

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

[2024] SGHC 59

Suit No 557 of 2021

Between

Riady Tjandra

... Claimant

And

Cheng Yi Han

... Defendant

JUDGMENT

[Contract — Formation]

[Contract — Breach]

[Contract — Remedies — Damages]

[Contract — Misrepresentation — Fraudulent]

[Contract — Contractual terms — Exclusion clauses]

[Restitution — Unjust enrichment — Subsidiarity principle]

[Restitution — Unjust enrichment — Total failure of consideration]

[Restitution — Unjust enrichment — Defence of change of position]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND TO THE DISPUTE	2
SUMMARY OF THE PARTIES' CASES	5
CONTRACTUAL CLAIM.....	5
WAS THERE A CONTRACT BETWEEN TJANDRA AND CHENG?.....	6
<i>Tjandra contracted with the Original Shareholders</i>	<i>13</i>
(1) The Share Transfer Forms do not constitute the entire agreement	13
(2) Blue Summit and Gestalt were just convenient vehicles of the Original Shareholders.....	16
(3) The Original Shareholders received payment for the Star Dust Shares	18
(4) The Original Shareholders referred to themselves and Tjandra as “partners”	18
(5) Tjandra did not acknowledge that he contracted exclusively with Blue Summit	19
(6) Ling was not acting exclusively as a director of Blue Summit	20
<i>Ling and Feng had the authority to bind Cheng</i>	<i>21</i>
<i>Issues arising from my finding of the Agreement</i>	<i>25</i>
WAS THE AGREEMENT BREACHED?	27
<i>The Original Shareholders' obligations under the Agreement.....</i>	<i>27</i>
<i>The Star Dust Shares were not transferred to Tjandra.....</i>	<i>28</i>
(1) No evidence of steps taken to effect the transfer	29
(2) Cheng's failure to call Ling	32
(3) The WhatsApp exchange on 30 June 2019 does not assist Cheng	34

(4) Tjandra's amended pleadings and his solicitor's earlier reference to him as a shareholder in Star Dust are not contrary to his case.....	37
(5) Tjandra's failure to enquire about the transfer of the Star Dust Shares is equivocal	38
WHAT DAMAGES IS TJANDRA IS ENTITLED TO?	38
UNJUST ENRICHMENT CLAIM	43
THE LAW ON UNJUST ENRICHMENT.....	43
ISSUES TO BE DETERMINED.....	44
DOES THE SUBSIDIARITY PRINCIPLE PROHIBIT THE UNJUST ENRICHMENT CLAIM?	44
WAS THE ENRICHMENT UNJUST?	46
<i>The law on total failure of basis.....</i>	<i>46</i>
<i>First basis: the transfer of the Star Dust Shares.....</i>	<i>47</i>
<i>Second basis: Royal Eastern Bank would be a licensed and operational bank</i>	<i>48</i>
ARE THERE DEFENCES TO THE UNJUST ENRICHMENT CLAIM?	52
<i>The law on the change of position defence</i>	<i>52</i>
<i>Cheng's case on change of position.....</i>	<i>53</i>
(1) Cheng's allegedly foregone income of SG\$250,000	54
(2) The alleged SG\$50,000 loan.....	54
(3) The US\$300,000 of expenses Cheng allegedly incurred	56
MISREPRESENTATION CLAIM	60
THE LAW ON FRAUDULENT MISREPRESENTATION.....	60
THE ENTIRE AGREEMENT CLAUSE DOES NOT PROHIBIT THE MISREPRESENTATION CLAIMS.....	61
THE EXCLUSIVITY REPRESENTATION CLAIM.....	62
<i>Was the Exclusivity Representation made?.....</i>	<i>62</i>

<i>Was the Exclusivity Representation false?</i>	64
<i>Did Tjandra rely on the Exclusivity Representation?</i>	64
THE VALUATION REPRESENTATION CLAIM	66
<i>Was the Valuation Representation made?</i>	66
<i>Was the Valuation Representation false?</i>	68
<i>Whether Tjandra relied on the Valuation Representation?</i>	69
<i>Did Cheng know that the Valuation Representation was false, or was he reckless as to its truth?</i>	70
CONCLUSION	73

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Riady Tjandra

v

Cheng Yi Han

[2024] SGHC 59

General Division of the High Court — Suit No 557 of 2021

Hri Kumar Nair J

17–18 January 2024, 28 February 2024

5 March 2024

Judgment reserved.

Hri Kumar Nair J

Introduction

1 The opportunity to acquire a sizeable stake in a new bank does not come often. The plaintiff (“Tjandra”) leapt at that chance but did not look first. He invested US\$4m and got nothing in return. The defendant (“Cheng”) personally received US\$1.36m of Tjandra’s funds and has repaid most of it. Tjandra brings this action to recover the balance of US\$500,000 from Cheng.

Background to the dispute

2 Tjandra is an Indonesian businessman resident in Singapore.¹ Cheng is a Singaporean with a medical practice in Australia.²

3 In or about early 2018, Cheng and two associates, Andrew Ling (“Ling”) and Then Feng (“Feng”), decided to purchase an offshore, cryptocurrency-friendly bank (“Royal Eastern Bank”).³ Ling was a businessman with a finance and investing background,⁴ and Feng was a lawyer.⁵ Cheng’s primary responsibility was to establish the back-end of the contemplated banking operations,⁶ while Ling was to handle the financial aspects of the business,⁷ and Feng, the legal matters.⁸

4 The three of them (collectively, the “Original Shareholders”), held their respective interests in Royal Eastern Bank through special purpose vehicles incorporated in the British Virgin Islands (“BVI”):

¹ Riady Tjandra’s Affidavit of Evidence-in-chief dated 26 May 2023 (“Tjandra’s AEIC”) at para 4.

² Cheng Yi Han’s Affidavit of Evidence-in-chief dated 4 April 2023 (“Cheng’s 1st AEIC”) at p 1; para 34.

³ Cheng’s 1st AEIC at paras 24-26; Statement of Claim (Amendment No. 3) dated 19 December 2023 (“SOC”) at para 12; Defence (Amendment No. 4) dated 19 December 2023 (“Defence”) at para 12.

⁴ Cheng’s 1st AEIC at paras 12-14.

⁵ Transcript for 18 January 2024 (Court 5F) (“Day 2 Transcript”) at p 130, line 24; p 131, lines 1-3.

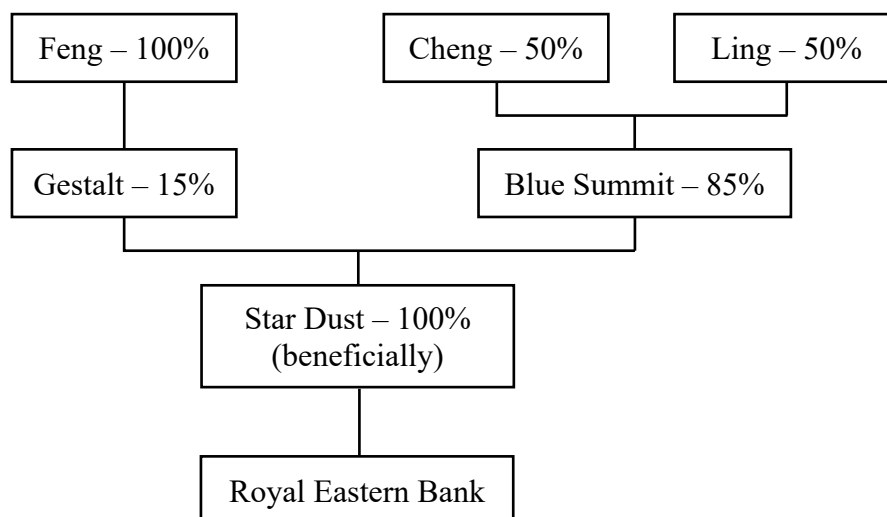
⁶ Transcript for 17 January 2024 (Court 5F) (“Day 1 Transcript”) at p 136, lines 14-20.

⁷ Cheng’s 1st AEIC at para 13-14; Day 1 Transcript at p 140, lines 3-19.

⁸ Day 2 Transcript at p 130, line 24; p 131, lines 1-3.

- (a) Ling and Cheng were each 50% shareholders of Blue Summit Investments Limited (“Blue Summit”);⁹
- (b) Feng wholly owned Gestalt Group Limited (“Gestalt”);¹⁰
- (c) Blue Summit and Gestalt were in turn shareholders of Star Dust Developments Limited (“Star Dust”), holding 85% and 15% of its shares respectively;¹¹ and
- (d) Star Dust in turn (beneficially) owned Royal Eastern Bank, its sole asset.¹²

For ease of reference, a diagram of the corporate structure is set out below:



⁹ Cheng’s 1st AEIC at para 36; Plaintiff’s Closing Submissions dated 16 February 2024 (“PCS”) at para 2.2.1.(a).

¹⁰ Tjandra’s AEIC at para 23(b)(i); Cheng’s 1st AEIC at para 46.

¹¹ Day 1 Transcript at p 135, lines 11-15; PCS at para 2.2.2.

¹² Defence at paras 5(b)-(d); PCS at para 2.2.1.(d).

5 In November 2018, Feng spoke with Tjandra about investing in Royal Eastern Bank.¹³ This was followed by several meetings and discussions between the Original Shareholders and Tjandra, the details of which are disputed. What is not disputed is that sometime in February 2019, an agreement was reached for Tjandra to purchase 10,000 shares (amounting to a 20% shareholding) in Star Dust (the “Star Dust Shares”) for US\$4m.¹⁴ It was agreed that payment would be made in two tranches of US\$3.2m and US\$800,000.¹⁵

6 It is also not disputed that between 25 to 27 February 2019, Tjandra paid the first tranche of US\$3.2m directly to the Original Shareholders as follows:¹⁶

- (a) US\$1.36m to Cheng;
- (b) US\$1.36m to Ling; and
- (c) US\$480,000 to Feng.

7 Cheng claimed that sometime in June 2019, he received disturbing information about the Royal Eastern Bank investment, in particular, that investment funds had been misappropriated,¹⁷ and warned Tjandra not to make the second tranche of payment.¹⁸ Tjandra asked Cheng to repay the US\$1.36m he had received.¹⁹ From 30 June to 1 July 2019, Cheng made payments to

¹³ Tjandra’s AEIC at para 7; Cheng’s 1st AEIC at para 37.

¹⁴ Day 1 Transcript at p 179, lines 18-25; Day 2 Transcript at pp 165-166.

¹⁵ AB at p 177.

¹⁶ Tjandra’s AEIC at para 34; Cheng’s 1st AEIC at paras 45-47; Agreed Bundle of Documents dated 12 January 2024 (“AB”) at pp 135-136, 191.

¹⁷ Cheng’s 1st AEIC at paras 48-49.

¹⁸ Cheng’s 1st AEIC at para 52; AB at p 194; Tjandra’s AEIC at paras 41-42.

¹⁹ AB at pp 197-198.

Tjandra (in cash and in kind) amounting to US\$860,000.²⁰ In this action, Cheng disputes his liability to repay the balance sum of US\$500,000.

Summary of the parties’ cases

8 Tjandra claims that the Star Dust Shares were never transferred to him, and brings three alternative claims for breach of contract, unjust enrichment, and fraudulent misrepresentation. Broadly speaking, Cheng’s defence is that Tjandra has failed to prove that the Star Dust Shares were not transferred to him; further and in any event, that Tjandra’s agreement for the Star Dust Shares was with Blue Summit and Gestalt, and not him. He also maintains that the representations pleaded by Tjandra were not false and were not made by him.

Contractual claim

9 Tjandra pleads that he entered a contract with Cheng on or around 13 February 2019 for the purchase of 4,250 shares in Star Dust (which reflects the portion of the Star Dust Shares ultimately owned by Cheng) at a price of US\$1.36m.²¹ On the other hand, Cheng pleads that any contract would have been between Tjandra and Blue Summit,²² and in any event, was concluded by Ling and/or Feng without his authority.²³

Issues to be determined

10 The relevant issues are:

²⁰ Tjandra’s AEIC at para 45.

²¹ SOC at para 8.

²² Defence at paras 3(d) and 10A(c); Defendant’s Closing Submissions dated 16 February 2024 (“DCS”) at para 6.

²³ Defence at para 6.

- (a) was there was a contract between Tjandra and Cheng?
- (b) if so, was Cheng in breach of that contract?
- (c) if so, what damages is Tjandra is entitled to?

Was there a contract between Tjandra and Cheng?

11 There is no doubt that an agreement was reached for Tjandra to pay US\$4m for a 20% stake in Royal Eastern Bank (*ie.* the Star Dust Shares) and a seat on its board of directors.

12 On 17 December 2018, Cheng, Ling, and Feng met with Tjandra at his office in Oxley Tower (“17 December 2018 Meeting”).²⁴ The discussions were substantive – amongst other things, Tjandra offered to buy a 15% stake in Royal Eastern Bank with a seat on its board.²⁵ Cheng confirmed this to Feng in a WhatsApp message, as Feng had to leave the 17 December 2018 Meeting early.²⁶

13 On 23 January 2019, Tjandra, Feng, and Ling met in Jakarta.²⁷ Although Cheng was not present, the exchange between the Original Shareholders in their WhatsApp chat group titled “Royal Eastern Bank Board” (“REBB WhatsApp Chat”) shows that Cheng was aware of the meeting,²⁸ and that it was intended to “finalise [Tjandra’s] involvement in [Royal Eastern Bank] and [that Tjandra]

²⁴ Tjandra’s AEIC at paras 9-13; Cheng’s 1st AEIC at para 38; AB at pp 99-100.

²⁵ AB at p 100, timestamps [17/12/18, 18:03:00]-[17/12/18, 19:37:12]; Day 2 Transcript at p 155, lines 6-13.

²⁶ AB at p 100, timestamp [17/12/18, 18:04:10].

²⁷ Tjandra’s AEIC at paras 16; AB at p 122.

²⁸ AB at p 122, timestamps [22/1/19, 19:41:31]-[22/1/19, 20:01:32].

will make his contribution after [they] have it all sorted”.²⁹ At this meeting, Tjandra increased his offer to a 20% stake in Royal Eastern Bank.³⁰ Cheng was informed of this through the REBB WhatsApp Chat,³¹ and the Original Shareholders discussed the new shareholding structure of Star Dust if Tjandra was sold the Star Dust Shares (see [30] below).

14 On 25 January 2019, Tjandra was added to the REBB WhatsApp Chat, and welcomed to the “Royal Eastern Bank board” and described as a “partner”:³²

[25/1/19, 15:03:47] andrew ling: yihan bro you only admin
 [25/1/19, 15:03:52] andrew ling: add him can
 [25/1/19, 15:09:55] you added Riady³³
 [25/1/19, 15:10:02] yihan:³⁴ hi riady. welcome
 [25/1/19, 15:10:56] andrew ling: **welcome to Royal Eastern Bank board partner. Yihan and Feng are in here as well**
 [25/1/19, 15:11:32] andrew ling: we use this chat for informal decisions and correspondence regarding the banks business
 [25/1/19, 15:11:32] [Feng]: Welcome partner Riady!
 [emphasis added]

On the same day, the Original Shareholders created a separate WhatsApp chat without Tjandra titled “Original REB (YH, FT, AL)” (the “Original REBB WhatsApp Chat”).

²⁹ AB at p 115, timestamp [15/1/19, 12:59:00].

³⁰ Tjandra’s AEIC at para 18; AB at p 12, timestamps [23/1/19, 15:56:31]-[23/1/19, 15:58:01]; Day 1 Transcript at p 175, lines 7-24.

³¹ AB at pp 122-123.

³² AB at p 123.

³³ Tjandra is also referred to as “Riady” in the WhatsApp correspondence.

³⁴ Cheng is also referred to as “yihan” in the WhatsApp correspondence.

15 On 2 February 2019, Feng and Ling met Tjandra at his office,³⁵ to sign share transfer forms in the presence of a notary public (the “2 February 2019 Meeting”):³⁶

(a) for the transfer of 1,500 shares in Star Dust from Gestalt to Tjandra for US\$600,000 – signed by Feng on behalf of Gestalt (the “Gestalt Share Transfer Form”);³⁷ and

(b) for the transfer of 8,500 shares in Star Dust from Blue Summit to Tjandra for US\$3.4m – signed by Ling on behalf of Blue Summit (the “Blue Summit Share Transfer Form”).³⁸

These forms (collectively, the “Share Transfer Forms”) were drafted by Feng and left undated.³⁹ According to Feng, they were not dated because there were still ongoing discussions on when and how Tjandra was going to effect the payments,⁴⁰ but that “they were all supposed to be dated [by] 13 February 201[9]”.⁴¹ No evidence was adduced to show that the Share Transfer Forms were ever dated and the copies adduced in evidence were undated.⁴²

³⁵ Cheng’s 2nd AEIC at para 19; Day 2 Transcript at p 7, lines 1-11; AB at p 126.

³⁶ Tjandra’s AEIC at para 25-26; Cheng’s 1st AEIC at para 45; AB at p 125.

³⁷ AB at pp 170-172.

³⁸ AB at pp 173-175.

³⁹ Plaintiff’s Bundle of Documents dated 12 January 2024 (“PB”) at p 5; Day 2 Transcript at p 169, lines 18-25.

⁴⁰ Day 2 Transcript at p 145, lines 14-25.

⁴¹ Day 2 Transcript at p 145, lines 10-11; AB at p 177.

⁴² AB at pp 179-190.

16 On 13 February 2019, Tjandra met with Ling and Feng in his office (the “13 February 2019 Meeting”).⁴³ Following this meeting, Ling sent the following email to Tjandra, Cheng, and Feng “to conclude” the transaction (“Ling’s 13 February 2019 Email”):⁴⁴

Dear Partner [Tjandra],

To conclude the transfer of shares and begin our new partnership, I write to surmise [sic] the details of the sale & purchase of 20% of shares in Stardust Developments Limited being sole owner of Royal Eastern Bank Limited and all its assets.

We agree to a par valuation of USD 20 mio with USD 16 mio already fronted by the existing shareholders prior. Details as below; ...

<u>Acquisition</u> [sic] Comoros, Anjoun, B License	USD committed \$ 8,500,000	USD Paid \$ 8,500,000	
Total	\$ 8,500,000	\$ 8,500,000	Paid via Walkers Professio nal Service
<u>CAPEX</u> Core Banking software – Comsoft	\$ 300,000		
NEP platform - Comsoft	\$ 6,000,000		
Trade desk interface – Comsoft	\$ 1,200,000		
IBP+CPT and swift upgrades – Comsoft	\$ 3,500,000		

⁴³ AB at p 131, timestamps [11/2/19, 16:48:33] and [11/2/19, 17:18:31]; p 133, timestamps [13/2/19, 10:33:27] and [13/2/19, 10:50:07].

⁴⁴ AB at p 176.

Less: Goodwill discount from comsoft	-\$ 2,000,000	\$ 7,200,000	Paid as initial payment to Comsoft
Digital Asset Vault & Custodian Dev - NOX	\$213,000		
Total CAPEX	\$9,213,000	\$ 7,200,000	
<u>Assets</u>			
Corrospounding [sic] Bank accounts deposit guarantee	\$ 2,000,000		To Issue BG
Total Assets	\$ 2,000,000	\$ -	
OPEX (as of 1 Dec 2018)	\$ 649,762.68	\$649,762.68	OPEX Paid
Total	\$ 20,362,762.68	\$ 16,349,762.68	

We agree to the sale being purchased in the following manner

20% of 16,000,000 = 3,200,000 to be paid to the shareholders by the 25th of Feb 2019 and in the following manner;

USD 1,360,000 pay to	
Account Name	[Cheng]
Account Number (USD)	[xxx]
SWIFT	[xxx]

USD 1,360,000 pay to	
Account Name	[Ling]
Account Number (USD)	[xxx]

SWIFT	[xxx]
-------	-------

USD 480,000 pay to	
Account Name	[Feng]
Account Number (USD)	[xxx]
SWIFT	[xxx]

20% of 4,000,000 = 800,000 to be available for equity call with the agreement that the equity call will be before the end of June 2019.

In good faith and as a sign of partnership, we have executed and will date & submit the share transfer forms as of today. ...

We look forward to you completing this by the 25th and of our significant partnership to come.

Sincerely,
[Ling]

17 From 25 to 27 February 2019, Tjandra paid US\$1.36m to Ling, US\$1.36m to Cheng and US\$480,000 to Feng.⁴⁵

18 It is evident from the foregoing that there was an agreement for Tjandra to pay US\$4m for a 20% stake in the Royal Eastern Bank (together with a board seat), pursuant to which Tjandra paid the three Original Shareholders the first tranche of US\$3.2m.

19 Indeed, that this was the content of the agreement was accepted by both Cheng and Feng at trial. Cheng accepted that by 25 January 2019 (when Tjandra was added to the REBB WhatsApp Chat and described as a “board partner”),

⁴⁵ Tjandra’s AEIC at para 34; AB at p 135, timestamps [25/2/19, 16:35:25]-[25/2/19, 16:45:06]; p 136, timestamps [27/2/19, 10:20:46]-[27/2/19, 10:22:46]; p 191.

the Original Shareholders had agreed to sell the Star Dust Shares to Tjandra for a specific price:⁴⁶

Q: Do you recall whether or not around this time -- 23 January 2019 -- the three of you decided to sell to Riady; sell 20 per cent shares in Stardust to Riady?

A: Yes.

Q: Yes, the three of you decided; correct?

...

A: Yes.

...

Q: Okay. So you will agree with me that by this time, 25 January 2019, the three of you had agreed to sell shares to Riady?

A: That's correct.

Q: Okay. And you will also agree with me that you would have, at least in principle, agreed what the price of those shares were going to be?

A: That's correct.

20 This was confirmed by Feng's testimony in court:⁴⁷

Q: [S]hortly after [the 23 January 2019 meeting in Jakarta], the three of you had communicated to Riady ... your agreement to sell 20 per of the shares in Star Dust to him. Would you agree?

A: Yes.

Q: And was the price also communicated?

A: It would have been around this time, I think, after Jakarta, yes.

Q: And the price was US\$4 million?

A: I believe so, yes.

⁴⁶ Day 1 Transcript, at p 179.

⁴⁷ Day 2 Transcript at pp 165-166.

21 In the circumstances, I find that a contract was concluded no later than 13 February 2019 for Tjandra to purchase the Star Dust Shares, along with a board seat in Royal Eastern Bank, for US\$4m, with payment to be made to each of the Original Shareholders as set out in Ling’s 13 February 2019 Email (the “Agreement”).

Tjandra contracted with the Original Shareholders

22 Cheng insists that any contract would only have been between Tjandra and Blue Summit (and Gestalt), and not with him personally.⁴⁸ To support this argument, Cheng relies on the Blue Summit Share Transfer Form,⁴⁹ which identifies Blue Summit as the party (and not himself or Ling),⁵⁰ and which expressly provides that “[t]his instrument constitutes the entire agreement between the parties with respect to the subject matter hereof...”.⁵¹

23 I reject this argument. It is clear from the evidence that the Agreement was concluded between Tjandra and the Original Shareholders *personally* and its terms are not governed by, or contained exclusively in, the Share Transfer Forms. The Share Transfer Forms were executed to effect the transfer of the Star Dust Shares to Tjandra in performance of the Agreement.

(1) The Share Transfer Forms do not constitute the entire agreement

24 First, and crucially, Cheng acknowledged in his own pleadings that the Share Transfer Forms do *not* contain all the terms of the agreement for the sale of the Star Dust Shares – he pleaded that “[p]ursuant to the terms of the Shares

⁴⁸ Defence at paras 3(d), 10A(c); DCS at para 6.

⁴⁹ Defence at paras 3(d), 10A(c).

⁵⁰ AB at pp 179-190.

⁵¹ AB at pp 180, 183, 186.

Transfer Agreement, [Tjandra] was required to pay the consideration sum of SG\$1.36m to [Cheng]’’.⁵² But the Share Transfer Forms do not state such an obligation – that is evidenced only in Ling’s 13 February 2019 Email.

25 Second, the Share Transfer Forms lack crucial details. They are silent on key issues such as Tjandra’s seat on the board of Royal Eastern Bank, the payment structure, and the recipients of the payments. Some of these terms are evidenced only in the contemporaneous WhatsApp conversations (the board seat),⁵³ and Ling’s 13 February 2019 Email (which explicitly provides for payments to be made directly to the Original Shareholders, and the timing for the payments).⁵⁴ Further, Ling’s 13 February 2019 Email also provides that Tjandra only had to pay the sum of US\$3.2m upfront, with the balance of US\$800,000 to be made available for an equity call likely before the end of June 2019.⁵⁵

26 Thirdly, as Feng testified, the Share Transfer Forms were not dated because there were *still ongoing discussions* on the terms of the sale of the Star Dust Shares (see [15] above). It is also evident that the Share Transfer Forms were hastily and carelessly put together by Feng. In this regard, counsel for Tjandra pointed out at least three errors or inaccuracies in the Share Transfer Forms:

⁵² Defence at para 10G.

⁵³ AB at p 100, timestamps [17/12/18, 18:04:10]-[17/12/18, 19:30:28]; at p 101, timestamp [17/12/18, 19:39:00]; at p 123, timestamp [25/1/19, 15:10:56].

⁵⁴ AB at p 177.

⁵⁵ AB at p 177.

(a) the year reflected at the top should have been “2019” and not “2018”;⁵⁶

(b) the Share Transfer Forms state that consideration was “received”, when that was not the case at the time they were signed;⁵⁷ and

(c) the Share Transfer Forms state “do hereby transfer to the *Transferrer*”, when they should have stated “*Transferee*”.⁵⁸

27 The entire agreement clause is not relevant as it only applies to “the parties” to the Blue Summit Share Transfer Form (*viz.* Tjandra and Blue Summit). It does not preclude Tjandra from bringing a claim against Cheng personally.

28 To support his argument that the Share Transfer Forms contained the entire agreement between the parties, Cheng highlights that they were circulated in advance by Feng to all the parties (including Tjandra), and that Feng had confirmed there were no comments from Tjandra.⁵⁹ In the first place, there is nothing to support this assertion. The evidence suggests that the draft Share Transfer Forms were only circulated via the Original REBB WhatsApp Chat – which did not include Tjandra.⁶⁰ The drafts were not circulated on the REBB WhatsApp Chat.⁶¹ In any event, the fact that Tjandra may have seen a draft of

⁵⁶ Day 2 transcript, at p 149, lines 12-20.

⁵⁷ Day 2 transcript, at p 150, lines 1-2.

⁵⁸ Day 2 transcript, at p 150, lines 3-8.

⁵⁹ DCS at para 12.2.

⁶⁰ PB at p 5, timestamp [28/1/19, 06:59:59].

⁶¹ AB at pp 124-126.

the Share Transfer Forms, and did not have any comments, does not mean, much less prove, that it contained the entire agreement between Tjandra and the Original Shareholders.

(2) Blue Summit and Gestalt were just convenient vehicles of the Original Shareholders

29 The evidence is clear that the Original Shareholders always considered themselves the parties to the sale of the Star Dust Shares to Tjandra – they referred to selling Tjandra *their* shares in Royal Eastern Bank.

30 For instance, after the 23 January 2019 meeting in Jakarta, Ling had asked Cheng to consider Tjandra’s offer to purchase 20% of Royal Eastern Bank which would lead to a shareholding in the following proportions:⁶²

[23/1/19, 15:57:01] andrew ling: riady [Tjandra] 20%
feng 10%
yh [Cheng] 32.5%
andrew [Ling] 32.5%

The share structure was noticeably reflected as against the *individuals* and not the companies which held the legal title to the Star Dust Shares. Under cross-examination, Cheng accepted that “this was because the three of [them] considered [themselves] as shareholders of the bank”.⁶³

⁶² AB at p 123, timestamp [23/1/19, 15:57:01]. When questioned on why the percentages in the message sent on [23/1/19, 15:57:01] added up only to 95%, Feng explained that this was most likely an error in respect of his shareholding (Day 2 Transcript, at p 165, lines 1-10.). It should have reflected “feng 15%” as he had made clear that he wanted to retain his 15% shareholding (Day 2 Transcript, at p 165, lines 1-10, and p 168, lines 10-25.).

⁶³ Day 1 Transcript at p 176, lines 19-25.

31 This was because Blue Summit and Gestalt were merely shell companies which sole purpose was to hold the Original Shareholder’s shares in Star Dust. They held no other assets, did not conduct any business, or even have a bank account. Indeed, Cheng’s own evidence is that Blue Summit was “a shelf company, incorporated in the BVI, to hold [his and Ling’s] share in the target bank”.⁶⁴ This is further supported by an earlier conversation between Ling and Feng on 24 June 2018, when parties were discussing how they would go about acquiring Royal Eastern Bank:⁶⁵

[24/6/18, 13:15:16] andrew ling: Feng bro, fyi *we will be using Blue Summit investments to hold our share into golden goose* instead of ppg. Vistra is selling me us the *shelf* on Monday and will concurrently gg.

[emphasis added]

32 It is also telling that other than in the Share Transfer Forms, there was no mention of Gestalt or Blue Summit in Ling’s 13 February 2019 Email or other relevant documents. This underscores the legal irrelevance of these shell vehicles. Instead, Ling’s 13 February 2019 Email expressly referred to the first tranche of US\$3.2m being “paid to the shareholders” – which referred to the Original Shareholders, and not Blue Summit and Gestalt.

33 Cheng argues that Tjandra was aware of the corporate structure of Star Dust and Blue Summit and their relationship with Royal Eastern Bank before he made his investment.⁶⁶ That is not surprising as he was to receive the Star Dust Shares from Blue Summit and Gestalt. But that does not mean that he was contracting only with them.

⁶⁴ Cheng’s 1st AEIC at para 35.

⁶⁵ AB at p 6, timestamp [24/6/18, 13:15:16].

⁶⁶ DCS at para 12.1; Day 1 Transcript at p 57-58 (lines 7-11).

(3) The Original Shareholders received payment for the Star Dust Shares

34 The Original Shareholders received Tjandra’s payment for the Star Dust Shares in their personal bank accounts.⁶⁷ Cheng treated the monies as his own and dealt with them as he saw fit. This is strong evidence of who the true parties to the Agreement were. While Cheng argues that consideration can move to a third party,⁶⁸ that is no answer. Cheng, along with Ling and Feng, were contracting with Tjandra for their own personal gain, and not for the benefit of Gestalt or Blue Summit.

(4) The Original Shareholders referred to themselves and Tjandra as “partners”

35 Significantly, the parties themselves referred to each other as “partners” (see [14] above).

36 Further, Ling’s 13 February 2019 Email begins by saying:⁶⁹

To conclude the transfer of shares and begin *our new partnership*, I write to surmise the details of the sale & purchase of 20% of shares in Stardust Developments Limited being sole owner of Royal Eastern Bank Limited and all its assets

...

USD 16 mio already fronted by the *existing shareholders* prior.

[emphasis added]

Under cross-examination, Cheng accepted that “our new partnership” refers to a partnership between the four individuals: Ling, Tjandra, Feng and himself,⁷⁰

⁶⁷ Tjandra’s AEIC at para 34; AB at pp 135-136, 176, 191.

⁶⁸ DCS at para 30.1.

⁶⁹ AB at p 176.

⁷⁰ Day 2 Transcript, at p 18, line 2.

and that “existing shareholders” refers to the Original Shareholders.⁷¹ Notably, there was no mention of Blue Summit or Gestalt. This was plainly a deal between the four individuals.

(5) Tjandra did not acknowledge that he contracted exclusively with Blue Summit

37 Cheng asserts that Tjandra acknowledged under cross-examination that the contract was between himself and Blue Summit.⁷² But this is an unfortunate mischaracterisation of Tjandra’s evidence:⁷³

Mr Lim: Now if you look at page 174 [of the Agreed Bundle] –

A: Okay.

Q: -- the heading of this document, at the top of the page, it says:

“We, Blue Summit Investments Limited (the ‘Transferor’), for good and valuable consideration received by us from Riady Tjandra (the ‘Transferee’) in the amount of US\$ 3,400,000.00 ...”

Now, did you understand that *under this contract* the parties were Blue Summit and yourself?

A: Yes, because the Blue Summit is owned by Andrew and – Andrew and Yi Han.

Q: Okay.

[emphasis added in italics]

38 Clearly, Cheng’s counsel was asking if Tjandra knew that the parties to *the Blue Summit Transfer Form* were Blue Summit and himself. Tjandra understandably and correctly admitted to this, as the 8,500 shares in Star Dust

⁷¹ Day 2 Transcript, at p 18, lines 18-23.

⁷² DCS at para 12.4.

⁷³ Day 1 Transcript at p 88, lines 10-13.

were legally held by Blue Summit. However, this does not amount to an admission that Tjandra only contracted with Blue Summit.

(6) Ling was not acting exclusively as a director of Blue Summit

39 Finally, Cheng points out that Ling was at the centre of the entire deal – he discussed and agreed to the terms of the Agreement, and was the one who executed the Blue Summit Share Transfer Form.⁷⁴ Given that Ling did all of this without the participation of Cheng, Cheng argues that Ling was acting as a director of Blue Summit.⁷⁵ According to him, this shows that Blue Summit was the party to the Agreement and not Cheng.⁷⁶

40 I reject this argument. The fact that Ling took charge of the negotiations and the execution of the Blue Summit Share Transfer Form does not assist Cheng. The evidence shows that Ling was always acting on behalf of himself as well as Cheng and Feng – I elaborate on this in the next section. With respect to the Blue Summit Share Transfer Form, it was only necessary for one of either Ling or Cheng (as directors) to sign the same. In fact, Cheng testified that he expected Ling to take the necessary steps to effect the transfer of the shares in Star Dust.⁷⁷ The fact that Ling signed the Blue Summit Share Transfer Form as a director does not assist Cheng.

⁷⁴ DCS at para 27.1.

⁷⁵ DCS at para 27.1.

⁷⁶ DCS at para 27.1.

⁷⁷ Day 2 Transcript, at p 40, lines 10-12.

Ling and Feng had the authority to bind Cheng

41 It is undisputed that the terms of the Agreement were finalised at meetings between Tjandra, Ling, and Feng, and that Cheng was not present.⁷⁸ Cheng relies on this to argue that Ling or Feng did not have the authority to bind him. In this regard, Cheng insists that he “has neither authorised [Ling] nor Feng to enter into any contract”.⁷⁹ He alleges that Ling and Feng agreed on all the commercial terms and signed the Share Transfer Forms “without any [of his] involvement”,⁸⁰ and even that Ling could bind Blue Summit and sell *his* (Cheng’s) interest in the Star Dust Shares without his agreement.⁸¹

42 I find Cheng’s attempts to downplay his involvement in the negotiations, and his claim that the Agreement was entered without his authority, wholly unconvincing and dishonest. Not only did Cheng clearly authorise Ling and Feng to negotiate and enter into the Agreement, he was also aware of its terms and had agreed to them.

43 First, Cheng was personally involved in substantive discussions on the deal at the 17 December 2018 Meeting. I reject Cheng’s evidence that there were “minimal discussions” and that this occasion “was essentially a meet and greet”.⁸² Substantive terms were discussed, and it was Cheng himself who updated Feng on these discussions:⁸³

[17/12/18, 18:03:00] feng then: Good meeting I hope?

⁷⁸ AB at p 115, timestamps [15/1/19, 12:59:12]-[15/1/19, 14:26:07]; Day 1 Transcript at p 179; Day 2 Transcript at pp 165-166.

⁷⁹ Defence at para 6; Cheng’s 2nd AEIC at para 11.

⁸⁰ Defence at paras 3(c)-(d).

⁸¹ Day 1 Transcript, at p 178, lines 4-9.

⁸² Cheng’s 1st AEIC at para 40.

⁸³ AB at pp 100-101.

[17/12/18, 18:04:10] yihan: he wants 15% and board seat

[17/12/18, 19:29:54] feng then: Does he know the valuation of \$30m?

[17/12/18, 19:30:17] feng then: I don't mind giving him a board seat on the basis that it will be the 4 of us. And we can out vote him in any event?

[17/12/18, 19:30:28] yihan: he don't know the value yet

44 Second, although Cheng was not present at the 23 January 2019 meeting in Jakarta, he was kept apprised of the discussions through the REBB WhatsApp Chat:⁸⁴

[23/1/19, 15:56:31] andrew ling: in essence consider this

[23/1/19, 15:56:40] yihan: ok

[23/1/19, 15:57:01] andrew ling: riady [Tjandra] 20%

feng 10%

yh [Cheng] 32.5%

andrew [Ling] 32.5%

[23/1/19, 15:57:11] yihan: rationale?

[23/1/19, 15:58:01] andrew ling: he wants 5% more because he wanna bring in ken behind him. Ken is top 20 gaming operator in world

feng and I also met ken..

45 Cheng's claim that he did not play any part at all in the negotiation of the terms of the Agreement and was not involved in the discussion to increase Tjandra's stake from 15% to 20% and the purchase price is not true.⁸⁵ It is clear from the above exchange that Cheng was kept informed of, and consulted on, Tjandra's request to increase his shareholding in Star Dust from 15% to 20%, as well as the new share structure involving the four of them. This shows that

⁸⁴ AB at p 123.

⁸⁵ DCS at para 27.1.

Cheng's input and agreement were necessary for the sale to occur. After all, *his* interest in Royal Eastern Bank was being sold to Tjandra.

46 Two days later, Tjandra was added to the Original REBB WhatsApp Chat, where he was welcomed by the Original Shareholders to the board of Royal Easter Bank and referred to as a "partner" (see [14] above). The clear inference is that Cheng had agreed to the terms of Tjandra's offer. Further, the drafts of the Shares Transfer Forms were sent to Cheng on 28 January 2019,⁸⁶ and the signed copies of the same were sent to him on 2 February 2019.⁸⁷ Cheng admitted to being aware of this:⁸⁸

Q: So just to put it all together, you knew that there was going to be a meeting on 2 February; correct?

A: That's correct.

Q: You knew that the purpose of the meeting was to sign and notarise the share transfer form, which had previously been sent to you; correct?

A: That's correct.

Q: And you were informed once the share transfer forms were notarised; correct?

A: That's correct.

47 Cheng therefore knew of the sale consideration of US\$4m, as well as the allocation of the Star Dust Shares between Gestalt and Blue Summit, which is consistent with the Original Shareholders' earlier discussions.

48 Third, and most importantly, a draft of Ling's 13 February 2019 Email was circulated by Ling to Cheng and Feng at around 7am for their approval,⁸⁹

⁸⁶ PB at p 5, timestamp [28/1/19, 06:59:59].

⁸⁷ PB at p 7, timestamp [2/2/19, 11:18:49].

⁸⁸ Day 2 Transcript at p 8, lines 2-11.

⁸⁹ PB at p 11.

before Ling sent the actual email to Tjandra around 5pm.⁹⁰ As set out above at [16], Ling's 13 February 2019 Email sets out the important terms of the Agreement, including the payment of US\$1.36m to Cheng. Cheng accepted that he received Ling's email attaching the draft but claimed not to have read it.⁹¹ Even if that is true – which I doubt – he received Ling's 13 February 2019 Email as well as the payment of US\$1.36m from Tjandra on 27 February 2019.⁹² He did not protest or question the payment. It is therefore entirely spurious for Cheng to assert that he was unaware of the Agreement or that it had been entered without his authority.

49 I therefore find that there was a contract between Tjandra and the Original Shareholders for Tjandra to receive a 20% stake in the Royal Eastern Bank along with a board seat, for a consideration of US\$4m. This was entered into by the Original Shareholders jointly and not severally. This is because the evidence is clear that Tjandra was purchasing a 20% interest and nothing less, and the Original Shareholders had collectively agreed to sell the same to him. How the Original Shareholders decided to apportion or allocate the Star Dust Shares from their own shares was an internal matter which did not involve, or concern, Tjandra. Further, the board seat to Tjandra was a term agreed to by all the Original Shareholders. This is different from the contract pleaded by Tjandra, that there was an agreement between him and Cheng for 4,250 of the shares in Star Dust for the sum of US\$1.36m.⁹³ I deal with the consequences of this below.

⁹⁰ AB at p 176.

⁹¹ Day 2 Transcript at p 16, lines 4-5.

⁹² Cheng's 1st AEIC at para 47; AB at pp 135-136, 191.

⁹³ SOC at para 8.

Issues arising from my finding of the Agreement

50 For completeness, I deal with three issues arising from my finding of the Agreement:

- (a) the relevance of the corporate veil;
- (b) the nonjoinder of Ling and Feng in this Suit; and
- (c) the consequences, if any, of the Agreement being different from the contract pleaded by Tjandra.

51 As regards the first issue, Cheng spent a substantial portion of his closing submissions arguing that the present case does not fall into the limited situations where the corporate veil should be pierced.⁹⁴ That issue only arises if I find that the contract was between Tjandra and Blue Summit, and not Cheng. Given my finding, Cheng’s submission is irrelevant.

52 The second issue may also be dealt with quickly. Being parties to the Agreement, Ling and Feng should have been joined as parties to this action as well. However, Order 15, rule 6 of the Rules of Court 2014 (which governs this action) explicitly provides that “[n]o cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party”. This is a longstanding and uncontroversial rule which prevents a defendant from raising a technical objection such as nonjoinder towards the merits of the plaintiff’s claim (see *Singapore Civil Procedure 2020* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2020) at para 15/6/2; *Henry J. B. Kendall v Peter Hamilton* (1879) 4 App. Cas. 504 at 531).

⁹⁴ DCS at paras 17-26.

53 As regards the third issue, the general rule is that parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties themselves have decided not to put into issue (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 (“*V Nithia*”) at [38]). However, the law permits a departure from the general rule in limited circumstances, where no prejudice is caused to the other party in the trial or where it would be clearly unjust for the court not to do so (*V Nithia* at [40]). This was precisely what was done in *iVenture Card Ltd and others v Big Bus Singapore City Sightseeing Pte Ltd and others* [2022] 1 SLR 302. In that case, the plaintiffs did not even identify the correct parties to the agreement. However, the Court of Appeal granted relief as the defendant was not prejudiced (at [37]–[42]).

54 Similarly, Cheng is not prejudiced by my finding of the Agreement which is different to that pleaded by Tjandra. Both Tjandra and Cheng are parties to the Agreement. My finding is premised on the same factual matrix pleaded and adduced in evidence by Tjandra, and Cheng had every opportunity to, and did, respond to the same. Further, the terms of the contract pleaded by Tjandra are effectively a component of, and not inconsistent with, the terms of the Agreement. Likewise, Tjandra’s case for breach is the same – the non-transfer of the Star Dust Shares. In the circumstances, I exercise my discretion in allowing Tjandra to maintain his claim for damages under the Agreement.

Was the Agreement breached?

The Original Shareholders' obligations under the Agreement

55 Under the Agreement, the Original Shareholders, *inter alia*, sold the Star Dust Shares to Tjandra. The Original Shareholders were therefore obliged to transfer, or procure the transfer, of the Star Dust Shares to Tjandra.

56 In this regard, the mere signing of the Share Transfer Forms does not discharge that obligation. Neither is it Cheng's case that this is sufficient. He accepted that for the Star Dust Shares to be validly transferred, a board resolution had to be passed.⁹⁵ The Original Shareholders also acknowledged that the Share Transfer Forms would have to be dated and submitted – in Ling's 13 February 2019 Email, it was stated: “we have executed and will date & submit the share transfer forms as of today”.⁹⁶

57 Since I have found that the Agreement was with all the Original Shareholders, the presumption is that all three of them are *jointly* responsible for effecting or procuring the transfer of the Star Dust Shares to Tjandra (see Edwin Peel, *Treitel on the Law of Contract* (Sweet & Maxwell, 15th Ed, 2020) at para 13-003). In other words, Cheng cannot simply shrug off his obligation by suggesting – as he did – that he had left it to Ling to effect the transfer.⁹⁷ If there was no transfer, the Agreement is breached.

⁹⁵ Day 2 Transcript at pp 37-40.

⁹⁶ AB at p 177.

⁹⁷ Day 2 Transcript at p 37, lines 2-14.

The Star Dust Shares were not transferred to Tjandra

58 Cheng’s case is that Tjandra has failed to discharge his burden of proving that the Star Dust Shares were not transferred to him.⁹⁸ He relies on the following evidence:⁹⁹

- (a) in a WhatsApp exchange on 30 June 2019, Tjandra allegedly told Cheng that he had received the Star Dust Shares;¹⁰⁰
- (b) Tjandra initially pleaded that he had received the Star Dust Shares, and only amended his Statement of Claim on 17 September 2021 to deny his receipt of them;¹⁰¹
- (c) Tjandra’s solicitors had written to the court on 15 June 2021, stating that Tjandra was a shareholder of Star Dust;¹⁰² and
- (d) Tjandra would have enquired or complained if the Star Dust Shares were still not transferred to him after making payment on 27 February 2019, but did not do so.¹⁰³

59 Tjandra, on the other hand, testified that he did not receive the Star Dust Shares.¹⁰⁴ He points out that there is no objective evidence of the Star Dust Shares being transferred to him,¹⁰⁵ and refers to email correspondence with Star

⁹⁸ DCS at pars 34-35.

⁹⁹ DCS at para 35.

¹⁰⁰ DCS at paras 35.1-35.2, and 35.11-35.14.

¹⁰¹ DCS at paras 35.3-35.4.

¹⁰² DCS at para 35.5; Cheng’s 1st AEIC at p 222.

¹⁰³ DCS at para 35.8.

¹⁰⁴ Tjandra’s AEIC at para 35.

¹⁰⁵ PCS at para 4.2.5.

Dust’s corporate secretary, Vistra (BVI) Limited (“Vistra”), which suggest that Tjandra was not registered as a member on Star Dust’s share register.¹⁰⁶

60 On balance, I find that the Star Dust Shares were not transferred to Tjandra.

(1) No evidence of steps taken to effect the transfer

61 First, the transfer of the Star Dust Shares was the obligation, and entirely in the control, of the Original Shareholders. However, no evidence was led by Cheng that any of them had done anything to effect the transfer. Indeed, there was no evidence that the Share Transfer Forms were ever dated or submitted. Nor was it Cheng’s evidence that the board resolution to approve the transfer, which he accepted was a necessary step for the transfer, was passed.¹⁰⁷ I note that Cheng pleaded in his Defence that “[Tjandra] himself procured the necessary director’s authorisations from Feng and [Ling]”¹⁰⁸ but led no evidence to support this. Cheng admitted during the trial that he did not take any steps to effect the transfer,¹⁰⁹ that he had left the matter entirely to Ling and was unsure if Ling had done so.¹¹⁰ But he did not call Ling to give evidence and no explanation was given for his failure to do so. I deal with this separately below at [68]–[72].

62 Second, while Ling had informed Tjandra in Ling’s 13 February 2019 Email that the Share Transfer Forms would be dated and submitted “as of

¹⁰⁶ PCS at paras 4.2.6–4.2.7.

¹⁰⁷ PB at p 5, timestamps [28/1/19, 07:01:21] and [28/1/19, 07:02:05]; p 6, timestamp [1/2/19, 02:52:23]; p 12, timestamp [13/2/19, 09:10:26].

¹⁰⁸ Defence at para 10(c)(ii).

¹⁰⁹ Day 2 Transcript, at p 37, lines 2–5.

¹¹⁰ Day 2 Transcript, at p 40, lines 10–12.

today”, Feng had separately and privately informed Cheng and Ling in the Original REBB WhatsApp Chat on 28 January 2019 that “Board resolutions to approve the transfer will be signed and dated after \$4m received”.¹¹¹ Feng repeated this on 1 February 2019 in the same private chat: “Once payment is made, share transfer forms are dated. Board resolutions passed. Register of directors and register of members updated”.¹¹² Neither Ling nor Cheng questioned this. The inference is that the Original Shareholders had between themselves decided or determined that the transfer would only be effected after full payment for the Star Dust Shares was received.

63 Third, although the above WhatsApp exchanges suggested that Feng was in charge of, or dealing with, the necessary steps and documentation to effect the transfer of the Star Dust Shares to Tjandra, Feng claimed that he was also not aware of what steps had in fact been taken to effect the transfer.¹¹³ Like Cheng, he claimed that he had left it to Ling to deal with the matter¹¹⁴.

64 Fourth, Feng explained that to preserve his own 15% shareholding in Star Dust (through Gestalt), Blue Summit was first supposed to transfer 1,500 Star Dust shares to Gestalt, before he would (through Gestalt) transfer 1,500 Star Dust shares to Tjandra.¹¹⁵ In other words, the Gestalt Share Transfer Form would not be effective until Gestalt first received 1,500 Star Dust shares from Blue Summit. Significantly, Feng testified that he did not know if the 1,500 Star Dust shares had been transferred by Blue Summit to Gestalt and that he was

¹¹¹ PB at p 5, timestamp [28/1/19, 07:01:21].

¹¹² PB at p 6, timestamp [1/2/19, 02:52:23].

¹¹³ Day 2 Transcript at p 180, lines 12-24.

¹¹⁴ Day 2 Transcript at p 180, lines 12-24.

¹¹⁵ Day 2 Transcript at p 168, lines 10-25.

“never provided the share certificates”.¹¹⁶ This suggests that Gestalt did not receive the 1,500 Star Dust shares, which in turn suggests that the transfer to Tjandra would not have taken place.

65 Fifth, both the REBB WhatsApp Chat and the Original REBB WhatsApp Chat continued to remain active with business discussions until early June 2019.¹¹⁷ Yet, there was nothing in these chats to suggest that the Original Shareholders had transferred the Star Dust Shares to Tjandra. If the transfer had been completed, one would expect an update to have been provided to Tjandra.

66 Finally, Cheng's own evidence was that the monies invested for the acquisition of Royal Eastern Bank had been misappropriated,¹¹⁸ his subsequent investigations had exposed the “fraud”¹¹⁹ and that Tjandra had been “scammed”.¹²⁰ This suggests that no steps were intended to be, or were, taken to transfer the Star Dust Shares to Tjandra.

67 For completeness, I note that in its response to Tjandra’s solicitor’s request for Star Dust’s shareholding on 3 August 2022,¹²¹ Vistra, stated that Star Dust had been struck off the BVI registry on 1 November 2019, as a result of non-payment of its annual licence fees.¹²² Tjandra relies particularly on Vistra’s email to Tjandra’s solicitors dated 7 June 2023 stating that “Mr Tjandra does

¹¹⁶ Day 2 Transcript at p 148, lines 23-25.

¹¹⁷ AB at pp 6-168; PB at pp 3-61.

¹¹⁸ Cheng’s 1st AEIC at para 48.

¹¹⁹ Cheng’s 1st AEIC at para 51.

¹²⁰ AB at p 207, timestamp [25/8/19, 19:10:02].

¹²¹ Tjandra’s AEIC at para 36 and p 227; and AB at p 303.

¹²² Tjandra’s AEIC at para 36 and p 230; and AB at p 306.

not [have] any particular relationship with [Star Dust]”¹²³ arguing that this must mean that Tjandra was never registered as a member. I do not place any weight on this given that it is hearsay and the language employed by Vistra is vague.

(2) Cheng’s failure to call Ling

68 The court’s ability to draw an adverse inference from a party’s failure to call a witness is grounded in section 116(g) of the Evidence Act 1893 (2020 Rev Ed) which provides:

116. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations

The court may presume —

...

(g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

69 In *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 (“*Sudha Natrajan*”), the Court of Appeal summarised the relevant principles as follows (at [20]):

(a) In certain circumstances the court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in the matter before it.

(b) If the court is willing to draw such inferences, these may go to strengthen the evidence adduced on that issue by the other party or to

¹²³ AB at p 312.

weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(c) There must, however, have been some evidence, even if weak, which was adduced by the party seeking to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference: in other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference.

(d) If the reason for the witness's absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. If, on the other hand, a reasonable and credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled.

70 In this regard, the “party who might reasonably have been expected to call the witness” is not necessarily the party who bears the *legal* burden of proving its case. Indeed, the other party may be expected to call the witness in question in order to discharge its *evidentiary* burden (*Elcarim Science Pte Ltd v Zhang Yongtai* [2023] SGHC 211 at [297]–[301]).

71 I find that Cheng was the party who was reasonably expected to call Ling as a witness. Tjandra does not rely on Ling in any way to prove that the Star Dust Shares were not transferred to him. On the other hand, it was the Original Shareholders' obligation to transfer the Star Dust Shares to Tjandra and Cheng had left it to Ling to effect the transfer. Cheng should therefore have called Ling to give evidence on what steps had been taken. No reasons were offered for his failure to do so – I note that Ling is a Singaporean and was a party to a related dispute (see below at [118]) where Cheng was a co-defendant. Instead, Ling called Feng as a witness – although Feng likewise testified that he

had also left the transfer to Ling. In these circumstances, Cheng's failure to call Ling as a witness warrants the drawing of an inference that Ling's evidence would have been unhelpful to Cheng. I also observe that Cheng chose to call Feng despite his evidence that he had been informed that it was Feng who had misappropriated the investment monies,¹²⁴ and that he has accused *both* Ling and Feng of defrauding Tjandra.¹²⁵ Clearly, Cheng accusing Ling of fraud was not an impediment to calling him.

72 I reiterate that Cheng has no personal knowledge of whether the Star Dust Shares had been transferred to Tjandra and took no steps to find out although he could have done so. The evidence he relies on is to invite an *inference* that the transfer had taken place. For the reasons below, I reject that submission.

(3) The WhatsApp exchange on 30 June 2019 does not assist Cheng

73 In the aftermath of the investment unravelling, the following exchange took place between Cheng and Tjandra:¹²⁶

[30/6/19, 14:27:54] yihan: pak can you confirm if Stardust Shares have been transferred to you?

[30/6/19, 14:28:16] yihan: if so, can you show me the share transfer form later please? executed by the two of them?

[30/6/19, 14:33:20] Riady: Ok

[30/6/19, 14:33:56] Riady: Notarial Certificate • 6 pages
<attached: 00000298-Notarial Certificate (1).pdf>

[30/6/19, 14:34:10] yihan: but this one isn't the share transfer officially yah?

¹²⁴ Cheng's 1st AEIC at para 48.

¹²⁵ Defence at para 10E(c); Cheng's 1st AEIC at paras 48-51.

¹²⁶ AB at p 199.

[30/6/19, 14:34:19] yihan: so feng didn't actually send you the shares right??

[30/6/19, 14:34:21] Riady: There is hard copy with me

[30/6/19, 14:34:33] Riady: Is this the correct one?

[30/6/19, 14:34:45] Riady: At office.

[30/6/19, 14:34:51] yihan: this one only you committed to buy

[30/6/19, 14:34:57] yihan: but the actual shares you got receive?

[30/6/19, 14:35:05] Riady: Yes at office

[30/6/19, 14:35:12] yihan: oh...

[30/6/19, 14:35:30] Riady: The evidence

[30/6/19, 14:35:36] Riady: The tt slips n so on

[30/6/19, 14:35:49] Riady: My nominee at stardust

[30/6/19, 14:35:48] yihan: oh...

[30/6/19, 14:36:02] Riady: All being held under a nominee

[30/6/19, 14:38:15] yihan: okok

74 In reliance on this WhatsApp exchange, Cheng makes two arguments. First, he claims that Tjandra “not only confirmed that the [Star Dust] shares have been transferred to him but that he has even received the hard copies of the [Star Dust] shares which were kept at his office”.¹²⁷ Second, he adds that Tjandra has confessed to the Star Dust Shares “all being held under his nominee”, which suggests that the shares had been transferred.¹²⁸ I find these arguments unconvincing.

75 First, I accept Tjandra’s explanation that the “hard copies” he was referring to are the Share Transfer Forms, and not the share certificates. It is

¹²⁷ DOS at para 13.2; DCS at para 35.1.

¹²⁸ DOS at para 13.3.

undisputed that Tjandra was given one set of the Share Transfer Forms.¹²⁹ It is also relevant that he states “[t]here is hard copy with me”¹³⁰ less than 30 seconds after he sends the soft copies of the Share Transfer Forms to Cheng, and then asks “is this the correct one?”¹³¹ immediately after saying he had hard copies with him. Tjandra and Cheng were exchanging messages within seconds of each other, which suggests some may have crossed. That Cheng himself recognised Tjandra was referring to the Share Transfer Forms, is confirmed by his attempt to clarify in the two messages he sent subsequently: “this one only you committed to buy ... but the actual shares you got receive?”¹³² Tjandra replies within *eight* seconds: “[y]es at office”¹³³ and continues to refer to “[t]he tt slips n so on”¹³⁴ – a reference to the payment made for the shares. I do not accept it safe to conclude that Tjandra was referring to holding the share certificates in this exchange and it is certainly insufficient to displace the evidence against Cheng’s position referred to above.

76 Second, I also accept that Tjandra’s reference to a “nominee” was a mistake.¹³⁵ There was no evidence of any nominee being involved throughout the negotiation process and in the corresponding WhatsApp conversations. Indeed, the Share Transfer Forms explicitly provide that the Star Dust Shares were to be transferred to Tjandra *in his own name*.¹³⁶ I therefore find that the intention at all material times was for the Star Dust Shares to be transferred to

¹²⁹ Day 1 Transcript at p 109, lines 11-14; Day 2 Transcript at p 144, lines 20-21.

¹³⁰ AB at p 199, timestamp [30/6/19, 14:34:21].

¹³¹ AB at p 199, timestamp [30/6/19, 14:34:33].

¹³² AB at p 199, timestamp [30/6/19, 14:34:51] and [30/6/19, 14:34:57].

¹³³ AB at p 199, timestamp [30/6/19, 14:35:05].

¹³⁴ AB at p 199, timestamp [30/6/19, 14:35:36].

¹³⁵ Day 1 Transcript at p 110, lines 1-7.

¹³⁶ AB at pp 179-190.

Tjandra personally. His mention of a “nominee” should also be understood in the context of an anxious and hasty conversation where he had just discovered he had been defrauded.

- (4) Tjandra’s amended pleadings and his solicitor’s earlier reference to him as a shareholder in Star Dust are not contrary to his case

77 At trial, Tjandra explained that when the action was first commenced on 24 June 2021, he was unaware that the Star Dust Shares had not been transferred to him.¹³⁷ This was because he erroneously assumed that by having a signed and notarised share transfer form, he would receive the shares.¹³⁸ He candidly admitted that he only discovered the Star Dust Shares had not been transferred subsequently, after receiving legal advice.¹³⁹

78 In light of Tjandra’s late discovery, it explains why his original statement of claim filed on 24 June 2021 stated that “[the Star Dust Shares] were duly transferred to [him]”.¹⁴⁰ It also explains why Tjandra’s solicitors initially referred to Tjandra as “a shareholder in Star Dust” in a request to inspect the case file for a related action (SIC/S 5/2020) filed on 15 June 2021 (see [118] below).¹⁴¹ This is consistent with the explanation given by Tjandra in court.¹⁴²

¹³⁷ Day 1 Transcript at p 100, lines 5-16.

¹³⁸ Day 1 Transcript at p 100, lines 9-10; PCS at para 4.2.1.

¹³⁹ Day 1 Transcript at p 100, lines 19-20.

¹⁴⁰ Statement of Claim dated 24 June 2021 at para 10.

¹⁴¹ Cheng’s 1st AEIC at p 222.

¹⁴² Day 1 Transcript at p 114, lines 16-25.

- (5) Tjandra's failure to enquire about the transfer of the Star Dust Shares is equivocal

79 Finally, I am unconvinced by Cheng's argument that Tjandra would have made enquiries or complained if the Star Dust Shares were not transferred to him after his payment on 27 February 2019.¹⁴³ The registration of Tjandra's name in Star Dust's register of members and the issuance of share certificates, were matters for the Original Shareholders to take care of. Tjandra was not asked in cross-examination when he expected the process to be completed. He also explained that he was busy and that he trusted the Original Shareholders to take the necessary steps.¹⁴⁴ I accept that explanation.

80 Further, from the time Tjandra made payment until he was informed by Cheng of the fraud on 18 June 2019,¹⁴⁵ Tjandra had no reason to suspect anything was amiss, nor was it put to him that he had such reason.

81 Therefore, I find on the balance of probabilities that the Star Dust Shares were not transferred to Tjandra, and that Cheng is in breach of the Agreement.

What damages is Tjandra is entitled to?

82 Tjandra is entitled to damages for the breach of the Agreement. In this regard, it is undisputed that Tjandra paid the sum of US\$3.2m to the Original Shareholders,¹⁴⁶ of which a sum of US\$1.36m was paid to Cheng.

¹⁴³ DCS at para 35.8.

¹⁴⁴ Day 1 Transcript at p 105, lines 10-21.

¹⁴⁵ Cheng's 1st AEIC at para 52; AB at p 194; Tjandra's AEIC at paras 41-42.

¹⁴⁶ Tjandra's AEIC at paras 50(c), 43(a); AB at pp 135-136, 191.

83 Parties agree that Cheng had made part-payments to Tjandra amounting to US\$860,000,¹⁴⁷ in the following manner:

- (a) a bank transfer of US\$660,000 on 30 June 2019;¹⁴⁸
- (b) a bank transfer of SG\$136,000 on 30 June 2019, which parties agree was equivalent to US\$100,000;¹⁴⁹ and
- (c) the delivery of two paintings on 1 July 2019,¹⁵⁰ which parties agree were worth US\$100,000 collectively.¹⁵¹

84 The discussion in relation to these part-payments appears to have occurred on 29 June 2019, when Cheng and Tjandra met at Grand Hyatt, as evidenced by the message sent by Tjandra to Cheng after the meeting:¹⁵²

[29/6/19, 23:51:39] Riady: Yihan to follow up our conversation of offsetting US\$ that i trans to you.
US\$ 1,360,000.
US\$ 660,000 uob trans.
SG\$ 136,000 uob trans for US\$ 100,000.
SG\$ 154,000 david yarrow offseting for US\$ 100,000
Remainder
US\$ 500,000
Car sale SG\$ 136,000 offseting US\$ 100,000
Remainder
US\$ 400,000
It will be repaid by family loan.
Thanks

¹⁴⁷ Tjandra's AEIC at para 45.

¹⁴⁸ SOC at paras 10E, 16; Defence at paras 10E(a); 16; AB at 199-200.

¹⁴⁹ SOC at paras 10E, 16; Defence at paras 10E(a); 16; AB at 199-200.

¹⁵⁰ AB at p 200 read with Day 2 Transcript at p 91, lines 3-13.

¹⁵¹ Defence at paras 10E(b), 16; AB at p 198.

¹⁵² AB at p 198.

85 The repayment plan was for the return of the entire sum of US\$1.36m paid to Cheng. Cheng did not respond to, object, or dispute Tjandra's recapitulation of the plan.¹⁵³ In fact, Cheng complied with it over the next two days. On 30 June 2019, he made two bank transfers for US\$660,000, and SG\$136,000.¹⁵⁴ The day after, on 1 July 2019, he handed over to Tjandra the two paintings (collectively worth US\$100,000).¹⁵⁵

86 Cheng did not, at the material time, qualify these payments in any way. However, in these proceedings, he claims that he made them “not as an admission of either responsibility or liability but because [he] felt that the surplus funds [Tjandra] transferred were not [his] to keep ... At the time [he] felt bad that both of [them] had been duped by people [they] both had trusted”.¹⁵⁶ I also note that Tjandra did not plead that these part-payments are an admission of Cheng's liability to him. Nonetheless, they evidence Cheng's acceptance that Tjandra did not receive anything in return for his investment of US\$4m and that he (Cheng) believed he was not entitled to retain any of the US\$1.36m he had received.

87 For completeness, I note that Cheng and Tjandra extensively discussed Cheng's repayment of the balance of US\$500,000. There were suggestions that Cheng would: (a) sell his Audi R8 car to satisfy US\$100,000;¹⁵⁷ and (b) transfer his investment in a venture capital fund to Tjandra to satisfy an additional

¹⁵³ AB at p 198, timestamp [29/6/19, 23:51:39].

¹⁵⁴ SOC at paras 10E, 16; Defence at paras 10E(a); 16; AB at 199-200.

¹⁵⁵ AB at p 200 read with Day 2 Transcript at p 91, lines 3-13.

¹⁵⁶ Cheng's 1st AEIC at para 55.

¹⁵⁷ AB at 198.

US\$120,000.¹⁵⁸ If these two transfers were made, it would leave a balance of US\$280,000. This was the context in which the following exchange took place:

[3/7/19, 13:24:00] yihan: i think we have a way forward =)

[3/7/19, 13:24:26] Riady: But before we move forward we need to clear all first yihan so we have a clear mind and our venture

...

[3/7/19, 13:26:50] yihan: i have given everything i have to you, *i think remainder 200+k, if you want me to earn money and pay back it will take about 5 years*

[3/7/19, 13:34:20] Riady: Need to be faster yihan as i try to clear all of it this mth

...

[3/7/19, 13:36:36] Riady: Is better yihan start fresh and no hurdles between us and we can move forward. u know what i meant

[3/7/19, 13:38:10] yihan: *i know that*

...

[3/7/19, 13:38:30] yihan: *but i don't know how to earn 200+k in two weeks?*

[emphasis added]

88 It is clear from this exchange that Cheng wanted to pay the balance US\$500,000 but needed time to do so. This is further buttressed by the following statements by Cheng in early August on repaying the outstanding US\$500,000:¹⁵⁹

[1/8/19, 15:03:54] Riady: Yihan i think you need to work out the plan for the payment to me. im paying back my friend this mth the whole investment that they invested with me for REB. So i need the payment of the car to be settled and the remainder if just left US\$ 400 k after the car, you need to work on how you need to pay me the rest of it. as this mth im going to report this

¹⁵⁸ AB at 200-201.

¹⁵⁹ AB at pp 205-206.

case to authority if nothing comes to me. i just do not want you to be the same boat.

...

[1/8/19, 18:31:06] yihan: rest assured i am doing all i can to get you the funds

[1/8/19, 18:31:17] yihan: if you see above, i have also been trying to get the 120k from sosv

[1/8/19, 18:31:25] yihan: i am not delaying this just for fun or to play you out

[1/8/19, 18:31:25] yihan: but the fact is, i am doing all i can but the sosv investment and the car sale are both out of my control

[1/8/19, 18:32:28] yihan: i can do a settlement plan with you, that assure you that once these two are liquidated to me that i will send it to you

[1/8/19, 18:33:38] yihan: just i look back and i have done everything right by you, from when i found out i told you, to giving you everything i have, and assuring you that when these two are liquidated that it will go to you

[1/8/19, 18:54:43] Riady: Thats why i want to clear it asap and move on

[1/8/19, 19:03:46] yihan: asap on my end
there are things that are not in my control i am doing my best

[1/8/19, 19:04:50] yihan: ...
let me know if you wish to do the settlement plan

89 US\$860,000 is no small sum, and it is unlikely that Cheng would deplete his cash, sell off all his assets, and offer to pay the balance over 5 years, just because he “felt bad”.¹⁶⁰ I find that he did so because he knew and accepted that Tjandra had been deceived and received nothing for his investment, and that the monies he received should be repaid to Tjandra.

¹⁶⁰ Cheng’s 1st AEIC at para 55.

90 Although Tjandra had paid out a sum of US\$3.2m under the Agreement, he is entitled to limit his claim against Cheng. I therefore find that Tjandra is entitled to damages in the sum of US\$500,000 against Cheng as claimed by him.

Unjust enrichment claim

91 I also find Cheng liable to pay US\$500,000 to Tjandra based on Cheng’s unjust enrichment. This applies even if I accept Cheng’s argument that Tjandra’s contract was not with him but with Blue Summit.

The law on unjust enrichment

92 Under the principle of subsidiarity, the courts generally do not permit an unjust enrichment claim where there is a subsisting contract which has not been set aside at law or in equity (*Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 (“*Alwie Handoyo*”) at [104]).

93 If this preliminary hurdle is crossed, the plaintiff will have to establish the following four elements to make out a claim in unjust enrichment (*Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 (“*Wee Chiaw Sek*”) at [98]-[99]): (a) the defendant has benefitted or been enriched; (b) the enrichment was at the expense of the plaintiff; (c) the enrichment was unjust; and (d) there are no defences. In the present case, I am only concerned with the third and fourth elements (*viz.* elements (c) and (d)), as the first two elements are clearly established (see *Zaiton bte Adom v Nafsiah bte Wagiman and another* [2023] 3 SLR 53321 at [193]).

Issues to be determined

94 Accordingly, the issues to be determined for the unjust enrichment claim are:

- (a) whether the claim is permitted in light of the subsidiarity principle?
- (b) whether the enrichment Cheng received was unjust?
- (c) whether Cheng can rely on any defences?

Does the subsidiarity principle prohibit the unjust enrichment claim?

95 Generally, the principle of subsidiarity dictates that “the law of restitution should not be allowed to disturb unrescinded contracts and transactions which have not been set aside at law or in equity” (*Info-communications Development Authority of Singapore v Singapore Telecommunications Ltd* [2002] 2 SLRI 136 at [89]). “The courts are unwilling to permit a plaintiff’s unjust enrichment claim in these cases as to do so would undermine the contract and the contractual allocation of risk between the [parties]” (*Alwie Handoyo* at [104]).

96 Cheng relies on this principle to argue that Tjandra had contracted to pay US\$1.36m to Cheng, and therefore this court should not undermine the contractual allocation of risk in permitting a claim for unjust enrichment.¹⁶¹ In support of this, Cheng attempts to analogise this case to that in *Alwie Handoyo*. This argument fails for two reasons.

¹⁶¹ DCS at paras 75-77.

97 First, this case is distinguishable from *Alwie Handoyo*. That case involved the sale of shares in an Indonesian company for US\$18m. Although Tjong Very Sumito (“Tjong”) was the seller of those shares, the share purchase agreement (“SPA”) provided that a portion of the US\$18m was to be paid to two BVI companies. Specifically, US\$6m was to be paid directly to Tjong; US\$10m to Aventi Holdings Limited (“Aventi”); and US\$2m to Overseas Alliance Financial Limited (“OAFL”) (at [10]). Neither Aventi nor OAFL was owned or controlled by Tjong. The sale was subsequently completed, and the buyer of the shares paid out the three amounts in accordance with the SPA. Tjong subsequently brought an action in unjust enrichment to recover the sums paid to OAFL. The Court of Appeal rejected the claim in unjust enrichment on the basis that the payments were made in accordance with a valid and subsisting contract. In Rajah JA’s words, to allow such a claim “would be to undermine the contractual bargain under the SPA which the [parties] agreed on” (at [104]). The key difference in the present case is that the sale and purchase of the Star Dust Shares was never completed. As I found above (at [58]–[81]), the Star Dust Shares were not transferred to Tjandra as promised.

98 Second, and relatedly, the present case falls within an exception to the subsidiarity principle. One recognized exception to the subsidiarity principle, is where there is total failure of consideration (*Max Media FZ LLC v Nimbus Media Pte Ltd* [2010] 2 SLR 677 at [24]). According to Andrew Ang J:

[O]rdinarily restitutionary principles are supplemental to the law of contract where the parties are in a contractual relationship ... The rationale behind this general rule is that the law of restitution should not redistribute the risks which the parties have, by contract, already allocated. ... *Nonetheless, one recognised exception where restitution may apply to a contract is where the consideration for the contract has failed.* The relevant principle applicable here is this: where money has been paid out under a contract that is or becomes ineffective, the payer may recover the money if the consideration for the payment has totally failed; but this right of recovery only arises where there

is no express or implied term in the contract making the payment irrecoverable.

[emphasis added]

99 This exception was recently endorsed by the Appellate Division of the High Court in *Carlsberg South Asia Pte Ltd v Pawan Kumar Jagetia* [2023] SGHC(A) 29 at [83].

100 For reasons I explain below, I find that there was a total failure of consideration. Therefore, the subsidiarity principle does not pose an issue in this case.

Was the enrichment unjust?

The law on total failure of basis

101 The unjust factor Tjandra relies on in this case is a total failure of consideration.¹⁶² The inquiry for this has two parts (*Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 (“Benzline”) at [46]): first, what was the basis for the transfer in respect of which restitution is sought; and second, did that basis fail?

102 The courts adopt the following objective approach in determining what the basis of a transfer is (*Simpson Marine (SEA) Pte Ltd v Jiapiro Jiaravanon* [2019] 1 SLR 696 (“Simpson”) at [49]):

The basis of the transfer must be objectively determined based on what is communicated between the parties, and must be jointly understood by both parties as such. ... A basis may be expressed, but it may also be implied. The task of identifying the basis objectively is very similar to the approach taken in determining the formation and construction of contracts. It involves inquiring into what a reasonable person in the position

¹⁶² SOC at para 10D; and PCS at para 5.3.4.

of the parties would have understood the words and conduct of the parties to mean.

103 In recent decisions, the Court of Appeal made clear that the “basis” or “consideration” can refer to one of two things (*Benzline* at [48]–[50]; and *Simpson* at [49]):

- (a) first, in the promissory sense, it can refer to the *performance* of a counter-promise to be distinguished from the counter-promise itself; and
- (b) second, it may refer to a non-promissory contingent condition, *ie*, an expected event or state of affairs which neither party is responsible for bringing about.

Although the test refers to “*the*” basis for the plaintiff’s transfer, Prakash JA made clear that a transfer may have more than one basis (*Benzline* at [52]).

104 After identifying the basis of the transfer, the next step is to determine whether that basis has failed. Here, there must be a *total* (and not merely partial) failure of the basis (*Benzline* at [53]–[54]).

105 In this case, there are at least two separate and distinct bases for Tjandra’s transfer of US\$1.36m to Cheng – both of which have totally failed.

First basis: the transfer of the Star Dust Shares

106 The first and most obvious basis for Tjandra’s transfer of US\$1.36m is his receiving a 20% interest in Royal Eastern Bank and a seat on its board of directors. This promissory basis closely resembles the case of *Just Gems Limited v Shirley Ooi Ching Ling and another* [2002] SGHC 19 (“*Just Gems (HC)*”), a decision upheld on appeal in *Ooi Ching Ling v Just Gems Inc* [2003]

1 SLR(R) 14 (“*Just Gems (CA)*”). The parties there entered a share purchase agreement, where the defendant promised to procure the transfer of a 22% shareholding in Pacific Rim to the plaintiff for the price of US\$500,000. The plaintiff made full payment of the US\$500,000, but the defendant failed to procure the transfer of the shares. Instead, the shares were transferred to one Jamilah, the plaintiff’s sole shareholder and controller. The court nonetheless held that there was a total failure of consideration, as the shares were not transferred to the rightful entity as promised (*Just Gems (HC)* at [124]. The decision was upheld on appeal in *Just Gems (CA)* at [53]–[58]).

107 Although this finding of a total failure of consideration was made in the context of a “claim for money had and received” (see *Just Gems (HC)* at [120]), the Court of Appeal has since clarified that “the underlying basis for the action for money had and received is now embraced under the rubric of unjust enrichment” (*Alwie Handoyo* at [125]).

108 The facts here present a stronger case. After Tjandra paid US\$4m (including US\$1.36m to Cheng) he did not receive a single Star Dust share (as well as the board seat he was promised) (see [60]–[81] above). I therefore find that there was a total failure of consideration.

Second basis: Royal Eastern Bank would be a licensed and operational bank

109 As mentioned earlier (at [103(b)] above), the “basis” in the context of an unjust enrichment claim can also be a non-promissory contingent condition, *ie*, an expected event or state of affairs which neither party is responsible for bringing about.

110 Tjandra had contracted with the Original Shareholders to invest in what he was told was, or would be, a licensed, operational, cryptocurrency-friendly,

offshore bank. The establishment of such an enterprise as a going concern was therefore the fundamental basis of the transaction.

111 However, as the evidence suggests, there was a total failure of this basis.

112 Cheng accepts that Tjandra’s investment in Royal Eastern Bank was brought about by fraud. Cheng pleads and refers to Ling and Feng’s “fraudulent and/or dishonest commercial conduct in their dealings with [Tjandra] (“the Feng/Andrew Dishonest Conduct”)”.¹⁶³ Indeed, in his attempt to explain his repayments to Tjandra (see above at [83]–[89]), Cheng pleads that “the payments and the transfer of the Artwork were made in good faith by [him] immediately *on his realisation of the Feng/Andrew Dishonest Conduct towards [Tjandra] in securing the Investment*” [emphasis added].¹⁶⁴

113 Cheng’s evidence is that he was informed by a business associate of Feng and Ling that “Feng had misappropriated funds that had been raised for the purposes of purchasing Royal Eastern Bank”,¹⁶⁵ and that his own enquiries had exposed “[Ling’s] participation in [the] fraud”.¹⁶⁶

114 Further, in Cheng’s discussion for working out a repayment plan with Tjandra in August 2019, Cheng candidly stated the following:¹⁶⁷

[25/8/19, 19:10:02] yihan: ... I get that you are frustrated that *you paid for a bank that was not working*, I have been working all that time too to get the bank functional, I gave it my everything - I had the rug pulled out under me by Andrew and Feng.

¹⁶³ Defence at para 10E(c).

¹⁶⁴ Defence at para 10E(e).

¹⁶⁵ Cheng’s 1st AEIC at para 48.

¹⁶⁶ Cheng’s 1st AEIC at para 51.

¹⁶⁷ AB at p 207.

All of the above is honor. In fact, it is on my honor that you are *not still being scammed of money* from Andrew and Feng. I told you the moment I found out.

[emphasis added]

115 On Cheng’s own case, the deal was, or became, a scam. Royal Eastern Bank never became operational. I also note that Star Dust (which was supposed to serve as the vehicle to hold the Original Shareholders’ stake in Royal Eastern Bank) was struck off the BVI registry because of non-payment of its annual licence fees.¹⁶⁸

116 While the above disposes of the point, I note in addition that no documents were produced, or evidence adduced, that the Original Shareholders had in fact purchased a genuine banking licence for US\$8.5m – as was represented to Tjandra in Ling’s 13 February 2019 Email. On the contrary, the representation made to Tjandra as to the cost of Royal Eastern Bank’s banking licence is fraught with inconsistencies and was likely untrue. In Ling’s 13 February 2019 Email, he states that US\$8.5m was *committed and paid* for a “Comoros, Anjoun B[anking] License” – which is a reference to the licence for Royal Eastern Bank.¹⁶⁹ However, it is Cheng’s testimony that the US\$8.5m was initially set aside to purchase *two* banking licences: a Comoros banking licence for US\$4m and a Curacao banking licence for US\$4.5m.¹⁷⁰ This also appears to contradict a related shareholders agreement between a third party, Micro Tellers Network Pte Ltd (“Micro Tellers”), and Blue Summit (“Micro Tellers Shareholder Agreement”)¹⁷¹ which provides that the Curacao licence was

¹⁶⁸ Tjandra’s AEIC at para 36; and p 230; and AB at p 306.

¹⁶⁹ AB at p 176.

¹⁷⁰ Day 1 Transcript at p 141, lines 9-13.

¹⁷¹ Defendant’s Document 1, tendered in court on 18 January 2024 (“D1”).

supposed to be acquired for US\$28m.¹⁷² Further, Cheng revealed that the Original Shareholders had decided not to acquire the Curacao licence by the time Ling’s 13 February 2019 Email was sent, thus rendering the assertion that US\$8.5m had been “committed and paid” untrue.¹⁷³

117 Nonetheless, Cheng continued to defend the US\$8.5m figure on the basis that the Original Shareholders *intended* to acquire a Swiss banking licence in lieu of the Curacao licence.¹⁷⁴ He said he “believe[s] that Feng’s business associate, Fred [Gaillard], had put a EUR 2 million deposit on that Swiss bank licence, with a total payment of EUR 23.8 million to be paid in February”.¹⁷⁵ No documentary or credible evidence was produced in support of this assertion. Cheng later clarified that the Swiss banking licence was never acquired.¹⁷⁶

118 In fact, it is highly doubtful that even the Comoros licence was acquired for US\$4m. No evidence was adduced as to how much, if anything, was paid for it. In this regard, Cheng gave evidence that Gaillard informed him in June 2019 that the actual cost of acquiring the Comoros licence was only \$300,000.¹⁷⁷ I have also taken notice of Thorley J’s findings in the related case of *The Micro Tellers Network Ltd and others v Cheng Yi Han and others* [2021] 5 SLR 328, where the learned judge found (at [117]), on a *prima facie* level, that Royal Eastern Bank was only acquired for “€130,000, not US\$4m”.

¹⁷² D1 at clause 2.2.

¹⁷³ Day 2 Transcript at p 21, lines 1-3.

¹⁷⁴ Day 2 Transcript at pp 21-22.

¹⁷⁵ Day 2 Transcript at p 21, lines 14-17.

¹⁷⁶ Day 2 Transcript at p 128 at lines 2-6.

¹⁷⁷ Day 2 Transcript at p 72, lines 9-21; PB at p 74.

119 Taken as a whole, the evidence strongly suggests that the entire investment was plagued with difficulties and deception, and that there was no, or was never going to be, a licenced operational bank.

120 I make no finding as to who was responsible for this state of affairs. What is relevant is that Tjandra was not going to – and did not – get what he was purchasing *viz.* a stake in a licensed, cryptocurrency-friendly offshore bank. This was the substratum of the entire transaction and without it, there is a total failure of the basis for Tjandra’s payment to Cheng.

Are there defences to the unjust enrichment claim?

121 I turn to consider if there are any defences. In this regard Cheng relies on the defence of change of position.¹⁷⁸

The law on the change of position defence

122 The four elements to make out the defence of change of position are (*Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [35]; *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 (“*Skandinaviska*”) at [140]–[142]):

- (a) the payee has changed his position;
- (b) there is a causal link between the change of position and the enrichment received;
- (c) the change is *bona fide*; and

¹⁷⁸ DCS at paras 79-87.

- (d) it would be inequitable to require him to make restitution or to make restitution in full.

123 In relation to element (b), the defendant must show that he would not have changed his position, “but for” the enrichment received (*Skandinaviska* at [140]).

124 In relation to element (c), the defendant’s knowledge of the facts entitling the plaintiff to restitution would bring the defendant’s *bona fides* into question and disentitle him from relying on this defence (*Seagate Technology Pte Ltd and another v Goh Han Kim* [1994] 3 SLR(R) 836 at [32]). Knowledge, in this regard, connotes: (a) actual knowledge; (b) wilfully shutting one’s eyes to the obvious; and (c) wilfully and recklessly failing to make such inquiries as an honest and reasonable man would make (*Id.* at [34]).

Cheng’s case on change of position

125 Cheng claims that he changed his position in three respects:¹⁷⁹

- (a) he terminated his work as a medical practitioner thereby foregoing future income, which he estimates to be SG\$250,000;
- (b) he borrowed SG\$50,000 from his family to meet the wages of the employees of the Royal Eastern Bank; and
- (c) he applied US\$300,000 of the monies he received from Tjandra to meet the expenses associated with establishing and promoting the operations and anticipated operations of Royal Eastern Bank.

¹⁷⁹ Defence at para 10(e)(i); DCS at para 79.

126 I dismiss all of them.

(1) Cheng’s allegedly foregone income of SG\$250,000

127 Cheng did not provide any evidence of this alleged income. Indeed, he did not even specify *when* he left his job as a doctor. He vaguely asserts in his affidavit that “[b]etween 2018 and 2019, [he] also gave up [his] career as a practising medical doctor to focus on the [acquisition of Royal Eastern Bank]”.¹⁸⁰ Although he asserts that “[he] was earning approximately AUD\$250,000 per annum”,¹⁸¹ he adduced no evidence of the same. In the circumstances, I dismiss this claim as it is completely unsubstantiated and bereft of details.

128 Further, even if there was evidence of Cheng’s foregone income, there is no causal link between Tjandra’s investment and Cheng terminating his work as a medical practitioner. In his further and better particulars filed on 16 March 2022, Cheng pleaded that he commenced winding down his practice in or around April 2018, and effectively ceased practising medicine as a main source of income “in mid 2018”.¹⁸² But this was well *before* Tjandra’s investment in February 2019.¹⁸³

(2) The alleged SG\$50,000 loan

129 The loan Cheng allegedly took from his family is also not evidentially supported. While I appreciate that a loan from family members may not always

¹⁸⁰ Cheng’s 1st AEIC at para 34.

¹⁸¹ Cheng’s 1st AEIC at para 34.

¹⁸² Further and Better Particulars of the Defendant’s Defence (Amendment No. 2) dated 29 July 2022 (“FBP Defence”) at p 4.

¹⁸³ Tjandra’s AEIC at para 34; AB at pp 135-136, 191.

be reduced to writing, this claim was completely bereft of details. While Cheng gave particulars that the loan was given on 2 July 2019 by one Cheng Theng How (“Theng How”),¹⁸⁴ he gave no such evidence in his AEIC or in the stand. Neither did he call Theng How. There was also no documentary or other evidence of his receipt of the funds.

130 Further, on his own pleaded case, Cheng took the loan on 2 July 2019¹⁸⁵ – but this was *after* he had discovered the fraud surrounding Royal Eastern Bank and, more importantly, *after* he had agreed (or at least discussed) returning the monies to Tjandra (see above at [Error! Reference source not found.]). It is wrong, and plainly absurd, for Cheng to claim that he had *bona fide* changed his position by taking the loan and it would be inequitable to make him pay this sum to Tjandra when he took the loan after becoming aware of the fraud and acknowledging that Tjandra should be repaid his investment. He also did not explain why he was personally bearing the expenses of Royal Eastern Bank. Even if he had used the proceeds of the loan (if any) to meet the expenses of the Royal Eastern Bank, this was done voluntarily by Cheng and should not be borne by Tjandra.

131 I further note that there is no evidence that Cheng used the proceeds of the loan (if any) to meet the (alleged) wages of employees of the Royal Eastern Bank.

¹⁸⁴ FBP Defence at p 5.

¹⁸⁵ FBP Defence at p 5.

(3) The US\$300,000 of expenses Cheng allegedly incurred

132 Cheng asserts that he had spent US\$300,000 out of the US\$1.36m he received from Tjandra on the operations of Royal Eastern Bank.¹⁸⁶ He breaks down these expenses into the following four broad categories:¹⁸⁷

- (a) expenses related to securing a lease and thereafter redesigning, renovating and re-furnishing the office for Royal Eastern Bank;
- (b) expenses related to finding and paying eight members of Royal Eastern Bank’s staff;
- (c) expenses related to purchasing and establishing the computer systems, internet banking, cryptocurrency platforms for Royal Eastern Bank; and
- (d) expenses related to the marketing and promotion of Royal Eastern Bank.

133 Cheng testified that these expenses are recorded in a spreadsheet which he created at the time of establishing Royal Eastern Bank.¹⁸⁸ This spreadsheet consists of two tables:¹⁸⁹ one setting out the alleged expenses in US\$ (the “US\$ Spreadsheet”) and another in SG\$ (the “SG\$ Spreadsheet”). I note that the total amount of expenses reflected in the Spreadsheets is about US\$250,000,¹⁹⁰ which is lower than the US\$300,000 Cheng claimed he spent, and he made no attempt

¹⁸⁶ Defence at para 10(e)(i)(C).

¹⁸⁷ Cheng’s 1st AEIC at para 47.2.

¹⁸⁸ Cheng’s 1st AEIC at para 35.

¹⁸⁹ Cheng’s 1st AEIC at p 189-192.

¹⁹⁰ Calculated based on the total sum in the Spreadsheets at the exchange rate at the time the expenses were allegedly incurred (*ie*, early 2019).

to explain or reconcile the difference. In any event, the Spreadsheets do not assist Cheng.

134 First, the Spreadsheets were created by Cheng himself.¹⁹¹ The entries therein were not supported by any underlying documentation such as receipts and invoices. In other words, there is no evidence that the expenses were even incurred, much less paid.

135 Second, none of the expenses in the Spreadsheets were dated. This makes it difficult to ascertain the veracity of those transactions and more importantly, whether they were incurred after Tjandra's payment to Cheng. Cheng adduced a print-out from his computer which appears to show that the Spreadsheets were created only on 21 March 2019.¹⁹² Even if reliable, it does not mean that the expenses were incurred and paid after that date.

136 Third, the description of the expenses in the Spreadsheet were general or vague, and it is not clear that they were all incurred for the operations of the Royal Eastern Bank.

137 In a belated attempt to resolve these evidential issues, while under cross-examination, Cheng adduced two HSBC bank statements: the first for the period of 9 February 2019 to 9 March 2019;¹⁹³ and the second for the period of 9 March 2019 to 9 April 2019.¹⁹⁴ Both of these statements recorded Cheng's transactions in his SG\$ account (the "SG\$ Transactions") and his US\$ account (the "US\$ Transactions").

¹⁹¹ Cheng's 1st AEIC at para 35.

¹⁹² Defendant's Document 2, tendered in court on 18 January 2024 ("D2").

¹⁹³ Defendant's Document 3, tendered in court on 18 January 2024 ("D3").

¹⁹⁴ Defendant's Document 4, tendered in court on 18 January 2024 ("D4").

138 Preliminarily, I note that Tjandra objected to the admission of these statements because of their lateness. In response, Cheng, through his counsel, claimed that this was because he was not represented at the time discovery was given in this action.¹⁹⁵ However, this reason was false. Cheng's list of documents was filed on 29 April 2022 by his previous solicitors, Timothy Ong Lim & Partners, who only discharged themselves on 20 March 2023. Nonetheless, I admitted the statements as they were unquestionably authentic and material – the US\$ Statement, in particular, reflected the receipt of the sum of US\$1.36m from Tjandra¹⁹⁶ – and Tjandra was not prejudiced by their admission.

139 The two bank statements not only do not assist Cheng, they undermine his defence.

140 First, most of the alleged expenses recorded in the Spreadsheets are not reflected in either of the two bank statements.

(a) As regards the US\$ Transactions, only expenses amounting to US\$40,276.08 out of the alleged US\$64,296.08 are reflected.

(b) As regards the SG\$ Transactions, only expenses amounting to SG\$5,185.40 out of the alleged SG\$252,089.80 are reflected.

In total, this amounts to about US\$43,000 out of the alleged sums claimed in the Spreadsheets.

¹⁹⁵ Day 2 Transcript at pp 101-102.

¹⁹⁶ Day 2 Transcript at p 103 at lines 15-22.

141 Second, and more crucially, there was already a sum of US\$60,711.76 in the HSBC US\$ account *before* Tjandra's monies were received on 27 February 2019. Thereafter, from 27 February 2019 to 25 March 2019, only US\$40,250.59 was paid out of the HSBC US\$ account. Contrary to what Cheng claims in his closing submissions,¹⁹⁷ this means that Tjandra's funds were *not* used to pay the (alleged) expenses. Indeed, on 25 March 2019, a sum of US\$1,398,066.42 – which is more than what Tjandra paid in – was transferred out of the HSBC US\$ account, leaving nothing in the account. Cheng claimed that this sum was transferred to a UOB account but did not produce any statements. There was no explanation for why the funds were paid out of the HSBC account or what happened to them.

142 Finally, Cheng did not lead any evidence that he would not have incurred the expenses but for his receipt of the funds from Tjandra. Indeed, Cheng testified that Ling would reimburse him for the expenses he incurred on behalf of Royal Eastern Bank.¹⁹⁸ In this regard, Cheng's submission that he could only incur the expenses with Tjandra's monies "as funds from Ling were no longer available"¹⁹⁹ is self-serving. It is not his evidence that he knew Ling's funds would no longer be forthcoming at the time he incurred the alleged expenses or that Ling would stop reimbursing him after Tjandra's monies came in.

143 I therefore find that Cheng was unjustly enriched in the sum of US\$1.36m at Tjandra's expense and has failed to make out, even partially, a defence of change of position. Cheng has made part-payment of US\$860,000 to

¹⁹⁷ DCS at para 85.1

¹⁹⁸ Day 2 Transcript at p 75, lines 1-5; p 80, lines 2-5.

¹⁹⁹ DCS at para 87.

Tjandra (see [83] above), which leaves the amount of US\$500,000 outstanding. I therefore find Cheng liable to pay Tjandra the sum of US\$500,000.

Misrepresentation claim

144 Tjandra pleads that the Original Shareholders (whether individually or collectively) made the following representations to him in or around February 2019:²⁰⁰

(a) by purchasing the Star Dust Shares, Tjandra would be entering into a joint venture *exclusively* with Cheng, Ling, and Feng in relation to the business and operations of Royal Eastern Bank (“Exclusivity Representation”); and

(b) Star Dust had a par valuation of US\$20m – which Tjandra understood to mean that Royal Eastern Bank (which was Star Dust’s sole asset) was worth US\$20m (“Valuation Representation”).

145 Tjandra further pleads that these representations were false and made fraudulently.²⁰¹

The law on fraudulent misrepresentation

146 The courts have consistently adopted a “relatively high standard of proof” which must be satisfied before a fraudulent misrepresentation can be established (*Wee Chiaw Sek* at [30]–[31]; *Government of the City of Buenos Aires v HN Singapore Pte Ltd and another* [2023] SGHC 139 at [116]; *Yong*

²⁰⁰ SOC at para 7.

²⁰¹ SOC at paras 11-12.

Khong Yoong Mark and others v Ting Choon Meng and another [2021] SGHC 246 at [306]).

147 The plaintiff bears the burden of proving the following elements of fraudulent misrepresentation (*Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 (“*Broadley Construction*”) at [26]; *Fuji Xerox Singapore Pte Ltd v Mazzy Creations Pte Ltd and others* [2021] SGHC 193 at [50]):

- (a) there must be a representation of fact by words or conduct;
- (b) the representation must be made with the intention that it should be acted on by the plaintiff;
- (c) the plaintiff had acted upon the false statement;
- (d) the plaintiff suffered damage by so doing; and
- (e) the representation must be made with the knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

The entire agreement clause does not prohibit the misrepresentation claims

148 Preliminarily, Cheng pleads that Tjandra is precluded from making any misrepresentation claim,²⁰² on the basis of the following clause found in the Share Transfer Forms (the “Entire Agreement Clause”):²⁰³

This instrument constitutes the entire agreement between the parties with respect to the subject matter hereof and there is no other promise, representation, warranty, usage or course of

²⁰² Defence at para 3(d)(iii)-(iv).

²⁰³ AB at pp 171 and 174.

dealing affecting it, whether express or implied. Each party acknowledged that *in entering into this instrument*, it does not rely on any statement representation or warranty other than those expressly set out in this share transfer form.

[emphasis added]

149 However, as I found above (at [24]–[28]), the Share Transfer Forms do not constitute the agreement between the parties. More importantly, the Entire Agreement Clause merely provides “that *in entering into this instrument* [each party] does not rely on any statement representation or warranty”. However, Tjandra is not suing on “this instrument”, but for misrepresentations which induced him into entering the Agreement.²⁰⁴

150 In any event, the applicability of the Entire Agreement Clause ultimately does not matter as I dismiss Tjandra’s fraudulent misrepresentation claim for the reasons below.

The Exclusivity Representation claim

Was the Exclusivity Representation made?

151 The Exclusivity Representation fails on the very first element, as Tjandra has not proven that it was made. In particular, Tjandra has failed to prove when the Exclusivity Representation was made, what was said and by whom.

152 Tjandra’s pleadings underscores that he cannot recall, or is unable to say, who made the Exclusivity Representation. In his original Statement of Claim filed on 24 June 2021, Tjandra states that the “representations were made

²⁰⁴ SOC at para 8.

by [Cheng] to [Tjandra]”.²⁰⁵ This remained the case for more than two years until Tjandra made his third amendment to his Statement of Claim on 19 December 2023, where he changed his case to the “representations were made by the [Original Shareholders] (including [Cheng]), whether individually or collectively”.²⁰⁶

153 In Tjandra’s AEIC, he alleges that the Exclusivity Representation was made by the Original Shareholders “at meetings and/or telephone calls with all 3 men [*viz.* Cheng, Ling, and Feng]”,²⁰⁷ without providing particulars on the same.

154 At trial, Tjandra’s testimony cast even further doubt on the particulars, and therefore the existence, of the Exclusivity Representation. He began by saying he was sure that Ling and Feng had discussed with him the exclusive nature of the venture at the 13 February 2019 Meeting.²⁰⁸ When asked what exactly was discussed, Tjandra made vague allusions to discussions on the “shareholder structure”, without specifying who said what. Subsequently, Tjandra confessed that he could not remember *when* he asked about the shareholding structure, and *who* was at that meeting.²⁰⁹

155 Further, there is nothing in the contemporaneous records which evidences that the Exclusivity Representation was made. Tjandra merely alleges that the Exclusivity Representation is reinforced by the fact that there were only

²⁰⁵ Statement of Claim dated 24 June 2021, at para 7.

²⁰⁶ Statement of Claim (Amendment No. 3) dated 19 December 2019 at para 7.

²⁰⁷ Tjandra’s AEIC at para 24.

²⁰⁸ Day 1 Transcript at p 46, lines 1-19.

²⁰⁹ Day 1 Transcript p 50, lines 12-25; p 51, lines 1-18.

four members (including him) in the REBB WhatsApp Chat.²¹⁰ This is not enough to evidence the representation. It does not suggest that they were intended to be the only investors in Royal Eastern Bank, and much less that it was so represented to Tjandra.

Was the Exclusivity Representation false?

156 Even if I accept that the Exclusivity Representation was made, I find that Tjandra has failed to prove it is false. In this regard, Tjandra pleads that it is false because “[p]rior to [Tjandra’s] agreement to purchase the Shares, a third-party company, [Micro Tellers], had invested in the acquisition of the business and operations of [Royal Eastern Bank]”.²¹¹

157 However, the Micro Tellers Shareholder Agreement provides for Micro Teller’s investment in *Blue Summit*, and not Royal Eastern Bank. Clause 2.4(b) read with Clause 2.1 of the Micro Tellers Shareholder Agreement makes clear that Micro Tellers was to receive 5,672 (11.344%) shares of Blue Summit for a capital contribution of US\$2.7m. No evidence was led as to what arrangements were made between Micro Tellers, Cheng and Ling as to the role or rights Micro Tellers had with respect to the ownership or operations of Royal Eastern Bank, or how this would affect Tjandra’s investment.

Did Tjandra rely on the Exclusivity Representation?

158 Finally, even if the Exclusivity Representation was made, I find that Tjandra did not act on it in entering the Agreement. This element is commonly understood as connoting a requirement of materiality. In other words, the

²¹⁰ Tjandra’s AEIC at para 24.

²¹¹ SOC at para 11(b).

representee must show that a false representation was material in inducing him to enter into an agreement. The key question is whether the representation has had “a real and substantial effect on the representee’s mind such that it can be said to be *an* inducing cause which led him to act as he did; it need not be *the* inducing cause” (*Ong Keh Choo v Paul Huntington Bernardo* [2020] SGCA 69 at [82]).

159 In this regard, Tjandra failed to give any evidence on why the Exclusivity Representation, even if made, was material or that he had relied on the same in making his decision to invest. He gave no evidence as to how Micro Teller’s investment in Blue Summit would have affected his own decision to invest in Royal Eastern Bank. He also did not explain why it mattered to his decision to invest whether there were other investors in Royal Eastern Bank. The evidence suggests that he was focused on securing a 20% stake as well as a board seat in Royal Eastern Bank.²¹² He was obviously prepared to be a minority shareholder in Royal Eastern Bank as well as a minority on the board. While he repeatedly claimed to have “trusted” the Original Shareholders,²¹³ prior to the deal, he only knew Feng,²¹⁴ and then again, only fleetingly.²¹⁵ It is not the case that he had any prior business dealings with any of them.

160 In the circumstances, I find that Tjandra had failed to establish his claim with respect to the Exclusivity Representation.

²¹² Tjandra’s AEIC at para 12, 18 and 20; Day 1 Transcript at p 175, lines 14-25 and p 175, lines 1-5.

²¹³ Tjandra’s AEIC at para 24; Day 1 Transcript at p 38, lines 12-20.

²¹⁴ Day 1 Transcript at p 124, lines 9-12; Tjandra’s AEIC at paras 6-7.

²¹⁵ Day 1 Transcript p 124, lines 9-12.

The Valuation Representation claim***Was the Valuation Representation made?***

161 Tjandra pleads that the Valuation Representation was “made by the [Original Shareholders], whether individually or collectively, to [him] in or around February 2019 and prior to [his] purchase of [the Star Dust Shares]”.²¹⁶ In his affidavit of evidence in chief, he clarified that this representation was likely made at the 23 January 2019 meeting in Jakarta.²¹⁷ He says that he does not recall exactly *who* it was that conveyed it to him, but it was likely to have been both Feng and Ling,²¹⁸ who made it on behalf of themselves and Cheng.²¹⁹ I accept Tjandra’s evidence. The evidence leads irresistibly to the conclusion that the Valuation Representation was made.

162 First, some value of Royal Eastern Bank must have been conveyed to Tjandra before the Agreement was reached. After all, it would not have been possible for the parties to agree on a price without an underlying basis. In fact, Cheng himself acknowledged at trial that “it would be weird” for an investor to want to come onboard “without knowing the value of the bank”.²²⁰ This is further supported by the WhatsApp conversations between Cheng, Ling, and Feng during the negotiation phase, where they had discussed what value to convey to Tjandra.²²¹

²¹⁶ SOC at para 7.

²¹⁷ Tjandra’s AEIC at para 18.

²¹⁸ Tjandra’s AEIC at para 18.

²¹⁹ Tjandra’s AEIC at para 19.

²²⁰ Day 1 Transcript at p 153, lines 6-8.

²²¹ AB at pp 100-101.

163 Second, I find that the value represented was in fact US\$20m. The most telling piece of evidence is Ling’s 13 February 2019 Email, which confirmed the parties’ earlier discussions. Specifically, the second paragraph of the email explicitly states “[w]e agree to a par valuation of US\$ 20 mio”.²²² This aligns with the parties’ agreement for Tjandra to acquire a 20% stake in Royal Eastern Bank for US\$4m, thereby reflecting a valuation of US\$20m. Ling’s 13 February 2019 Email supports Tjandra’s case that the Valuation Representation had earlier been made to him.

164 Third, I agree with Tjandra that this valuation was most likely conveyed at the 23 January 2019 Meeting, as that was when parties had agreed on the purchase price of US\$4m (see above at [44]–[47]). Since Cheng was not present at this meeting,²²³ the Valuation Representation was made by Ling or Feng. Indeed, Tjandra testified that he was fairly certain that Ling had made it.²²⁴ I find that the Valuation Representation was made on behalf of Cheng. As I have found above (at [42]), Ling and Feng had the authority to negotiate and enter into the Agreement on behalf of Cheng and that Cheng agreed to the terms of the Agreement. Cheng knew that the value of Royal Eastern Bank would be discussed, and representations would be made. Feng acknowledged at trial that the Original Shareholders would have agreed that Royal Eastern Bank was worth US\$20m by 16 January 2019.²²⁵ Cheng must have known that this figure would be communicated to Tjandra. Further, as observed above at [48], Cheng was aware of the contents of Ling’s 13 February 2019 Email and did not question or raise any concerns. Ultimately, the Agreement was negotiated on

²²² AB at p 176.

²²³ Tjandra’s AEIC at paras 18-19.

²²⁴ Day 1 Transcript at p 36, lines 4-6.

²²⁵ AB at p 118 read with Day 2 Transcript at p 158, lines 11-24.

behalf of Cheng and the Valuation Representation was therefore made on his behalf.

165 Lastly, I do not accept Cheng’s submission that Tjandra had failed to explain what “par valuation” is and that this alleged failure amounts to a fatal omission for the Valuation Representation claim.²²⁶ Tjandra was not cross-examined on this point. Further, Ling’s 13 February 2019 Email provides some context to what the parties meant by “par valuation”. After stating that “[w]e agree to a par valuation of US\$ 20 mio”, Ling goes on to breakdown this valuation in the table reproduced above (at [16]). In essence, the “par valuation” refers to the amount of capital spent and to be spent in establishing Royal Eastern Bank. This was the Original Shareholder’s representation, as evinced in Ling’s 13 February 2019 Email.

Was the Valuation Representation false?

166 Tjandra pleads that the Valuation Representation is false as Royal Eastern Bank was worth substantially less than US\$20m.²²⁷ This US\$20m figure is broken down in Ling’s 13 February 2019 Email.²²⁸ A major component of this valuation is a US\$8.5m figure – which Ling claims the existing shareholders *had paid* for the “Comoros, Anjoun B[anking] License”.²²⁹ However, as I found above (at [116]–[118]), this US\$8.5m figure is false, or at best, a gross overvaluation, which means that the Valuation Representation was false.

²²⁶ DCS at para 49.

²²⁷ SOC at para 11(a).

²²⁸ AB at p 176-177.

²²⁹ AB at p 176.

167 Indeed, in his Defence, Cheng does not claim that US\$20m had in fact been spent or planned to be spent. Rather, he says that Royal Eastern Bank “had good business prospects and was capable of being valued at US\$20m on the strength of representation made to him by [Ling]”.²³⁰ Putting aside the evidentiary difficulties with this argument, the fact that Cheng does not even attempt to defend the par valuation of US\$20m as represented to Tjandra is telling.

Whether Tjandra relied on the Valuation Representation?

168 The valuation of US\$20m is clearly a material fact which induced Tjandra into entering the Agreement. After all, the US\$4m he agreed to pay for his 20% interest was directly derived from the valuation of US\$20m. I accept Tjandra’s submission that this is reinforced by the fact that the consideration was US\$3m when he offered to purchase a 15% shareholding in Star Dust.²³¹ Feng acknowledged that this works back to a valuation of US\$20m.²³²

169 In this regard, Cheng highlights Tjandra’s failure to check the US\$20m valuation against the documents produced by Ling, which suggests that Tjandra was not concerned about it.²³³ I do not accept that Tjandra was not concerned about the valuation of Royal Eastern Bank – the purchase price for the Star Dust Shares was based on it. The figure was also important enough for Ling to highlight and account for it in Ling’s 13 February 2019 Email. Insofar as Cheng is arguing that Tjandra should have verified the valuation, it is an established principle that once reliance is proven, it does not matter that the representee may

²³⁰ Defence at para 11(b).

²³¹ PCS at para 6.3.6.

²³² Day 2 Transcript at p 158, lines 6-17.

²³³ DCS at para 55.1.

have been negligent in failing to verify the same – even if there were materials available for him to do so (*Jurong Town Corp v Wishing Star Ltd (No 2)* [2005] 3 SLR 283 at [111]–[114]). Representees are not obliged to test the accuracy of the representations made to them, and it does not matter if they had the opportunity to discover the truth so long as they did not actually discover it (*Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110; [2018] SGCA 25 at [36]).

Did Cheng know that the Valuation Representation was false, or was he reckless as to its truth?

170 Nevertheless, for a claim in fraudulent misrepresentation to be made out, Tjandra must prove that Cheng knew or was reckless to the truth of the Valuation Representation at the time it was made (see *Wee Chiaw Sek* at [32]–[33]). In this regard, Phang JA emphasised that the concept of recklessness must not be equated with negligence or carelessness; negligence however gross, is not fraud (*Id*, at [34]–[35]).

171 Tjandra pleads that the Valuation Representation was made by Cheng with the knowledge that it was false because Cheng had agreed to purchase Royal Eastern Bank for only US\$4m.²³⁴ Therefore, Tjandra argues that Cheng was aware that Royal Eastern Bank was worth far less than US\$20m at the time the Valuation Representation was made.²³⁵

172 However, just because Cheng may have known that Royal Eastern Bank was initially acquired for US\$4m does not necessarily mean that he knew the valuation of US\$20m was false at the time the Valuation Representation was

²³⁴ SOC at para 12(a).

²³⁵ SOC at para 12(b).

made. According to Cheng, Ling informed him that a large portion of the valuation came from *other* expenditures such as software expenses.²³⁶

173 Further, although Cheng knew that the Curacao banking licence was not going to be acquired by the time Ling’s 13 February 2019 Email was sent,²³⁷ his evidence is that he believed that the US\$8.5m valuation of the banking licenses was still accurate as he was told by Feng and Ling that they were going to acquire a Swiss banking licence in lieu of the Curacao licence.²³⁸ According to Cheng, Gaillard “had put a EUR 2 million deposit on that Swiss bank licence, with a total payment of EUR 23.8 million to be paid in February”.²³⁹ While this Swiss licence would cost a lot more than the Curacao licence, Cheng claimed that Ling and Feng had explained that Tjandra did not have to pay more although he was going to get the benefit of a more expensive licence.²⁴⁰ He also testified that he was told by Ling and Feng that Tjandra had been informed that there would be more than one banking licence for the US\$8.5m.²⁴¹ This evidence was not tested or explored in cross-examination.

174 Although Cheng’s evidence was vague and unsatisfactory, I must assess the matter in totality.

175 First, Cheng testified that he relied on Ling with respect to financial matters given their respective roles and responsibilities. Cheng is a medical doctor by training and was primarily in charge of the back-end technology and

²³⁶ AB at p 99.

²³⁷ Day 2 Transcript at p 21, lines 1-3.

²³⁸ Day 2 Transcript at p 21, lines 14-20.

²³⁹ Day 2 Transcript at p 21, lines 14-17.

²⁴⁰ Day 2 Transcript at p 22, lines 12-19.

²⁴¹ Day 2 Transcript at p 22, lines 5-14.

operational aspects of the business.²⁴² On the other hand, Ling oversaw the financial aspects of the business.²⁴³ Cheng had left the financial and valuation issues to Ling – someone who he trusted as a financial expert.²⁴⁴ It is therefore not unreasonable for Cheng to have deferred to Ling on financial matters.

176 Second, the evidence suggests that Cheng’s suspicions about the deal were only developed around June 2019 – after the Valuation Representation was made. According to Cheng, he was informed about the misappropriated funds on or around June 2019 by Gaillard.²⁴⁵

177 It was on 9 June 2019, that Cheng raised his suspicions to Ling about the gross overvaluation of the cost of the Comoros banking licence.²⁴⁶

[09/06/19, 00:19] [Cheng]: can i call you in about 20min?

[09/06/19, 00:20] [Ling]: can message ? cant really talk here

[09/06/19, 00:20] [Cheng]: i’m really quite suss about feng’s deals

[Gaillard] asked me how much we paid for comoros

i said 8.5m

darryl was here

[Gaillard] said you got to be kidding

300k for license comoros, 500k w swift bic8

178 Third, on 18 June 2019, Cheng reached out to warn Tjandra about the fraud to stop him from making further payments to the venture.²⁴⁷

²⁴² Cheng’s 1st AEIC at paras 32-33; Day 1 Transcript at p 136, lines 14-22.

²⁴³ Cheng’s 1st AEIC at para 13-14; Day 1 Transcript at p 140, lines 3-19.

²⁴⁴ Cheng’s 1st AEIC at para 13-14; Day 1 Transcript at p 140, lines 3-19.

²⁴⁵ Cheng’s 1st AEIC at para 48-49.

²⁴⁶ Plaintiff’s Additional Bundle of Documents at p 74.

²⁴⁷ Cheng’s 1st AEIC at para 52; AB at p 194; Tjandra’s AEIC at paras 41-42.

179 Fourth, Cheng readily and almost immediately agreed to repay the monies he had received from Tjandra, and repaid most of it (see above at [83]).

180 Although not conclusive, Cheng’s conduct supports his case that he was not aware of the falsity of the Valuation Representation when it was made. On balance, I find that Tjandra has not satisfied the high standard of proof required to establish a claim in fraudulent misrepresentation.

Conclusion

181 In summary, I find that:

- (a) Tjandra entered into the Agreement, which is a contract with the Original Shareholders to, *inter alia*, purchase a 20% shareholding in Star Dust for US\$4m. Cheng breached the Agreement by failing to transfer, or procure the transfer, of the Star Dust Shares to Tjandra.
- (b) I also find that Cheng has been unjustly enriched at the expense of Tjandra, and that Cheng’s defence of change of position fails.
- (c) I reject Tjandra’s claim for fraudulent misrepresentation against Cheng as Tjandra has failed to meet his burden of proof.

182 I therefore enter judgment in favour of Tjandra against Cheng in the sum of US\$500,000. I also order Cheng to pay Tjandra costs fixed at S\$90,000, with reasonable disbursements to be fixed by me unless agreed by the parties.

Hri Kumar Nair
Judge of the High Court

Koh Junxiang, Ng Pi Wei (Clasis LLC) for the claimant;
Lim Tong Chuan (Excelsior Law Chambers LLC) for the defendant.
