IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 167

Suit No 268 of 2018

Between

Ahmad Ebrahim s/o S M E Mohamed Sadik

… *Plaintiff*

And

Ilangchizian Manogaran

… *Defendant*

GROUNDS OF DECISION

[Contracts] — [Breach] — [Existence of oral agreement]
[Contracts] — [Contractual terms] — [Implied terms]
[Contracts] — [Misrepresentation] — [Inducement]
[Contracts] — [Undue influence] — [Relationship of trust and confidence]
[Restitution] — [Unjust enrichment] — [Moneys had and received]
[Equity] — [Fiduciary relationships] — [When arising]

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Ahmad Ebrahim s/o S M E Mohamed Sadik
v
Ilangchizian Manogaran

[2019] SGHC 167

High Court — Suit No 268 of 2018
Mavis Chionh JC
12–15 February, 8 April 2019

15 July 2019

Mavis Chionh JC:

Introduction

1 The Plaintiff in the present suit is a licensed money-changer who has been in the money-changing business for more than 30 years. The Defendant has, for a number of years, provided the Plaintiff with book-keeping services for his money-changing business as well as income tax filing services. The Plaintiff's position was that the Defendant had provided such services since 2008[1] but the Defendant's position was that he had done so since 2005.[2] The two men became friends over the years, until their relationship broke down as a result of the present dispute.

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1 [20a] of the Statement of Claim (Amendment No. 2).

2 [3a] of the Defence.

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2 In gist, between 1 October 2014 and 19 March 2015, the Plaintiff made a number of payments to the Defendant amounting to a total of US$1 million. The Plaintiff's case was that he had paid these moneys to the Defendant pursuant to an oral contract whereby he would invest in the Defendant's investment scheme. According to the Plaintiff, each sum he invested "in the Defendant" was to be locked in for a period of 18 months. The Defendant was to invest the moneys "in the foreign exchange market" and to pay him a "monthly guaranteed return of 8% per month",[3] with the return of the principal sum also being guaranteed. The Plaintiff claimed that after paying him a total of US$216,800 in "monthly returns", the Defendant ceased paying any of the remaining "guaranteed" returns and also failed to return the principal sum paid. The Plaintiff sought various reliefs against the Defendant, including a declaration that the Defendant had breached or wrongfully repudiated the alleged oral contract; the return of the US$1 million; the payment of allegedly outstanding "guaranteed returns" totalling US$1,320,000; an "account and inquiry" of "secret commissions" allegedly received by the Defendant; and damages for breach of fiduciary duty and/or breach of trust.

3 The Defendant's case, in contrast, was that the Plaintiff had asked him for a recommendation of "contacts" who might be able to lend him money, as he needed to settle loans taken from unlicensed moneylenders and to finance his money-changing operations. The Defendant did not know anyone who could lend the Plaintiff money. However, he did tell the Plaintiff about his investment in a company called "Maxim Trader" which was promising investors fixed monthly returns on the amounts invested. These investment sums had to be

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[3] [2] to [4] of the Statement of Claim (Amendment No. 2).

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locked in for 18-month periods. The Plaintiff expressed interest in investing in Maxim Trader himself. As the Plaintiff had difficulty leaving his money-changing counter, he asked the Defendant to let him use the latter's investment account with Maxim Trader for his first two investments; subsequently, to help him open his own investment account; and also to help collect and transfer his monthly returns from Maxim Trader. The Plaintiff invested a total of US$1 million with Maxim Trader of his own volition. The Defendant invested a total of US$230,000. In June 2015, Maxim Trader stopped paying returns to its investors. In January 2018, the press reported that three representatives of Maxim Trader had been charged for offences including that of promoting an illegal multi-level marketing scheme.

4 At the conclusion of the trial, I dismissed the Plaintiff's claims. As the Plaintiff has filed an appeal, I now set out the reasons for my decision.

The parties' cases

The Plaintiff's claims

5 I start by setting out the various causes of action pleaded in the Plaintiff's statement of claim as they provide context to the evidence given by the parties. Firstly, as mentioned above, the Plaintiff claimed that he had an investment contract with the Defendant which was made orally on the following terms:

(a) that the Plaintiff be entitled to a "guaranteed return" of 8% per month on the sums invested with the Defendant;

(b) that each sum invested would be locked in for 18 months from the date of payment;

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(c) that the guaranteed return of 8% per month would be paid to the Plaintiff by the Defendant for every calendar month until the expiry of the 18-month period;

(d) that this monthly guaranteed return would be paid within two calendar months from each investment; and

(e) that the sums paid to the Defendant were guaranteed and immediately due and payable on the expiry of the 18-month period.

6 The Plaintiff also pleaded the following further contractual terms which he said were implied terms:

(a) that the Defendant would invest the Plaintiff's moneys in the foreign exchange market;

(b) that the Defendant would use all reasonable endeavours and/or due care and skill in investing the Plaintiff's moneys;

(c) that the Defendant owed the Plaintiff a fiduciary duty whereby he would serve the Plaintiff honestly and in good faith;

(d) that the Defendant would not receive and/or retain a secret profit and/or commission; and

(e) that the Defendant would not invest in any illegal investments to the Plaintiff's detriment.

7 The Plaintiff contended that the Defendant had breached "the express and/or implied terms" of the oral contract by failing to pay outstanding

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guaranteed returns totalling US$1,320,000 and failing to return the total investment sum of US$1 million.

8 Secondly, the Plaintiff claimed in the alternative that the Defendant had made the following oral representations to him which he had relied on in entering into the alleged oral investment contract:

(a) that the Defendant would exercise reasonable care and invest the Plaintiff's moneys in the foreign exchange market in order to achieve the guaranteed returns of 8% per month;

(b) that the Defendant, being a successful investor and foreign exchange trader, possessed the necessary knowledge, skills and ability to undertake the investment contract and to achieve the guaranteed returns; and

(c) that the Defendant would not undertake any commitments he was unable to fulfil.

9 The Plaintiff contended that the above representations were made "fraudulently and/or negligently" by the Defendant "knowing that they were false, untrue and misleading, or recklessly not caring whether they were true or false".

10 Further and/or in the alternative, the Plaintiff also claimed that the Defendant had exercised "undue influence" over him in procuring his payment of US$1 million under the alleged oral investment contract. According to the Plaintiff, the Defendant had "placed himself in a position of trust and confidence vis-à-vis the Plaintiff" through the book-keeping services he had provided, by

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portraying himself as "an honest book-keeper and a trusted friend", and by doing various favours for the Plaintiff such as "[r]ecommending a physiotherapist for the Plaintiff's wife" and [v]isiting the Plaintiff at his business premises to either collect documents, to chat, to change money or to have lunch". The Plaintiff contended that it was "only due to the Defendant's longstanding relationship [with him] and position of trust and confidence" that the Plaintiff was "induced by the Defendant's said representations" to invest in his foreign exchange investment scheme.

11 Thirdly, the Plaintiff claimed in the alternative that he had paid the total amount of US$1 million to the Defendant "on trust for the sole purpose of the Defendant investing in the foreign exchange market". The Defendant was alleged to have breached this trust by "misapplying" this investment sum. From the Plaintiff's pleadings, it would appear that the "misapplication" lay in the Defendant allegedly putting all of the Plaintiff's moneys in Maxim Trader, which – according to the Plaintiff – was not in compliance with the purpose of "investing in the foreign exchange market". It should be highlighted that in the earlier iterations of the statement of claim, the Plaintiff had pleaded that he had never heard of Maxim Trader until September 2016[4] – but this position underwent a change in February 2019 when his pleadings were amended to state instead that he heard from the Defendant for the first time in September 2016 that he had "directly invested in… 'Maxim Trader' instead of in the Defendant as agreed".[5] I highlight this change in position as the issue of the Plaintiff's

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4 See, *eg*, [9], [14], [15d] and [15e] of the Reply filed on 18 April 2018.

5 See, *eg*, [21e] of the Statement of Claim (Amendment No. 2) and [8], [13], [14d] and [14e] of the Reply (Amendment No. 2), filed on 12 February 2019.

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awareness of Maxim Trader and his dealings with them formed an important aspect of his case and of the Defendant's defence.

12 Fourthly, the Plaintiff pleaded in the alternative that he had appointed the Defendant as his agent and given the Defendant instructions to invest his moneys "in the foreign exchange market". According to the Plaintiff, the Defendant had breached his fiduciary duties as agent by failing to comply with these instructions. In addition, according to the Plaintiff, the Defendant had admitted to making "a secret profit and/or commission in the sum of $50,000" while acting as his agent, and was liable to account for such secret profit.

13 Finally, the Plaintiff claimed in the alternative the return of the sum of US$1 million as "money had and received by the Defendant to the use of the Plaintiff under the [alleged] oral investment contract".

The Defendant's defence

14 The Defendant's defence has largely been set out at [3] above. The bottomline to his version of events may be summed up in [3] and [4] of the Defence, which asserted that the Plaintiff knew that the Defendant was not a trader in foreign currencies or commodities; that he was not doing such trading for himself or on behalf of anyone else; that the Plaintiff had been aware all along that he was investing in Maxim Trader for his sole benefit and not in any investment scheme of the Defendant's; and that he had also been aware all along that the Defendant was helping him with his investment-related matters gratuitously, at his request, only because they were good friends and he (the Plaintiff) was unable to leave his money-changing counter to attend to such matters.

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15 The Defendant also asserted that it was only in late January 2018 – after the media reported the prosecution of the Maxim Trader representatives – that the Plaintiff started claiming that the Defendant was the party with whom he had entered into an investment agreement.

The evidence

16 I next summarise the evidence given at trial by the parties and their witnesses.

The Plaintiff's evidence

The Plaintiff's relationship with the Defendant

17 The Plaintiff testified that he first became acquainted with the Defendant in 2008 when the latter started providing audit-related services to his money-changing business. The Plaintiff subsequently recommended the Defendant's services to his daughter, Shakila binte Mohd Sham ("Shakila"), who ran a restaurant business, and to several fellow money-changers. At the same time, the Defendant also became a customer of the Plaintiff's money-changing business. The two of them grew to be close friends over the years and the Plaintiff claimed that he came to rely "heavily" on the Defendant's "advice" for his "business and also [his] personal matters".

The Defendant's "investment scheme"

18 The Plaintiff alleged that the Defendant first approached him in mid-August 2014 about investing in his (the Defendant's) investment scheme. Up until that point in time, the Defendant had never mentioned trading in shares

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or in foreign exchange[6] – but in August 2014, he allegedly represented to the Plaintiff that he was making "heaps of monthly returns" from trading in foreign exchange and in the stock market, thanks to his experience as a trader and his "investments research". He also declared that he was "seeking funds from his own investors" so as to "increase the return on his investments" and that he wanted to "extend" the "opportunity" to his family and close friends to "participate in his scheme of investment", Indeed, he assured the Plaintiff that his (the Defendant's) wife and close friends had already invested in his investment scheme and were "reaping good monthly income".[7] This scheme, which he proposed the Plaintiff invest in, was based on the following terms:[8]

(a) that the Plaintiff pay the Defendant cash which he would convert into US dollars at a rate dictated by him, and which he would "add on to his investments";

(b) that in return for the Plaintiff's investment "into his investment scheme", the Defendant would "guarantee" a sum of 8% per month in cash on the invested sums, and such invested sums were to be locked in for 18 months but would be returned in full to the Plaintiff at the end of the 18-month period; and

(c) that the monthly return of 8% would be paid to the Plaintiff within two months of making the investment.

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6 Notes of evidence ("NE") for 12 February 2019, p 26 at lines 21 to 32.

7 [13] of the Plaintiff's AEIC.

8 [14] of the Plaintiff's AEIC.

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19 The Plaintiff claimed that he was initially "unwilling" to take up the Defendant's investment proposal because he had no experience in investing in stocks or shares and did not wish to part with his "life savings". He questioned the Defendant on how he was able to generate 8% monthly returns and even expressed his fear of getting involved in "money laundering activities". The Defendant allegedly represented that the investment scheme was "lawful" and further claimed that the investments he had undertaken were "all well known, run by billionaires". The Plaintiff did not ask the Defendant any questions about the platforms he traded on because he "trusted [the Defendant] wholeheartedly so [he] didn't wanted [*sic*] to find out".[9]

20 Despite the Plaintiff's avowed reluctance, the Defendant persisted in trying to "convince" him over the next few months to invest in his investment scheme by repeating the same representations (at [18] above). The Plaintiff claimed that he was "induced" by these representations to invest in the Defendant's scheme. He believed that the Defendant must be "doing well from his investments" since he was a "partner" in an accounting firm (Alan Morgan Partners LLP[10]), his wife was a lawyer, and his daughter was pursuing further studies in London. Moreover, he "trusted" the Defendant not to "cheat" him because of their close friendship.

The oral investment agreement

21 On 29 September 2014, the Plaintiff informed the Defendant that he wished to invest in the latter's investment scheme. He asked the Defendant why

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9 NE for 12 February 2019, p 31 at lines 18–29.

10 See pp 98–99 of the Plaintiff's AEIC.

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his investment had to be in US dollars and whether the lock-in period could be reduced to 12 months. The Defendant then informed the Plaintiff that his investment would be "tied to the terms of [the Defendant's] own investment which had to be in USD and that the 'lock-in' period had to be 18 months because [the Defendant's] investment was also locked in for 18 months". The Plaintiff was also cautioned not to tell his family about the investment.[11] At the same time, the Defendant made the following further representations:[12]

(a) that he would exercise all reasonable care and use the sums paid by the Plaintiff to "invest in the foreign exchange market in order to achieve" the guaranteed 8% monthly returns;

(b) that as a "successful investor and foreign exchange trader", he possessed "the necessary knowledge, skill and ability" to guarantee the Plaintiff's capital and to achieve the guaranteed returns; and

(c) that he "was able to undertake his commitment and to fulfil his agreement with [the Plaintiff]".

22 The Plaintiff claimed that in addition to the terms previously proposed by the Defendant (at [18(a)] to [18(c)] above), the oral investment agreement he entered into with the Defendant also contained the following implied terms:

(a) that the Defendant would invest his money "in foreign exchange market [*sic*]*";*

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11 [19] of the Plaintiff's AEIC.

12 [20] of the Plaintiff's AEIC.

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(b) that the Defendant would "use all reasonable endeavours and/or due care and skill in so doing";

(c) that the Defendant owed him a "fiduciary duty" of honesty and good faith;

(d) that the Defendant would not make any "secret profit and/or commissions" under their oral agreement; and

(e) that the Defendant would not invest in any "illegal investments" to his detriment.

The investments made by the Plaintiff and the profit payments he received

23 The Plaintiff decided to invest an initial sum of US$150,000 but was only able to raise the sum of US$50,000. This sum was collected from him by the Defendant in its Singapore currency equivalent in cash on 29 September 2014 (the Plaintiff's evidence was that he would simply accept the exchange rate conveyed to him by the Defendant for the conversion of USD to SGD[13]). The Defendant assured the Plaintiff that in respect of this first investment sum of US$50,000, he would receive his first guaranteed monthly return – US$4,000 – in mid-November 2014.

24 On 20 October 2014, the Plaintiff invested a further sum of US$100,000 which he said he had raised from his own savings. He was told by the Defendant that the guaranteed return of US$8,000 on this investment sum would be paid to him in mid-December 2014. At the same time, the Defendant continued to

13 See, *eg*, [26] and [55] of the Plaintiff's AEIC.

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repeat his representations about how he was "making a lot of money" in "his investment scheme" not just for himself but also for "his own investors, his wife and friends".[14]

25 The Plaintiff did in fact receive the "guaranteed return" of US$4,000 (S$5,097.44) on 14 November 2014. A few days later, the Defendant visited the Plaintiff at his office and "boasted" about "his investment abilities and his ability to promptly pay the 8% profit". The Plaintiff claimed that he asked the Defendant how he was able to reap such good profits that he was able to pay his investors 8% monthly returns and guarantee their capital – to which the Defendant responded by revealing that his "main investment" was "in a foreign exchange company called Maxim and their returns were very attractive and reaped profits of more than 8% per month". The Defendant then suggested that the Plaintiff invest more funds in his scheme, which suggestion the Plaintiff agreed to think over. On 25 November 2014, he received news from the Defendant that his "second monthly profit" on his total investment of US$150,000 – amounting to US$12,000 – would be paid on 25 December 2014. The Defendant followed up by again trying to persuade the Plaintiff to make another larger investment on the same terms as before. This time, he suggested that the Plaintiff invest another US$450,000 to bring his total investments up to US$600,000 and repeated the same representations about guaranteeing 8% monthly returns and return of capital. The Plaintiff was so impressed by the Defendant's boasts and the prompt payment of the monthly profits on his first two investments that he agreed to – and did – increase his total investments to US$600,000.

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14 [26] of the Plaintiff's AEIC.

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26 On 29 December 2014, the Plaintiff received the promised returns of US$12,000 (S$15,200) from the Defendant. Once again, he asked the Defendant how he was able to reap such good profits that he was able to pay his investors 8% monthly returns and guarantee their capital. Once again, the Defendant boasted of his investment abilities, and also repeated his story about "his Maxim investment… reaping good profits".[15] Once again, the Defendant also attempted to "lure" the Plaintiff into making yet another, larger investment, emphasizing that his monthly returns would "double or triple" if he increased his total investments. The Plaintiff was reluctant to do so, however, as he had "depleted [his] personal savings and moneys [he] had borrowed from [his] business". He decided to wait for the payment of the next set of monthly returns – US$48,000 – due in January 2015.

27 In January 2015, the Plaintiff received his investment profit of US$48,000 (S$60,245). On this occasion, the Defendant once again touted his own investment abilities and also once again suggested that the Plaintiff increase his investment. The Plaintiff was still reluctant to do so and decided to wait for the next monthly payment of the US$48,000 returns on his total investments of US$600,000. This payment was made to him by the Defendant on 26 February 2015. On this occasion, the Defendant once again boasted of his investment abilities and also once again attempted to "lure" the Plaintiff into investing more money with him. According to the Plaintiff, the Defendant stated that he wished to increase his own investment in Maxim Trader – "his biggest and most lucrative investment". This was presented to the Plaintiff as a "good opportunity" for him to increase his investment in *the Defendant's* investment

15 [40] of the Plaintiff's AEIC.

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scheme; and the Defendant allegedly also repeated the same representations about guaranteeing 8% monthly returns and return of capital. The Plaintiff was also told that he "should not take too long to decide" because the Defendant's "own investment in Maxim Trader had a deadline for further investments".[16]

28 On 1 March 2015, the Plaintiff informed the Defendant that he would be investing another US$160,000 "into the Defendant's investment scheme",[17] thereby bringing his total investments to US$760,000. This further investment sum (in its SGD equivalent) was collected from him in cash by the Defendant on 4 March 2015.

29 Following this, according to the Plaintiff, the Defendant urged him to invest another US$240,000 so as to bring his total investments to US$1 million. Besides repeating his boasts about his investment skills and his success in delivering the promised profits, the Defendant proposed that the original investment agreement should be varied as follows:

(a) All sums already paid to the Defendant thus far *(ie*, US$760,000 in total) would be locked in for an 18-month period starting from the date when the Plaintiff made his next investment of US$240,000.

(b) The guaranteed 8% monthly returns would be paid to the Plaintiff until the expiry of this 18-month period. These monthly returns would still be paid within two calendar months from his investment, with the final such payment being made in October 2016.

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16 [59] of the Plaintiff's AEIC.

17 [60] of the Plaintiff's AEIC.

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(c) The principal sum of US$1 million would be repaid to the Plaintiff at the end of the 18 months from his next investment of US$240,000.

30 The Plaintiff claimed that he did not ask the Defendant why a variation of their oral agreement was necessary.[18] It did not occur to him to ask. Instead, he stressed that in proposing these variations to their oral investment agreement, the Defendant once again repeated his representations about guaranteeing the monthly profit payments and return of capital. Once again induced by these representations, the Plaintiff agreed to the Defendant's proposal but stressed that he would only be able to confirm the next investment amount after sourcing for more funds.

31 On 10 March 2015, the Defendant informed the Plaintiff that he would be receiving the next payment of monthly profit (totalling US$48,000) on or before 18 March 2015. At the same time, the Defendant continued trying to "lure" the Plaintiff into investing another US$240,000. He also cautioned the Plaintiff not to take too long to decide as he (the Defendant) would be meeting with his investment manager at Maxim Trader, one Goh Seow Mooi (also known as "Sammi").[19]

32 On 18 March 2015, the Plaintiff received from the Defendant payment of the monthly returns of US$48,000 (S$65,400) on his previous total investment of US$600,000. The Plaintiff was "overjoyed" at the time – but claimed that on hindsight, this payment from the Defendant appeared to have

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18 NE for 12 February 2019, p 52 at lines 1–7.

19 [70] of the Plaintiff's AEIC.

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been a "calculated arrangement" to "deceive [him] and induce [him] into making the additional substantial investment of US$240,000", as the Defendant took the opportunity on this occasion to urge him again to round up his investments to US$1 million and to emphasise the "deadline" of 19 March 2015 imposed by Maxim Trader. The Plaintiff claimed that he was "induced" by the Defendant's "deception" and the "alleged urgency" to agree to investing a further US$240,000. The following day, he handed the money (S$333,600) in cash to the Defendant.

33 On 22 April 2015, the Plaintiff received from the Defendant payment of the monthly returns of US60,800 (S$80,000) on his previous total investment of US$760,000. Once again he claimed that he was "overjoyed" at the time but that on hindsight, he believed this payment to have been a ploy "calculated to deceive [him] that the Defendant's [investment] scheme was bona fide and in accordance with [their] agreement".[20]

34 As at 25 May 2015, the Plaintiff had invested sums totalling US$1 million,[21] in return for which he had received monthly returns totalling US$300,800 (the Plaintiff initially erroneously claimed he was paid US$48,000 in April 2015, but this was later corrected and confirmed by the Defendant).[22] According to the Plaintiff, up until this point, he believed that he had been investing in *the Defendant's* investment scheme; and he was completely

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20 [84] of the Plaintiff's AEIC.

21 [79] of the Plaintiff's AEIC.

22 [95] of the Plaintiff's AEIC, [6] of the Statement of Claim (Amendment No. 2), [91] of the Defendant's AEIC.

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unaware of any investment agreement with Maxim Trader.[23] As far as he was concerned, it was the Defendant who had guaranteed 8% monthly returns on the investment and who had been paying him these returns.

The Plaintiff's allegations regarding the "deception" practised by the Defendant

35 On 2 June 2015, an article appeared on a Singapore social media site – "All Singapore Stuff" – in which the writer asserted, *inter alia*, that Maxim Trader was a Ponzi scheme whose founders had already been arrested in Taiwan.[24] The Plaintiff claimed that he did not see this article at the time of its publication on 2 June 2015. However, he contended that the Defendant must have seen the article on 2 June 2015; that the Defendant deliberately concealed the information from him and that having realised on that date that "his investment in Maxim Trader was lost because it was a Ponzi scheme", the Defendant "set out to hatch a false defence that he was only [the Plaintiff's] agent" and that the Plaintiff had invested his US$1 million into Maxim Trader.[25] The Plaintiff based his contention on the following. Firstly, the Defendant allegedly told him on 2 June 2015 that he had recommended to Maxim Trader that on the expiry of the Plaintiff's contract with the Defendant in September 2016, the Plaintiff should "benefit directly" from investing in Maxim Trader "under the same terms agreed with the Defendant". Secondly, according to the Plaintiff, the Defendant also started "frantically and deceptively chasing [him] to urgently" open "an I-account directly with Maxim Trader".

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23 [96] of the Plaintiff's AEIC.

24 See pp 180–182 of the Plaintiff's AEIC.

25 [99] of the Plaintiff's AEIC.

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36 In respect of the first allegation, the Plaintiff claimed that he was not agreeable to investing "directly in Maxim Trader for another 18 months" after the expiry of his investment agreement with the Defendant.[26] He claimed that this refusal to take up the direct investment with Maxim Trader was communicated to the Defendant in a Whatsapp message on 7 June 2015,[27] in which he had stated:

> I thout I nid to put in maxim for another 18 mnths sftr my contrac ends so i wont owe anyone a single cent n j wil hv myown capita 2 run my biz but it seems not to b in my favor

37 In respect of the second allegation, the Defendant explained during the trial that the "I-account" was an online fund transfer platform which was operated by another company unrelated to Maxim Trader, and which he and other investors used to transfer their investment profits from Maxim Trader to their personal bank accounts. The Defendant's evidence about the "I-account" was not disputed. In any event, according to the Plaintiff, whilst he initially agreed to the Defendant's suggestion that he open his own I-account, no I-account was opened for him because he decided not to proceed with the arrangement.[28]

The cessation of monthly profit payments

38 June 2015 was in fact the month in which things started going wrong for the Plaintiff's investments. On 21 June 2015, he discovered that the monthly profit of US$80,000 had not been credited into his bank account as promised;

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26 [104] of the Plaintiff's AEIC.

27 Plaintiff's Whatsapp message to Defendant on 7 June 2015 @ 15:30:40, p 112 of the Plaintiff's AEIC.

28 [101] of the Plaintiff's AEIC.

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and on checking with the Defendant, he was told that the latter too had not received his June returns from Maxim Trader.[29] The Defendant subsequently reported having been told by Sammi that there was a delay in the payment of investment profits for all investors in Maxim Trader. He suggested that the Plaintiff attend a meeting which he was planning to arrange with Sammi, adding that he had informed Sammi of the Plaintiff's "monthly financial commitment".[30]

39 On 25 June 2015, the Plaintiff and the Defendant attended a meeting with Sammi at PUB Auditorium. Many other people were also there "raising issues with Maxim Trader". At this meeting, the Plaintiff was told by Sammi that Maxim Trader was "having some investment problems in Taiwan" which apparently necessitated the conversion of investors' shares and consequent delay in the payment of the Defendant's investment profits. According to the Plaintiff, it was also at this meeting that the Defendant revealed to him "for the first time" that his US$1 million had all been invested "into Maxim Trader" together with the funds from the Defendant's "other investors" – and that the payment of his investment returns would therefore "depend on Maxim Trader's dealings and recovery of their own options".[31] The Plaintiff was "shocked" by this revelation. The Defendant later reported on 30 June 2015 that the share conversion alluded to by Sammy was going on "worldwide". At this point, the Plaintiff received yet another shock when the Defendant informed him that he was "unable to confirm and comply with his contractual obligations" to the

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29 [105] of the Plaintiff's AEIC.

30 Defendant's Whatsapp messages to Plaintiff on 24 June 2015 @ 16:01:41 & 16:07:17, p 113 of the Plaintiff's AEIC.

31 [110] of the Plaintiff's AEIC.

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Plaintiff because he was "unsure when his investment in Maxim Trader [would] materialise".[32]

40 In the weeks that followed, the Plaintiff was "under tremendous stress" as he had taken "loans" from his "friends to invest into the Defendant".[33] He made "many calls" to the Defendant expressing his "anguish", but the latter was unable to confirm when he would be paid his promised monthly profit. On 15 July 2015, however, the Defendant allegedly informed the Plaintiff that he had managed to sell off 200,000 of his Maxim Trader shares for 20 cents each and that he would pay the Plaintiff "the proceeds towards the outstanding guaranteed monthly instalment of US$80,000" due for June. The Defendant did in fact pass the Plaintiff cash of S$52,000 (US$40,000) on 16 July 2015.[34] This amount, according to the Plaintiff, was only half of the monthly profit he was entitled to for June 2015. He was informed by the Defendant that Sammi was discouraging Maxim Trader investors from selling more shares – but he did not concern himself with these matters because he "was not an investor into Maxim Trader" and believed at this stage that the Defendant was trying to sell off his shares in order to comply with his obligations under their oral investment agreement.

41 The month of July 2015 passed without the Plaintiff receiving payment of his monthly profit of US$80,000 for that month, or of the balance of his June profit. The Defendant's "excuse" was that "he and Maxim Trader were not able to convert or sell their shares".[35] At the end of July 2015, the Defendant

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32 [115] of the Plaintiff's AEIC.

33 [116] of the Plaintiff's AEIC.

34 [120] of the Plaintiff's AEIC.

35 [126] of the Plaintiff's AEIC.

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informed the Plaintiff that Maxim Trader was implementing a new trading platform through which he hoped to sell off his shares and pay the Plaintiff the contracted investment returns. By early September 2015, however, the Plaintiff had yet to receive any payment. He decided to contact Sammi directly for news, and was informed by her that the Defendant's investment was to be "converted to shares", that the share conversion was "still in progress", and that these shares would be sold sometime in February 2016.[36]

42 The Plaintiff did not receive any update from the Defendant throughout September 2015. Indeed, according to the Plaintiff, the Defendant delayed the provision of any updates whilst trying to "invoke [the Plaintiff's] sympathy" by disclosing personal and family problems such as the death of an aunt, the ill health of his daughter and defaults in his mortgage repayments. The Defendant subsequently assured the Plaintiff in late October 2015 that he would be "speaking to some friends" to ask that they purchase his Maxim Trader shares and that he would use such sale proceeds to pay the Plaintiff his US$1 million capital and the guaranteed profits. However, by December 2015, no such sales had materialised. When the Plaintiff chased him again for an update in January 2016 on whether anyone was buying his shares, the Defendant replied that "everyone is quiet" and that there was no interested buyer.[37] The Defendant also informed the Plaintiff that he had been told the Maxim Trader shares would be "in [the] market" in February 2016.[38]

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36 [132] of the Plaintiff's AEIC.

37 [146] of the Plaintiff's AEIC; also Defendant's Whatsapp messages to Plaintiff on 19 January 2016 @ 12:37:20, p 128 of the Plaintiff's AEIC.

38 Plaintiff's Whatsapp message to Defendant on 19 January 2016 @ 12:38:45, p 128 of the Plaintiff's AEIC, and Defendant's Whatsapp reply on the same day @ 12:40:02, p 129 of the Plaintiff's AEIC.

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43 On 29 February 2016, the Defendant forwarded the Plaintiff a message from the Maxim Trader investors' chat group which purported to inform all investors that the trading of their shares would commence "by the end of April 2016".[39] This deadline was subsequently pushed back once again to May 2016 *via* a company announcement shared within the same chat group.[40] According to this announcement (which was forwarded to the Plaintiff by the Defendant *via* Whatsapp), investors were expected to have their shares traded on the New York Stock Exchange ("NYSE") by an "appointed Fund Manager" from May 2016; and in anticipation of the trading activity, investors were urged to "operate a trust account with [the] appointed official trustee" before 30 April 2016. On the Plaintiff chasing him for an update in early May 2016, the Defendant confirmed that he had successfully applied to open the necessary trust account.[41] By June, however, this deadline had been pushed back by Maxim Trader yet again, this time to "July/August 2016"; and investors were being told to open a "brokerage account" with the "appointed share brokerage firm".[42]

44 By end-August 2016, the Plaintiff had still not received any further payment of monthly profits or of his principal investment sum. The Defendant informed him that the only update received from the purported "Trustee of Maxim Trader" was a text message which the Defendant forwarded – and which spoke in vague and general terms of the "next 2-3 months" being a "critical period of vulnerability" while "the Sponsor" worked towards "completing the

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39 See p 130 of the Plaintiff's AEIC.

40 See pp 132–133 of the Plaintiff's AEIC.

41 [152] of the Plaintiff's AEIC.

42 [154]–[157] of the Plaintiff's AEIC.

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NYSE project"[43] As the Plaintiff himself observed in a Whatsapp message to the Defendant,[44] there was "nothing solid [and] firm" about the "trading of shares" in the Trustee's update.

The "confrontation" of 19 September 2016

45 The Plaintiff claimed that by this stage, it was already "clear" to him that the Defendant was in breach of their oral investment agreement and was unable to return him the principal investment amount of US$1 million, let alone pay him the guaranteed monthly profits. According to the Plaintiff, he was "very depressed", "sick" and "felt cheated" by the Defendant, so much so that he finally confided the truth about his predicament to his daughter, Shakila. It was then that he learnt from Shakila that the Defendant had approached her in July 2014 to invite her to invest in his investment scheme; and it was only then that he realised the Defendant had "surreptitiously deceived" him into entering into the latter's investment scheme and thereby "defrauded" him of his "whole life savings and borrowings".[45]

46 On 19 September, both of the Plaintiff's daughters, Shakila and Haseena binte Mohd Sham ("Haseena"), confronted the Defendant at the Plaintiff's office. The Defendant came alone while the Plaintiff and his wife were present with their two daughters (and apparently with Haseena's husband as well). The Plaintiff's and the Defendant's accounts of the "confrontation" differed

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43 See pp 143–144 of the Plaintiff's AEIC.

44 Plaintiff's Whatsapp message to Defendant on 3 September 2016 @ 13:42:42, p 144 of the Plaintiff's AEIC.

45 [165] of the Plaintiff's AEIC.

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substantially. According to the Plaintiff,[46] his daughters had berated the Defendant for "surreptitiously" inducing the Plaintiff to invest substantial amounts in his (the Defendant's) investment scheme; and they had also questioned him as to how he could "guarantee" the 8% monthly profit and return of capital. In the Plaintiff's version of events, the Defendant responded by falsely alleging that it was the Plaintiff who had not wanted to tell his children about his investment. It was also at this "confrontation" that the Defendant allegedly revealed that Maxim Trader was "not on the Stock Exchange"; and that he was "not able to pay… the monthly profit and guaranteed amount because Maxim Trader were having financial problems in Taiwan where their funds were frozen". The Defendant also allegedly asserted – "for the first time" – that the Plaintiff had entered directly into an investment agreement with Maxim Trader with the Defendant acting purely as his "gratuitous agent" and that the Defendant had kept all the investment contracts between the Plaintiff and Maxim Trader. On top of all this, the Defendant even admitted that he had received "commission" of US$30,000 for "introducing" the Plaintiff to Maxim Trader, which commission – according to the Plaintiff – was "unlawful" and amounted to "secret profits".[47]

47 In the course of the "confrontation", according to the Plaintiff, the Defendant did not say anything about Maxim Trader being a Ponzi scheme or about their being "subject to international criminal prosecution". This led the Plaintiff to continue to believe that "Maxim Trader were in fact a genuine investment" and "they were doing everything to get their returns to be able to

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46 [166]–[176] of the Plaintiff's AEIC.

47 [174] of the Plaintiff's AEIC.

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pay… the guaranteed returns".[48] The "confrontation" ended with the Defendant agreeing to produce the investment contracts between the Plaintiff and Maxim Trader.

The events following the "confrontation"

48 On 10 October 2016, the Defendant forwarded a file containing documents which he said were the investment contracts between the Plaintiff and Maxim Trader. Copies of these contracts and a table setting out the list of contracts are found in the Plaintiff's AEIC.[49] At trial, the Plaintiff insisted that he had never seen these contracts before, that the dates and amounts stated in the alleged contracts "did not correspond" with his investment agreement with the Defendant; and that these contracts must therefore have been "falsely fabricated" by the Defendant[50] as a means of evading his own liability.

49 Despite the Defendant's alleged "deception", "fabrication" and shocking revelations, the Plaintiff decided not to make any police report or to seek legal advice – because, according to him, he still viewed the Defendant as a "close friend" and moreover, still continued to "trust" that the Defendant would "come back with the money".[51] Indeed, the only Whatsapp message from the Plaintiff in which he alluded to the 19 September 2016 "confrontation"

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48 [176] of the Plaintiff's AEIC.

49 [179] and pp 187–516 of the Plaintiff's AEIC.

50 [176] of the Plaintiff's AEIC.

51 NE for 12 February 2019, p 142 at lines 7-16.

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between his daughters and the Defendant – which was sent on the same date[52] – simply stated:

> I told u n the gals to go out n talk not in front of my wife but u didnt want.now i m vry sttessd wth my wife's worry

50 The Whatsapp exchanges between the two men for the rest of September 2016 and October 2016 do not contain any references to the "confrontation" or to the allegedly "false" contracts furnished by the Defendant.[53] The Whatsapp messages exhibited by the Plaintiff in his AEIC end at 5 October 2016 and then resume on 9 January 2018. It should be noted that the Whatsapp messages exhibited in the Plaintiff's AEIC appear to be exactly those disclosed by the Defendant during discovery. The Defendant has explained that he was unable to produce the Whatsapp exchanges for the period November 2016 to December 2017 because he lost all Whatsapp messages for the said period when he switched to a new iPhone.

51 On 9 January 2018, according to the Plaintiff, he found out for the first time from news reports that Maxim Trader was a Ponzi scheme and that they were being prosecuted in Singapore. He felt "shocked" and immediately suggested to the Defendant that he should contact Sammi and "see how he could recover his own investments from Maxim Trader" so as to pay off the guaranteed profits and capital sum pursuant to their own oral investment

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52 Plaintiff's Whatsapp message to Defendant on 19 September 2016 @ 23:29:59, p 144 of the Plaintiff's AEIC.

53 See pp 144–146 of the Plaintiff's AEIC.

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agreement. On 18 January 2018, the Defendant forwarded a text message from Sammi which simply stated:[54]

> Hi friends. I felt sorry that it ended this way. Will update again if there are more firm developments.

52 The Plaintiff claimed that it was only then that he "finally accepted"[55] that the Defendant would not be paying him the outstanding monthly profits or the principal investment sum. On 22 January 2018, he sent the Defendant Whatsapp messages announcing that he would commence legal action unless the latter paid him "the capital sum of [US$1 million] and agreed interest in the total [US$360,000]" within 7 days.[56] He followed up by engaging his present solicitors and causing a letter of demand to be issued to the Defendant on 9 February 2018 for the total sum of US$2,360,000.[57]

The evidence given by the Plaintiff's daughters

53 Both the Plaintiff's daughters, Shakila and Haseena, were called by him as witnesses; and both gave evidence about the "confrontation" on 19 September 2016 which matched his version of events. In gist, both claimed that when confronted, the Defendant had told them "his investment was in Maxim Trader" which "was guaranteeing 8% per month profits and guaranteed return of the capital investment". Although he initially described Maxim Trader as "a listed Company on the Stock Exchange", he caved in when pressed by them and

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54 Whatsapp message forwarded by the Defendant on 18 January 2016 @ 07:44:05, p 147 of the Plaintiff's AEIC.

55 [188] of the Plaintiff's AEIC.

56 See p 147 of the Plaintiff's AEIC.

57 See pp 531–533 of the Plaintiff's AEIC.

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admitted that the company was "not on the Stock Exchange". He also told them he was unable to pay the Plaintiff his guaranteed profits and capital sum because "Maxim Trader was a failed investment and their funds were frozen".[58] Asked what relevance this had to the Plaintiff's investment, the Defendant replied that the Plaintiff had invested directly in Maxim Trader and not in his (the Defendant's) investment scheme: he had merely acted as an intermediary to assist the Plaintiff when the latter was unable to leave his business premises.[59] He also informed Shakila and Haseena that he had received "commission" of US$30,000 for introducing the Plaintiff to Maxim Trader and had invested money in Maxim Trader himself, together with the Plaintiff.

54 According to Shakila and Haseena, the "confrontation" lasted for more than an hour, during which the Plaintiff "denied [the Defendant's] false allegations",[60] and Haseena even threatened to lodge a police report against him for "cheating" the Plaintiff.[61] The Defendant allegedly asked Haseena not to do so and promised to produce the investment contracts between the Plaintiff and Maxim Trader which were in his possession. A file containing the contract documents was subsequently forwarded by the Defendant. Both Shakila and Haseena claimed that they had examined these documents. Both opined that the documents had been "fabricated as an afterthought" by the Defendant, since the Plaintiff insisted that he had never seen these contracts, that he had never

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58 [9] of Haseena's AEIC and [12] of Shakila's AEIC.

59 [12] of Haseena's AEIC and [15] of Shakila's AEIC.

60 [13] of Haseena's AEIC and [16] of Shakila's AEIC.

61 [14] of Haseena's AEIC and [17] of Shakila's AEIC.

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appointed the Defendant, and that it was "the Defendant's investment scheme" which he had invested in.[62]

55 Both Shakila and Haseena also claimed that the Plaintiff had refused to take any action against the Defendant even after his lies because the Plaintiff "still trusted the Defendant" and hoped that he would be able to pay the outstanding profits and capital sum. It is not disputed that no police report has to date been lodged by the Plaintiff against the Defendant. It was only after finding out on 9 January 2018 that Maxim Trader was a Ponzi scheme that the Plaintiff decided to take legal action against the Defendant.

56 In addition to the above account, Shakila claimed that the Defendant – who had been the book-keeper for her restaurant business since 2009 – had in July 2014 invited her to "invest into his investment scheme". Under this scheme, she was promised "as much as 8% guaranteed returns per month" and "guaranteed" return of her capital after an 18-month lock-in period.[63]. Shakila claimed that the Defendant had been "persistent" in contacting her several times about the suggested investment, but that she had been "sceptical" about his ability to pay the promised 8% monthly profit and had refused to invest in his scheme.

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62 [18] of Haseena's AEIC and [21] of Shakila's AEIC.

63 [5] of Shakila's AEIC.

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The Defendant's evidence

The Defendant's relationship with the Plaintiff

57 The Defendant runs his own book-keeping and tax advisory business, in the course of which he has developed a base of some 40 money-changer clients including the Plaintiff. He provides them with services such as the keeping of business books, the completion of tax returns, and the submission of audits to the Monetary Authority of Singapore.

58 The Defendant testified that he has known the Plaintiff since 2005 and agreed that they had over the years become good friends who would do favours for each other and discuss personal as well as family matters.[64] It was during such chats that the Plaintiff talked about his financial problems: how he was often short of money to run his business, especially when it came to stocking up on fast-moving foreign currencies, and how he had taken short-term loans from some "regular customers" at high interest rates.[65]

59 In mid-2014, the Plaintiff disclosed to the Defendant that he had resorted to borrowing from unlicensed moneylenders who charged high monthly interest rates. He asked the Defendant if he knew anyone who could lend money at a lower interest rate, but the latter did not know any moneylenders.

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64 [9]–[11] of the Defendant's AEIC.

65 [12] of the Defendant's AEIC.

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The Defandant's first contact with Maxim Trader and his initial investment

60 It was around this time that the Defendant first heard about Maxim Trader from one James Thomas ("Thomas"), who was the manager of the condominium where the Defendant stayed. Thomas told the Defendant in May 2014 that he had invested in a company called Maxim Trader from which he was getting "good guaranteed monthly returns"; and he encouraged the Defendant to invest as well. In July 2014, Thomas broached the subject of investing in Maxim Trader again; and this time the Defendant agreed to attend an "investment presentation" by Maxim Trader.[66] It was at this presentation that the Defendant learnt that Maxim Trader "was actually Maxim Capital Limited, a forex international company" whose core area of expertise was forex trading and who provided a platform for individual clients to "invest and trade" in forex directly for "high guaranteed monthly returns". Such clients had to open investment accounts with Maxim Trader and enter into investment contracts which required them to "lock in" their investment sums in US dollars for 18-month periods. In return, they would be paid a "guaranteed monthly performance return" from 3% per month for a minimum investment of US$1,000 to 8% per month for investments of US$30,000 or more.[67] These guaranteed monthly returns would be deposited in an investor's Maxim Trader investment account after one month from the date of the investment, following which investors would be able to transfer the money to their personal bank accounts. Investors were also encouraged to open individual I-accounts as this online fund transfer platform allowed for faster transfers of their monthly profits from Maxim Trader to their bank accounts. Additionally, an investor who

66 [16] of the Defendant's AEIC.

67 See pp 129–145 of the Defendant's AEIC.

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introduced a new investor to Maxim Trader would receive an "introduction fee of 10% of the first investment" of that new investor.[68]

61 At this presentation, the Defendant spoke to some investors who told him that they were receiving the guaranteed returns on their investments regularly. After hearing from these investors, the Defendant was persuaded that Maxim Trader was genuinely trading in forex. Thomas then introduced him to one Chin Ming Kam ("Chin"), a representative of Maxim Trader. With Chin's assistance, the Defendant opened an online investment account with Maxim Trader on 8 August 2014 and invested a sum of US$10,000, which he was told would yield a guaranteed monthly performance return of 6%.[69] Subsequently, he also opened an I-account with an online fund transfer platform – I-Account Services (HK) Ltd – to allow for faster transfers of the monthly returns from his Maxim Trader investment account.[70]

62 In cross-examination, the Defendant testified that as he had been told at the presentation that Maxim Trader was an online trading platform with a New Zealand licence to trade in forex "worldwide", he did not check whether the company had a registered address in Singapore, nor did he conduct his own enquiries to verify the existence of the New Zealand licence.[71] He had, however, limited the potential risks of his initial investment in Maxim Trader by investing only US$10,000, which was a sum he felt he "can risk with".[72]

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68 [18] of the Defendant's AEIC.

69 [21]–[25] of the Defendant's AEIC.

70 [55] of the Defendant's AEIC.

71 NE for 13 February 2019, p 105 at line 11 to p 107 at line 32.

72 NE for 13 February 2019, p 106 at lines 17–29.

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63 According to the Defendant, apart from his investment in Maxim Trader, he had invested in stocks on only four occasions between 2012 and 2018. Those investments had been in Ausigroup (an Australian oil and gas company) and Olam (a company registered on the Singapore stock exchange); and he had made losses on those investments.[73] He denied that he had represented himself to the Plaintiff as an experienced trader or that the latter had relied on him for advice in *personal* financial matters.

The Plaintiff's initial investments into Maxim Trader

64 Around the same time, the Plaintiff again asked the Defendant if he could recommend any moneylenders. The Defendant did not know anyone he could recommend, but decided to share with the Plaintiff the information about his investment in Maxim Trader as he thought that the Plaintiff too might benefit from it. The Plaintiff became "very interested" in investing in Maxim Trader when he learnt of the "guaranteed 6% to 8% monthly returns"[74] being offered by them. At this point, the Defendant also told the Plaintiff about the one-time 10% introduction fee and explained that he would receive this fee if he introduced another investor, just as the Defendant would receive this fee for introducing him. The Plaintiff replied that he "just wanted to invest on his own" and had no time to source for referrals. Seeing the Plaintiff's eagerness, the Defendant advised him to wait until the Defendant had been paid his first monthly return. The Plaintiff agreed to wait, but declined the suggestion that he attend Maxim Trader's presentations, claiming that he could not afford to leave

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73 NE for 13 February 2019, p 97 line 10 to p 98 line 8.

74 [28] of the Defendant's AEIC.

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his money-changing counter during operating hours.[75] For the same reason, the Plaintiff was also unable to meet up with Maxim Trader's representatives for the opening of an investment account in his name and instead requested that the Defendant assist to make the investment under his (the Defendant's) name and to facilitate the withdrawal of the monthly returns. The Defendant agreed to assist him.

65 On 1 October 2014, the Plaintiff passed the Defendant the Singapore currency equivalent of US$50,000 for his first investment with Maxim Trader. It was around the same time that the Defendant received from Maxim Trader the first monthly return on his first investment, which spurred him on to make a second investment of US$40,000. He did not tell Chin that of the two tranches of US$50,000 and US$40,000 he wished to invest on this occasion, the former sum was the Plaintiff's investment. Chin proposed that the Defendant break up the investments into three investment contracts of US$30,000, each of which would yield an 8% monthly return; and the Defendant accepted the proposal after obtaining the Plaintiff's consent.[76] He suggested to the Plaintiff that he create a file of the latter's investments for him to keep at his business premises, but the Plaintiff said he did not wish his family members to know about his investments and asked that the Defendant keep the file for him instead.[77]

66 On 20 October 2014, the Plaintiff decided to make a second investment with Maxim Trader, this time of a sum of US$100,000. Surprised, the Defendant advised him to wait until after the receipt of his first guaranteed monthly return

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75 [28]–[29] of the Defendant's AEIC.

76 [35] of the Defendant's AEIC.

77 [38] of the Defendant's AEIC.

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– but the Plaintiff proceeded with the investment as he felt confident. This second investment was also made under the Defendant's name, in the form of three investment contracts of US$30,000, US$30,000 and US$40,000 respectively.

67 In November 2014, the Plaintiff received two sets of monthly returns: US$4,000 (being the first monthly return on his investment of US$50,000) and US$8,000 (being the first guaranteed monthly return on his investment of US$100,000). He decided to invest a further US$450,000 with Maxim Trader. Concerned about the size of his intended investment, the Defendant advised him to think carefully about it – but the Plaintiff remained confident of making good returns on his investment in light of the monthly returns he had already received.[78] When the Defendant informed Sammi that it was the Plaintiff who was proposing to invest US$450,000, she asked him to tell the Plaintiff to open an investment account in his own name. At first, the Plaintiff maintained that he still wanted to make his investments under the Defendant's name and that he was not free to leave his money-changing business. He eventually agreed to open his own investment account but requested that the Defendant assist him to open the account and to pass his money to Maxim Traders. As he felt "very stressed" dealing with computers, the Plaintiff also did not wish to learn how to access his investment online and instead requested that the Defendant continue to facilitate the payout of his monthly profits by transferring the moneys to the Defendant's I-account and bank account before paying it over.[79] The Defendant agreed to assist. The Plaintiff's US$450,000 was eventually invested under his

78 [45] of the Defendant's AEIC.

79 [51] of the Defendant's AEIC.

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own name in two tranches of US$300,000 (on 27 November 2014) and US$150,000 (on 28 November 2014) respectively.[80] As the Plaintiff was considered a new investor with Maxim Trader, the Defendant received on this occasion the "introducer's fee" of US$30,000 which was credited to his investment account.

The Plaintiff's and the Defendant's further investments into Maxim Trader

68 Between December 2014 and May 2015, the Plaintiff and the Defendant continued to receive their monthly profit payments from Maxim Trader.[81] Both also continued to make further investments with Maxim Trader. The Plaintiff invested a further US$160,000 on 4 March 2015 and another US$240,000 on 19 March 2015, thereby bringing his investments with Maxim Trader to a total sum of US$1 million.[82] The Defendant too made a further five investments with Maxim Trader between December 2014 and April 2015, which brought his own investments with Maxim Trader to a total of US$230,000.[83] In cross-examination, the Defendant testified that he had not found Maxim Trader's promises of 6% to 8% "guaranteed" monthly profits suspicious because not only had various investors spoken positively at the Maxim Trader presentation of their investment experience, the receipt of the first monthly return on his initial US$10,000 investment had led him to believe that the company was able to deliver on its promises.[84] By end-May 2015, the Plaintiff

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80 [50] of the Defendant's AEIC.

81 [56]–[58], [60], [67]–[68], [71]–[72] and [75] of the Defendant's AEIC.

82 [89] of the Defendant's AEIC.

83 [92] of the Defendant's AEIC.

84 NE for 13 February 2019, p 112 line 14 to p 113 line 17.

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had received a total of US$300,800 in monthly profits[85] while the Defendant had received a total of US$56,600.[86]

The cessation of monthly profit payments

69 Sometime in June 2015, the Defendant suggested to the Plaintiff that he open his own I-account, as it would allow him to withdraw his monthly profits directly from his investment account instead of waiting for the moneys to be transferred first to the Defendant's I-Account and from there to the Defendant's OCBC account before the Defendant then issued him a cheque. At trial, the Defendant could not recall whether an I-Account was successfully opened for the Plaintiff in the end. In any case, the issue of the I-Account opening was overtaken by other events: both men did not receive their guaranteed monthly returns for the month of June 2015; and at a meeting of Maxim Traders investors on 23 June 2015, Sammi informed the investors that the delay in payment "was because the authorities in Taiwan, Korea and Japan had frozen Maxim Trader's funds and had begun investigations following some complaints".[87] Sammi also informed them that the matter had been reported in Taiwanese papers.

70 At the same meeting, investors were told that Maxim Trader would be converting their investments into Royal Group Holdings Inc ("ROGP") shares under a programme called the "Super Swap Share" ("SSS"). The Defendant updated the Plaintiff, who requested that he assist with the online arrangements for the SSS programme. The Plaintiff also disclosed that he was worried about

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85 [91] of the Defendant's AEIC.

86 [94] of the Defendant's AEIC.

87 [81] of the Defendant's AEIC.

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the delay in Maxim Trader's payment of the monthly returns as he had to repay loans taken from moneylenders.[88] The Defendant therefore asked him to attend a meeting with Sammi on 25 June 2015 so that they could discuss with her options on moving forward and overcoming the delay. The Defendant also conveyed to him information received from Sammi that, *inter alia*, "[m]aybe due to Taiwan case thus funds from Maxim being monitored".[89]

71 The meeting with Sammi on 25 June 2015 turned out to be "very unsatisfactory", as she was unable to provide any certainty as to when Maxim Traders would be paying the investment returns. On 30 June 2015, the Defendant shared with the Plaintiff an update from Sammi to the effect that the conversion to ROGP shares had been extended to 15 July 2015 and that these shares were expected to be traded on the NYSE by the first quarter of 2016.[90] The Plaintiff expressed fear that he was "totally stuck".[91] He subsequently asked the Defendant to arrange for another meeting with Sammi in early July 2015, but Sammi did not respond.[92]

72 Around 15 July 2015, the Defendant managed – with Sammi's help – to sell 200,000 of his converted shares at US$0.20 per share, for a total sum of US$40,000 (S$52,000). The Plaintiff then sought the Defendant's help to sell

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88 [83] of the Defendant's AEIC; see also Plaintiff's Whatsapp message to Defendant on 24 June 2015 @ 15:08:53 at p 92 of the Defendant's AEIC.

89 [86] of the Defendant's AEIC.; see also Defendant's Whatsapp message to Plaintiff on 25 June 2015 @ 11:31:06 at p 92 of the Defendant's AEIC.

90 [96] of the Defendant's AEIC; see also the Whatsapp exchange on 30 June 2015 at p 93 of the Defendant's AEIC.

91 Plaintiff's Whatsapp message to Defendant on 30 June 2015 @ 18:09:01 at p 98 of the Defendant's AEIC.

92 [97] of the Defendant's AEIC.

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his shares, but he wanted to sell at no less than US$0.50 per share, and no buyers could be found at that price. By then, the Plaintiff was desperate to settle his loan repayments, and he asked the Defendant to help him out. This led to the Defendant agreeing that the Plaintiff could use the former's US$40,000 sale proceeds first.[93]

73 Things did not get better in the following months. On 30 July 2015, the Defendant shared with the Plaintiff another update received from Sammi, in which it was announced that Maxim Trader investors would have a new platform by August 2015 to buy and sell their ROGP shares.[94] On 13 September 2015, however, the Plaintiff spoke to Sammi and was informed that the new trading platform would only be operational in February 2016.[95] In the ensuing months, confusing and at times contradictory updates were given by Maxim Traders. In October 2015, investors were told to open trust accounts with a Malaysian company called Perpectual Trustees Berhad, but after having done so, they were told in February 2016 to open trust accounts instead with a Hong Kong company called Legacy Fiduciary Services Limited (HK) because of "disagreements between Perpectual Trust Berhad and the management of Maxim Trader".[96] After opening a trust account with the Hong Kong company, however, the Defendant received yet another update from Sammi in May 2016 that the ROGP shares had been "suspended" from the NYSE and that Maxim

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93 [100] of the Defendant's AEIC.

94 [102] of the Defendant's AEIC; see also the Whatsapp exchange on 30 July 2015 at p 99 of the Defendant's AEIC.

95 [104] of the Defendant's AEIC; see also Plaintiff's Whatsapp message to Defendant on 13 September 2015 @ 16:07:35 at p 101 of the Defendant's AEIC.

96 [106]–[109], [111]–[113] of the Defendant's AEIC.

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Trader would instead be injecting investors' moneys into another company called India Globalisation Capital Inc.[97] Investors were further instructed in late June 2016 to open a brokerage account with the "appointed share brokerage firm".[98]

74 According to the Defendant, despite following the various instructions received from Maxim Trader, there was still no sign of the company paying them. The Plaintiff was "very very stressed"[99] as he was finding it hard to maintain sufficient stock at his money-changing counter[100] and to keep up with his financial commitments,[101] and he repeatedly urged the Defendant to "talk to Sammi" and "chek [*sic*] with Sammi"[102] about what was happening to their investments. The Defendant himself was very worried about his own financial commitments such as the school fees for his daughter's university studies abroad.[103]

The "confrontation" of 19 September 2016

75 On 12 September 2016, the Defendant received a request from the Plaintiff's daughter Shakila to meet her. The meeting was arranged for 19 September 2016 at the Plaintiff's money-changing counter. The Defendant's

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97 [118] of the Defendant's AEIC.

98 [120] of the Defendant's AEIC.

99 [119] of the Defendant's AEIC.

100 [115] of the Defendant's AEIC.

101 [119] of the Defendant's AEIC.

102 [119]–[120] of the Defendant's AEIC; see also the Whatsapp exchanges at pp 115-123 of the Defendant's AEIC.

103 See the Defendant's Whatsapp message to the Plaintiff on 7 June 2016 @ 10:59:35 at p 117 of the Defendant's AEIC.

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account of the "confrontation" differed substantially from the Plaintiff's and his daughters'.[104] According to the Defendant, Shakila did not tell him what the meeting was about. He assumed it was to discuss her company's accounts, but upon arriving, he found the Plaintiff, his wife, his two daughters (Shakila and Haseena), and Haseena's husband all present. The Plaintiff told the Defendant he had told his family members about his investments in Maxim Trader and they wanted to speak to the Defendant about it. The Plaintiff's wife and daughters then asked the Defendant how much the Plaintiff had invested in Maxim Trader. When the Defendant told them the Plaintiff had invested a total of US$1 million, he saw that they were very shocked; and although he could not understand much of what they said to each other in Malay, he sensed that the Plaintiff had not been frank with his family about his investments.

76 According to the Defendant, the Plaintiff's family – and particularly his daughters – then scolded him for having agreed to help the Plaintiff invest with Maxim Trader and for not having told them about what the Plaintiff was doing. Haseena lamented that the Plaintiff had previously "put himself and his family in a similar situation" by borrowing money from unlicensed moneylenders, while Shakila – fretting that the Plaintiff would not have enough capital to run his money-changing business during upcoming festive periods – demanded that the Defendant make a written declaration stating that the Plaintiff's US$1 million had been given to him and that he also provide the Plaintiff funds to run his business. When Shakila heard that the Defendant had received an introduction fee of US$30,000 for introducing the Plaintiff to Maxim Trader, she demanded that this amount should be given to the Plaintiff. The Defendant

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104 [124]–[135] of the Defendant's AEIC.

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refused these demands. He felt that the Plaintiff's family members were trying to make him the scapegoat when the Plaintiff himself had knowingly made an independent decision to invest with Maxim Trader. Shakila also demanded to have the Plaintiff's investment contracts, which the Defendant explained had been left in his keeping at the Plaintiff's request; and the Defendant agreed to give them the contracts.

77 Throughout this "confrontation", the Plaintiff did not say anything apart from asking his daughters to have the discussion at a nearby coffee shop instead – which request they ignored. The Defendant left the meeting feeling very harassed and traumatised. It was only when he left that the Plaintiff came up to him and apologised, claiming that he had not been in a position to speak up against his family. The Defendant retorted that he should let his family know he had invested in Maxim Trader of his own free will.

The events following the "confrontation"

78 In December 2016, the Defendant received a phone call from the Plaintiff's daughters in which Shakila again demanded that he help the Plaintiff out with funds for his money-changing business[105] and Haseena verbally abused him. After this, the Defendant called the Plaintiff to express his disappointment at such treatment. He told the Plaintiff that he was in no position to help him financially, and that while he would convey any updates from Maxim Trader, he did not wish to be contacted by the Plaintiff's family again.

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105 [137] of the Defendant's AEIC.

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79 On 9 January 2018, the Plaintiff texted the Defendant to highlight the news about the arrest and prosecution of Maxim Trader representatives.[106] According to the Defendant, it was around this time that the Plaintiff began alleging that it was the Defendant to whom he had entrusted his money. In a Whatsapp message on 15 January 2018, the Plaintiff alleged for the first time that it was the Defendant who had been entrusted "with so mch [*sic*] mony [*sic*]" and who should be doing something "for that trust…to collect bk [*sic*] that money".[107]

80 On 18 January 2018, the Defendant received the following text from Sammi, which he understood to mean that all the moneys he had invested in Maxim Trader were lost:[108]

> Hi friends. I felt sorry that it ended this way. Will update again if there are more firm development.

81 The Defendant forwarded Sammi's text to the Plaintiff. A few days later, he was shocked to receive from the Plaintiff a Whatsapp message which alleged that the Plaintiff had paid him US$1 million in return for his promise to pay monthly interest of 8% and to return the capital within 18 months.[109] The Defendant did not respond to this message as he knew the Plaintiff was aware these accusations were all lies. On 9 February 2018, he received a letter of demand from the Plaintiff's lawyers repeating similar allegations and

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106 [138] of the Defendant's AEIC; see also the Whatsapp exchanges on 9–10 January 2018 at p 125 of the Defendant's AEIC.

107 See the Plaintiff's Whatsapp message to the Defendant on 15 January 2018 @ 10:49:14 at p 126 of the Defendant's AEIC.

108 [143] of the Defendant's AEIC.

109 [144] of the Defendant's AEIC.

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demanding payment of US$2,360,000. It was then that he responded with his letter of 19 February 2018 to point out that it was the Plaintiff who had been "keen" to "grab the opportunity" to invest in Maxim Trader; that there was no investment agreement between him and the Plaintiff; and that the latter had invested directly in Maxim Trader all along.[110]

82 Asked why he had not called Sammi, Chin or Andrew Lim (the CEO of Maxim Trader) to testify on his behalf, the Defendant said he had never spoken to Andrew Lim; and whilst he had initially dealt with Chin in the opening of his investment account, he had communicated much more with Sammi subsequently. He had not called Sammi as a witness because when he called her in the aftermath of the media story about her arrest, she had told him there was "a proceeding going on" and asked him not to call her again.[111]

The evidence given by James Thomas

83 The Defendant did, however, call his former condominium manager James Thomas who confirmed that he had introduced the Defendant to Maxim Trader in mid-2014. Thomas testified that he had suggested the Defendant invest in Maxim Trader because he himself had invested US$20,000 in Maxim Trader at that point and – having received his 6% returns – was convinced that it was a genuine and good investment.[112] He received a 10% "commission" from Maxim Trader for introducing the Defendant as a new investor.[113]

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110 See pp 641–645 of the Defendant's AEIC.

111 NE for 15 February 2019, p 87 line 18 to p 88 line 30.

112 [6]–[8] of Thomas' AEIC.

113 NE for 15 February 2019, p 97 line 26 to p 98 line 12.

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84 Like the Defendant, Thomas too stopped receiving his promised monthly returns from Maxim Trader after May 2015, and had only found out later that "Maxim Trader had broken the law and its representative had been charged in Court for a variety of offences".[114]

The key issues in contention

85 From the evidence adduced by both parties, they were agreed that moneys totalling US$1 million were passed by the Plaintiff to the Defendant; that the moneys were in fact invested in Maxim Trader; that the promised interest rate was 8% per month; and that the moneys invested were to be locked in for 18 months, with the return of the capital sum at the end of the 18 months being guaranteed. What was in dispute was whether the Plaintiff had contracted directly with and invested directly in Maxim Trader, such that Maxim Trader was the entity contractually obliged to pay him the "guaranteed" profits and capital sum – or whether the Plaintiff had entered into an investment agreement with the Defendant, who was then contractually obliged to pay him the promised profits and the "guaranteed" capital.

86 As a preliminary aside, I should note that the Plaintiff did attempt (somewhat surprisingly) to suggest early on in cross-examination that he "[did] not know where the money went to".[115] This, however, was not a position he persisted in advancing for the rest of the trial. In any event, it was clear from his own pleadings, his AEIC, and the rest of his testimony throughout the trial that his case against the Defendant was not premised on any allegation as to the latter

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114 [10]-[11] of Thomas' AEIC.

115 NE for 12 February 2019, p 12 lines 6 to 31.

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having stolen and/or personally pocketed the US$1 million. Rather, the case theory advanced by the Plaintiff – and put to the Defendant – was that the Defendant had been running his own investment scheme "back to back" with his personal investments in Maxim Trader; that the Defendant had represented to the Plaintiff that he would invest the latter's funds "in the foreign exchange market" and that the Plaintiff had entered into the oral investment contract on this basis; that the Defendant had instead invested the entire US$1 million in Maxim Trader without the Plaintiff's knowledge or consent; and that he had done so in order to earn "secret" commissions from Maxim Trader which (so the Plaintiff alleged) were paid on every individual amount invested.[116]

Assessment of the evidence

Inconsistent and illogical evidence by the Plaintiff

87 I set out below my reasons for rejecting the Plaintiff's version of events.

Material shifts in position in critical aspect of the Plaintiff's case

88 It must be remembered that the Plaintiff's entire case hinged on the assertion that he had contracted directly with the Defendant and invested his money in the Defendant's investment scheme; that Maxim Trader had nothing to do with him; and that he had always looked to the Defendant to fulfil his contractual obligations vis-à-vis the payment of the guaranteed monthly profits and return of capital. In this connection, a fundamental – indeed, critical – aspect of the Plaintiff's case related to the issue of when he first came to know that the Defendant was investing his money in Maxim Trader. This was because a key

116 NE for 14 February 2019, p 28 line 16 to p 29 line 18; p 61 line 25 to p 65 line 30; p 80 line 19 to p 81 line 20.

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plank of the Plaintiff's case rested on the contention that he could not have contracted directly with Maxim Trader when he had been ignorant even of the existence of Maxim Trader from the start, and remained ignorant of it until after sinking US$1 million into the Defendant's "investment scheme".

89 The original Statement of Claim filed on 13 March 2018 made no mention of Maxim Trader. Following the filing of the Defence, in which the Defendant asserted that the Plaintiff had contracted directly with Maxim Trader, the Plaintiff alleged in his Reply of 18 April 2018 that it was "not until the Plaintiff confronted the Defendant with his two daughters sometime in September 2016 at the premises of the Plaintiff's money changing business that the Defendant first mentioned Maxim Trader to the Plaintiff";[117] that he had never been told about Maxim Trader prior to this meeting in September 2016;[118] and that he "was… not aware of any alleged investment by the Defendant in Maxim Trader until" this meeting in September 2016.[119] On 22 June 2018, the Plaintiff amended his Reply – but his pleaded position as to when he first heard of Maxim Trader and when he became aware of the Defendant investing his (the Plaintiff's) money in it remained unchanged.

90 On 27 July 2018, as part of the discovery process, the Defendant filed a List of Documents which included, *inter alia*, the Whatsapp messages exchanged between him and the Plaintiff during the period 15 March 2014 to 22 January 2018. Subsequently, in the AEIC filed by the Plaintiff on 27 December 2018, it became clear that his position as to when he had first heard

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117 [14d] and [15d] of the Reply dated 18 April 2018.

118 [9] and [15e] of the Reply dated 18 April 2018.

119 [14] of the Reply dated 18 April 2018.

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of Maxim Trader – and when he became aware of the Defendant investing *his* moneys in it – had undergone a material shift. According to the Plaintiff's AEIC, he first heard of Maxim Trader *in August 2014* when the Defendant mentioned it as one of his "trading platforms" while pitching his investment scheme;[120] and following the Plaintiff's decision to invest in his investment scheme, the Defendant allegedly mentioned, *on numerous occasions prior to September 2016*, that he was able to offer investors such as the Plaintiff guaranteed monthly returns of 8% because he himself had invested "in a foreign exchange company called Maxim" which offered "profits of more than 8% per month".[121] As to when he actually became aware that *all* his money had been invested in Maxim Trader, the Plaintiff claimed in his AEIC that it was on *25 June 2015* – during a meeting with Sammi – that he learnt from the Defendant for the first time that the latter had invested his U$1 million "and other investor's funds all into Maxim Trader". The confrontation with the Defendant in September 2016 – which had been identified in the Reply as the date at which the Plaintiff heard of Maxim Trader for the first time – was instead described in his AEIC as being the date on which *the Defendant first advanced the claim that the Plaintiff had "entered into the investment directly with Maxim Trader*".[122] This last assertion was incorporated in the amended Reply filed on 12 February 2019 (*ie*, the first day of trial), in substitution for the previous assertions as to the Plaintiff having first heard of Maxim Trader only in September 2016. I should add that in applying to amend the Reply, the Plaintiff did not explain in the affidavit filed in support of the application why the amendments were not made earlier.

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120 [16] of the Plaintiff's AEIC.

121 See, *eg*, [31], [36], [40], [56] and [64] of the Plaintiff's AEIC.

122 [170] of the Plaintiff's AEIC.

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91 I found the above shift in the Plaintiff's position to be material – and telling. Given that he had pleaded from the outset that his investment agreement was with the Defendant and that Maxim Trader had nothing to do with their investment agreement, it was highly suspicious that his recollection of when he first became aware of the Defendant investing his money in Maxim Trader should have been so unreliable and susceptible to revision.

92 It was also highly suspicious that these revisions to the Plaintiff's version of events should have come only after the Defendant's disclosure of the Whatsapp messages exchanged by the parties during the material period. Oddly, none of the parties' Whatsapp messages were disclosed by the Plaintiff in the List of Documents he filed on 26 July 2018, even though a good number of these messages involved communications about both parties' investments and the payment of investment returns (after the filing of the Defendant's List of Documents on 27 July 2018, the Plaintiff filed a Supplementary List of Documents on 18 September 2018 disclosing additional Whatsapp messages for the period from 2 November 2017 to 22 January 2018). It was the Whatsapp messages disclosed by the Defendant which exposed the fact that the Plaintiff had been aware of Maxim Traders – and had moreover been regularly following up with the Defendant for updates on the investments in the company – even before 25 June 2015, and certainly well before September 2016. As early as November 2014, the Whatsapp communications showed the Defendant explaining to the Plaintiff the process by which the monthly returns would be paid by Maxim Traders:[123]

> [3/11/2014, 10:39:03] [Defendant]: The credits are deposited into my investment account. Now i need to instruct them to

123 See pp 80–81 of the Defendant's AEIC.

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> withdraw from my investment account to my OCBC account within the next 7 working days. Thereafter they will transfer to my OCBC account. This should be done by the 25th of Nov 2014. Then I will issue a cheque or Internet transfer…
>
> [3/11/2014, 10:56:40] [Plaintiff]: O i c.it is ysually that period of the month the funds wud b in?ok then.
>
> …
>
> [14/11/2014, 09: 09:44:51] [Defendant]: Money Just came into my account. Which account to transfer to? Us$4,000 @ 1.27436 = $5,097.44
>
> [14/11/2014, 09: 11:44:51] [Plaintiff]: Just trnfr 5k to my posb [xxx xxxx xx].
>
> …
>
> [25/11/14, 16:26:10] [Defendant]: Your last investment returns of US 8,000 has been credited into the trading account. I will be able to request for withdrawal from the 1st to 7th December. Thereafter the lady will help to transfer to my account by the 25th Dec and I will immediately transfer to your account as what we did the last time…
>
> [25/11/14, 16:26:50] [Plaintiff]: Ok God willing.tomr oncevi hav d $ in my hand i cal u.

93 Whilst both men did not refer to Maxim Trader expressly by name in the above exchanges, it has not been disputed that the "*they*" alluded to by the Defendant was Maxim Trader; and this is also evident from the other Whatsapp messages which followed. Thus for example, by 15 January 2015, the Plaintiff could be seen asking the Defendant in a Whatsapp message:[124] "Any gud news frm maxim?" – following which both men communicated about the payment of the Plaintiff's first monthly investment returns in January 2015.[125] As another example, another Whatsapp message on 10 March 2015 showed the Plaintiff

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124 See the Plaintiff's Whatsapp message to the Defendant on 15 January 2015 @ 17:47:14 at p 84 of the Defendant's AEIC.

125 See the Plaintiff's Whatsapp message to the Defendant on 16 January 2015 @ 17:18:59 at p 84 of the Defendant's AEIC.

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again asking the Defendant for an update from Maxim Trader and expressing concern that he was "slightly tight" for funds:[126]

> Btw any news frm max? aftr settling and not taking in anymore forwarding slightly tight

94 Rather suggestively, the Defendant's response on the same day was:

> Funds just deposited into the I-account today. Sent s request to TT the funds from I-account to OCBC account today. Gods willing *we* should get the funds before 18th. [emphasis added]

95 On 17 March 2015, the Defendant updated the Plaintiff as follows:

> Just received e-alert from OCBC that *our funds* are in my account. [emphasis added]

96 The Plaintiff's replies to the above messages were, simply, "ok thanks" and "Ok can" respectively.[127] I found these Whatsapp messages pertinent and suggestive in that they showed the Defendant to be drawing no distinction between his investment returns and the Plaintiff's: both sets of investment returns were clearly depicted as being paid by Maxim Trader, apparently without demur on the Plaintiff's part.

97 The upshot of Whatsapp messages such as these was that they completely contradicted the Plaintiff's original claims as to having been ignorant of Maxim Trader and/or "any alleged investment by the Defendant in Maxim Trader until" September 2016. Given that subsequent to the disclosure of these messages, the Plaintiff pivoted to a noticeably different version of

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126 See the Plaintiff's Whatsapp message to the Defendant on 10 March 2015 @ 12:35:51 at p 86 and on 17 March 2015 @ 19:47:52 at p 87 of the Defendant's AEIC.

127 See the Plaintiff's Whatsapp messages to the Defendant on 10 March 2015 @ 12:39:09 and 10:17:42 at p 86 of the Defendant's AEIC.

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events in his AEIC and in the re-amended Reply, the inference to be drawn was that he had realised the damaging effect of the Whatsapp evidence on his original version of events and had come up with another version to explain away these messages. Thus, the references to Maxim Trader in the Whatsapp messages prior to 25 June 2015 were explained away on the basis that the Defendant had from the start "boasted" about the "good monthly profits"[128] he was getting from "his own investment into Maxim Trader, his biggest and most lucrative investment".[129] At the same time, the Plaintiff insisted in his AEIC that he was "only concerned about the Defendant's guaranteed payment to [him] under [his] investment with the Defendant's scheme", that Maxim Trader had "nothing to do with [him]", and that he saw no need to query the Defendant's investment arrangements with Maxim Trader[130] – until the shocking discovery on 25 June 2015 that the Defendant had invested his entire US$1 million into Maxim Trader.[131]

98 In this connection, however, the Plaintiff's position underwent yet another material shift in the course of cross-examination. When pressed about the Whatsapp messages with the Defendant and the concern he appeared to show in these messages about the Defendant's investments in Maxim Trader, the Plaintiff testified that *by January 2015*, the Defendant had told him that "*all*" the investment moneys "were injected to this Maxim", and the Plaintiff accordingly knew he had "to refer to Maxim so that… to get back [his]

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128 [40] of the Plaintiff's AEIC.

129 [57] of the Plaintiff's AEIC.

130 [91] of the Plaintiff's AEIC.

131 [110] of the Plaintiff's AEIC.

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returns".[132] This was plainly at odds with the narrative presented in his AEIC, where he claimed to have found out only for the first time on 25 June 2015 about the Defendant investing "all" his investors' moneys (including the Plaintiff's US$1 million) in Maxim Trader.[133]

99 These material changes in the Plaintiff's position on an important aspect of his case were not explained, and were in my view highly detrimental to his credibility. In contrast, the Defendant's version of events remained consistent from the time he first replied on 19 February 2018[134] to the letter of demand from the Plaintiff's lawyers, to the filing of his Defence, and in the course of his testimony at trial.

The Plaintiff's version of events as inconsistent with contemporaneous evidence

100 Quite apart from the fact that the Plaintiff's version of events at trial was inconsistent with the version presented in his pleadings, the version presented at trial was also inconsistent with the undisputed evidence of parties' contemporaneous communications and conduct.

101 In his AEIC and in his testimony at trial, the Plaintiff took pains to emphasize that he had looked solely to the Defendant to "make payment" on his investment scheme, that the latter's contractual obligation to pay was unaffected by whatever "internal" arrangements he had with Maxim Trader, and that it was therefore unnecessary for the Plaintiff to "query, understand or get involved in

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132 NE for 12 February 2019, p 66 at line 2 to p 67 at line 10.

133 [110] of the Plaintiff's AEIC.

134 See pp 644–645 of the Defendant's AEIC.

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the Defendant's involvement" in Maxim Trader.[135] I have highlighted earlier instances where the Plaintiff was shown in various Whatsapp communications to be querying the Defendant and/or expressing concern about the investments in Maxim Trader. What was equally telling about these Whatsapp communications was the total absence of any reference by the Plaintiff to the Defendant's contractual responsibilities under their alleged oral investment agreement. Even after the "shocking" revelation on 25 June 2015 that the Defendant had placed his entire US$1 million in Maxim Trader and that the payment of profits by Maxim Trader was delayed by its "investment problems in Taiwan", the Plaintiff's Whatsapp messages to the Defendant did not allude at all to the latter's contractual obligation to pay him the amounts promised. Indeed, in the period after 25 June 2015, even as he chased the Defendant to update on "[a]ny gud news frm sammi"[136] and to arrange a further meeting with Sammi,[137] the Plaintiff made no mention at all of the Defendant's contractual responsibility to ensure payment of the "guaranteed" sums.

102 Equally surprising was the Plaintiff's response to the information he received on 25 June 2015 that all investments in Maxim Trader were being converted to shares.[138] Given that the Plaintiff's position was that he had no investment agreement with Maxim Trader and it was the Defendant who was liable to pay him all "guaranteed" sums, it was odd that following the news of

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135 [90]–[91] of the Plaintiff's AEIC.

136 See the Plaintiff's Whatsapp messages to the Defendant on 30 June 2015 @ 17:03:30 at p 114 of the Plaintiff's AEIC.

137 See the Plaintiff's Whatsapp messages to the Defendant on 6 July 2015 @ 15:26:09 at p 119 of the Plaintiff's AEIC.

138 [110] of the Plaintiff's AEIC.

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the share conversion exercise and the resulting delay in profit payments, he never once reminded the Defendant of his contractual obligations to pay, much less upbraided him for breaching those obligations. Indeed, whilst the Plaintiff claimed in his AEIC that he had reminded the Defendant the proceeds from the sale of his 200,000 shares on 15 July 2015 "would not… satisfy the agreed monthly return *under the Defendant's investment scheme*", this was not borne out by his contemporaneous Whatsapp messages to the Defendant which said something quite different. On 15 July 2015, on being informed of the Defendant's sale of 200,000 shares, the Plaintiff's responses were as follows:[139]

> [15/07/2015, 10:58:00] [Defendant]: Managed to sell 200,000 shares @ 0.20. The rate used is 1.30. Will collect cash from Sammi tomorrow and pass you, once received. Sammi is helping through her contacts. But still she is discouraging us to sell any further this month and to wait next month. I told her you need urgently. If another 100,000 sold, I will keep you posted
>
> [15/07/2015, 11:00:47] [Plaintiff]: OK.
>
> [15/07/2015, 11:07:35] [Plaintiff]: Convey my appreciation to her. upsey wth maxim not sammi
>
> [15/07/2015, 11:12:24] [Defendant]: Just spoke with her and she said she will help us
>
> [15/07/2015, 11:13:05] [Plaintiff]: Oj Gid willing
>
> [16/07/2015, 17:05:12] [Plaintiff]: At d rate they calculate i m going yo get bk less than half wat I investedmpls chek with sammi again
>
> [16/07/2015, 17:07:01] [Defendant]: Once the new platform is up, it will be higher. it should be up next month. Now it is the buyer market.
>
> [16/07/2015, 17:05:12] [Plaintiff]: Ok msy God help us in d face of adversity n people who tk advntg

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139 See pp 119–120 of the Plaintiff's AEIC.

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103 In the above exchange, not only was there no evidence of the Plaintiff reminding the Defendant about "the agreed monthly return" under *his* "investment scheme", the Plaintiff declared himself upset with Maxim Trader for the delay in payment. It was also clear that whilst he did rue the fact that the sale of converted shares would leave him with "less than half" of what he had invested, he appeared to acknowledge that this was due to the rate at which Maxim Trader calculated the conversion of investments to shares ("*[a]t d rate they calculate*"); and instead of reminding the Defendant of the obligations he owed under their oral investment agreement, he simply asked the latter to "check with Sammi again". Even when it became increasingly obvious in the following months that no payment was forthcoming, the Plaintiff's reaction was not to hold the Defendant directly responsible, but to ask him to check with Sammi again. Indeed, the Plaintiff's remarks suggested that he blamed himself for the predicament he was in, as seen from the italicised words below:

> [13/10/2015, 17:09:00] [Plaintiff]: …cud ubpls check wth sammi abt our funds.m going thru vry hard times settling.
>
> [13/10/2015, 17:14:43] [Defendant]: I have asked her what is next in relation to our shares. She said she will call me in one hour time. And in return I will update you too
>
> [13/10/2015, 17:19:05] [Plaintiff]: Hope she will cum up wth something fruitful
>
> [13/10/2015, 17:19:37] [Defendant]: I need a miracle too
>
> [13/10/2015, 17:13:23] [Plaintiff]: Its peole's mony bro. *I hav put myself in vry deeo shit cis of nit heeding my dad's advice.*
>
> [emphasis added]

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104 I should point out that in his AEIC, the Plaintiff sought to "paraphrase" his own remarks in the above exchange by claiming that what he had said was this:[140]

> [I] reminded [the Defendant] that the US$1 million which *I had invested into his investment scheme at his inducement* were monies which I had saved and borrowed, *entrusted in to his investment scheme* and that I was in deep trouble *as the result of the Defendant's failure to comply with his contractual obligation.* [emphasis added]

105 I found the Plaintiff's attempted "paraphrasing" of his own messages highly disingenuous. These messages plainly did not say what he claimed in his AEIC to have said. If anything, his remark on 13 October 2015 that he had put himself "in very deep shit" was revealing: these were certainly not the words of someone who viewed his financial predicament as being "the result of the Defendant's failure to comply with his contractual obligation". I should add that the Plaintiff's reference to it being "people's money" – coupled with his earlier expressions of worry about "settlements"[141] – appeared to support the Defendant's evidence that the Plaintiff had borrowed funds from third parties and was facing difficulties in repaying the loans.[142]

106 The Plaintiff alleged in his AEIC that the Defendant had "deliberately" played on his sympathy by talking about the ill health of his family members and thereby "[delaying] his explanations for his breach of contract and

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140 [136] of the Plaintiff's AEIC.

141 See the Plaintiff's Whatsapp messages to the Defendant on 24 June 2015 @ 15:08:53 at p 113 of the Plaintiff's AEIC.

142 [87] of the Defendant's AEIC.

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trust…and not paying [the Plaintiff] the agreed monthly guaranteed profits".[143] It did not appear to me, in the first place, that the Defendant had made up stories about his family members' ill health: the incident involving his aunt dying of cancer, for example – which he mentioned to the Plaintiff on 15 October 2015 as his reason for not being able to talk that day[144] – was corroborated by the obituary notice which was disclosed in discovery.[145] In any event, whatever sympathy the Plaintiff felt for the Defendant's family woes plainly did not constrain him from complaining to the latter about the "very hard times"[146] he was going through and the "very deep shit"[147] he was in. I did not believe it would have constrained him from bringing up the Defendant's contractual obligations to make good the "guarantees" of payment – if there had indeed been such guarantees.

107 Yet more startling discrepancies showed up between the Plaintiff's account in his AEIC of subsequent events in the period from September to October 2016, and the objective evidence of parties' contemporaneous conduct. According to the Plaintiff's account, the "confrontation" of 19 September 2016 exposed the Defendant as a shocking liar: when pressed by Shakila and Haseena, the Defendant allegedly sought "to distance himself from Maxim Trader and to evade his contractual obligations" to the Plaintiff, even trotting

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143 [137] of the Plaintiff's AEIC.

144 See the Defendant's Whatsapp message to the Plaintiff on 5 October 2015 @ 20:20:59 at p 101 of the Defendant's AEIC.

145 Defendant's Second Supplementary List of Documents dated 28 January 2019.

146 See the Plaintiff's Whatsapp message to the Defendant on 13 October 2015 @ 17:09:00 at p 102 of the Defendant's AEIC.

147 See the Plaintiff's Whatsapp message to the Defendant on 13 October 2015 @ 17:23:23 at p 102 of the Defendant's AEIC.

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out a "completely untrue and false" story about the Plaintiff having contracted directly with Maxim Trader.[148] To add insult to injury, the Defendant was also exposed during this "confrontation" as having profiteered on the back of the Plaintiff's investments through secret "commissions" from Maxim Trader.[149] Even worse, when the Defendant furnished the Maxim Trader investment contracts on 10 October 2016, these were allegedly discovered to be "falsely fabricated…from his own computer".[150] At this stage, it "became apparent to [the Plaintiff] that the Defendant had created these contracts to extricate his liability to [the Plaintiff] for the substantial guaranteed monthly profits."[151]

108 If the Plaintiff's account of the events of September and October 2016 were to be believed, therefore, these events had proven the Defendant to be a liar and a cheat bent on evading his contractual responsibilities. Astonishingly, however, the Plaintiff's Whatsapp communications with the Defendant betrayed none of the anguish and anger one would reasonably have expected from the victim of such fraud. Indeed, the Whatsapp message sent by the Plaintiff in the immediate aftermath of the "confrontation" merely lamented that his daughters and the Defendant had not heeded his request to "go out n talk" during the "confrontation" instead of talking in front of his wife:[152]

> I told u n the gals to go out n talk not in front of my wife but u didnt want. now i m vry stressed with my wife's worry

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148 [170]–[173] of the Plaintiff's AEIC.

149 [174] of the Plaintiff's AEIC.

150 [180] of the Plaintiff's AEIC.

151 [181] of the Plaintiff's AEIC.

152 See the Plaintiff's Whatsapp message to the Defendant on 19 September 2016 @ 23:29:59 at p 123 of the Defendant's AEIC.

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109 There was also no mention in any of the Plaintiff's Whatsapp messages post-10 October 2016 of the Defendant's alleged fabrication of the Maxim Trader investment contracts. In cross-examination, the Plaintiff claimed that he had said nothing about the Defendant's lies and forgeries in his messages because he had not wanted to "hurt" the Defendant by being "blunt" or unsympathetic,[153] and also because he still "trust[ed] that [the Defendant] will come back with the money".

110 I found the Plaintiff's explanation frankly incredible. On his own account, by October 2016 the Defendant already owed him US$1.32 million in overdue monthly investment returns[154] – as well as the capital sum of US$1 million which represented the Plaintiff's life savings and loans taken from close friends. By October 2016, the Defendant had also made it plain – through what he had said on 19 September 2016 and the provision of "fabricated" contract documents thereafter – that he was trying "to evade his contractual obligations". I did not find it at all believable that the Plaintiff would have viewed the situation with such equanimity that he would have been more worried about hurting the Defendant's feelings than confronting him about his lies and contractual liabilities. This was all the more so in view of his high state of anxiety about his finances, as seen from the messages to the Defendant about the "very hard time" he was going through. It should also be noted that despite professing his "trust" in the Defendant to "come back with the money", the Plaintiff was unable to offer any coherent explanation as to why he had such "trust" in someone who had allegedly been shown to be a fraudster. In fact,

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153 NE for 12 February 2019, p 139 line 6 to p 140 line 15.

154 [123] of the Plaintiff's AEIC.

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when asked why he thought the Defendant would repay him after having declared on 19 September 2016 that he was unable to pay up, the Plaintiff simply claimed that he could not understand "a lot of the things" the Defendant talked about.[155]

111 In short, therefore, the Plaintiff's claims about having consistently held the Defendant responsible for the "guaranteed" payments under their investment agreement ran contrary to the state of affairs shown in the parties' contemporaneous communications. The picture which emerged from these contemporaneous communications was far more consistent with the Defendant's version of events. In particular, the Plaintiff's failure to bring up the Defendant's supposed contractual obligations in any messages prior to January 2018, and his reference to being upset with Maxim Trader, were consistent with the Defendant's assertion that the Plaintiff knew very well his investment agreement was with Maxim Trader.

Logical flaws in the Plaintiff's case theory

112 Over and above the various evidential gaps and incongruities which beset the Plaintiff's case, when one took a step back to consider the general narrative he was presenting, there appeared to me to be a fundamental lack of logic in his case theory. *Per* the Plaintiff's narrative, the essential terms of his oral investment agreement with the Defendant were no different from the terms of the Defendant's investment agreement with Maxim Trader – especially insofar as the rate of return (8% per month) and the lock-in period (18 months) were concerned. In fact, the Plaintiff said he himself had realised his investment

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155 NE for 12 February 2019, p 142 line 23 to p 143 line 32.

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terms with the Defendant were no different from the latter's investment terms with Maxim Trader after (eventually) reading about Maxim Trader's scam.[156] However, as the Defendant's counsel pointed out in cross-examination, if it were indeed true that the Defendant had run an investment scheme offering the Plaintiff exactly the same rate of return and lock-in period as those he had with Maxim Trader, there would appear to be no benefit of any kind the Defendant could personally have derived from such a scheme.[157] When asked to explain this conundrum, the Plaintiff was plainly stumped. He was obliged to concede in cross-examination the apparent lack of any personal benefit to the Defendant from supposedly operating his own investment scheme.[158] I would add that whilst the Defendant himself testified that he did receive from Maxim Trader a one-off 10% introduction fee for introducing a new investor, it was obvious – as a matter of common sense and logic – that the Defendant had no need to pretend to operate his own investment scheme merely to claim this one-off introduction fee.

113 Visibly vexed at the concession made in cross-examination, the Plaintiff attempted in the course of the trial to come up with an explanation for the conundrum. In his counsel's cross-examination of the Defendant, it was put to the Defendant that he had received commission from Maxim Trader for every investment made by the Plaintiff which he channelled into Maxim Trader. Counsel relied on a number of cash deposits shown in the Defendant's OCBC account statements, which he said represented payment of secret commissions

156 NE for 12 February 2019, p 46 lines 20 to 30.

157 NE for 12 February 2019, p 46 line 31 to p 47 line 16.

158 NE for 12 February 2019, p 47 lines 8 to 11.

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by Maxim Trader based on the Plaintiff's investments.[159] Indeed, in the Plaintiff's closing submissions, it was even suggested that the Defendant "operated his own investment scheme whereby he intended to use his network and pool of 40 money changer clients as investors into his own investment scheme which he then secretly parked as his own investments in his name into Maxim and earned secret profits as 'passive income'".[160]

114 I did not find the above proposition at all credible. Firstly, it should be noted that this proposition – that the Defendant operated his own investment scheme in order to earn secret commissions from Maxim Trader for every investment made by his pool of investors – surfaced only for the first time during the cross-examination of the Defendant. It was never pleaded by the Plaintiff, even though I would have considered it a material fact since it supposedly explained the entire rationale of the Defendant's investment scheme. Nor was it mentioned either in the Plaintiff's AEIC or in his counsel's opening statement. That such a pertinent proposition should have emerged only for the first time in the Defendant's cross-examination suggested that it was something the Plaintiff had belatedly invented after being confronted with the logical gap in his own narrative.

115 Secondly, in respect of the cash deposits relied on by the Plaintiff, these were explained by the Defendant as having been fund transfers made in error to his account by the Maxim Trader representatives he was dealing with (Chin and

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159 NE for 14 February 2019, p 65 lines 1 to 30, p 80 line 19 to p 81 line 20; also [42b] of the Plaintiff's Closing Submissions.

160 [44] of the Plaintiff's Closing Submissions.

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Sammi).[161] The Defendant was also able to demonstrate that each of these deposits into his account was followed by a transfer of the same amount (or a very similar amount, allowing for some rounding-up) out of his account back to either Chin or Sammi; and nothing in the evidence presented by the Plaintiff persuaded me that the Defendant had retained the cash deposit amounts. While much was made of the fact that the Defendant had not informed the Plaintiff of the erroneous fund transfers,[162] there did not appear to me any sensible reason why the Defendant should have mentioned these fund transfers to the Plaintiff if they had in fact been made in error and subsequently returned. It must also be highlighted that despite charging in closing submissions that the Defendant had derived secret profits from his "*pool of 40 money changer clients*" by parking their investments with Maxim Trader, the Plaintiff's counsel did not identify in cross-examination any other cash deposits representing the "secret" commissions made from "money changer clients" other than the Plaintiff.

116 Thirdly, this belated case theory was in fact refuted by a third party, James Thomas. Thomas gave clear testimony that the commission paid to a member by Maxim Trader was strictly a "one-time bonus" of 10% on the first investment made by a new investor he or she introduced.[163] It was not suggested to Thomas that his testimony on this issue was untrue or that he had any reason to lie on behalf of the Defendant.

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161 NE for 15 February 2019, p 70 line 19 to p 75 line 27.

162 NE for 14 February 2019, p 64 lines 15 to 30; also [49] of the Plaintiff's Closing Submissions.

163 [7] of Thomas' AEIC, see also NE for 15 February 2019, p 97 line 26 to p 98 line 13.

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117 Fourthly, the Plaintiff's belated case theory was undermined by the same fundamental lack of logic which had plagued his original narrative. According to this belated case theory, the amounts invested by the Plaintiff (and supposedly other investors) in the Defendant's investment scheme were all "parked" by the latter in Maxim Trader as investments *in his own name*.[164] If this were indeed the case, however, it made no sense for Maxim Trader to be paying the Defendant "commission" on each investment made in his own name when it was already paying him 8% monthly interest on such investments. The ultimately incoherent nature of the Plaintiff's belated case theory only reinforced my conviction that it was something he had concocted mid-trial.

The partisan and improbable nature of the evidence given by the Plaintiff's daughters

118 I should add that insofar as the Plaintiff attempted to bolster his case with evidence from his daughters, I did not find this attempt persuasive. Both Shakila and Haseena struck me as being partisan witnesses whose evidence I found highly improbable. In the first place, it did not appear to me believable that having so ferociously confronted the Defendant on 19 September 2016 and having established that he was a liar who had taken US$1 million of their father's life savings and borrowings, both women would have been so sanguine as simply to accept their father's alleged refusal to make a police report or to seek legal advice.[165]

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164 See, *eg*, NE for 14 February 2019, p 81 lines 17 to 20 and [44] of the Plaintiff's Closing Submissions.

165 [12]–[20] of Haseena's AEIC, [14]–[23] of Shakila's AEIC.

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119 Moreover, while both women echoed the Plaintiff's statement that he had still "trusted" the Defendant even after the shocking discovery of his dishonest behaviour in September and October 2016, the reason which both proffered for the Plaintiff's inaction did not make sense. Both women claimed in their AEICs that the Plaintiff had taken action only in January 2018 because it was then that it had become "apparent that the Defendant had cheated and breached his agreement with [the Plaintiff]".[166] However, this explanation was totally at odds with their own evidence: both asserted in their AEICs that at the 19 September 2016 meeting, the Plaintiff had already "denied [the Defendant's] false allegations" about his contracts with Maxim Trader;[167] and both had also asserted that it was "apparent" to them from their perusal of the contracts on 10 October 2016 that these were fabrications.[168] It could not be true, therefore, that the Defendant's alleged "cheating" and contractual breaches became "apparent" to the Plaintiff only in January 2018.

120 Moreover, just as the Plaintiff's communications with the Defendant from September to October 2016 did not at all betray the anger or hurt one would reasonably have expected of a victim of massive fraud, so too Shakila's documented communications with the Defendant in the same period revealed no signs of outrage against a man who had supposedly lost her father's life savings (and more). On the contrary, Shakila continued to call on his services as auditor for her restaurant business and to seek his advice. This was shown in a series of Whatsapp communications between her and the Defendant in the

166 [20] of Haseena's AEIC, [23] of Shakila's AEIC.

167 [13] of Haseena's AEIC, [16] of Shakila's AEIC.

168 [18] of Haseena's AEIC, [21] of Shakila's AEIC.

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period from October to November 2016,[169] in which – quite apart from omitting any mention of the latter's supposed forgeries and lies – she was shown politely requesting his help in audit matters and expressing her appreciation. As the Defendant's counsel pointed out in cross-examination, these messages showed her communicating with the Defendant "as if everything [were] perfectly normal"[170] – instead of her having exposed him as a crook.

121 When confronted with these messages, Shakila at first claimed that they had been sent before she saw the "fake" Maxim Trader contracts forwarded by the Defendant.[171] However, it was pointed out to her[172] that this could not be true because she had stated in her AEIC that she and Haseena had reviewed the Defendant's "fake" contracts on 10 October 2016[173] – whereas her Whatsapp messages to the Defendant on her business audit matters dated from 27 October 2016 onwards. Confronted with this evidence, Shakila changed tack: she claimed instead that she had continued to engage the Defendant and to maintain a "conversation" with him after 10 October 2016 because she had believed that he was "genuinely trying to assist [them] through with [her] father's investment".[174] This seemed to me a highly improbable explanation, since she also testified that she had already realised by then that the contracts forwarded by the Defendant were fakes.[175] In fact, when pressed further, Shakila changed

169 See pp 435–436 of the Defendant's Bundle of Documents ("DBOD").

170 NE for 13 February 2019, p 79 lines 4 to 26.

171 NE for 13 February 2019, p 79 lines 24 to 32.

172 NE for 13 February 2019, p 80 line 1 to p 81 line 18.

173 [21] of Shakila's AEIC.

174 NE for 13 February 2019, p 81 line 21 to p 82 line 19.

175 NE for 13 February 2019, p 81 lines 21 to 22.

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her explanation again, claiming that she had continued to seek his professional help because his role as her book-keeper was a "different entity" from his "involvement" with her father.[176]

122 Having seen the glibness with which Shakila switched stories once confronted with inconvenient evidence, I found her to be an unreliable witness; and I rejected her various explanations for her Whatsapp exchanges with the Defendant in the period post-10 October 2016. As the Defendant's counsel noted, the cordial and friendly nature of these exchanges was inconsistent with her assertion as to the discovery of the Defendant's treachery.

123 As to Shakila's assertion that the Defendant had approached her in July 2014 – just one month before approaching her father – to invite her to invest in his investment scheme, there was no independent evidence of any such communications. Instead, the Whatsapp messages adduced in evidence[177] supported the Defendant's contention that he had mentioned his forex investments to her in April 2015. It should be noted, as an aside, that Shakila's AEIC made no mention of these April 2015 communications: the Whatsapp messages were disclosed by the Defendant in his second supplementary list of document on 28 January 2019 after the filing of Shakila's AEIC. In addition, the Whatsapp evidence showed that the Defendant clearly stated he was engaging in "forex trading *with a company*".[178] In cross-examination, Shakila conceded that the Defendant was clearly *not* talking about his own investment

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176 NE for 13 February 2019, p 84 lines 1 to 24.

177 See pp 426–427 DBOD.

178 See the Defendant's Whatsapp message to Shakila on 23 April 2015 @ 17:55:23 at p 426 DBOD.

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scheme in this message. She did continue to insist that he had invited her in July 2014 to invest in his own investment scheme, but I did not find her testimony credible. Quite apart from the lack of any independence evidence in this respect, I found it unbelievable that the Defendant would have invited her in July 2014 to "invest into his investment scheme" at "8% profits per month" for an 18-month lock-in period,[179] only to tell her eight months later about his investing in forex "*with a company*" on *exactly the same investment terms*. My conclusion was that Shakila had made up her evidence about the Defendant inviting her to "invest into his investment scheme" in July 2014 in order to lend verisimilitude to her father's story about a similar invitation from the Defendant in August 2014.

Consistent and credible evidence by the Defendant

124 In contrast with the Plaintiff, I found the Defendant to be consistent and credible in his evidence. As noted earlier, the objective evidence of the parties' contemporaneous communications and conduct was inconsistent with the Plaintiff's version of events and instead resonated with the Defendant's version. Moreover, as also noted earlier, he had maintained the same version of events from the outset, from his reply to the Plaintiff's letter of demand in February 2018[180] to the filing of his AEIC and throughout the trial.

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179 [5] of Shakila's AEIC.

180 See pp 644–645 of the Defendant's AEIC.

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The Defendant's alleged knowledge by 2 June 2015 of the illegal Ponzi scheme

125 The Plaintiff claimed that the Defendant must already have found out on 2 June 2015 "that Maxim Trader was a Ponzi scheme and [his] investment into Maxim Trader… was swindled" and "lost", and that he deliberate kept quiet about this information while stealthily "set[ting] out to hatch a false defence that he was only [the] agent" for the Plaintiff's investments with Maxim Trader.[181] The "All Singapore Stuff" online story dated 2 June 2015 – which the Plaintiff contended the Defendant must have seen on the same date – was a document disclosed by the Defendant himself in discovery.[182] The Defendant's evidence was that he had found this article online in March 2018 when preparing for the trial. In the copy of the article exhibited in the Defendant's AEIC, 20 March 2018 is shown as the date on which this copy of the article was accessed and printed.[183] The Plaintiff sought to cast suspicion on the Defendant by pointing to the fact that on 2 June 2015, he had communicated with the Plaintiff about the latter opening an I-Account of his own.[184] I did not find anything suspicious in this. Even if the Plaintiff had opened an I-Account of his own in June 2015, I did not see how this would have supported a "false" defence by the Defendant that the Plaintiff had contracted directly *with Maxim Trader since October 2014*. In any event, the Plaintiff himself testified that an I-Account was never opened for him because he changed his mind about doing so.

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181 [99] of the Plaintiff's AEIC.

182 Defendant's List of Documents dated 27 July 2018.

183 See pp 663–669 of the Defendant's AEIC.

184 See, *eg*, the Defendant's Whatsapp message to the Plaintiff on 2 June 2015 @ 11:08:55 at p 110 of the Plaintiff's AEIC; also [58] at p 104 of the Plaintiff's Closing Submissions.

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126 More importantly, other evidence of the Defendant's conduct post-2 June 2015 contradicted the Plaintiff's contention that he must have known by that date that his investment in Maxim Trader was "lost" to an illegal Ponzi scheme. In particular, the Plaintiff admitted that the Defendant had on 16 July 2015 given him the Singapore currency equivalent of the US$40,000 obtained from selling 200,000 converted shares. The Defendant's evidence was that he had given this money to the Plaintiff for his use first because the latter was "very desperate" to "settle some loans" at the time.[185] The Plaintiff disputed this, claiming that the amount represented part payment of the guaranteed monthly profits due to him from the Defendant in July 2015 and that the Defendant must have been "trying his best to sell off his shares… in order to comply with his investment scheme".[186] In my view, the Plaintiff's claim made no sense when juxtaposed against his other claim that the Defendant had already known by 2 June 2015 that his investment in Maxim Trader was "lost" to a Ponzi scheme. If indeed the Defendant had possessed such knowledge by 2 June 2015, and if indeed he were the calculating crook that the Plaintiff made him out to be, then there was no reason for him to give the Plaintiff US$40,000 in July 2015 – since he would have known by then the impossibility of being able to recoup such a payment. It should also be noted that the Defendant's assertion that the Plaintiff had been "very desperate" at the time to settle his loans was corroborated by the evidence of the Plaintiff's Whatsapp messages, which alluded to his anxiety about "settlements":[187]

> [24/06/2015, 15:08:53] [Plaintiff]: M worried abt settlemnts on Monday.till now not in

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185 [100] of the Defendant's AEIC.

186 [119] of the Plaintiff's AEIC.

187 See pp 113, 118–119 of the Plaintiff's AEIC.

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> .....
>
> [30/06/2015, 17:55:09] [Plaintiff]: so wen can v expect $$$(in intrst/profit/dividend)?
>
> [30/06/2015, 17:55:27] [Plaintiff]: July 1st week anything?
>
> [30/06/2015, 17:58:14] [Defendant]: Right now I am lost. Waiting for the whole exercise of conversion to be over and then I need to speak to Sammi. Then I hope it would be more clear on how to go about.
>
> [30/06/2015, 18:09:01] [Plaintiff]: OK. m totally stuck n in july cant imagine wat is it gonna b

127 In light of the above reasoning, I rejected the Plaintiff's claims about the Defendant's state of knowledge as at 2 June 2015.

The alleged "material discrepancies" between the Maxim Trader contracts in the Plaintiff's name and those in the Defendant's name

128 I also rejected the Plaintiff's claims about there being "material discrepancies" between the Maxim Trader investment contracts in his name and those contracts in the Defendant's name. My reasons were as follows.

129 The Plaintiff highlighted three alleged discrepancies between the contracts in his name and those in the Defendant's name[188] which, according to him, proved that the Defendant had "fabricated" the contracts in his (the Plaintiff's) name. Firstly, it was submitted that the contracts in the Defendant's name featured a Maxim Trader watermark on each page, whereas those in the Plaintiff's name – or at least the copies exhibited in the Defendant's AEIC – did not feature any such watermark. However, it was pointed out that the copies of the contracts in the Plaintiff's name which were exhibited in the Defendant's

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188 NE for 14 February 2019, p 130 line 28 to p 131 line 10.

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Bundle of Documents did in fact bear the same Maxim Trader watermark seen in the copies of the contracts in the Defendant's name. The Defendant's counsel explained that the apparent absence of the watermark in the copies exhibited in the Defendant's AEIC could have been due to the process of scanning and photocopying; and I did observe for myself that the photocopies exhibited in the Defendant's AEIC were of somewhat poor quality. More importantly, the Defendant's counsel produced for my inspection the originals of the contracts in question; and I verified for myself, after careful inspection, that all the contracts did in fact carry the same Maxim Trader watermark. In the circumstances, I saw no reason to doubt counsel's explanation as to the possibly deleterious effects of the scanning and photocopying process on the clarity of the watermark in the copies exhibited in the Defendant's AEIC; and with respect, I found the Plaintiff's refusal to accept this explanation – as well as the aspersions cast on counsel's explanation[189] – devoid of any merit.

130 Secondly, the Plaintiff submitted that the contracts in his name carried an additional clause – a new clause 9 on "capital protection" – which the Defendant's contracts did not. This was not actually accurate because although the "capital protection" clause was missing from the Defendant's earlier contracts,[190] it was present in his later contracts.[191] The same was true of the third alleged discrepancy highlighted by the Plaintiff – which was that the contracts

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189 See pp 24–26 of the Plaintiff's Closing Submissions.

190 See, *eg*, the Defendant's Maxim Trader contract dated 13 August 2014 at p 151 and the Defendant's Maxim Trader contract dated 1 October 2014 at p 162 of the Defendant's AEIC.

191 See, *eg*, the Defendant's Maxim Trader contract dated 6 March 2015 at p 194 and the Defendant's Maxim Trader contract dated 24 March 2015 at p 205 of the Defendant's AEIC.

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in the Defendant's name had contained a clause just before the portion headed "Signature" stating "By the signature below we agree to the terms of this agreement" – whereas such a clause did not appear in the contracts in the Plaintiff's name. Whilst this clause did appear in the Defendant's earlier contracts,[192] it was not present in his later contracts.

131 The reasonable inference to be drawn in these circumstances, in my view, was that at some point, Maxim Trader had made changes to the text of its investment contract. If the Defendant had indeed been "hatching" his false defence since 2 June 2015 as the Plaintiff alleged, and if he had taken the trouble to "fabricate" the contracts in the Plaintiff's name, there was no sensible reason why he should have introduced such "material discrepancies" between the "fabricated" contracts and those in his own name. As the Defendant's counsel pointed out,[193] it made no sense for the Defendant to go through the trouble of creating two different forms of investment contracts. This was especially so when the addition of the new "capital protection clause" required the incorporation of a corresponding new clause in the Chinese version of the contract – and it was undisputed that neither the Defendant nor the Plaintiff understood Chinese.

The alleged significance of exhibit P1

132 Another item of evidence which the Plaintiff sought to make much of was exhibit P1. This was a document which the Defendant testified he had

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192 See, *eg*, the Defendant's Maxim Trader contract dated 13 August 2014 at p 152 and the Defendant's Maxim Trader contract dated 1 October 2014 at p 163 of the Defendant's AEIC.

193 [4h] of the Defendant's Reply Submissions.

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created as his own internal record. This single-page document was headed "For the month of May 2015". It appeared to show, firstly, the amounts invested by the Plaintiff and the returns he was paid. There were also separate items recording different amounts under different names: "Alli" (the Defendant's wife), "Ilan" (the Defendant), "Karthik" (a friend of the Defendant's); and Hrsha (a client of the Defendant's). There were also a column headed "Charges" which (according to the Defendant[194]) recorded the charges levied by Maxim Trader "for transferring the funds out", and another column headed "Cash out to investors" which appeared to show the balance amount of the returns less the charges levied.

133 The Plaintiff argued that P1 showed the Defendant was running his own investment scheme and keeping track of his investors' investment amounts as well as the returns he paid them. The Defendant denied this. His evidence was that apart from the Plaintiff, Hrsha was the only other person who had invested in Maxim Trader; and like the Plaintiff, Hrsha had invested directly in Maxim Trader after having heard of the company from the Defendant.[195] The investment profit which Hrsha had received from Maxim Trader on his investment of US$10,000 was recorded by the Defendant in P1 because this profit amount being a small sum (US$600), Hrsha had just asked the Defendant to help him arrange for the payment to be transferred out from his Maxim investment account to the Defendant's bank account before paying it to him.[196] As for Alli (the Defendant's wife) and Karthik (his friend), they had not invested in Maxim

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194 NE for 13 February 2019, p 127 lines 6 to 16.

195 NE for 13 February 2019, p 121 lines 2 to 5 and p 124 line2 23 to 24.

196 NE for 13 February 2019, p 124 line 25 to p 125 line 16.

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Trader, but he had recorded their names in P1 along with his own, because they represented sources of funds which he had used for his own investments.[197] With regard to Alli, he had borrowed money from her to invest in Maxim Trader after getting her to take a loan on her insurance policy. With regard to Karthik, he had repaid a loan to the Defendant, which sum of money the Defendant had taken to invest in Maxim Trader. The Defendant kept for himself the investment profits derived from these investments. Insofar as the profits paid on the investments he had made with, *inter alia*, moneys borrowed from Alli and moneys returned by Karthik, these were recorded under the "Cash out to investors" column because the form adopted for P1 was "just a template".[198]

134 I make the following points about P1. Firstly, it was not denied that P1 was disclosed by the Defendant in discovery. Whilst the Plaintiff sought to cast aspersions on the fact that P1 was disclosed after the filing of the Defendant's AEIC,[199] the crucial point is that P1 being a personal record, the Plaintiff would never even have known of its existence had the Defendant not disclosed it. This, in my view, showed that the Defendant was being transparent and that he was not given to "deliberately suppressing" evidence – contrary to the repeated accusations levelled in this respect by the Plaintiff in closing submissions.

135 As to the Defendant's explanations for the entries made in P1, they appeared to me to be reasonable. At any rate, I was not persuaded that P1 proved the Defendant to be running his own investment scheme with "a pool" of his own investors. It should be remembered that it was the Plaintiff who was

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197 NE for 13 February 2019, p 123 line 14 to p 124 line 22, p 126 line 26 to p 127 line 5.

198 NE for 13 February 2019, p 128 lines 3 to 6.

199 NE for 13 February 2019, p 128 lines 15 to 30.

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advancing the case that the Defendant had operated his own investment scheme "back to back" with Maxim Trader. That "he who asserts must prove" is a trite common law rule which finds statutory expression in ss 103 and 105 of our Evidence Act (Cap 97, 1997 Rev Ed): see *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471 at [17]; also *Loo Chay Sit v Estate of Loo Chay Loo, deceased* [2010] 1 SLR 286 at [14]. That the Plaintiff (as the claimant in this trial) started out bearing both the legal and the evidential burden of proof – and that the legal burden could not be shifted – should also be uncontroversial. The most that could be said of P1, in my view, was that it seemed somewhat suggestive and called for an explanation from the Defendant – but the Defendant having provided a reasonable explanation, the evidential burden of proof fell back on the Plaintiff; and as I have noted in the course of these written grounds, the evidence adduced at trial simply did not support the Plaintiff's case.

Other points

136 As I noted earlier, the Plaintiff in his closing submissions made multiple allegations about the Defendant "deliberately suppressing" evidence. I found most of the allegations to be exaggerated and none of them to be justified. For example, the Plaintiff charged that the Defendant had deliberately suppressed his September 2014 OCBC bank statement.[200] However, as the Defendant's counsel pointed out,[201] the Defendant had a reasonable explanation for omitting the September 2014 statement from the bank statements given in discovery, in that there was nothing in the September 2014 statement which was relevant to the issues in dispute. Furthermore, the Plaintiff himself had raised no queries or

200 [60]–[61] of the Plaintiff's Closing Submissions.

201 [11] of the Defendant's Reply Submissions.

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objections to the omission of the September 2014 statement in discovery, and had only made a demand (through his counsel) for this statement on 29 January 2019 – less than two weeks before the start of trial. The statement was then provided by the Defendant's counsel on 31 January 2019. The Plaintiff claimed that the Defendant must have wanted to suppress the September 2014 statement so as to conceal the fact that the Plaintiff's investment amount of US$50,000 (S$64,150) "was not credited into [the Defendant's] account".[202] The Defendant's case, on the other hand, was that he had collected this amount from the Plaintiff on 1 October 2014 and passed it to Chin on the same date.[203] There was no evidence produced by the Plaintiff which established conclusively that 29 September 2014 was the date on which he had handed over the investment amount of US$50,000. If anything, rather curiously, the 29 September 2014 date was only introduced by the Plaintiff on the first day of trial, whereas in his amended statement of claim, 1 October 2014 continued to be stated as the date on which the US$50,000 was paid to the Defendant.[204] In any event, it could not be seriously disputed that the Plaintiff did duly receive the investment profits payable on this first investment of US$50,000 – so it was not as if the Defendant had somehow stolen or misappropriated this amount. In short, I did not see anything sinister in the Defendant's initial omission of the September 2014 bank statement in discovery.

137 The Plaintiff also contended that the Defendant should have been able to produce official Maxim Trader receipts for the various sums of cash he passed

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202 [60] of the Plaintiff's Closing Submissions.

203 [33]–[36] of the Defendant's AEIC.

204 [5] of the Statement of Claim (Amendment No. 2).

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to them for the Plaintiff's investments. It was contended[205] that I should infer that the Defendant was "deliberately suppressing" such official receipts and that he was doing so because they would have revealed that he had invested the Plaintiff's money under his own name.

138 I did not see any basis for drawing such an inference. In the first place, there was no evidence that Maxim Trader had an established practice of issuing "official receipts" for moneys received for investments. James Thomas, when asked, merely stated that he could not remember if he was given a receipt for the amount he invested.[206] In the second place, as the Defendant explained in cross-examination, he treated the online investment contract issued for each investment as a receipt;[207] and it could in fact be seen from these contracts[208] that they contained a specific clause acknowledging the specific amount invested for each contract. That Maxim Trader did issue an investment contract for each amount invested – and that these investment contracts were all kept online – was corroborated by James Thomas.[209]

139 It was further contended that Thomas' evidence had proven that the Defendant "lied that Maxim required the investment to be paid by cash". In fact, Thomas' evidence provided no such proof. What Thomas was able to recall was that he had given Maxim Trader a cheque for his investment – but when asked by the Plaintiff's counsel to confirm that the cheque had been "issued to

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205 [62] of the Plaintiff's Closing Submissions.

206 NE for 15 February 2019, p 95 lines 25 to 31.

207 NE for 14 February 2019, p 17 lines 10 to 31.

208 See, *eg*, p 150 of the Defendant's AEIC at Schedule Two, Clause 1.

209 NE for 15 February 2019, p 96 line 28 to p 97 line 7.

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Maxim Trader" (presumably as opposed to being a cash cheque), Thomas said he could not remember.[210] It should be added that the Defendant's AEIC contained evidence, in any event, that Maxim Trader did allow for investors to pay their investment amounts via non-cash methods: in March 2015, according to the Defendant,[211] Sammi had actually suggested that the Plaintiff consider the option offered by Maxim Trader of "transferring [his] investment monies to its bank account by telegraphic transfer"; and it was the Plaintiff who had maintained his preference for payment in cash in order to avoid questions from his bank as to "the source of his funds".

140 Finally, the Plaintiff argued that the Maxim Trader representatives (Andrew Lim, Sammi and Chin) would have been able to give evidence on matters relating to the issue of whether the Plaintiff had contracted directly with Maxim Trader.[212] It was argued that an adverse inference should be drawn against the Defendant for not calling them as witnesses.

141 I rejected the Plaintiff's argument for the following reasons. In respect of Andrew Lim and Chin, I was not persuaded that they would have been able to give any material evidence. Firstly, as to Andrew Lim,[213] the Defendant's evidence was that he had never dealt with Lim for any of the investments. This was not refuted by the Plaintiff – nor did the Plaintiff for that matter claim to have been privy to any dealings with Lim.

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210 NE for 15 February 2019, p 95 lines 14 to 20.

211 [66] of the Defendant's AEIC.

212 [12]–[21] of the Plaintiff's Closing Submissions.

213 NE for 15 February 2019, p 88 lines 1 to 7.

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142 Secondly, as to Chin, whilst the Defendant had spoken with Chin for the Plaintiff's first two investments (US$50,000 and US$100,000) in Maxim Trader, his evidence was that he had not disclosed to Chin that the Plaintiff was the one making these investments. This part of his evidence was not actually challenged by the Plaintiff in cross-examination.[214] Whilst the Plaintiff had a different explanation for the Defendant's motive in not disclosing his identity as an investor to Chin, the issue of the Defendant's motive was not something Chin would have been privy to.

143 Thirdly, as to Sammi, while the Defendant agreed that she was the Maxim Trader representative with whom he had had the most dealings, he explained that he had not called her as a witness because when he first contacted her after the media reports of her arrest, she had warned him off calling her again in view of the ongoing criminal proceedings.[215] This seemed to me hardly surprising given the reportedly serious nature of the allegations against Maxim Trader and its representatives in the criminal proceedings.[216] As the Defendant's counsel pointed out,[217] given the pending prosecution, it was highly probable that Sammi – and indeed the other key Maxim Trader representatives – would have been primarily concerned to avoid saying anything which could be used against them in the criminal proceedings, and would not have been willing to testify in a civil suit where the Plaintiff was making similar allegations about their running a Ponzi scheme. On the whole, therefore, I did not think an adverse inference was warranted against the Defendant for not calling Sammi.

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214 NE for 14 February 2019, p 66 line 26 to p 69 line 4.

215 NE for 15 February 2019, p 87 lines 21 to 30.

216 See pp 671–673 of the Defendant's AEIC.

217 [4p] of the Defendant's Reply Submissions.

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Conclusion

Summary of key factual findings

144 In the final analysis, this was a case where the Plaintiff's case contained fundamental logical flaws, where he shifted position on material issues more than once, and where his version of events was unsupported and – in multiple instances – contradicted by other evidence adduced at trial. I found him to be a glib and disingenuous witness; and I rejected his testimony, and that of his daughters, as being totally lacking in credibility. In contrast, I found the Defendant to be a credible witness whose version of events was consistent from the start, and moreover, corroborated in several important aspects by objective evidence. On the evidence before me, I was satisfied that the Plaintiff had contracted directly with Maxim Trader in respect of all his investments; and he knew from the outset that he was investing directly in Maxim Trader and that this company – not the Defendant – was the party liable to him for both the payment of profits and the return of capital. I was also satisfied that the Defendant had merely helped the Plaintiff – at his request and gratuitously – to make some of the arrangements for his investments: namely, by allowing him to park his first two investments under the Defendant's name; by helping him open his own Maxim Trader investment account; by facilitating the transfer and pay-out of the monthly investment returns; and by keeping a record of his investments. In my view, it was clear that the Defendant had merely helped the Plaintiff as a friend, since the latter found it inconvenient to leave his money-changing business to attend to these administrative matters and also did not wish to let his family know about the large sums he was putting into Maxim Trader. There were no "secret profits" or "secret commissions" made by the Defendant in respect of the Plaintiff's investments: the only commission received by the Defendant was the one-off 10% introduction fee paid on the

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Plaintiff's third investment of US$300,000 on 27 November 2014.[218] There was no separate investment scheme operated by the Defendant: in my view, the story about the Defendant's separate investment scheme was only invented by the Plaintiff after he realised in January 2018 that there was no prospect of recovering his money from Maxim Trader.

My decision on the Plaintiff's claim against the Defendant for breach of oral investment agreement

145 These being my key factual findings, it followed that the Plaintiff's claim against the Defendant for breach of an alleged oral agreement must fail.

My decision on the Plaintiff's claim for restitution of the US$1 million as "money had and received"

146 As for the alternative claim that the US$1 million was "money had and received by the Defendant to the use of the Plaintiff under the oral investment contract" between the parties, it should be noted firstly that the underlying basis for a claim for "money had and received" has been subsumed under the rubric of unjust enrichment: *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 at [125]. The essential ingredients of a claim for restitution of an unjust enrichment – benefit obtained by the Defendant at the Plaintiff's expenses and the factors rendering such enrichment unjust (see, *eg*, *Banque Financière de la Cité v Parc (Battersea Ltd) and others* [1999] 1 AC 221 per Lord Hoffman at p 234) – should have been properly pleaded by the Plaintiff. They were not. Nor were they elaborated upon in closing submissions. In any event, this claim for restitution of the US$1 million appeared to be premised on the proposition that

218 [52] of the Defendant's AEIC.

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the money was paid to and accepted by the Defendant for the purpose of his investment scheme, pursuant to the parties' alleged oral investment agreement. Given that I have rejected this proposition in my key factual findings, the alternative claim for restitution of the US$1 million as "money had and received" could not be sustained.

My decision on the Plaintiff's claims for breach of trust and breach of fiduciary duty as agent

147 The Plaintiff's alternative claims against the Defendant for breach of trust and for breach of fiduciary duty as his agent were both rooted in the same factual proposition – namely, that he had paid the Defendant a total of US$1 million on the basis that the Defendant would invest the money on his behalf "in the foreign exchange market". Given my finding that the Defendant was merely helping the Plaintiff – as a friend – to pass the money to Maxim Trader for his investments with them, it followed that neither the claim for breach of trust nor the claim for breach of fiduciary duty as agent was factually sustainable.

My decision on the Plaintiff's claim for misrepresentation

148 As for the Plaintiff's alternative claim in misrepresentation, it will be remembered that the misrepresentations relied on by the Plaintiff all related to the Defendant's alleged investment scheme. They were, namely, that the Defendant would "exercise reasonable care" and "utilize [*sic*] the sums paid by the Plaintiff to invest in the foreign exchange market" to achieve "guaranteed return [*sic*] of 8% per month"; that the Defendant "possessed the necessary knowledge, skills and ability" to undertake the investment contract and to achieve the guaranteed returns; and that the Defendant "would not undertake

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any commitments he was unable to fulfil".[219] Having found that the Plaintiff had knowingly contracted with Maxim Trader from the outset and that there was never any separate investment scheme operated by the Defendant, I also found that there were never any such misrepresentations made by the Defendant.

My decision on the Plaintiff's claim of alleged undue influence

149 The last of the multiple alternative claims pleaded by the Plaintiff in his amended statement of claim was that of alleged undue influence by the Defendant. In gist, the Plaintiff alleged that there had been actual undue influence of the "Class 1" category (per *BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM*") at [101(a)]), or presumed undue influence of the Class 2B category (per *BOM* at [101(b)(ii)]) and that it was only due to the undue influence exercised by the Defendant that he had been induced to invest in the latter's "foreign exchange investment scheme".

150 I did not find that the Plaintiff was able to make out his claim of undue influence. In the first place, as noted earlier, I disbelieved entirely his story about the Defendant running his own "foreign exchange investment scheme" and about his having entered into an oral investment agreement with the Defendant. This removed an essential piece of the factual stratum for his claim.

151 In any event, the evidence relied on by the Plaintiff for the allegation of undue influence was wholly inadequate. This evidence, as summarised by counsel in cross-examination, was as follows[220]:

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219 [4] of the Statement of Claim (Amendment No. 2).

220 NE for 13 February 2019, p 100 lines 21 to 30.

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> Q. … (O)ver the years, the plaintiff and you became very good friends, and you have given instances like the Plaintiff would buy you food. And then you said… you were a regular customer of the Plaintiff's money-changing counter. You and the Plaintiff discussed matters concerning yourselves and family matters. You say you also gifted him a pair of shoes to ease the Plaintiff's leg pain. You helped the Plaintiff to buy a laptop for the Plaintiff's nephew. You did work for the Plaintiff but did not charge him. You did work for the Plaintiff's daughter too…
>
> A. Yes.

152 I should add that whilst it was suggested to the Defendant at one point that the Plaintiff relied on him for advice on his *personal* finances, this was denied by the Defendant; and no further details were provided by the Plaintiff nor was any independent evidence produced by him to substantiate what appeared to be a bare assertion.

153 I should also add that despite the Plaintiff's repeated claims about having trusted the Defendant so much that he followed his advice unquestioningly, the Plaintiff's own evidence showed that he was perfectly capable of making up his own mind and disagreeing with the Defendant when he wanted to. Thus, for example, it was the Plaintiff's own evidence that despite the Defendant urging him to open his own I-account, no such account was eventually opened because he changed his mind about doing so.[221]

154 On the basis of the evidence relied on by the Plaintiff, therefore, the most that could be said was that the two men were friends who got along well. It was not possible to find on the basis of such evidence that the Defendant had the capacity to influence the Plaintiff, much less that he actually exercised such influence – the existence of such capacity to influence and the exercise of it

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221 [101] of the Plaintiff's AEIC.

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being essential elements in proving actual undue influence (*BOM* at [101(a)]). Nor was it possible to find that there was between the parties a relationship of trust and confidence sufficing to give rise to a rebuttable presumption of undue influence (*BOM* at [101(b)(ii)]).

Orders made at the end of trial

155 For the reasons I have given, I dismissed the present action and ordered that the Plaintiff pay the costs of these proceedings to the Defendant. It was not disputed that the Defendant had made the Plaintiff an offer to settle on 27 July 2018: the terms of the offer were that the Plaintiff should discontinue his action and each party should bear his own costs. It was also not disputed that in having had his action dismissed with costs, the Plaintiff had failed to beat the offer to settle. As such, I ordered that the costs awarded to the Defendant were to be costs on the standard basis from the date of the writ of summons to the date of service of the offer, and then on an indemnity basis thereafter. The quantum of costs payable was subsequently agreed between the parties.

Mavis Chionh
Judicial Commissioner

S Magintharan, Vineetha Gunasekaran and Tan Yixun Benedict (Essex LLC) for the plaintiff;
Ravinran Kumaran and Subash s/o Rengasamy (Relianze Law Corporation) for the defendant.

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