

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

[2021] SGHC(A) 6

Civil Appeal No 11 of 2021

Between

Poh Chiak Ow

... Appellant

And

United Overseas Bank Ltd

... Respondent

In the matter of Suit No 762 of 2019

Between

Poh Chiak Ow

... Plaintiff

And

United Overseas Bank Ltd

... Defendant

JUDGMENT

[Tort] — [Misrepresentation] — [Fraud and deceit]

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Poh Chiak Ow
v
United Overseas Bank Ltd

[2021] SGHC(A) 6

Appellate Division of the High Court — Civil Appeal No 11 of 2021
Woo Bih Li JAD and See Kee Oon J
28 June 2021

23 August 2021

Judgment reserved.

Woo Bih Li JAD (delivering the judgment of the court):

Introduction

1 This is an appeal from the decision of the High Court judge (“the Judge”) who dismissed the appellant’s claim that the respondent was vicariously liable for the alleged deceit of its employee. The parties agree to dispense with an oral hearing and for the matter to be heard by a *coram* of two judges, and we have decided to do so to save judicial resources and to reduce costs for both parties. After considering the submissions, we dismiss the appeal and set out our reasons below.

The material facts

2 The appellant, Mr Poh Chiak Ow (“Poh”), was at all material times a privilege banking customer of the respondent, United Overseas Bank Ltd

(“UOB”).¹ From early 2017 to August 2018, one Mr Ashley Wong Xianwei (“Wong”) served as Poh’s relationship manager with UOB.² From early 2017 to early October 2017, with Wong’s involvement, Poh invested in four different bonds which were issued by reputable financial institutions.³

3 In October 2017, also with Wong’s involvement, Poh invested US\$200,000 in PixelTrade (UK) Limited (“PixelTrade”) and in December 2017, invested a further sum of US\$300,000 into PixelTrade.⁴ These investments totalling US\$500,000 constitute the subject matter of this appeal. The sums were transferred by Poh to PixelTrade’s bank account with UOB.⁵ In the court below, references to “PixelTrade” and “PixelTrade Product” were used interchangeably. We will only refer to “PixelTrade” to avoid confusion.

4 From January 2018, Poh tried to recover his investment in PixelTrade but was unable to get any of his money back.⁶ Around August 2018, Wong left UOB as he was going for surgery the next month, and one Mr Sebastian Goh (“Goh”) took over as Poh’s relationship manager.⁷

¹ ROA IIIA 13 at para 12.

² ROA IIIA 21 to 22, paras 34 to 35.

³ ROA IIIA 27 to 29, paras 51 to 55

⁴ ROA IIIA 44 paras 76, 77 and 79, p 66 to 67 at para 115.

⁵ ROA IIIA 44 paras 76 and 77; ACB IIF 1660 to 1662.

⁶ ROA IIIA 47 at paras 84 and 85, 81 paras 134 and 135.

⁷ ROA IIIA 57 at para 99; ROA IIIC 698 at para 1.

The parties' cases before the High Court

Poh's case

5 Poh filed a writ of summons against UOB on 29 July 2019.⁸ In his Statement of Claim, Poh pleaded as follows. At a meeting in September 2017, Wong had represented to him that:⁹

- (a) one of UOB's approved investment products was a product called PixelTrade ("the First Representation");
- (b) PixelTrade was an established company that loaned moneys to commercial institutions ("the Second Representation");
- (c) PixelTrade had, over the preceding seven years, garnered good yields and/or returns on investment averaging 7–8% per annum for UOB's privilege banking customers who had invested in PixelTrade ("the Third Representation");
- (d) UOB would guarantee the return and/or repatriation of any principal amounts invested in PixelTrade, and that upon a request by Poh for the return and/or repatriation of any principal amounts invested, such principal amounts would be returned and/or repatriated to Poh within a calendar month ("the Fourth Representation");
- (e) UOB was then actively recommending PixelTrade to its privilege banking customers ("the Fifth Representation"); and

⁸ HC/S 762/2019.

⁹ ROA IIIA 38 to 39 at para 72; SOC para 9 at ACB IIA 10.

- (f) even Wong’s colleagues, including his manager, were investing in PixelTrade (“the Sixth Representation”).

6 Poh relied on the representations and was induced by them into investing US\$200,000 in PixelTrade.¹⁰

7 In December 2017, Wong told Poh that UOB was of the view that PixelTrade was continuing to garner handsome yields and returns on investment (“the Seventh Representation”).¹¹ Poh relied on this, as well as the earlier representations, and invested a further US\$300,000 into PixelTrade.¹² We will refer to the seven representations collectively as “the Representations”. Poh alleged that but for these Representations, he would not have invested US\$500,000 in PixelTrade.¹³

8 Poh claimed that the Representations were made with no honest belief, and/or no reasonable grounds for belief, and/or no *bona fide* intention that they were true. Alternatively, they were made fraudulently or recklessly.¹⁴

9 Poh hence sought to recover the US\$500,000 from UOB on the ground that it is vicariously liable to him, since Wong was an employee, agent and/or representative of UOB.¹⁵

¹⁰ SOC para 10 at ACB IIA 11.

¹¹ SOC para 11 at ACB IIA 11.

¹² SOC para 11 at ACB IIA 11.

¹³ SOC para 12 at ACB IIA 12.

¹⁴ SOC para 16 at ACB IIA 13.

¹⁵ SOC para 24 at ACB IIA 15.

10 Poh also suggested that UOB was negligent. He pleaded that UOB owed him a duty of care to act with reasonable care, or ordinary care and skill, in handling remittance moneys and to protect such moneys from pure economic loss, and that UOB breached that duty.¹⁶ However, we will say no more about this negligence claim as Poh is not pursuing it on appeal.

11 At trial, Poh gave evidence in support of his case.

UOB's case

12 UOB pleaded that the relationship between UOB and Poh was not advisory in nature, and that UOB had never entered into an agreement with Poh in which UOB was obliged to advise Poh on its investments.¹⁷ No financial advice or representation was made by UOB and/or Wong to Poh prior to Poh's purchase of financial products through UOB.¹⁸ Even if any such advice or representation was made, Poh did not rely on them, and any decision made by Poh to purchase financial products was made solely on his own accord and of his own volition.¹⁹ Furthermore, any alleged representation made by Wong to Poh fell outside of the scope of Wong's role as a relationship manager to Poh and was made in his personal capacity. As such, UOB would not be vicariously liable for them.²⁰

¹⁶ SOC para 24(e) and (f).

¹⁷ Defence para 11 at ACB IIA 22 to 23.

¹⁸ Defence para 15 at ACB IIA 27; paras 18 and 20 at ACB IIA 29.

¹⁹ Defence para 11 at ACB IIA 22 to 23, para 15 at ACB IIA 27 to 28; paras 18 and 20 at ACB IIA 29 and 30.

²⁰ Defence para 32c at ACB IIA 38; para 17 at ACB IIA 28.

13 UOB also pleaded that based on wealth planner forms which Poh had provided answers to and signed, Poh’s computed risk profile around 4 October 2017 to 20 December 2017 was “C5”, which was described as:²¹

I want to maximize my return. I am comfortable with taking significant levels of fluctuation to the value of my investments including the possibility of losing more than my initial investments

14 Wong gave evidence on behalf of UOB. He testified that his role was non-advisory in nature and that UOB’s customers retained sole discretion whether to purchase any financial product.²² Before a customer purchased a financial product, they would have to fill up a “My Wealth Planner” form (“MWP form”) for UOB to ascertain the customer’s financial situation, investment objectives and risk profile.²³ Poh filled up MWP forms each time before he purchased the four bonds referred to at [2] above.²⁴ In all four MWP forms, he indicated that the objective important to him was wealth accumulation.²⁵ At no time did Poh tell Wong (or indicate in the MWP forms) that he was risk-averse in respect of the principal amounts invested by him.²⁶ Poh also knew that the four bonds he had purchased were not principal-guaranteed.²⁷

²¹ Defence para 12 at ACB IIA 23.

²² Wong’s AEIC para 4 at ROA IIIC 699.

²³ Wong’s AEIC para 8 at ROA IIIC 700.

²⁴ Wong’s AEIC paras 8 and 9 at ROA IIIC 700.

²⁵ Wong’s AEIC paras 15b, 19b, 23b and 27b at ROA IIIC 702 to 710; see 1ABD 350 at ROA V(B) 356, 396, 414, 428.

²⁶ Wong’s AEIC para 12 at ROA IIIC 701.

²⁷ Wong’s AEIC para 13 at ROA IIIC 702.

15 Wong also testified that his conversation with Poh concerning PixelTrade was on a personal level and was not in his capacity as Poh’s relationship manager.²⁸ He denied making the First to Fifth and Seventh Representations²⁹ and alleged that he had told Poh that PixelTrade was not UOB-approved.

The decision of the High Court

16 The Judge released his decision in *Poh Chiak Ow v United Overseas Bank Ltd* [2020] SGHC 275 (“the Judgment”) on 30 December 2020.

17 He found that as UOB acknowledged that PixelTrade was not among UOB’s approved investment products,³⁰ the First Representation, and as a corollary, the Fourth, Fifth and Seventh Representations, would have been false if Wong had made them (the Judgment at [15]). Since the Fourth, Fifth and Seventh Representations were dependent on PixelTrade having been approved for investment by UOB in the first place, the First Representation was of prime importance (the Judgment at [18] to [20]). However, there was a sea change in Poh’s case between what was pleaded (and as stated in his affidavit of evidence-in-chief) and what was advanced in Poh’s opening statement and at trial concerning the First Representation. Instead of alleging that Wong had *positively* made the First Representation (as pleaded), Poh asserted that Wong had *omitted* to inform Poh that PixelTrade was not a UOB-approved product

²⁸ Wong’s AEIC para 44 at ROA IIC 717.

²⁹ Wong’s AEIC para 45 at ROA IIC 717; para 50 at p 720.

³⁰ Defence at para 17 (see ACB IIA 28).

(the Judgment at [27] to [33]).³¹ The Judge went on to consider whether the Representations were made, focusing on the First Representation.

18 He found that none of the Representations was evidenced in writing, nor did the WhatsApp messages between Poh and Wong refer to the Representations (the Judgment at [26]). It was hence merely a case of Poh's word against Wong's word that the Representations had been made (the Judgment at [26]). The Judge believed Wong's evidence over Poh's, namely, that Wong had never made the Representations, and that Poh's investment in PixelTrade was not made in reliance on any of the Representations (the Judgment at [93]). He also accepted that Wong had told Poh that PixelTrade was not UOB-approved (the Judgment at [94]).

19 First, the MWP forms signed by Poh pertaining to the four bonds ([2] above) stated that the principal was not guaranteed,³² and Poh should thus have known that UOB did not guarantee his investments (the Judgment at [45]). There was also a risk warning statement for overseas listed investment products, and Poh should have known from this that PixelTrade might not be regulated by the Singaporean authorities (the Judgment at [48] to [49]).³³ In addition, the MWP forms showed that Poh's risk profile was moderate to high, which contradicted Poh's claim that he would only make investments where the amount invested was not at risk (the Judgment at [42]).³⁴

³¹ See Plaintiff opening statement paras 22 to 23 (ROA IV(A) 54); see also ROA IIIF 1624:1-2.

³² See eg ROA V(B) 471, 473.

³³ See eg ROA V(B) 347.

³⁴ ROA V(B) 365, 366, 395, 427, 470.

20 Second, since Poh signed UOB documents³⁵ in relation to the bonds he purchased through UOB, but did not receive or sign any UOB documents pertaining to his investment in PixelTrade (except the bank transfer forms), he should have known from this that he was not investing in PixelTrade through UOB. This was especially since he made his fourth bond investment through UOB on the same day that he made his first investment in PixelTrade (the Judgment at [51]).³⁶

21 Third, Poh had been dealing directly with PixelTrade and not UOB in relation to the PixelTrade investment, as can be seen from the fact that he: (a) submitted information to PixelTrade to open an account;³⁷ (b) received emails from PixelTrade;³⁸ (c) signed a limited power of attorney;³⁹ and (d) received monthly trade reports from PixelTrade (the Judgment at [52]). These dealings began even before Poh's first transfer of money to PixelTrade in October 2017 (the Judgment at [53]).

22 In contrast, Poh did not receive anything from UOB in relation to his PixelTrade investment, even though he received trade confirmations for his bond purchases through UOB. His PixelTrade investment did not feature in the monthly statements he received from UOB. He received foreign exchange reports from PixelTrade rather than from UOB,⁴⁰ and his returns from the PixelTrade investment were credited into his account with PixelTrade⁴¹ and not

³⁵ See eg ROA IIIC 728 onwards.

³⁶ See ROA IIIC 718 paras 46 to 48.

³⁷ Defendant's Bundle of Documents ("DBD") p 1.

³⁸ DBD 2, 8.

³⁹ DBD 8-15 (email shows that signed LPOA was sent to Poh on 15 September 2017).

⁴⁰ DBD 6 to 7.

⁴¹ ROA V(C) 684 to 686.

to his account with UOB. Further, while Wong updated Poh by WhatsApp concerning Poh's coupon payments for the bonds he purchased through UOB, Wong did not do so for Poh's returns with PixelTrade; this was communicated directly to Poh by PixelTrade (the Judgment at [59]).

23 Furthermore, when Poh became concerned about the recoverability of his PixelTrade investment, he first sought to resolve it with PixelTrade and only approached UOB later on (the Judgment at [61]). When he found out from PixelTrade that UOB had closed its bank account, he did not raise this with UOB but instead asked Wong to arrange a meeting with representatives of PixelTrade (the Judgment at [62]). If Poh had believed that the investment in PixelTrade was UOB-approved, he would have approached UOB instead (the Judgment at [62]).

24 Fourth, Poh came up with the story about the Representations only after much delay. For example, at a meeting with Wong and PixelTrade representatives on 28 August 2018, Poh did not mention any of the Representations (the Judgment at [63]). In particular, Poh did not mention that Wong had told him that PixelTrade was UOB-approved (the Judgment at [63] to [64]).⁴² It was only on 23 October 2018 that Poh finally accused Wong of deceiving him, but this was promptly denied by Wong (the Judgment at [67] to [68]).⁴³ In addition, even in Poh's police report on 26 October 2018⁴⁴ and in Poh's email to UOB on 3 November 2018,⁴⁵ Poh did not mention about the Representations or say that Wong had deceived him (the Judgment at [71] to

⁴² ROA V(C) 727 to 743.

⁴³ ROA V(A) 41.

⁴⁴ ROA V(C) 746.

⁴⁵ ROA IIIC 650.

[74]). Various UOB representatives also testified that at a meeting on 15 April 2019, Poh had admitted that he was aware that his investment in PixelTrade was not UOB-approved (the Judgment at [82] to [84]).⁴⁶ An email by Poh dated 23 May 2019 to UOB was also silent on the Representations (the Judgment at [85]).⁴⁷ Even in a letter of demand from Poh's lawyers to UOB dated 12 June 2019, only three of the seven Representations were mentioned (the Judgment at [88] to [91]).⁴⁸

25 Fifth, Poh did not even seek to prove that the Second, Third and Sixth Representations were false, which cast doubt on his claim that he was defrauded (the Judgment at [17]).

26 The Judge alternatively found that even if Wong had defrauded Poh, it would not be fair, just and reasonable to hold UOB vicariously liable since the Representations were thoroughly contradicted by the documents which Poh received from UOB (the Judgment at [96] and [97]). UOB had made clear through these documents that it did not guarantee any investments other than structured deposits, and that investments carried risks (the Judgment at [97]). Further, the complete lack of any UOB documentation on Poh's investment with PixelTrade was a further sign to Poh that he was not investing in a UOB-approved product (the Judgment at [97]).

⁴⁶ ROA IIC 875 at para 10a; ROA IIID 1015, 1172; ROA IIIF 1664:16-18; 1714:4-8; 1725:23-25; 1726:30-31.

⁴⁷ ROA V(A) 260.

⁴⁸ ROA V(C) 269.

The parties' arguments on appeal

Poh's arguments

27 Poh focuses on the First Representation in his Appellant's Case. He argues that the Judge erred in finding that Wong did not make the First Representation.⁴⁹ The Judge failed to consider the following:

(a) There was a recording of a clear admission made by Wong at a meeting on 28 August 2018 that he had recommended PixelTrade to Poh as there were a lot of UOB personnel who had invested in the same.⁵⁰ In the same recording, Poh can be heard saying that he informed Wong he wanted low-risk products and Wong replying that the product was low-risk.⁵¹ Also, Poh can be heard saying that he had already told Wong from the "very beginning" that he only wanted to do "thing that is UOB-approved".⁵² In response, Wong stated that he understood and that no matter what, he would get Poh's funds back for him.⁵³ We set out at [46] below the part of the transcript of the meeting which Poh relies on.

(b) There were WhatsApp messages from Poh to Wong on 23 October 2018 in which Poh accused Wong of deceiving him that PixelTrade was approved by UOB for investment and Wong replied that he would do everything within his power to get back the funds for Poh.⁵⁴ We set out the messages at [52] below.

⁴⁹ AC at paras 7, 10.

⁵⁰ AC at paras 10, 16

⁵¹ ACB IIC p 728.

⁵² AC at para 17p.

⁵³ AC at para 17p and 17q.

⁵⁴ AC at para 17s.

(c) The extent of Wong’s involvement and participation in introducing and facilitating the investment, and his role in being a conduit between Poh and PixelTrade, made it inherently probable that he had made the First Representation. In particular: Wong had discussed PixelTrade with Poh alongside with another UOB-approved product;⁵⁵ Wong was the one who called Poh to ask him to withdraw his PixelTrade investment due to PixelTrade’s “restructuring”;⁵⁶ Wong advised Poh on how to reply PixelTrade’s email;⁵⁷ Wong appeared to have an intimate knowledge of PixelTrade’s inner workings and was even able to arrange for the main person of PixelTrade to speak to Poh;⁵⁸ Wong described himself as an “introducer” of PixelTrade;⁵⁹ and a staff of PixelTrade told Poh that he would assist with Poh’s withdrawal “[o]n behalf of [Wong]”.⁶⁰

(d) Poh did not know and had not met anyone from PixelTrade and would not have parted with US\$500,000 unless Wong had recommended PixelTrade to him.⁶¹

(e) Poh asserts that he first found out that PixelTrade may not be UOB’s product during a conversation with Goh in August 2018.⁶²

⁵⁵ AC at para 17.

⁵⁶ AC at para 17h.

⁵⁷ AC at para 17i.

⁵⁸ AC at para 17u.

⁵⁹ AC at para 17v.

⁶⁰ AC at para 17v.

⁶¹ AC at para 17p.

⁶² AC at para 21.

(f) In a letter to UOB's deputy chairman in November 2018, Poh had informed UOB that his decision to make the PixelTrade investment was on the basis that it was with UOB.⁶³

(g) Poh asserts that he had informed UOB's representatives in a meeting in April 2019 of Wong's misrepresentations.⁶⁴

28 Poh also argues that the Judge erred in the following areas:

- (a) In relying on the MWP forms as Poh was only asked to sign on particular pages, was not brought through the documents, did not receive a copy of them at the material time, and Wong testified that he had pre- or post-populated the documents.⁶⁵
- (b) In failing to note that Wong's testimony regarding the MWP forms was contradictory.⁶⁶
- (c) In finding that Poh should have approached UOB first instead of PixelTrade when UOB closed PixelTrade's UOB account ([23] above), because Poh approached Wong and Wong was a representative of UOB.⁶⁷
- (d) In finding that Wong was unlikely to have encouraged Poh to make a police report if Wong had made misrepresentations,

⁶³ AC at para 24.

⁶⁴ AC at para 25.

⁶⁵ AC at para 29.

⁶⁶ AC at para 32.

⁶⁷ AC at para 34.

when the WhatsApp communications show that it was Poh who first threatened to make a police report.⁶⁸

- (e) In relying on the fact that Poh did not make allegations of misrepresentation in his letter to the deputy chairman, since these allegations were already made in his contemporaneous exchanges with Wong.⁶⁹

29 Poh also argues that UOB should be vicariously liable for Wong's misrepresentations as: (a) Wong was an employee of UOB; (b) Wong's conduct possessed a sufficient connection with the relationship between Poh and UOB, and increased the risk of the tort being committed; and/or (c) Wong was UOB's agent and/or representative.⁷⁰

UOB's arguments

30 UOB seeks to uphold the Judge's decision and reiterates various points made by the Judge.⁷¹ It argues that Poh has failed to address his change of position at trial in respect of the First Representation (see [17] above).⁷² Further, Poh errs in his Appellant's Case in thinking that the allegation that Wong had recommended PixelTrade to him is evidence that Wong had made the First Representation.⁷³ In addition, while Poh argues that the Judge erred in failing to consider why Wong advised Poh on how to respond to PixelTrade's email and arranged for PixelTrade's representatives to speak to Poh, these do not assist

⁶⁸ AC at para 35.

⁶⁹ AC at para 36.

⁷⁰ AC at para 43.

⁷¹ See eg RC at paras 63, 66, 67, 86, 90, 99, 101 to 104.

⁷² RC at paras 27 to 40.

⁷³ RC at paras 41 to 43.

Poh because Wong had testified that he had simply helped Poh as a friend.⁷⁴ For completeness, UOB argues that the Judge did not err in any of his findings of fact.⁷⁵

31 UOB also argues that the Judge did not err in finding that it was not vicariously liable to Poh.⁷⁶

The issues on appeal

32 The main issues to be considered in this appeal are:

- (a) whether the Judge erred in finding that Wong did not make the Representations to Poh; and
- (b) if so, whether the Judge erred in finding that in any event, UOB is not vicariously liable to Poh.

Our decision

Whether the First Representation was made

33 The principles governing appellate interference with a trial judge's factual findings are well established (see *Charles Lim Teng Siang and another v Hong Choon Hau and another* [2021] 2 SLR 153⁷⁷ at [62]). The findings of a trial judge should be taken as *prima facie* correct and should not be disturbed in the absence of sound reasons. An appellate court will be slow to overturn the trial judge's findings of fact unless it can be shown that those findings were

⁷⁴ RC at paras 53 to 55.

⁷⁵ RC at para 75.

⁷⁶ RC at paras 105 to 114.

⁷⁷ Respondent's supplementary bundle of authorities dated 4 June 2021 Tab 1.

plainly wrong or were against the weight of the evidence before the court. If the trial judge’s findings of fact are based on his assessment of the witnesses’ veracity and credibility, the appellate court should exercise even more restraint in overturning such findings.

34 In the present case, Poh, as the plaintiff, bears the burden of proving that the First Representation was made. As the Judge noted, there is no direct documentary or material evidence to prove or disprove whether Wong had made the First Representation (and other representations) to Poh. The question rests on Poh’s word against Wong’s word, as well as inferences which can be drawn from the correspondence, documents, and other circumstances. In such a situation, the court should refrain from overruling the Judge unless the inferences he drew were plainly wrong or against the weight of the evidence.

35 In our view, there is no basis for us to disturb the Judge’s main conclusion that the First Representation was not made. We agree with the Judge that Poh’s inexplicable delay in complaining about the First Representation suggests that it was not made. Poh raises various arguments and points which he claims the Judge had failed to consider. However, they do not assist him because his arguments or points are either not borne out by the evidence or are contradicted by the evidence; or are equivocal, as they merely suggest, at their highest, that the Judge had relied on evidence which he should not have in reaching his decision. Although we think that the Judge may have erred in finding that the Fifth and Sixth Representations were not made, this is inconsequential as Poh has not proved that these representations were false.

The “sea change” in Poh’s case

36 We first address the Judge’s view that Poh had shifted his case on the First Representation. The Judge referred to this as a “sea change”.

37 Poh's pleaded case with regard to the First Representation was that Wong had told him that PixelTrade was UOB-approved.

38 However, the Judge noted that Poh's opening statement for the trial made a different allegation, *ie*, that Wong *neglected* to inform Poh that PixelTrade was not approved by UOB for investment. Thus, the Judge stated at [30] and [31] of the Judgment that:

30 [Poh's] opening statement states at paras 22–23:

[Wong] made various representations in relation to the PixelTrade Product which led [Poh] to believe that the PixelTrade Product was [UOB's] approved investment product.

...

If the PixelTrade Product was not [UOB's] approved investment product, [Wong] neglected and failed to inform [Poh] of the same, whether in writing or otherwise.

31 The assertion that [Wong] neglected or failed to correct [Poh's] belief that his PixelTrade investment was UOB-approved has not been pleaded. Moreover, it is an allegation of negligence, rather than of fraud.

[emphasis in original]

39 The Judge also referred to Poh's counsel's cross-examination of Wong where he had suggested that Wong had failed to mention to Poh that the product had not been approved by UOB for investment. We set out below the relevant extract of the transcript during the trial on 14 August 2020:⁷⁸

Q ---in relation to the Pixeltrade investment. My client is saying that, essentially, he had relied upon the representations that you had made, right. I think we've been through them. Namely, that it was a UOB-approved investment.

A Sorry, your question---yes, yes, yes.

Q Yes, yes, I'm going to get to my question.

⁷⁸ ACB II Part F pp 1664-1665.

A Sorry, yah.

Q I'm just trying to explain why---

A Yah.

Q ---you are here essentially.

A Okay.

Q Right, and that, essentially, he had thought it was a UOB-approved investment because you'd never mentioned otherwise and he was greatly investment, of course. Right, so--
-

A No, sorry. So right now, am I supposed to answer?

Q Hang on for a little while. I haven't asked---

A Sorry, you are waiting for my response or---

Q I'm merely trying to explain why you are here just to make sure---

A Oh, okay.

Q ---that you know why you are here.

A Okay, so I, not required to say anything?

Q Right, alright.

A Yah.

Court: Mr Tan, I must say I am finding that a bit---

Tan: Okay, fine. I---

Court: ---confusing.

A Yah, like you are---you are---you are waiting for my reply and I don't understand what's that on.

Q Alright.

Court: And, Mr Tan, can I tell you what I am specifically finding confusing?

Tan: Yes, Sir.

Court: You shift between saying Mr Wong told Mr Poh certain things and then you say Mr Poh thought certain things. So if you made that a bit clearer---

Tan: Right.

Court: ---I think Mr Wong will find it easier---

Tan: Right.

Court: ---to talk about whether he is being accused of having said some things---

Tan: Yes, Sir.

Court: ---or having not said some thing or Mr Poh having thought some things.

40 The Judge referred to these as a “shift in [Poh’s] case” (the Judgment at [32]).

41 In the Appellant’s Case, Poh did not address the Judge’s comment about this sea change in his position. In his subsequent skeletal submissions, he denied that he had abandoned his case that Wong had made the First Representation, and suggested that the reference to Wong’s omission to inform him that the product was not approved by UOB was merely an alternative argument.

42 The problem with this is that Poh’s opening statement did not make it clear that this was an alternative argument, although we agree that it also does not state that he was abandoning his case on the First Representation.

43 Furthermore, while we agree that the transcript also does not clearly show that Poh was abandoning his case on the First Representation, we are of the view that Poh’s counsel had conflated the two, *ie*, he drew no distinction between an allegation that Wong had made the First Representation and an allegation that Wong had omitted to inform Poh that PixelTrade was not approved by UOB. The latter was not stated as an alternative. Indeed, the Judge appeared to have drawn the conflation to counsel’s attention but counsel did not clarify which of the two propositions he was adopting or if he was adopting both of them as alternatives.

44 Therefore, even if Poh had not abandoned his case on the First Representation, the conflation did not assist him. It showed that his own counsel was not clear as to what Poh's case was.

The alleged admissions by Wong

45 We now address Poh's arguments about alleged admissions made by Wong.

46 As mentioned, Poh relies on a recording he made of a meeting between Poh, Wong, and various PixelTrade representatives the next day on 28 August 2018. We set out that part of the transcript which Poh relies on as well as other parts of the transcript which he did not refer to in his Appellant's Case (see [27(a)] above):⁷⁹

[Wong]: Uh... the other time, I recommended this to you, right, OK, it's because there were a lot of our UOB people in it. OK? Even our head of strategy in UOB was inside.

...

[Poh]: Because on the very first place [sic], when UOB assigned you to me...

[Wong]: Um.

[Poh]: ... on all the things I filled up, I tell you 'low risk' [sic].

[Wong]: OK, at this point in time, right, I can... I can tell you from the bottom of my heart, right, this is a low-risk product. OK? This, as far as I'm being told lah, at any point in time, right, you want to have your funds back—

...

[Poh]: if I want to find these investment ah, I don't have to go through you, know? I can go everywhere? Why I'm not doing it? I already told you from the very beginning: I only want to do thing that is UOB-approved. From the very beginning! And bond... that one to be very safe. And this, my retirement fund [sic].

⁷⁹ ACB IIC pp 647 to 648.

[Wong]: I understand. So Mr. Poh, what I will do now, right, is no matter what, I'll get back your funds for you. And no matter what, these funds is not [unclear]. The funds just require a little bit more time.

47 In so far as Poh claims that he wanted low-risk products and Wong had said that PixelTrade was low-risk, Poh makes two arguments which are inconsistent. In Poh's skeletal arguments, he argues that Wong had "seemingly applied [UOB's] criterion"⁸⁰ of low risk to PixelTrade, but he simultaneously argues that Wong, "was still representing to [Poh] that PixelTrade was 'low risk'".⁸¹ It therefore appears to us that Poh, even at the appeal stage, is unable to make up his mind as to whether he was alleging that Wong had actually represented to him, before the investments were made, that PixelTrade was low-risk, or that Wong had recommended the product to him because Wong had thought (to himself) that it was low-risk.

48 We accept that Wong had recommended PixelTrade to Poh. However, that is not enough for Poh to succeed. Even if Wong had negligently thought that PixelTrade was low-risk, that would not assist Poh because Poh is no longer pursuing a negligence claim on appeal.

49 As regards the question of whether Wong had represented to Poh that PixelTrade was a low-risk product before the investments were made, we do not need to consider it as this was not one of the Representations which Poh had pleaded.

50 In so far as the transcript of the audio recording shows that Wong had admitted that he had recommended PixelTrade to Poh because many others in

⁸⁰ Appellant's skeletal submissions at para 10.

⁸¹ Appellant's skeletal submissions at para 10.

UOB were also investing in it, that too does not assist Poh because it was not clear from the transcripts whether Wong was saying that he had made this representation to Poh *before* Poh invested in PixelTrade, or whether Wong was saying that he had himself believed this but had not made such a representation. In any case, even if Wong had made that representation, which is the Sixth Representation, Poh did not prove that it was false and he thus did not prove deceit on this basis.

51 In relation to the First Representation, which is the focus of Poh's appeal, the audio recording does not suggest that the representation was made.

52 In so far as Poh relies on the WhatsApp messages between himself and Wong on 23 October 2018 to suggest that Wong had not disagreed with his accusation of deceit, Poh has only selectively quoted the portions which serve his case, but these do not reflect the full picture. We set out the full context of the relevant WhatsApp messages here:⁸²

[23/10/18, 23:25:32] Poh: You have no idea and get me into this

[23/10/18, 23:26:47] Poh: **Deceive me is a UOB approve fund**

[23/10/18, 23:26:57] Wong: **Mr poh I nv deceive you**

[23/10/18, 23:27:07] Poh: I told you from day one

[23/10/18, 23:26:57] Wong: I alr told you right from the start

[23/10/18, 23:27:20] Poh: I only invest UOB approved fund

...

[23/10/18, 23:34:22] Poh: You tell me they take money and loan to MNC etc, this a trading company and trade all FX commodities etc, how to guarantee my fund without risk?

...

⁸² ROA V(A) 41.

[23/10/18, 23:38:52] Wong: Mr poh, no matter I'll do everything I can in my power to get back the funds for you

[emphasis added]

As can be seen, Wong had unequivocally denied that he had deceived Poh. Furthermore, it is unclear from what Poh said to Wong whether Poh was accusing Wong of making the First Representation to him or failing to tell him that PixelTrade was not UOB-approved.

The other evidence that Poh relies on

53 We now turn to the other evidence that Poh relies on.

54 First, Poh states that on or around 11 September 2017, Wong had met Poh at Poh's office. Thereafter, Wong sent Poh a picture of Poh's handwritten note which suggested that PixelTrade was discussed alongside other products which were approved for investment by UOB. Taking Poh's argument at its highest and assuming this alleged fact to be true, it still would not amount to the First Representation which Poh was relying on. At most, the discussion may have caused Poh to assume that PixelTrade was approved by UOB, but this was not Poh's pleaded case.

55 Second, Poh relies on evidence suggesting that Wong was an introducer and a conduit between PixelTrade and Poh, and that Wong was allegedly intimately involved with PixelTrade. He argues that this proves that Wong had made the First Representation. We are of the view that while the evidence that Poh relies on may suggest that Wong recommended the investment and knew someone in PixelTrade, such evidence does not go the further step of showing that any misrepresentation was made by Wong. Wong had explained that he had gotten involved as PixelTrade was not very responsive to Poh and Poh kept

asking Wong for help. Hence, Wong helped Poh out as a friend,⁸³ on a personal level, and not as part of his job.⁸⁴ Wong was able to better network with PixelTrade because he personally knew one “Andrew” who worked in PixelTrade.⁸⁵ In any event, the evidence which Poh relies on does not lead to any inference that the First Representation was made.

56 Third, Poh argues that there were no independent means available to him to confirm whether PixelTrade was UOB-approved, and he had to rely on Wong’s word on this.⁸⁶ However, this is equivocal because even if Poh had no other way of verifying if PixelTrade was UOB-approved, it does not mean that Wong had made the First Representation.

57 There is some other evidence which Poh raises to support his case: Poh had emailed Wong at his official UOB email account concerning PixelTrade;⁸⁷ Wong asked Poh to meet him at UOB’s Northpoint branch to transfer US\$200,000 to PixelTrade’s account with UOB, and likewise arranged to meet at UOB for the further US\$300,000 transfer;⁸⁸ and Wong had undertaken to ensure that Poh got his money back and even appeared to be willing to pay Poh back in instalments out of his own pocket.⁸⁹

58 However, these pieces of evidence, even if taken as true, do not aid Poh’s case. They do not necessarily mean that Wong had made the First

⁸³ ACB IIF 1601:8-13; 1602:8-11; 1604:5-11

⁸⁴ ACB IIF 1600:24; see also ROA IIIC 717 at paras 43 to 44.

⁸⁵ ROA IIIC 717 at paras 43 to 44.

⁸⁶ AC at para 30.

⁸⁷ AC at para 17l.

⁸⁸ AC at paras 17e to g.

⁸⁹ AC at para 17t.

Representation. Furthermore, the fact that Wong undertook to pay Poh back is in itself equivocal. Wong could have felt responsible for recommending PixelTrade to Poh, and such conduct was not necessarily because Wong had made any misrepresentation to Poh.

The Judge's alleged errors

59 We now turn to discuss some points on which Poh claims the Judge had erred by placing weight on.

60 First, Poh argues that the Judge erred in relying on the MWP forms as Poh had not read the forms, and there is an apparent contradiction in Wong's testimony relating to the forms (see [28(a)] and [28(b)] above).

61 However, even if Poh had not read these forms, it only means that the Judge should not have concluded from the terms in the forms that Poh had a risk profile which was moderate to high or that Poh should have appreciated that investments made through UOB were not risk-free.

62 Second, Poh argues that the Judge erred in giving weight to the fact that Poh had approached PixelTrade first to recover his investments instead of UOB. Poh submits that this was not contrary to the allegation that the First Representation was made, and he had only approached PixelTrade first in order to mitigate his loss, and even then, only on Wong's advice. We disagree and are of the view that this was an inference which the Judge was entitled to draw. Furthermore, even if the Judge was wrong to do so, it was only one of the multifarious pieces of evidence he relied upon in deciding against Poh.

63 Third, Poh argues that the Judge erred in finding that Wong was unlikely to have encouraged Poh to make a police report if Wong had made

misrepresentations, because the WhatsApp communications show that it was Poh who first threatened to make a police report.⁹⁰ However, even if Poh was the one who first threatened to make a police report, this was equivocal. The fact is that Wong did agree that Poh should make a police report and correspondingly, the Judge was entitled to draw the inference which he did.

64 Fourth, Poh argues that the Judge was wrong in finding that as the PixelTrade investment did not feature in Poh’s monthly statements from UOB, Poh would have known that it was not purchased through UOB, since there were also other UOB investments which did not feature in such monthly statements. We note that one of UOB’s witnesses admitted that a certain “AIA Platinum Legacy Policy” was a UOB-approved product which did not feature in Poh’s monthly statements from UOB,⁹¹ which showed that not all UOB-approved products would feature therein. Therefore, it may be that the Judge should not have relied on this in his finding. However, again, this was only one among various pieces of evidence which he relied on.

65 We are of the view that the above alleged errors made by the Judge, even if we take Poh’s case at its highest and consider them collectively, would not materially change the outcome of Poh’s claim. Even if the Judge was wrong to rely on such evidence to find *against* Poh, the burden of proof lies on Poh to *positively* prove his case on the First Representation, and we find that he has not done so.

⁹⁰ AC at para 35; ACB IIB 586.

⁹¹ ACB II(F) 1728:3–14.

Poh's conduct

66 In particular, Poh's conduct did not support his case that the First Representation was made. The evidence suggests that Poh did not explicitly complain about the First Representation and that his allegation was a mere afterthought.

67 First, as mentioned above at [43], Poh's counsel was not consistent as to what Poh's main allegation was. He had conflated the allegation that the First Representation was made with the allegation that Wong had omitted to warn Poh that PixelTrade was not approved by UOB.

68 Second, also as mentioned above at [51], the recording of the meeting on 28 August 2018 did not establish that the First Representation was made. This is significant because according to Poh, he had found out from Goh only the day before that PixelTrade was not UOB-approved. If this had been the case and Wong had indeed made the First Representation, Poh would almost certainly have confronted Wong on this very matter when they met on 28 August 2018, but he did not.⁹²

69 Third, also as mentioned above at [52], while Poh accused Wong of deceiving him in the 23 October 2018 WhatsApp messages, Wong denied he had deceived Poh. Furthermore, Poh did not mention the First Representation explicitly.

70 Fourth, the police report made by Poh on 26 October 2018 made no mention that Wong had deceived Poh, nor did it contain anything about the First Representation.

⁹² AC p 19.

71 Fifth, Poh finally raised the issue of the loss of his PixelTrade investment to UOB on 3 November 2018 when he wrote to UOB’s deputy chairman and chief executive officer (“3 November 2018 letter”). Parts of that document are cited in the Judgment at [73] and parts are cited at para 24 of the Appellant’s Case. We set out the letter:⁹³

...

Allow me to write to you for your urgent attention in the recovering of my investment worth US\$500,000, under the act of your employee.

I have been an UOB customer for many years, owning both business and personal privilege accounts as follows:

1. Business accounts number: XXXXXX
2. Privilege personal account number: [XXXXXX]

Since year 2015/2016, UOB has assigned [Wong] as my UOB relationship manager.

As a non-sophisticated investor, I only invest in bonds or investment that has high capital protection and/or under the advise of your relationship manager. My risk appetite and profile has always been maintained with UOB's relationship manager.

In September 2017, your relationship manager [Wong] approached me to invest in PixelTrade (UK) Limited ('PixelTrade'). I was shared the historical performance and return on investment of the company over the past 7 years. He further persuaded me that many of UOB's senior relationship managers and his manager have many clients investing in this.

Under the impression and trust that this is an UOB investment coupled with your employee's aggressive selling tactics, I invested US\$200,000 on 5 October 2017. I transferred US\$200,000 over the counter at UOB North Point Yishun branch to account no. [XXXXXX] UOB PixelTrade (UK) Limited) as instructed.

On 16 December 2017, your employee further approached me to make more investment. I make another over the counter transfer of US\$300,000 to the same account at UOB North Point Yishun branch.

⁹³ ACB II Part C 688 and 689.

In January 2018, your employee asked that I withdraw the investment as PixelTrade is undergoing restructuring. He shared that he will handle all the administrative process and that I only need to authorize him to withdraw. I proceed to authorize him as instructed.

Later, as I chased for my investment, I was told that due to some tax related matters, UOB and himself are handling the matter.

Only in August 2018, I received an email from UOB sharing that [Wong] is leaving UOB. A new relationship manager [Goh] then contacted me. Following discussion with him, I was told that PixelTrade is not an authorized UOB investment portfolio.

This sequence of events, loss of US\$500,000 and the undue inconveniences caused detrimental stress to both my family and myself. It has impacted my well-being, health and affected my business decisions.

This issue has raised a grave and worrying concern of the Integrity, Trust and Responsibility of your employee acting on behalf of UOB. It has also raised serious questions on the risk, corporate governance and compliance processes that UOB has in place to protect innocent customers like myself.

My decision to make the investment is clearly make [sic] on the basis that this is with UOB and an assigned UOB relationship manager.

I believe this is a serious matter that warrants your urgent attention and that you will find a way to return back immediately my hard-earned US\$500,000 with UOB.

Thank you and looking forward to hearing from you soon.

...

72 We note that the letter does mention that Wong represented to Poh that many of UOB's personnel had many clients investing in the PixelTrade investment in question. This is a reference to the Fifth Representation. However, the letter did not mention the First Representation. On the contrary, the letter suggested that Poh had assumed that PixelTrade had been approved by UOB for investment.

73 On 15 November 2018, one Mr Yong, who was Goh’s team leader, replied on behalf of UOB. Mr Yong requested Poh to inform UOB when the police had concluded their investigation and asked for a copy of the police report and related documents for UOB to investigate internally.

74 Subsequently, Poh emailed Mr Yong on 3 April 2019. The salient points of the email are listed in the Judgment at [77]. Poh stressed that he would only invest in capital-guaranteed investments but again, he did not mention the First Representation.

75 On 15 April 2019, Poh met with Mr Yong and Mr Yong’s colleagues, one Mr Beh and one Mr Tham. These UOB representatives gave evidence that at the meeting, Poh had admitted that he was aware that PixelTrade was not approved by UOB. Poh disputes this. He alleges that he did tell them about the Representations. The UOB representatives deny that he told them this.

76 On 23 May 2019, Poh sent an email to Mr Yong. The contents of the email are set out at [85] of the Judgment. We will set out the first sentence only:

My decision to invest in the Pixel Trade was solely based on the fact that [Wong] was the RM who UOB Privilage [sic] Banking assigned to me.

77 As the Judge observed, this cited sentence is telling. Poh was saying that his investment in PixelTrade was “solely” based on the fact that Wong was the relationship manager assigned to him by UOB. There was no mention of any of the Representations. This is telling because if Poh had indeed told the UOB representatives about the Representations at the meeting on 15 April 2019, he would have followed up on the Representations in his email to Mr Yong.

78 On 10 June 2019, UOB wrote to Poh to say that it was unable to accede to Poh's request for compensation (as stated in his earlier letter dated 3 November 2018).

79 On 12 June 2019, Poh's lawyers sent a letter of demand to UOB. The Judge referred to this letter at [88] and [89] of the Judgment where he noted:

88 On 12 June 2019, [Poh's] lawyers sent UOB a letter of demand. In it, they said that [Poh] had been induced to invest in PixelTrade by three representations made by [Wong]:

- a. a UOB approved investment product was a product called PixelTrade (the 'PixelTrade Product');
- b. the PixelTrade Product had, over the preceding 7 years, garnered handsome yields and/or returns on investment for UOB's customers; and
- c. UOB was then actively recommending the PixelTrade Product to UOB's privilege banking customers.

89 Representation (a) was referred to in [Poh's] WhatsApp chat with [Wong] in October 2018 (and denied by [Wong]), but representations (b) and (c) appear for the first time in this letter of demand. The other four Representations in the statement of claim were still conspicuously missing. In particular, the 4th Representation that UOB was guaranteeing investments in PixelTrade was not in the letter of demand. If, as [Poh] claims, he had mentioned all seven Representations at the meeting with the UOB officers on 15 April 2019, why were only three of the seven Representations mentioned in the letter of demand sent approximately two months later?

80 On 24 June 2019, UOB's lawyers replied to deny liability on UOB's part.

81 On 26 July 2019, Poh's new lawyers wrote to say that he would be commencing action against UOB. However, this letter did not mention any representation in addition to the three previously mentioned in the letter of demand.

82 On 29 July 2019, Poh commenced the present action against UOB.

83 We elaborate on the first written communication from Poh to UOB dated 3 November 2018 and Poh’s three arguments in respect of that letter.

84 First, the Appellant’s Case at para 36 argues that the Judge was wrong to rely on the fact that the 3 November 2018 letter did not contain allegations of misrepresentation, because Poh had already made these allegations in his earlier contemporaneous exchanges with Wong (“first argument”).

85 Second, the Appellant’s Case at para 37 argues, in response to the Judge’s finding that Poh had not mentioned the Representations in the meeting of 15 April 2019, that Poh had already made his position “abundantly clear” in his 3 November 2018 letter (“second argument”).

86 Third, para 29 of Poh’s skeletal arguments argues that Poh is a lay person and not legally trained. He had already mentioned in the 3 November 2018 letter that Wong had approached him to invest in PixelTrade and his decision to invest was on the basis that this was with UOB and through an assigned UOB relationship manager. Poh was unsure how much clearer he was required to be in the letter (“third argument”).

87 In our view, it is insufficient for Poh to argue that Wong had recommended the investment to him or that he had acted on the basis or assumption that PixelTrade was an investment approved by UOB. It is one thing to assume that it was approved by UOB and another to allege that Wong had told him so. The 3 November 2018 letter made no mention of the First Representation. Poh’s second and third arguments that the letter was

“abundantly clear” or that he was unsure how much clearer he was required to be is a straw man’s argument.

88 If the 3 November 2018 letter was already “abundantly clear”, then it would have been unnecessary for Poh to rely on the first or the third arguments. The fact that he raises them is telling.

89 As regards the first argument, Poh had only alleged once that Wong had deceived him, and Wong had denied it on that occasion. We have already elaborated on that above. More importantly, if Poh was able to blame Wong for deceiving him that PixelTrade was approved by UOB, then surely, he could have raised this allegation and specifically the First Representation to the police or to Wong’s superiors. Poh’s act of accusing Wong of deceit contradicts his third argument which suggests that Poh did not know how to be more explicit because he was only a lay person. The fact is that Poh did not explicitly mention the First Representation despite having had various opportunities to do so. It bears repeating that in his email of 23 May 2019, he said that the *sole* reason for the investment was the fact that Wong was the relationship manager assigned to him by UOB.

90 In these circumstances, the Judge was entitled to take into account Poh’s omission to explicitly mention the First Representation in deciding to believe Wong and not Poh in relation to the First Representation. While there is some evidence from the recording of the meeting on 28 August 2018 that Wong might have made the Sixth Representation and the 3 November 2018 letter suggested that Wong may have also made the Fifth Representation, this was not adequate for Poh’s claim to succeed since Poh did not prove that these representations were false. In any event, the Appellant’s Case focused on the First Representation.

Whether the Judge erred in finding that vicarious liability was not made out

91 In the light of the above, the question of vicarious liability on the part of UOB is academic. We reserve comment as to whether the Judge erred in finding that vicarious liability was not made out.

Conclusion

92 The appeal is dismissed. The appellant estimated his costs and disbursements at a total of S\$56,876.20,⁹⁴ whereas the respondent estimated its costs and disbursements at a total of S\$52,490.35.⁹⁵ We award the respondent \$40,000 inclusive of disbursements. The usual consequential orders apply.

Woo Bih Li
Judge of the Appellate Division

See Kee Oon
Judge of the High Court

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⁹⁴ Appellant's costs schedule.

⁹⁵ Respondent's costs schedule.