected. In that case, the defendant company's employee, Chia, had forged the board resolutions of the defendant company which he then used to dupe the plaintiff bank into extending credit facilities to (ostensibly) the defendant company. Chia drew huge sums from those facilities, which he then misappropriated. The plaintiff bank claimed that its losses arose from the defendant company breaching its duty to properly supervise Chia (at [97]). The Court of Appeal rejected this argument and held that the requisite degree of proximity was absent, as between the plaintiff bank and the defendant company, to satisfy the test set out in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck Engineering*") for establishing a common law duty of care in negligence (at [99]–[103]). Amongst other things, the Court of Appeal in *Skandinaviska (CA)* noted (at [103]–[104]):

> 103 … in the present case, it was ***relatively easy for [the plaintiff bank] to check whether Chia was authorised to represent that [the defendant company] had accepted the [plaintiff bank's] Facility***. All it had to do was to comply with its own due diligence procedures for verifying the signatures of the directors on the forged … Board resolution [of the defendant company] provided by Chia to show that [the defendant company] had (ostensibly) accepted the [plaintiff bank's] Facility (especially given that [the defendant company] was a customer with whom [the bank] did not have a prior relationship). ***That [the plaintiff bank] had the ability to prevent Chia's fraud by using reasonable means of***

271 Plaintiff's Reply Submissions at paras 171 and 177.

272 D1's Closing Submissions at para 101.

> ***verification provides even less reason for this court to impose a duty of care*** on [the defendant company].
>
> [emphasis added in bold italics]

The Court of Appeal also touched on the issue of causation, remarking that even if a duty of care existed, the loss did not arise from a breach of that duty. Rather, the proximate cause of the plaintiff bank's loss was its own negligence in readily accepting a forged document without performing the necessary verifications:

> 104 Finally, we agree with the Judge that even if [the defendant company] did owe [the plaintiff bank] a duty of care and, further, breached this duty by its lax supervision of Chia, thereby giving Chia the opportunity to cheat [the plaintiff bank], ***such breach did not cause [the plaintiff bank's] loss. The proximate cause of the loss was [the plaintiff bank's] own negligence in believing the representations made by Chia apropos the [plaintiff bank's] Facility and in readily accepting as genuine the forged … Board resolution [of the defendant company]*** which Chia provided in connection with that facility ***without verifying the directors' signatures on that resolution***.
>
> [emphasis added in bold italics]

191 In the present case, the Plaintiff simply glossed over the test in *Spandeck Engineering*, asserting that:[273]

> … the Plaintiff does not agree that the principles in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* 1200714 SLR(R) 100, apply to the present case.

There was no elaboration accompanying this one-liner.

192 Under the circumstances, I am compelled to conclude that the Plaintiff's submission that D1 owed him a duty of care to supervise Zee is devoid of merit.

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273 Plaintiff's Reply Submissions at para 173.

Whether D2 had a duty to supervise Zee

193 I now turn to the Plaintiff's claim that a duty was also owed by *D2* to supervise Zee, which D2 breached.

194 The Plaintiff contended that D2's duty to supervise Zee arose by virtue of his position as managing director of D1 and CEO of Torque, both of which gave him the ability to prevent Zee's fraud.[274] The Plaintiff further claimed that D2 breached that duty when he failed to exercise due diligence or control over Zee, thereby allowing the latter to siphon away the Plaintiff's cryptocurrencies.[275] In particular, the Plaintiff argued that D2 displayed Nelsonian blindness[276] in the following areas:

(a) D2 knew that Zee, as a director of Snap Vietnam, was involved in the Cryptotrage scheme, but still allowed Zee to concurrently hold the office of CTO in Torque; Zee was thus allowed to wear two hats and thereby place himself in a position of conflict of interest.[277]

(b) D2 knew, or ought to have known, that cryptocurrencies invested in the Cryptotrage scheme were being commingled with that of Torque's investors, but nevertheless acquiesced to this state of affairs.[278]

195 In reply, D2 maintained that he was not at any material time responsible for D1's Vietnam operations. More importantly, he was merely an independent

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274 Plaintiff's Closing Submissions at para 98.

275 Statement of Claim (Amendment No. 1) at paras 44.1–45

276 Plaintiff's Reply Submissions at para 178.

277 Plaintiff's Closing Submissions at paras 77–81.

278 Plaintiff's Closing Submissions at paras 82–83 and 99.

contractor of D1 and thus could not have possibly owed any duty to supervise members of D1's team.[279]

196 It is well established that directors owe fiduciary duties and legal responsibilities *to their companies*: see the High Court's remarks in *Vita Health Laboratories Pte Ltd and others v Pang Seng Meng* [2004] 4 SLR(R) 162 ("*Vita Health*") at [14]. The duties owed by a director include the duty to properly supervise the subordinates to whom the director has delegated his functions: see *Vita Health* at [21]. The views in *Vita Health* were re-affirmed by the Court of Appeal in *PlanAssure PAC (formerly known as Patrick Lee PAC) v Gaelic Inns Pte Ltd* [2007] 4 SLR(R) 513 at [130].

197 The Plaintiff failed to explain why any such duty which a director may owe to his company to properly supervise his subordinates should be extended, such that the duty is also owed to an *outsider* such as the Plaintiff. The Plaintiff cited the case of *TV Media Pte Ltd v De Cruz Andrea Heidi and another appeal* [2004] 3 SLR(R) 543,[280] where the Court of Appeal lifted the corporate veil and imputed liability for a company's tortious acts to the director responsible for the company's breach of duty. In that case, the company was held liable in negligence for selling slimming pills that ultimately damaged the plaintiff's liver. In finding that the company's director should be held personally liable as well, the court held (at [145]):

> In our considered opinion, [the director's] level of involvement in [the company] indicates that *he was clearly the controlling mind and spirit* of [the company]. … We accordingly find sufficient reason to lift [the company's] corporate veil and find

279 D2's Closing Submissions at para 190.

280 Plaintiff's Reply Submissions at para 179.

> [the director] personally liable for authorising, directing and/or procuring [the company's] negligent acts.
>
> [emphasis added]

That case does not assist the Plaintiff, who failed to point to any tortious liability of the corporate entities involved, for which D2 could be made personally liable by way of piercing the corporate veil:

(a) In respect of D1, I have already explained at para 192 above that the Plaintiff failed to justify the existence of any duty owed by D1 to the Plaintiff at law, in relation to the supervision of Zee, the breach of which could have given rise to an actionable tort.

(b) In respect of Torque, the Plaintiff similarly failed to explain the basis for imputing any duty owed by Torque to the Plaintiff, which was breached by Torque. In fact, the Plaintiff's submissions did not allude to any duty owed to him by Torque at all.

198 I should also add that in respect of D1, even if there had been any tortious liability on the part of the company, the facts of the present case do not come anywhere close to the threshold for lifting the corporate veil and imputing D1's tortious liability to D2. Unlike the director in *TV Media*, D2 was not in any way D1's "controlling mind and spirit". As explained at para 131 above, D2 did not even meet the test for being a *de facto* director. There was no evidence of D2 having exercised any significant responsibility over D1's business or over Zee's activities in Vietnam (other than Zee's statement that D2 was his "boss").

199 For these reasons, I find that D2 owed no duty to the Plaintiff to supervise Zee. Any action for breach of D2's duty to supervise Zee must therefore fail.

Issue 6: Whether the Plaintiff properly quantified his loss

200 Even if the issue of liability had been decided in the Plaintiff's favour, I would nevertheless find that the Plaintiff has not properly quantified his loss. Specifically, he failed to prove the quantum of cryptocurrencies which he allegedly lost following Zee's fraud.

201 The Plaintiff sought to recover the value of the cryptocurrencies which he claimed to have deposited in the Cryptotrage scheme. He alleged that he had deposited three different cryptocurrencies which, at the time Zee's fraud was discovered, collectively added up to US$9,122,044 in value. As explained at para 47 above, the Plaintiff derived this sum by adding up the US dollar value of the balance of each of his three cryptocurrency deposits, existing as at the end of 7 February 2021, as encapsulated in the 8 February 2021 daily reports:

S/n.	Digital Asset in Cryptotrage	Balance	USD Equivalent*
1.	**USDt**	656,422 USDt	656,422
2.	**BUSD**	3,073,178 BUSD	3,073,178
3.	**BNB**	21,772.06	5,392,443
		Total:	9,122,044

*Based on exchange rate existing as at 2 March 2021.

202 The Plaintiff's methodology for calculating his balance for each cryptocurrency can be gleaned from the daily reports for 8 February 2021:

(a) The Plaintiff's claim for 656,422 USDt was supported by a daily report that Snap Vietnam sent via Telegram on 8 February 2021.[281] That report enclosed a table, extracted below, purporting to set out his daily USDt balances from 30 January to 7 February 2021:

[281] Exhibited in Plaintiff's AEIC at p 792.

George Baizanis

Date	Coin	Start	Finish	Trading Fee	Total profit	%	Our Profit 20%	Your Profit 80%
30/1/2021	USDT	682877.583	672930.511	2018.79153	8234.1557	1.2426	1646.8311	6587.3246
31/1/2021	USDT	667284.888	616440.053	1849.32016	7325.8450	1.2064	1465.1890	5860.6760
1/2/2021	USDT	613125.564	622457.948	1867.37384	7465.0104	1.2175	1493.0021	5972.0083
2/2/2021	USDT	619097.572	628578.432	1885.73530	7595.1249	1.2268	1519.0250	6076.0999
3/2/2021	USDT	625173.672	634793.845	1904.38153	7715.7909	1.2342	1543.1582	6172.6327
4/2/2021	USDT	631346.305	641117.652	1923.35295	7847.9936	1.2431	1569.5988	6278.3950
6/2/2021	USDT	637624.700	647276.425	1941.82928	7709.8958	1.2092	1541.9792	6167.9166
6/2/2021	USDT	643792.617	653557.964	1960.70369	7814.6432	1.2138	1562.9286	6251.7146
7/2/2021	USDT	650044.331	659997.160	1979.99148	7972.8373	1.2265	1594.5675	6378.2698

A perusal of the table above indicates that the Plaintiff took the finishing balance for 7 February 2021 (*ie*, 659,997.160 USDt, as indicated in the final row under the "Finish" column) and subtracted the corresponding "Trading Fee" (*ie*, 1,979.99148 USDt, as indicated in the adjacent cell) and Snap Vietnam's 20 per cent cut (*ie*, 1,594.5875 USDt, as indicated in the final row under the "Our Profit 20%" column), to arrive at the final round figure of 656,422 USDt.

(b) The Plaintiff's claim for 3,073,178 BUSD was supported by a daily report that Snap Vietnam sent via Telegram, also on 8 February 2021.[282] That report enclosed a table, extracted below, purporting to set out his daily BUSD balances from 4 to 7 February 2021:

GEORGE

Date	Coin	Start	Finish	Total profit	Management and fees (20%)	Profit (80%)
04/02/2021	BUSD	3035460.5469	3047147.0700	11686.523	2337.3046	9349.2185
05/02/2021	BUSD	3044809.7654	3056775.8678	11966.102	2393.2205	9572.8819
06/02/2021	BUSD	3054382.6473	3066203.1081	11820.461	2364.0922	9456.3687
07/02/2021	BUSD	3063839.0160	3075512.2426	11673.227	2334.6453	9338.5813

A perusal of the table above indicates that the Plaintiff likewise took the finishing balance for 7 February 2021 (*ie*, 3,075,512.2426 BUSD, as indicated in the final row under the "Finish" column) and subtracted the applicable fees (*ie*, 2,334.6453 BUSD, as indicated under the "Management and fees (20%)" column) to arrive at the final round figure of 3,073,178 BUSD.

282 Exhibited in Plaintiff's AEIC at pp 794–795.

(c) The Plaintiff's claim for 21,772.06 BNB was supported by daily reports that Snap Vietnam had sent via two Telegram messages, both dated 8 February 2021.[283] The daily reports in both messages collectively enclosed five tables, each purporting to set out the daily BNB balances of the Plaintiff and (what appeared to be) various other investors, for the period spanning 4 to 7 February 2021:

George

Date	Coin	Start	Finish	Total profit	Management and fees (50%)	Profit (50%)
04/02/2021	BNB	10094.07125	10136.06259	41.9913	20.9957	20.9957
05/02/2021	BNB	10115.06692	10157.65135	42.5844	21.2922	21.2922
06/02/2021	BNB	10136.35914	10178.32366	41.9645	20.9823	20.9823
07/02/2021	BNB	10157.34140	10198.27549	40.9341	20.4670	20.4670

Daryl

Date	Coin	Start	Finish	Total profit	Management and fees (50%)	Profit (50%)
04/02/2021	BNB	747.0133	750.1209	3.1076	1.5538	1.5538
05/02/2021	BNB	748.5671	751.7186	3.1515	1.5757	1.5757
06/02/2021	BNB	750.1429	753.2485	3.1056	1.5528	1.5528
07/02/2021	BNB	751.6957	754.7250	3.0293	1.5147	1.5147

George

Date	Coin	Start	Finish	Total profit	Management and fees (50%)	Profit (50%)
04/02/2021	BNB	8744.6273	8781.0050	36.3776	18.1888	18.1888
05/02/2021	BNB	8762.8162	8799.7076	36.8915	18.4457	18.4457
06/02/2021	BNB	8781.2619	8817.6163	36.3544	18.1772	18.1772
07/02/2021	BNB	8799.4391	8834.9008	35.4617	17.7309	17.7309

Chia HL

Date	Coin	Start	Finish	Total profit	Management and fees (50%)	Profit (50%)
04/02/2021	BNB	302.9892	304.2496	1.2604	0.6302	0.6302
05/02/2021	BNB	303.6194	304.8976	1.2782	0.6391	0.6391
06/02/2021	BNB	304.2585	305.5182	1.2596	0.6298	0.6298
07/02/2021	BNB	304.8883	306.1170	1.2287	0.6143	0.6143

Fotis

Date	Coin	Start	Finish	Total profit	Management and fees (50%)	Profit (50%)
04/02/2021	BNB	1704.3971	1711.4873	7.0903	3.5451	3.5451
05/02/2021	BNB	1707.9422	1715.1326	7.1904	3.5952	3.5952
06/02/2021	BNB	1711.5374	1718.6232	7.0858	3.5429	3.5429
07/02/2021	BNB	1715.0803	1721.9921	6.9118	3.4559	3.4559

The titles of the five tables suggested that they pertained to accounts belonging to persons with the names "Daryl", "Chia HL", "Fotis" and "George", with the name "George" (which appeared in two out of the five tables) presumably referring to the Plaintiff. A perusal of the final row of each table indicates that the Plaintiff derived his final figure of

283 Exhibited in Plaintiff's AEIC at pp 797–803.

> 21,772.06 BNB by taking the finishing balance for 7 February 2021 (under the "Finish" column) and subtracting the applicable fees (under the "Management and fees (50%)" column) before summing up the result across the five tables, *ie*, (10,198.27549 – 20.4670) BNB + (754.7250 – 1.5147) BNB + (8,834.9008 – 17.7309) BNB + (306.1170 – 0.6143) BNB + (1,721.9921 – 3.4559) BNB ≈ 21,772.06 BNB.[284]

203 Preliminarily, D1 submitted that the Plaintiff should not be allowed to claim for losses in all three categories of cryptocurrencies (*ie*, USDt, BUSD and BNB) because the *ambit* of the Service Agreement was restricted to covering only the Plaintiff's USDt deposits. That being the case, argued D1, the corporate guarantee under the Service Agreement could not extend to losses in BUSD and BNB. D1 sought to justify its submission as follows:

> (a) When the Service Agreement was executed on 27 May 2019, the Plaintiff had deposited only USDt for the Cryptotrage scheme. His deposits of BUSD and BNB were made later, meaning that these latter two classes of cryptocurrencies were not contemplated – and consequently not covered – by the Service Agreement.[285]
>
> (b) Further, the Service Agreement was clearly focused on cryptocurrency *trades*. Specifically, cl 1.1 of the Service Agreement laid out D1's obligation "[t]o manage the funds of The Client or his Group under the scope of performing Cryptocurrency Arbitrage *trades*". The BNB deposits thus fell outside the scope of the Service Agreement because BNB had been deposited by the Plaintiff not for the purpose of

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284 The result should have been closer to 21,772.23 BNB, but nothing turns on this.

285 D1's Closing Submissions at para 139.

trading but for "stacking". "Stacking" entailed accumulating the BNB deposits in an account on the Binance Exchange to levels that would allow that account to achieve Tier 9 status, thereby triggering the benefits of referral fees and discounted trading costs alluded to at para 33 above.[286] D1 contended that BNB had never actually been *traded* in any arbitrage transactions, pointing to the further and better particulars furnished by the Plaintiff wherein he stated that "the BNB Cryptotrage scheme was a purely stacking project without any trading in the BNB funds invested by the Plaintiff".[287] If BNB had never been traded, argued D1, BNB deposits should be regarded as falling outside the ambit of the Service Agreement and thus outside the guarantee in cl 1.2.[288]

204 D1's attempt to limit the categories of cryptocurrencies covered by the Service Agreement can be dealt with briefly. In short, I disagree that the Service Agreement covered only USDt and not BUSD or BNB deposits:

(a) First, cl 1.2 employed the term "Funds managed under Cryptotrage books", without drawing any distinction between cryptocurrencies managed at the time the Service Agreement was signed and cryptocurrencies flowing in *after* the Service Agreement had been signed.[289] This clause was therefore wide enough to cover the subsequent BNB and BUSD deposits.

(b) Second, I disagree with D1's submission that the Service

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286 Plaintiff's Reply Submissions at para 98.

287 D1's Closing Submissions at para 141.

288 D1's Closing Submissions at paras 141–142.

289 Plaintiff's Reply Submissions at para 97.

> Agreement covered only cryptocurrencies that were traded. The use of the word "trades" in cl 1.1 is neither here nor there. There was nothing in the Service Agreement that explicitly required the cryptocurrencies to be "traded" before they were covered by the guarantee. The Plaintiff's BNB deposits, even if not traded, still served the pivotal function of stacking the digital assets in the accounts on the Binance Exchange to a level that unlocked Tier 9 status. That in turn generated earnings and savings that significantly boosted the Cryptotrage scheme's profitability. Given the central role played by the Plaintiff's BNB deposits, it is not apparent to me that the contracting parties would have intended for BNB to fall outside the protection which the corporate guarantee in cl 1.2 offered.

205 Having said that, I hold the view that the Plaintiff nevertheless failed to satisfactorily establish his loss. This was due in large part to the fact that his attempts at quantification hinged principally on the daily reports, which I find to be riddled with serious evidential shortcomings.

206 Firstly, the Plaintiff was effectively using the daily reports to prove the truth of what those daily reports purported to assert (*ie*, the daily balances of the cryptocurrency concerned). This was plainly hearsay evidence. Without the benefit of argument, it would appear that a possible way of overcoming this evidential hurdle might have been for the Plaintiff to invoke s 32(1)(*b*) of the EA, which allows for the admission of statements made in the ordinary course of a trade, business or profession. To invoke that exception, it would have been incumbent on the Plaintiff to at least present *some* evidence shedding light on, for instance, who prepared the daily reports and the processes attendant upon their preparation. As it were, nothing of the sort was adduced by the Plaintiff.

207 Secondly, there was a dearth of evidence as to the source from which the numbers within the daily reports were taken. While it is possible to make some sense of the tables in the daily reports and thereby use them to derive the components of the US$9,122,044 claimed by the Plaintiff (as per the exercise at para 202 above), question marks still remain as to *where* the constituent numbers within these tables were derived from:

(a) No explanation was provided as to the source of the *starting* balances in the earliest daily reports. If payments had been made to purchase the initial cryptocurrency balances, there were no receipts to document them. As D1 pointed out,[290] the Plaintiff failed to provide any accounts from the Binance Exchange, or verifiable transaction IDs or hashes of his deposits.

(b) One sees from the daily reports that the *finishing* balance for each day would, after making the necessary deductions (such as Snap Vietnam's fees), constitute the next day's *starting* balance. Gains from the next day's *trades* would then be added to the next day's starting balance to yield the next day's finishing balance. The process of accounting for the daily gains and deductions in this manner culminated in the finishing balances for 7 February 2021, which was used by the Plaintiff to calculate his claim figure of US$9,122,044. However, he failed to provide details of the underlying daily *trades*, which would have been a key driver of the finishing balance captured every day.

The Plaintiff asserted that the court should simply treat the daily reports as "akin

[290] D1's Closing Submissions at para 152.

to a bank statement".[291] However, without the necessary evidence to address the gaps above, the tabulated figures in the daily reports were nothing more than a series of inscrutable black boxes.

208 Thirdly, as regards the BNB daily reports, the Plaintiff's claim incorporated balances that appeared to be in the names of persons other than himself (*ie*, "Daryl", "Chia HL" and "Fotis" – see para 202(c) above). He did not explain why he should be regarded as having the standing to include those balances in his claim.

209 Finally, the very authenticity of the daily reports was at issue.[292] By his own pleadings, the Plaintiff described the daily reports as "completely bogus". I set out below the relevant sections from his Statement of Claim:[293]

> 31 On or about 9th February 2021, the Plaintiff discovered that Zee was using the Plaintiff's funds for purposes not linked to arbitrage trading.
> …
> c. Zee appeared to have long back sold the majority of the Plaintiffs assets in the cryptotrage projects (BNB, USDt and BUSD) without the Plaintiffs knowledge and approval to Bitcoin and forwarded those funds in Bitcoin to the futures trading wallet of the Binance Digital exchange account.
>
> e. Zee also participated in highly risk leveraged trades with the Plaintiffs funds and/or digital assets. In the process, Zee is estimated to have lost 100% of the Plaintiffs funds and/or digital assets made over time in the Cryptotrage projects.
>
> 32. ***To cover up the fraud by the 1st Defendants' staff, Zee and his team had been issuing daily reports to the Plaintiff which were completely bogus*** as the Plaintiff's

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291 Plaintiff's Reply Submissions at para 108.3.

292 D2's Closing Submissions at para 169.

293 Statement of Claim (Amendment No. 1) at paras 31–32.

> funds had been withdrawn a few months previously. This was an internal manipulation which could never have been discovered by the Plaintiff. Such fraud therefore triggered Clause 1.2 of the [Service Agreement].
>
> [emphasis added in bold italics]

210 At trial, the Plaintiff attempted to qualify his pleaded case by saying that it was *only the 7 February 2021* daily reports (which would have reflected the daily balances up to and including 6 February 2021) that were bogus.[294] He explained that prior to that day, all his withdrawal requests had been honoured by Snap Vietnam,[295] thereby implying that the daily reports for those prior days must have been in order. However, it is difficult to see how this explanation assisted his attempt at quantification:

> (a) Firstly, as stated at para 207(b) above, it is apparent from the daily reports that the finishing balance for any one day would, after the necessary deductions constitute the next day's starting balance. Gains from the next day's trades would then be added to the next day's starting balance to yield the next day's finishing balance, and the cycle is repeated. As seen at para 202 above, the Plaintiff purported to quantify his loss by using the finishing balances for 7 February 2021, *as captured in the 8 February 2021 daily reports*. For reasons just explained, those balances would have been derived by iteratively accounting for the finishing balances of the *preceding* days, including those for 6 February 2021 *as captured in the 7 February 2021 daily reports*. If the 7 February 2021 daily reports were indeed bogus (as per the Plaintiff's revised contention), that necessarily puts into question the integrity of the 6

294 Transcripts Day 6 (4 December 2023) at p 108 lines 11 to 13.

295 Transcripts Day 6 (4 December 2023) at p 108 line 18 to p 109 line 8.

February 2021 finishing balances captured therein. As these balances would have fed directly into the 7 February 2021 finishing balances that was used to calculate the Plaintiff' loss, his calculations would still be tainted by the bogus figures.

(b) Secondly, it was the Plaintiff's case that Zee had been conducting unauthorised futures trading with the Plaintiff's cryptocurrencies, with the result that the daily reports may have been inaccurate because of their failure to reflect those trades.[296] The Plaintiff discovered that Zee had been performing the unauthorised trades for *months* leading up to February 2021,[297] meaning that the trades were being carried out for a significant duration, leading up to when the 8 February 2021 daily reports were prepared. That would similarly render the daily reports for the days leading up to (and including) 8 February 2021 suspect, thereby undermining the Plaintiff's calculations.

(c) Thirdly, the fact that the Plaintiff was able to make some withdrawals of his investments in the Cryptotrage scheme prior to 7 February 2021 would at best indicate that there were *some* balances remaining of the Plaintiff's cryptocurrency deposits in the Binance Account up to that day.[298] This had no bearing on whether the figures in the daily reports accurately reflected the quantum of those balances.

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296 Transcripts Day 6 (4 December 2023) at p 109 line 10 to p 110 line 22.

297 Transcripts Day 4 (30 November 2023) at p 41 line 12 to p 42 line 8.

298 Transcripts Day 4 (30 November 2023) at p 42 lines 13 to 17.

211 The Plaintiff was also unable to adduce any evidence to show how much of his cryptocurrencies in the Binance Account had been lost following Zee's alleged unauthorised trades and theft. Notably, the Plaintiff could not confirm how much of his cryptocurrencies *remained* in the Binance Account, which had since come under the control of Torque's liquidators.[299] The Plaintiff had submitted a proof of debt with Torque's liquidators seeking a sum of approximately US$14.8 million,[300] which included not only his investments under the Cryptotrage scheme but also under the Torque platform (since both used the same Binance Account, which has since come under the control of Torque's liquidators).[301] Against that backdrop, the Defendants highlighted fears that the Plaintiff could get a windfall, particularly if Torque's liquidators eventually return a sizeable portion of the Plaintiff's cryptocurrency deposits to him *after* the Defendants have already paid substantial damages.[302] The Plaintiff sought to downplay this concern by alleging that he will likely "only end up with 0.2 per cent or 0.02 per cent" (he was unable to recall the exact amount).[303] However, there is nothing to substantiate these percentage figures. As alluded to at para 184 above, the Plaintiff made no attempt at obtaining evidence from Torque's liquidators in relation to the assets that remained in the Binance Account, ostensibly because he did not wish to "harass" them while they did their work.[304] However, his failure to even try to procure such evidence meant that the risk of overcompensation remained very much a live one.

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299 Transcripts Day 3 (29 November 2023) at p 166 lines 6 to 13.

300 Transcripts Day 6 (4 December 2023) at p 74 line 15 to p 75 line 2.

301 Transcripts Day 6 (4 December 2023) at p 75 line 16 to p 76 line 4.

302 D1's Closing Submissions at para 151; D2's Closing Submissions at para 183.

303 Transcripts Day 6 (4 December 2023) at p 76 lines 6 to 8; p 94 lines 13 to 16.

304 Transcripts Day 6 (4 December 2023) at p 96 lines 9 to 17.

212 In sum, even if the Plaintiff succeeded in establishing the Defendants' liability (which he has not), I would nevertheless conclude that the Plaintiff has failed to satisfactorily quantify his loss. There is simply no reliable basis on which the Plaintiff can lay claim to the quantum of cryptocurrencies as set out in para 47 above, which he sought to recover by this suit.

Conclusion

213 For the above reasons, I dismiss the Plaintiff's claims against the Defendants. In summary:

(a) The Plaintiff failed to adduce sufficient evidence to prove the Executed Paper Copy and its contents. Specifically:

(i) The Plaintiff failed to abide by the evidential procedures for adducing the E-Copy (and hence P1) as secondary evidence proving the Executed Paper Copy.

(ii) Even if the E-Copy could be adduced as secondary evidence, the Plaintiff failed to establish its authenticity (and hence the authenticity of P1), especially given the dubious circumstances surrounding the E-Copy's provenance. Additionally, the Defendants were able to show that D2's signature on P1 was likely copy-pasted and thereby establish that P1 (and hence the E-Copy) was *forged*. Given that the E-Copy and P1 had not been shown to be authentic, they were consequently inadmissible.

The above findings meant that the Plaintiff failed to prove that D2 had signed the Service Agreement.

(b) Even if it were accepted that D2 had signed the Service Agreement, neither D2 nor Zee possessed any actual authority to do so on D1's behalf. Both men also had no ostensible authority to execute the Service Agreement on D1's behalf.

(c) The claim against D2 for breach of warranty of authority failed. This was not a typical scenario where the Plaintiff, in reliance on D2's purported warranty of authority, transacted with D2 while under the erroneous impression that the Plaintiff was dealing with D1 through D2. There was no such transaction with D2, given that D2 never signed the Service Agreement executed by the Plaintiff. The person whom the Plaintiff *did* transact with was Zee, but D2 never made any warranty about Zee having authority in any shape or form, which the Plaintiff could claim to have relied on when dealing with Zee.

(d) Even if D2 had successfully bound D1 to the Service Agreement, the operative clause obliging D1 to indemnify the Plaintiff for his losses (*ie*, cl 1.2) was not triggered. The Plaintiff failed to sufficiently demonstrate that there was "internal fraud" leading to the loss of his cryptocurrencies, or that his cryptocurrencies had been "stolen by fraud", as contemplated by that clause. That D1's obligation to indemnify could not have come into operation even if it existed meant that the Plaintiff's claim against D1 for breach of contract had failed.

(e) The Plaintiff's claim against the Defendants for the alleged breach of their duty to supervise Zee was devoid of merit. The Plaintiff failed to show that such a duty even existed to begin with.

(f) Finally, the Plaintiff failed to properly quantify his loss. His

attempts to do so hinged heavily on the daily reports, which were riddled with serious evidential shortcomings. In any case, the Plaintiff has filed a proof of debt with Torque's liquidators to claim whatever was left of his cryptocurrencies in the Binance Account following Zee's fraud, but failed to adduce any evidence substantiating his assertion that the amount which he is likely to recover will be negligible.

214 I will now hear parties on the issue of costs.

Christopher Tan
Judicial Commissioner

Ong Lian Min David and Chua Yuet Min Matthew (Cai Yuemin) (David Ong & Co.) for the plaintiff;
Christopher James de Souza, Lee Junting Basil and Darius Tan En Han (Lee & Lee) for the first defendant;
Sarbrinder Singh s/o Naranjan Singh and Tay Yu E (Sanders Law LLC) for the second defendant.