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

[2025] SGHC 144

Originating Claim No 193 of 2022

Between

(1) Envy Asset Management Pte Ltd (in liquidation)
(2) Envy Management Holdings Pte Ltd (in liquidation)
(3) Envy Global Trading Pte Ltd (in liquidation)
(4) Bob Yap Cheng Ghee
(5) Tay Puay Cheng
(6) Toh Ai Ling

… *Claimants*

And

(1) Lau Lee Sheng
(2) Teo Wei Wen Benjamin
(3) Shen Xuhuai
(4) Koh Hong Jie (Xu Hongjie)
(5) Edmund Chan Pak Kum
(6) Guo Yujia
(7) Ang Wen Min, Daniel
(8) Chua Wei Jian Jordan

… *Defendants*

JUDGMENT

[Debt and Recovery — Right of set-off]

[Insolvency Law — Avoidance of transactions — Transactions defrauding creditors]
[Insolvency Law — Avoidance of transactions — Transactions at an undervalue]
[Insolvency Law — Avoidance of transactions — Unfair preference]
[Restitution — Unjust enrichment]

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Envy Asset Management Pte Ltd (in liquidation) and others
v
Lau Lee Sheng and others

[2025] SGHC 144

General Division of the High Court — Originating Claim No 193 of 2022
Mohamed Faizal JC
3–6 September 2024, 10 March 2025

29 July 2025 Judgment reserved.

Mohamed Faizal JC:

Introduction

1 This originating claim is the latest instalment of civil proceedings as a result of the fallout from the largest Ponzi scheme in Singapore's history: a nickel-trading fraud that resulted in the solicitation of over S$1.5bn of funds to perform allegedly highly profitable investments. As it turned out, these investments simply did not exist.

2 This judgment is one of two related judgments that I am issuing concurrently, arising from two related trials that were heard back to back. These claims were brought by the liquidators of the insolvent entities used to facilitate the fraud which I will collectively refer to as the "Envy Companies". The other judgment is *Envy Asset Management Pte Ltd (in liquidation) and others v Ng Yu Zhi and others* [2025] SGHC 143 (the "Suit 942 Judgment"). In Suit 942 of

2021 ("Suit 942"), the liquidators brought claims against two directors of the Envy Companies and an employee that was heavily involved in forging various documents. There, the liquidators argued that the defendants had knowledge of the fraudulent nature of the Ponzi scheme. In the present case, the liquidators are pursuing claims against six employees of the Envy Companies whom the liquidators accept were *unaware* of the fraud.

3 The broader factual background of the present matter is set out extensively in the Suit 942 Judgment. I will refer to that judgment where appropriate, and I do not propose to traverse the facts in full in this judgment.

Background

The Purported Nickel Trading

4 The six claimants are as follows, comprising the three entities that form the Envy Companies and the three joint and several liquidators of these entities (the "Claimants"):

(a) Envy Asset Management Pte Ltd ("EAM");

(b) Envy Management Holdings Pte Ltd ("EMH");

(c) Envy Global Trading Pte Ltd ("EGT");

(d) Mr Bob Yap Cheng Ghee ("Mr Yap");

(e) Mr Tan Puay Cheng; and

(f) Ms Toh Ai Ling.

5 The first claimant, EAM, was incorporated in Singapore on 8 October 2015. From in or around 2015 to April 2020, EAM purported to engage in the

business of physical nickel trading (the "Purported Nickel Trading").[1] After the Monetary Authority of Singapore ("MAS") placed EAM on its Investor Alert List for being wrongly perceived as being licensed by MAS, the Purported Nickel Trading business was transferred to the third claimant, EGT. The second claimant, EMH, was incorporated as the sole shareholder of EGT.[2]

6 The full background to the Purported Nickel Trading and the Envy Companies' eventual winding up are set out in considerable detail in the Suit 942 Judgment at [5]–[17] and [25]–[50]. In gist, the Purported Nickel Trading was non-existent. The Envy Companies never transacted with an Australian company known as Poseidon Nickel Limited to purchase London Metal Exchange ("LME") Grade Metal ("Poseidon Nickel"), nor did they sell Poseidon Nickel to any third-party buyers.[3] It is undeniable that the Purported Nickel Trading was a Ponzi scheme, propped up by various forgeries and false representations to the investors. None of the moneys received from investors were used to purchase Poseidon Nickel. Instead, these funds were, *inter alia*:[4]

(a) transferred to Mr Ng Yu Zhi ("NYZ", who was formerly a defendant in Suit 942 before he was made bankrupt) through another entity known as Envy Asset Management Trading" (see [40]–[42] of the Suit 942 Judgment);

(b) paid as directors' fees to NYZ and Ms Lee Si Ye ("LSY", one of the defendants in Suit 942);

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1 Mr Bob Yap Cheng Ghee's affidavit of evidence-in-chief dated 3 June 2024 ("Yap's AEIC") at para 2.1.1.

2 Yap's AEIC at paras 1.1.2 and 3.3.1.

3 Yap's AEIC at paras 4.1–4.8.

4 Yap's AEIC at para 4.7.1.

(c) paid as commission payments, profit sharing payments, referral fees and/or other payments to the defendants in Suit 942 and other employees of the Envy Companies;

(d) paid as referral fees or "profits" in excess of the invested principal to investors; and

(e) transferred or paid to related entities such as other companies owned by the Envy Companies or NYZ.

The Defendants

7 The six employees whom the Claimants are pursuing claims against (the "Defendants") were employed by EAM and/or EMH in the following manner:[5]

(a) Mr Lau Lee Sheng (the "First Defendant") was employed by EAM as a sales director from 1 June 2016 to 30 September 2020. He was employed by EMH in the same capacity from 1 October 2020 to 17 May 2021.

(b) Mr Teo Wei Wen Benjamin (the "Second Defendant") was employed by EAM as a sales director from 16 December 2016 to 30 September 2020. He was employed by EMH in the same capacity from 1 October 2020 to 17 May 2021.

(c) Ms Shen Xuhuai (the "Third Defendant") was employed by EAM as a financial accountant from 9 January 2017 to 30 September 2020. She was employed by EMH as an office operations director from 1 October 2020 to 1 July 2021.

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5 Yap's AEIC at para 2.2.1.

(d) Mr Koh Hong Jie (Xu Hongjie) (the "Fourth Defendant") was employed by EAM as a sales associate from 24 October 2018 to 30 September 2020. He was employed by EMH in the same capacity from 1 October 2020 to 17 May 2021.

(e) Mr Guo Yujia (the "Sixth Defendant") was employed by EAM as a business development director from 19 October 2018 to 30 September 2020. He was employed by EMH as a marketing communications director from 1 October 2020 to 17 May 2021.

(f) Mr Chua Wei Jian Jordan (the "Eighth Defendant") was employed by EAM as a sales associate from 1 May 2018 to 30 September 2018.

8 As can be seen above, all the Defendants, save for the Eighth Defendant, were employed by EAM and/or EMH until their employments were terminated by the interim judicial managers ("IJMs") appointed over the Envy Companies. In light of the settlements between the Claimants and the fifth and seventh defendants, the present claim was discontinued against them with no order as to costs.[6]

The Payments

9 During the Defendants' employment with EAM and/or EMH, various payments were made to them. In the present claim, the Claimants seek to claw back these sums paid to the Defendants. The following categories of payments are relevant (the "Payments"):

(a) commission payments;

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6 Yap's AEIC at para 2.2.2.

(b) profit sharing payments;

(c) referral fees; and

(d) over-withdrawn sums.

10 All the Defendants were paid commission payments for referring investors to invest in the Purported Nickel Trading, or where the investor's account was assigned to them to manage. Generally, these were calculated by reference to a percentage (*eg*, 30% to 50%) of the Envy Company's earnings through the investments managed or brought in by that particular defendant.[7] In addition to commission payments, only the First and Second Defendants were paid "profit sharing" payments, which were, in practical terms, a percentage share of the "profits" on the Purported Nickel Trading.[8]

11 On top of receiving commission payments, the Fourth and Eighth Defendants were also paid "referral fees" for referring investors to invest moneys in the Purported Nickel Trading. These payments were distinct from commission payments in a couple of ways, one of them being that they were paid to the Fourth and Eighth Defendants in their capacities as *investors* rather than *employees*.[9] The second and more significant difference between commission payments and referral fees is that commission payments were calculated based on the *profits or returns* of the Envy Companies, while at least

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7 Yap's AEIC at paras 5.4.1 and 5.4.3; Mr Lau Lee Sheng's affidavit of evidence-in-chief dated 3 June 2024 ("Lau's AEIC") at para 38; Mr Teo Wei Wen Benjamin's affidavit of evidence-in-chief dated 3 June 2024 ("Teo's AEIC") at para 27; Ms Shen Xuhuai's affidavit of evidence-in-chief dated 30 May 2024 ("Shen's AEIC") at para 15; and Mr Koh Hong Jie (Xu Hongjie)'s affidavit of evidence-in-chief dated 3 June 2024 ("Koh's AEIC") at para 21.

8 Yap's AEIC at para 5.3.1; Lau's AEIC at para 34; and Teo's AEIC at para 27.

9 Yap's AEIC at para 5.4.1.

a portion of the referral fees were calculated based on the *amount invested* by the referred investor.[10] I discuss this in greater detail later when considering whether there was any basis to these Payments.

12 Finally, all the Defendants, save for the Third and Fourth Defendants, were paid "over-withdrawn sums", which refer to the moneys in excess of their investment principals in the Purported Nickel Trading. In simple terms, the over-withdrawn sums correspond to the "returns" on the Letters of Agreements ("LOAs") or Receivables Purchase Agreements ("RPAs") (*ie*, the mechanisms by which the investors invested into the Purported Nickel Trading), above and beyond their investment principal.[11]

13 A summary of the categories of Payments made to the Defendants, based on [10]–[12] above, is as follows:

Defendant	**Commission payments**	**Profit sharing payments**	**Referral fees**	**Over-withdrawn sums**
First	✓	✓		✓
Second	✓	✓		✓
Third	✓			
Fourth	✓		✓	
Sixth	✓			✓
Eighth	✓		✓	✓

[10] Yap's AEIC at para 5.2.3(d).

[11] Yap's AEIC at paras 5.6.1–5.6.2.

14 The Envy Companies were able to make these Payments (apart from the over-withdrawn sums) to the Defendants in the following manner: from the alleged profits of the Purported Nickel Trading, the Envy Companies would take a cut of this as their commission (the "Companies' Earnings"); and the commission payments, profit sharing payments and referral fees were paid out of the Companies' Earnings.[12]

The parties' cases

The Claimants

15 The Claimants are seeking to claw back the Payments made to the Defendants on the following bases:[13]

(a) For Payments made before 30 July 2020, the Payments were made to the Defendants with the intent to defraud creditors under s 73B of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("CLPA").

(b) For Payments made on 30 July 2020 and onwards, the Payments are transactions defrauding creditors under s 438 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").

(c) In the alternative to (a) and (b) above, the Payments were transactions at an undervalue within the relevant time (*ie*, the three years before 2 July 2021 in the present case), under s 224 of the IRDA.

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12 Yap's AEIC at para 3.3.4.

13 Statement of Claim dated 12 August 2022 ("SOC") at pp 42–44; and Claimants' closing submissions dated 16 December 2024 ("CCS") at para 1.1.6.

(d) In the further alternative to (a) to (c) above, the Payments were unfair preferences within the relevant time (*ie*, the two years before 2 July 2021 in the present case), under s 225 of the IRDA.

(e) In the further alternative to (a) to (d) above, the Defendants were unjustly enriched by their receipt of the Payments.

16 The sums claimed by the Claimants are as follows:[14]

Defendant	**Commission and profit sharing payments (S$)**	**Referral fees (S$)**	**Over-withdrawn sums (S$)**	**Total (S$)**
First	17,345,020.46	-	587,724.80	**17,932,745.26**
Second	9,932,631.25	-	271,701.86	**10,204,333.11**
Third	6,141,892.95	-	-	**6,141,892.95**
Fourth	4,913,441.95	49,582.70	-	**4,963,024.65**
Sixth	2,276,281.45	-	335,394.45	**2,611,675.90**
Eighth	8,784.88	110,090.30	252,006.38	**370,881.56**
Total	**40,618,052.94**	**159,673.00**	**1,446,827.49**	**42,224,553.43**

17 For completeness, the Claimants are *not* seeking to claw back any of the basic salary payments and bonuses (which were distinct from the Payments) paid to the Defendants.[15] This is because the Claimants take the position that

[14] CCS at para 1.3.4.

[15] SOC at para 1.4.4; and CCS at para 4.4.5.

none of the Defendants in the present case had any knowledge of the fraudulent nature of the Purported Nickel Trading.[16]

The Defendants

18 I will broadly outline the Defendants' cases at this juncture. I will discuss their specific legal positions in respect of each claim in greater detail in the legal analysis below.

The First, Second and Fourth Defendants

19 The First, Second and Fourth Defendants are represented by one set of counsel. They do not dispute that the Purported Nickel Trading was non-existent and fraudulent, though they maintain that they were unaware of the fraud.[17] Broadly speaking, these three Defendants argue that they should be allowed to retain their commission payments, profit sharing payments and referral fees for the following reasons:

> (a) The Defendants provided valuable consideration for these Payments. Regardless of how the Envy Companies ended up utilising the moneys, the Envy Companies ultimately benefited from the moneys brought in by the Defendants.[18] The fact that the Defendants received their basic salary payments does not detract from this. The value of the services they provided, taking into account the time and efforted expended by them, far exceeded the basic salary they received.[19]

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16 Transcript (3 September) at p 66 lines 9–14.

17 First, Second and Fourth Defendants' closing submissions dated 16 December 2024 ("124DCS") at paras 5–6.

18 124DCS at paras 78(a) and 83–87.

19 124DCS at paras 103–108.

(b) The Defendants are contractually entitled to the Payments. There was an implied term in their employment contracts that the Defendants would be periodically paid these sums, and the quanta would be based on the Envy Companies' *declared* profit as opposed to *actual* profit.[20] I note that this particular point was not pleaded by these three Defendants.[21]

(c) In the alternative, the court should not allow the Payments to be clawed back due to the Defendants' "change of position" in good faith.[22]

20 In their reply submissions, the First, Second and Fourth Defendants clarified that they are not actually advancing a change of position defence to the Claimants' statutory claims (indeed, it is admittedly doubtful if such a defence is available in the context of such claims). Instead, they are submitting that the court has and should exercise its *discretion* to decline to order a claw back of the Payments.[23] This is because the First, Second and Fourth Defendants had "significantly altered their financial and personal arrangements and those of their families" in reliance on the legitimacy of their employment income,[24] and they have also paid significant income tax based on the Payments they received.[25] These Defendants would not have entered into or continued with

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20 124DCS at paras 88–97.

21 Claimant's reply submissions dated 13 January 2025 ("CRS") at para 4.3.7.

22 124DCS at paras 113–121.

23 First, Second and Fourth Defendants' reply submissions dated 13 January 2025 ("124DRS") at paras 78–79.

24 124DCS at para 10(b)

25 124DCS at para 125.

their employment contracts with the Envy Companies but for their remuneration *via* the Payments.[26]

21 In respect of the over-withdrawn sums, the First and Second Defendants accept that they may be clawed back in principle, in light of the decision in *Envy Asset Management Pte Ltd (in liquidation) and others v CH Biovest Pte Ltd* [2024] SGHC 46 ("*Biovest (HC)*") (and *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd (in liquidation) and others* [2025] 1 SLR 141 ("*Biovest (CA)*")).[27] Nonetheless, as mentioned above, they take the position that the court should exercise its discretion to decline to make an order for the Defendants to return any of the Payments.

22 As to the First, Second and Fourth Defendants' counterclaims, they argue as follows:

(a) The First, Second and Fourth Defendants also highlight that they have various outstanding commission payments and under-withdrawn sums that should be set-off.[28]

(b) The Envy Companies breached an implied term of their employment contracts with the Defendants which required the Envy Companies to be operating a genuine investment business.[29]

(c) The Envy Companies fraudulently represented to the Defendants that they were running a genuine investment business, to induce the

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26 124DRS at paras 18–27.

27 124DCS at para 10(b).

28 Lau's AEIC at para 40; Teo's AEIC at para 46; and Koh's AEIC at para 26; and 124DRS at para 109.

29 124DCS at para 101(a).

Defendants to *invest* in the Purported Nickel Trading.[30] Subsequently, the First, Second and Fourth Defendants' case shifted in this regard, such that, by the conclusion of the proceedings before me, they allege that the Envy Companies fraudulently represented that they were running a genuine investment business, to induce the Defendants *qua employees* to provide services to or remain employed by the Envy Companies.[31]

(d) Even if the Defendants were not contractually entitled to these Payments, they should nonetheless have a claim against the Envy Companies in *quantum meruit*.[32]

23 However, as the Claimants point out, at least some of these counterclaims as presently framed were not pleaded by the First, Second and Fourth Defendants.[33]

The Third Defendant

24 The Third Defendant is the only defendant who takes the position that the Envy Companies were *not* insolvent from the outset. As such, according to the Third Defendant, the Claimants' statutory claims predicated on the Envy Companies' insolvency must necessarily fall away.[34]

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30 See, for example, Mr Lau Lee Sheng's Defence and Counterclaim (Amendment No. 1) at para 14.5

31 124DCS at para 101(b).

32 124DCS at para 101(c).

33 CRS at para 4.4.2.

34 Third Defendant's closing submissions dated 16 December 2024 ("3DCS") at paras 75–114.

25 In respect of the Claimants' claims for the Payments, the Third Defendant's case is as follows:

(a) Much like the First, Second and Fourth Defendants, the Third Defendant submits that she provided consideration for the Payments by bringing in investors and performing work for the Envy Companies.[35] She also claims to be contractually entitled to the Payments as these were calculated based on the Envy Companies' *declared* profit as opposed to *actual* profit.[36]

(b) The Third Defendant also urges the court to exercise its discretion to not order repayment of the Payments, which is broadly related to her change in position as a result of her receipt of the Payments.[37] In response to the Claimants' cause of action in unjust enrichment in particular, the Third Defendant relies on her change in position and estoppel defence.[38] She highlights, amongst others, that she had paid income tax on the Payments received[39] and that it would be unjust to claw back the moneys paid into her Central Provident Fund ("CPF") account as she would be unable to withdraw these sums.[40]

(c) The Third Defendant submits that her under-withdrawn sums (*ie*, her investment principal in the Purported Nickel Trading which she did

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35 3DCS at paras 48–56.

36 3DCS at para 131.

37 3DCS at paras 164 – 169.

38 3DCS at paras 197–199.

39 3DCS at para 167.

40 3DCS at paras 70–74.

not recover) should be set-off against the Payments under s 219 of the IRDA.[41]

26 The Third Defendant is the only defendant who disputes the Claimants' quantification of the Payments made to her and her under-withdrawn sums:[42]

(a) The Claimants aver that the Third Defendant received S$6,141,892.95 of commission payments.[43] However, the Third Defendant disputes her receipt of S$21,000 of this sum. As such, based on the Third Defendant's account, she contends that she only received S$6,120,892.95 of commission payments.

(b) The Claimants argue that the Third Defendant, as an investor, was under-withdrawn by S$2,800,951.32. However, the Third Defendant claims that she was only under-withdrawn by S$1,639,292.96. This is of little relevance as I will explain in due course.

The Sixth Defendant

27 The Sixth Defendant is self-represented. He argues that he was unaware of the fraudulent nature of the Purported Nickel Trading,[44] and that he performed his duties as an employee in exchange for the various Payments made to him.[45] Similar to the other Defendants, the Sixth Defendant also claims to

41 3DCS at paras 200–204.

42 CCS at para 1.3.3.

43 SOC at para 4.4.5(c).

44 Sixth Defendant's closing submissions dated 16 December 2024 ("6DCS") at paras 8–11.

45 6DCS at paras 7.1–7.3.

rely on a change of position defence,[46] and argues that his outstanding commission payments and unpaid salary should be set-off.[47]

The Eighth Defendant

28 The Eighth Defendant is also self-represented. Similar to the Sixth Defendant, he argues that he was unaware of the fraudulent scheme, and was entitled to the commission payments, referral fees and over-withdrawn sums as he held up his end of the bargain *qua* employee and investor.[48] In his closing submissions, the Eighth Defendant also claimed that he had actually re-invested another S$300,000 into the Envy Companies through his godfather.[49] However, this was not raised in his pleadings nor was any evidence of such arrangements adduced at the trial before me. I address this point below at [101].

Issues to be determined

29 The key issues to be determined are as follows:

(a) whether the Payments made before 30 July 2020 were transactions made with the intent to defraud creditors under s 73B of the CLPA;

(b) whether the Payments made on 30 July 2020 and onwards were transactions defrauding creditors under s 438 of the IRDA;

(c) whether the Payments were transactions at an undervalue under s 224 of the IRDA;

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46 6DCS at paras 12.1–12.3.

47 Guo Yujia's affidavit of evidence-in-chief dated 27 May 2024 at paras 4.4–4.5.

48 Eighth Defendant's closing submissions dated 16 December 2024 ("8DCS") at paras 7–12.

49 8DCS at para 13.

(d) whether the Payments were unfair preferences under s 225 of the IRDA; and

(e) whether the Payments unjustly enriched the Defendants.

30 The question underlying most of the above issues is whether the Payments were extra-contractual. As such, it would be profitable for me to first address the question of whether there was an implied term in their employment contracts that the Payments would be paid based on *declared* rather than *actual* profit.

31 If I find that the abovementioned causes of action are made out, I then have to determine whether the court should exercise its discretion to decline to order the claw back of the Payments. This would also entail a determination of whether certain portions of the Payments (*ie*, the moneys paid into the Defendants' accounts with the CPF, and the moneys they paid as income tax) should be taken into account in the final amount awarded to the Claimants.

32 In relation to the Defendants' counterclaims, the following issues need to be determined:

(a) whether the Envy Companies fraudulently misrepresented that the Purported Nickel Trading was a legitimate and profit-generating business to the Defendants as *investors*;

(b) whether the Envy Companies fraudulently misrepresented that the Purported Nickel Trading was a legitimate and profit-generating business to the Defendants as *employees*;

(c) whether the Defendants have a claim in *quantum meruit* even if they were not contractually entitled to the Payments; and

(d) whether an insolvency set-off is applicable.

33 Finally, if I find that the Payments should be clawed back, I then have to determine the quantification of the Payments.

34 I discuss each issue in turn.

The solvency of the Envy Companies

35 It is key to the Claimants' case, particularly for their statutory claims, that the Envy Companies were insolvent at the time the Payments were made to the Defendants. As I had observed in the Suit 942 Judgment at [87]–[91] (though I might add, for the avoidance of doubt, that I have not relied on the evidence adduced in that case to arrive at the findings I did in this case, as these were strictly speaking separate proceedings, even if the evidence overlapped almost completely), it is obvious that the Envy Companies were indeed insolvent from their inception. Based on an application of the cash flow test, the Court of Appeal in *Biovest (CA)* at [115]–[116] concluded that EAM was "never going to have sufficient realisable assets to pay its debts and liabilities as they fell due" because:

(a) "EAM did not carry out nickel trading or any other legitimate, revenue-generating business. EAM could only generate cash inflows by entering into further LOAs with investors – the same LOAs which obliged it to repay 85% of the investment amount upon the expiry of three months, regardless of whether EAM was earning any profits from its (non-existent) nickel trading business, and exposed it to contingent liabilities". Moreover, "EAM owed liabilities which were both significant (85% of the investment sum under each LOA) *and* current (being due upon the expiration of three months after each LOA was

entered into). In addition to its liabilities under the LOAs, EAM's fraudulent conduct would undoubtedly have exposed it to claims for damages by investors for breach of contract and fraudulent misrepresentation among other things" [emphasis in original].

(b) In turn, the investors' moneys received by EAM were used to pay: (i) NYZ, and its other directors and employees; (ii) its overhead costs; and (iii) referral fees and fictitious profits to earlier investors. Not all of these payments were legitimate. For example, the IJMs identified a significant number of transfers into bank accounts held by NYZ personally.[50]

(c) In fact, according to the IJMs' updated report dated 2 July 2021, the transfers made by the Envy Companies to NYZ or individuals and entities associated with him amounted to over S$475m.[51] Some of these transfers were not even recorded in the Envy Companies' bank records, let alone explained.

36 For similar reasons, and based on the evidence in this case, it is obvious to me that both EGT and EMH were also never going to be in possession of sufficient realisable assets to pay its debts and liabilities as they fell due:

(a) Neither EGT nor EMH had any legitimate, revenue-generating business. There was "no other meaningful business undertaken by" the Envy Companies.[52] EGT could only generate cash inflows by entering into further RPAs with investors, which similarly typically obliged it to

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50 IJMs' report dated 25 May 2021 at paras 2.3.3–2.3.7 (Core Bundle vol 4 at p 710).

51 Update to the IJMs' report dated 2 July 2021 at para 2.2.1 (Core Bundle vol 4 at pp 561–562).

52 IJMs' report dated 25 May 2021 at para 6.1.2 (Core Bundle vol 4 at p 739).

repay 85% of the investment amounts upon the expiry of three months regardless of whether EGT was earning any profits from its non-existent nickel trading business, while EMH was set up to be the sole shareholder of EGT.

(b) In turn, these moneys were used to pay NYZ, the other directors, employees, overhead costs and other fees.

(c) Indeed, the IJMs' updated report disclosed that the Envy Companies' assets, not just EAM's, were "grossly insufficient to meet the potential claims of the [Envy] Companies' investors".[53]

37 As I mentioned earlier, only the Third Defendant has raised any doubt about the Envy Companies' insolvency at the time the Payments were made. The other Defendants appear to have accepted the reality of the insolvency of the Envy Companies from the outset. In gist, the Third Defendant's argument is that the Claimants have not definitively shown that the Envy Companies were insolvent *at all times*, and thus they have not shown that the Envy Companies were indeed insolvent "at the time of each [impugned] transaction". In other words, at each time a Payment was made to the Third Defendant, it was not proven that the Envy Companies were in fact cash flow insolvent.[54] In particular, the Third Defendant argues as follows:

(a) The Purported Nickel Trading was not the only business ran by the Envy Companies. There were other investment portfolios offered to investors, such as the proprietary trading conducted by Mr Ju Xiao (*ie*, a defendant in Suit 942, a director of and the head of trading in EGT).

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53 IJMs' report dated 25 May 2021 at para 6.1.2 (Core Bundle vol 4 at p 739).

54 3DCS at para 81.

The liquidators' assertion that they "[did not] spend the time and costs investigating" into these other investments as they were "very, very small, in the whole context of the fraud" was not backed up by any evidence.[55]

(b) Even if the Envy Companies were "insolvent at the outset", there would be "changes in their financial position that occurred over the course of 2017 to 2021".[56] The summary table of the Envy Companies' fund inflows and outflows[57] prepared by the liquidators (the "Liquidators' Summary Table") was not exhaustive of "all the inflows and outflows ever into and out of the Envy Companies".[58] The fact that the Envy Companies presently owe S$593,015,240, US$192,220,888 and €880,000 to investors is merely a "snapshot" of the Envy Companies' financial position at the *end* of their conduct of business.[59] For instance, it is undisputed that the Envy Companies did trade in Bitcoin. According to the Third Defendant, "hypothetically", if the Envy Companies did invest a substantial enough amount in Bitcoin and held it strategically, the companies would have amassed investment assets valued at over S$200m. Yet, such sums would not have been recorded in the Liquidators' Summary Table.[60]

(c) The Envy Companies were able to pay investors their investment returns and pay off debts to creditors during the time that the Third

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55 3DCS at paras 89 and 96.

56 3DCS at para 92.

57 Yap's AEIC at Annex A.

58 3DCS at para 94.

59 Third Defendant's reply submissions dated 13 January 2025 at para 18.

60 3DCS at para 96.

> Defendant was receiving her commission payments. This implies that the Envy Companies were not insolvent at those points in time.[61]

38 I disagree with the Third Defendant's arguments. First, as I had impressed to the Third Defendant's counsel during the trial[62] and during the hearing for closing submissions,[63] it is unclear why the evidence put forward by the liquidators, specifically Mr Yap, should be doubted. As one of the Envy Companies' liquidators, he had reviewed the books and testified that the Envy Companies' investments outside of the Purported Nickel Trading was "insignificant". As such, the liquidators did not spend "the time and costs" investigating these other portfolios.[64] According to Mr Yap, considering the approximately S$1.4 to S$1.5bn of losses caused to investors of the Purported Nickel Trading, any other business which constituted less than 5% of that amount was deemed insignificant by the liquidators.[65] In the IJMs' reports, they had similarly come to the conclusion that there was "no other meaningful business" conducted by the Envy Companies.[66] Indeed, there was no suggestion by any of the Defendants that the liquidators or IJMs were negligent in their investigations, such that their findings should be doubted. It is even more unclear why the liquidators' findings should be doubted on the basis of a *theoretical possibility*. Almost anything is theoretically possible but the *plausibility* of such contentions must be seen against the backdrop of evidence and logic. As seen from the Third Defendant's own submissions, her argument

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61 3DCS at paras 82 and 108.

62 Transcript (3 September) at p 108 line 22 to p 112 line 11.

63 Transcript (10 March) at p 45 line 19 to p 46 line 18.

64 Transcript (3 September) at p 96 lines 2–9.

65 Transcript (3 September) at p 97 lines 7–8; and Transcript (4 September) at p 43 line 11 to p 44 line 24.

66 IJMs' report dated 25 May 2021 at para 6.1.2 (Core Bundle vol 4 at p 739).

that the Envy Companies may have an unaccounted pot of gold outside of the Purported Nickel Trading is ultimately based on a "hypothetical".[67]

39 When applying the cash flow test to determine a company's solvency, it is trite that the court adopts a commercial rather than a technical view of insolvency, and the question to be answered is "whether the company's assets are realisable within a timeframe that would allow each of the debts to be paid as and when it becomes payable, and whether any liquidity problem can be cured in the reasonably near future" (*Biovest (CA)* at [110]). Although the amount owed by the Envy Companies to investors is admittedly a "snapshot" of the Envy Companies' present financial position after the collapse of the Purported Nickel Trading, the *extent* of losses occasioned to investors (of more than a billion dollars) was one factor which allowed me to conclude that the Envy Companies were indeed insolvent from the outset. As I had noted in the Suit 942 Judgment at [87]–[91] (and as summarised above at [35]–[36]), and which findings were also based on the Court of Appeal's analysis and finding of EAM's insolvency in *Biovest (CA)*, the Envy Companies were never going to have sufficient realisable assets to pay their debts and liabilities as and when they fell due. There is no basis to the Third Defendant's contention that the Envy Companies could possibly experience material "changes in their financial position" in such circumstances.[68]

40 In cases like the present involving a Ponzi scheme, it is not sufficient for a party to contend that insolvency may hypothetically or technically not have occurred because the liquidators are unable to provide a comprehensive and continuous account of the financial position across the entirety of the scheme's

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67 3DCS at paras 96(g)–96(h).

68 3DCS at para 92.

existence. Such a standard demands an impossible precision that does not cohere with practical reality. By their very nature, schemes of this kind are opaque and intentionally patchy to obscure the flow and deployment (or, more accurately, the dissipation) of funds. To insist on a level of financial clarity that no honest enterprise – let alone a fraudulent one – could reasonably be expected to maintain is to deny the court the ability to draw rather self-evident and entirely obvious inferences from the available evidence.

41 In this connection, the mere fact that the Envy Companies were able to pay investors their returns and repay creditors prior to their collapse is not indicative of their solvency. In *Re Casa Estates (UK) Ltd (in liquidation)* [2014] 2 BCLC 49 ("*Re Casa Estates*"), the English Court of Appeal observed that when applying the cash flow test, "it is not enough merely to ask … whether the company [was] for the time being paying its debts as they fell due" (at [29]). Instead, the court must go on to inquire *how* the company was able to do so, because a company that is able to stave off cash flow insolvency "by going deeper and deeper into long-term debt" is, in all likelihood, insolvent (at [30]–[31]). As the court noted:

> [30] … In the early stages of a Ponzi scheme money flows in from investors promised high returns. Money from new investors is used to pay the promised returns to existing investors. On the face of it therefore the company is managing to pay its debts as they fall due. But the underlying reality is that, sooner or later, the whole house of cards will collapse. The accumulating liabilities to new investors cannot hope to be matched by any real investments: they are dependent on the continued inflow of new money. When that dries up, the game is up. In any commercial sense the company is insolvent from the beginning. *What a commercial approach requires the court to do is not to stop automatically at the answer to the question: is the company for the time being paying its debts as they fall due? In an appropriate case it must go on to inquire: how is it managing to do so?*
>
> [31] *It certainly seems counter-intuitive (to me at least) that a company that manages to stave off cash-flow insolvency by*

> *going deeper and deeper into long-term debt is not insolvent. It may be able to trade its way out of insolvency, and thus avoid going into insolvent liquidation, but that is a different matter. …*
>
> [emphasis added]

42 For completeness, I note that the Third Defendant has prepared her own summary table of the fund inflows in the Envy Companies' bank statements.[69] Through this table, the Third Defendant purports to show that there was a substantial difference between the overall fund inflows into the Envy Companies and the fresh funds as a result of the Purported Nickel Trading, such that it is possible that the additional fund inflows could have been sufficient to pay off all outstanding liabilities in relation to the Purported Nickel Trading.[70] However, as the Claimants point out, this is an erroneous conclusion for a multitude of reasons: (a) the purported overall fund inflows into the Envy Companies recorded by the Third Defendant also includes inter-company transfers such that these figures would "appear to be higher than the fresh funds" actually received by the Envy Companies; and (b) the Third Defendant's table and analysis fail to take into account the *outflows* of the Envy Companies.[71] I say no more on this point since it is patently clear from the analysis above that the Envy Companies were insolvent from the outset. I stress again that this is not a matter that anyone, save the Third Defendant, even disputes.

Statutory causes of action

Transactions to defraud creditors under s 73B of the CLPA

43 I refer to the Suit 942 Judgment at [201]–[210] for the applicable law and principles to s 73B of the CLPA. In gist, as I explained in that judgment, a

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69 3DCS at para 102.

70 3DCS at para 106.

71 CRS at paras 3.4.5–3.4.14.

claim under s 73B succeeds if the claimant establishes that: (a) there has been a conveyance of property; (b) this conveyance was made with the intent of defrauding creditors; and (c) the claimant was prejudiced by the foregoing conveyance of property (*Wong Ser Wan v Ng Bok Eng Holdings Pte Ltd and another* [2004] 4 SLR(R) 365 ("*Wong Ser Wan*") at [5] and [27]). All three requirements are met in this case:

(a) In considering both definitions of "conveyance" and "property" in s 2 of the CLPA, the transfer of moneys to the Defendants, in the form of the Payments, constitute conveyances of property.

(b) The Payments were made with the intent to defraud creditors. The Purported Nickel Trading was plainly a Ponzi scheme, such that it is presumed that transactions made thereunder were to defraud creditors (*Biovest (HC)* at [119]).

(c) The Claimants were prejudiced by the Payments as "significant value has been eroded from the [Claimants'] estate, and therefore from the reach of [their] creditors" (*Biovest (CA)* at [79]).

44 In order for the Defendants to rely on the defence under s 73B(3) of the CLPA, they must have "acted in good faith and provided consideration of adequate value for the property received" (*Biovest (CA)* at [80]). The question before me is thus whether the Defendants provided good consideration for the Payments, which in turn raises the question of whether there was any basis for the Payments (*Biovest (CA)* at [81]).

Over-withdrawn sums

45 In light of *Biovest (CA)* at [81]–[82], it is clear that the Claimants may claw back the over-withdrawn sums. In brief, the LOAs provided that:[72]

(a) The investor would provide an "Investment Amount", which EAM would use "solely for investment in LME Nickel Grade Metal" or "solely for investment in LME Grade Nickel Concentrates" for a three-month term.[73]

(b) When the LOA matured, EAM would be liable to pay the investor the "Investment Amount" and any "Appreciation", which was defined to mean the fair market value of "each liquid asset of [EAM] at any given time after the date of [the LOA]" minus the fair market value "of each liquid asset of [EAM] as of the date of [the LOA]" or the "date of acquisition of such asset" after the deduction of stipulated fees.[74]

(c) If the trades were not profitable, the investor was typically guaranteed a minimum of at least 85% of their Investment Amount.[75]

46 Given that EAM never had nickel assets, there could have been no "appreciation" of such assets either. As such, EAM was never under any obligation to pay its profits to investors. The payment of the over-withdrawn sums "bore no connection to [EAM's] obligations under the LOAs" and were essentially non-contractual. As such, it could not be said that the Defendants "provided any value for them, let alone valuable or good consideration" (*Biovest*

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72 Yap's AEIC at paras 3.1.6–3.1.7

73 Core Bundle vol 7 at pp 215 and 354.

74 Core Bundle vol 7 at p 213.

75 Core Bundle vol 7 at p 213; and Yap's AEIC at para 3.1.7.

(CA) at [82]). Thus, the Defendants cannot avail themselves of the defence in s 73B(3) of the CLPA in respect of the over-withdrawn sums paid under the LOAs.

47 In a similar vein, the over-withdrawn sums bore no connection to EGT's obligations under the RPAs as well. Thus, there was no basis for the over-withdrawn sums and the Defendants may not avail themselves of the defence under s 73B(3) of the CLPA. As outlined in the Suit 942 Judgment at [10]–[11], the RPAs operated substantively in the same manner as the LOAs. Instead of investing directly into the nickel trading portfolio, the investor may purchase EAM's or EGT's right to receive payment from a "Forward Buyer" of Poseidon Nickel:[76]

(a) EAM or EGT would enter into a "Forward Contract" with a third-party Forward Buyer for Poseidon Nickel. The amount payable by the Forward Buyer to EAM or EGT under the contract was known as the "Total Receivable".

(b) The investor may then purchase a proportion of the Total Receivable, which would entitle the investor to that portion of EAM's or EGT's rights to the Total Receivable. The investor's payment was referred to as the "Sale Price".

(c) The RPAs typically guaranteed a return of at least 85% of the Sale Price.

48 However, the Forward Contracts never existed. There was thus no Total Receivable, nor did EAM or EGT own any rights to such Total Receivable.

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[76] Yap's AEIC at paras 3.3.3–3.3.4.

Consequently, there was no counter-obligation for EAM or EGT to pay investors any amount corresponding to the investors' purchased right to the Total Receivable. Therefore, there was no basis for the over-withdrawn sums under the RPAs as well, and the Defendants cannot rely on the defence under s 73B(3) of the CLPA. Indeed, the First and Second Defendants accept that, in light of *Biovest (CA)*, the over-withdrawn sums may be clawed back by the Claimants in principle. However, they submit that the court should nevertheless exercise its discretion to allow them to retain these Payments. I largely disagree, the reasons for which I will discuss at greater length below at [81]–[86].

49 The Sixth and Eighth Defendants merely assert that the over-withdrawn sums paid to them *qua* investor were made in the "normal and ordinary course of business" based on the relevant LOAs or RPAs.[77] However, the Court of Appeal in *Biovest (CA)* (at [81]) had clarified that the issue of whether one could rely on the defence in s 73B(3) of the CLPA was "straightforward"; the "focus of s 73B is not on the validity of the contract under which [the Payments have] been conveyed", but rather the "validity of the [Payments]" themselves. As such, it is irrelevant that the LOAs or RPAs were valid and binding on the Envy Companies, and the Defendants *qua* investors. The fact remains that the payments of the over-withdrawn sums were invalid as they had no contractual basis. As such, the Defendants did not provide consideration nor value for the over-withdrawn sums.

Commission payments and profit sharing payments

50 I now turn to the next category of Payments: the commission payments and profit sharing payments. Before delving into the analysis, I will first set out

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77 6DCS at para 15.1; and 8DCS at para 10.

the Defendants' remuneration clauses and/or agreements when they were employed by the Envy Companies. According to the First Defendant, the "variable portion" of his monthly salary payments referred to the profit sharing payments, and an oral agreement governed his commission payments (see [51] below).[78] For the avoidance of doubt, I will not set out the clauses governing any of the Defendants' bonus payments which are distinct from the commission payments and profit sharing payments and which the Claimants are not seeking to claw back.

51 The relevant clauses and/or agreements in relation to the First Defendant are as follows:

<table>
<tr><th></th><th>Commission payments</th><th>Profit sharing payments</th></tr>
<tr><td>EAM</td><td rowspan="2">The First Defendant had an oral agreement with NYZ that commission payments "would be calculated at a rate of 50% of the earnings made by [EAM or EMH] through managing the investments/investors that [the First Defendant] bring[s] in".[79] This practice persisted throughout the First</td><td>The First Defendant's remuneration clause under his employment contract read as follows: "Your basic monthly salary will be S$5,000.00 per month. Basic monthly salary will be paid out on the first day of each calendar month. Variable portion of salary will be 20% of the Company's monthly net profit and is to be paid out on the last day of each calendar quarter as an investment dividend" [emphasis in original omitted].[81]</td></tr>
<tr><td>EMH</td><td>Profit sharing payments were no longer paid out when the First Defendant was</td></tr>
</table>

78 Lau's AEIC at paras 35 and 37; and Transcript (3 September) at p 21 lines 10–16.

79 Lau's AEIC at para 37.

81 Core Bundle vol 6 at p 541.

	Commission payments	**Profit sharing payments**
	Defendant's time in EAM and EMH.[80]	employed by EMH. His remuneration clause read as follows: "The Employee's starting salary will be a fixed basic monthly salary of S$5,000.00 per month. Basic monthly salary will be paid out on the first day of each following calendar month" [emphasis in original omitted].[82]

52 In relation to the Second Defendant, the remuneration clauses under his employment contract were almost exactly the same as the First Defendant. Similarly, he understood his monthly pay to comprise the following: a basic salary payment of S$5,000, commission payments calculated by reference to 50% of the earnings of EAM or EMH from the investments he brought in and, and also 20% of the company's earnings from investments brought in by other employees.[83]

53 The Third Defendant's salary was revised a few times over the years, from S$2,500 to S$5,500.[84] When her salary was fixed at S$2,500, the Third Defendant found this to be "relatively low" and spoke with LSY if there were other ways for her to earn money. LSY agreed that the Third Defendant could "get 30% of whatever commission [they] earn from [clients brought in by the Third Defendant]". After a month, the Third Defendant negotiated with LSY,

80 Transcript (5 September) at p 22 line 5 to p 24 line 20.

82 Core Bundle vol 6 at p 604.

83 Teo's AEIC at paras 27, 29 and 42, and p 174.

84 Shen's AEIC at paras 14 and 21 and pp 355, 363–365 and 367.

and her commission rate was increased from 30% to 50%.[85] Her employment contract thus reflected as such:[86]

> You will also be entitled to a variable portion of salary, which will be 50% of the Company's monthly net profit generated by your clients. It is to be paid out on the last day of each calendar quarter as an investment dividend.
>
> [emphasis in original omitted]

54 For the Fourth Defendant, his basic monthly salary ranged from S$3,000 to S$3,500, and he was paid commission payments of 50% of the earnings made by EAM or EMH from the investments he brought in:[87]

	Commission payments
EAM	"Your basic monthly salary will be S$3,000.00 per month. Basic monthly salary will be paid out on the first day of each calendar month. Variable portion of salary will be 50% of the Company's monthly net profit generated by your clients and is to be paid out on the lasty day of each calendar quarter as an investment dividend" [emphasis in original omitted].[88]
EMH	"The Employee's starting salary will be a fixed basic monthly salary of S$3,500.00 per month. Basic monthly salary will be paid out on the first day of each following calendar month" [emphasis in original omitted].[89]

85 Shen's AEIC at paras 15 and 20.

86 Shen's AEIC at p 365.

87 Koh's AEIC at paras 21 and 24.

88 Core Bundle vol 6 at p 536.

89 Core Bundle vol 6 at p 610.

	Commission payments
	Although his employment contract with EMH did not mention commission payments, he continued to be paid 50% of the company's monthly net profit generated by his clients.[90]

55 The Sixth and Eighth Defendants were paid S$8,000 and S$2,500 respectively as basic salary payments. Similar to the other Defendants, their employment contracts stated that the "[v]ariable portion of salary will be 50% of the Company's monthly net profit generated by [their respective] clients" [emphasis in original omitted].[91]

56 Based on the above, it is clear that the commission payments and profit sharing payments hinged on the Envy Companies making a profit. In other words, the Envy Companies' contractual obligations to pay commission payments and profit sharing payments were only engaged if there were actual profits from the Purported Nickel Trading. A plain reading of the remuneration clauses reveal that the "variable portion of salary" was based on the company's "monthly net profit". Even where the payment of commission and/or profit sharing was governed by an oral agreement or continued practice, the Defendants (save for the Third Defendant) accepted at trial that this nonetheless hinged on the company actually making a profit:

(a) The First Defendant accepted that, in respect of his commission payments which was governed by an oral agreement with NYZ, "if the company did not make money, [he] wouldn't receive commissions".[92]

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90 Koh's AEIC at para 24.

91 Core Bundle vol 6 at pp 497 and 582.

92 Transcript (5 September) at p 14 lines 19–21.

(b) The Second Defendant similarly accepted that the payment of commission and profit-sharing depended on the company's profitability and "no matter how hard [he] work[ed], if the company is not profitable [he does] not get the variable portion [of his salary]".[93]

(c) The Third Defendant denied this, and she maintained her position that the commission payments were based on *declared* profit rather than *actual* profit.[94]

(d) The Fourth Defendant accepted the First and Second Defendants' evidence on the nature of the commission payments and had nothing else to supplement in that aspect.[95]

(e) The Sixth Defendant accepted that, "[i]n the event that there was no nickel investments pursuant to an LOA or an RPA, there could have been no profits to be paid out to investors", and that "if there were no profits from the nickel investment, [there could not] have been commissions paid out".[96]

(f) The Eighth Defendant also agreed with the other Defendants' evidence that the commission payments were "premised or conditional upon there being profits from the company".[97]

57 Similar to my conclusion above in respect of the over-withdrawn sums, the Envy Companies were never under any obligation to pay the commission

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93 Transcript (5 September) at p 51 lines 9–12.

94 Transcript (5 September) at p 28 line 16 to p 29 line 2.

95 Transcript (5 September) at p 71 lines 19–23.

96 Transcript (5 September) at p 84 lines 2–19.

97 Transcript (5 September) at p 93 lines 14–20.

payments and profit sharing payments to the Defendants because the Envy Companies never made any actual profit. The payment of such sums therefore bore no connection to the Envy Companies' obligations under the employment contracts and/or oral agreements with the Defendants and were essentially non-contractual. As such, the Defendants failed to provide any value, let alone valuable consideration, for these payments and cannot avail themselves of the defence in s 73B(3) of the CLPA.

58 In support of their case that they were indeed contractually entitled to the commission payments and profit sharing payments, the First to Fourth Defendants submitted that such payments were based on the Envy Companies' *declared* profit rather than *actual* profit. In particular, the First, Second and Fourth Defendants argued that there was such an implied term in their employment contracts. As such, once the Envy Companies declared their "earnings" on the investments, they were contractually entitled to the commission payments as calculated based on those declared earnings.[98]

59 When it comes to the interpretation of the Defendants' employment contracts, the text and context of the contracts are relevant (*Biovest (CA)* at [48]). First, looking at the terms of the employment contracts, I find that there is no evidence to support the view that the term "profit" referred to "declared profit" rather than "actual profit". On a plain reading of the various employment contracts, it is clear that the "variable portion" of the salary, which referred to commission payments and/or profit sharing payments (as the case may be), would be calculated based on a certain percentage of the relevant company's actual "monthly net profit". There is nothing in the language of the employment contracts to support the interpretation of "profit" as "declared profit".

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98 124DCS at paras 91–97.

60 Next, the context of the employment contracts also do not support the Defendants' proposed interpretation of "profit". In this regard, the Court of Appeal in *Biovest (CA)* at [49] held that:

> … the LOAs cannot be interpreted in ignorance of the relevant context of the parties' commercial agreement. In this case, the agreement, in substance, was an investment scheme. The appellant, as the investor, placed moneys with EAM, with the promise of returns generated by EAM's purported investment strategy, which was to trade in nickel to achieve a profit. *It would be absurd, in our view, to hold that EAM was contractually obliged to pay returns which were generated not by the execution of that investment strategy, but by fraudulent activity on EAM's part. It would be equally absurd to hold that a certification clause could constitute a contractual solution, permitting the investee to fraudulently certify that such returns were in fact the legitimate fruits of a promised investment strategy that was never carried out.* …
>
> [emphasis added]

The Court of Appeal's findings above are apposite for present purposes. Here, the Defendants were employed to manage and generate investments in the Purported Nickel Trading to achieve profit. It would be absurd to hold that EAM and/or EMH were contractually obliged to pay commission payments or profit sharing payments based on fraudulent activity or fraudulently certified profits, when no such trading activity was actually carried out.

61 Finally, in respect of the First, Second and Fourth Defendants' argument that there was an "implied term" in their employment contracts that the commission payments and profit sharing payments would be paid based on *declared* rather than *actual* profit, there is no basis to this argument either. The court will only imply a term into a contract if there is a "gap" in the contract because the parties did not contemplate the issue at all, and if the business efficacy and officious bystander tests are passed (*Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193

("*Sembcorp Marine*") at [101]). An implied term that is "not equitable", such as the one proposed by the First Second and Fourth Defendants in the present case which would allow the payment of commission payments or profit sharing payments based on fraudulent activity or fraudulently certified profits, would "necessarily fail the officious bystander test" (*Sembcorp Marine* at [98]).

62 For completeness, even when commission payments and profit sharing payments were governed by oral agreements because the employment contracts no longer referred to a "variable" component of the salary, there is still no suggestion by the Defendants that the remuneration practice differed from when such a written clause was included in their employment contracts. As outlined above, all the Defendants (save for the Third Defendant) accepted at trial that the commission payments and profit sharing payments were always to be paid out on the basis that the Envy Companies actually turned a profit.

63 In sum, there was no basis to the commission payments and profit sharing payments. They were extra-contractual and it cannot be said that valuable consideration was given for them. In my view, the Defendants may not rely on the defence under s 73B(3) of the CLPA in respect of these Payments.

Referral fees

64 I turn to the issue of referral fees. The referral fees were paid to the Fourth and Eighth Defendants in the following manner:[99]

(a) Before April 2020, between 0.8% to 2.75% of the amount invested under each contract would be paid as referral fees ("Pre-April 2020 Referral Fees").

[99] Yap's AEIC at para 5.2.3(d).

(b) From April 2020 onwards, 30% to 50% of the Envy Companies' Earnings were paid as referral fees ("From April 2020 Referral Fees").

65 As I alluded to at [11] above, the referral fees differed from commission payments in two key ways. First, referral fees were paid to *investors* for referring other investors to the Purported Nickel Trading. The Fourth Defendant received referral fees before he became an employee of the Envy Companies, and the Eighth Defendant received such fees after he was no longer an employee.[100] Second and more significantly, the Pre-April 2020 Referral Fees were paid based on the *amount invested* by the referred investor. As such, unlike the commission payments, the Envy Companies' counter-promise to pay the Pre-April 2020 Referral Fees did not depend on the Companies' Earnings or any purported profits from the nickel trading.

66 The Fourth Defendant argues that he is entitled to retain at least the Pre-April 2020 Referral Fees, as these fees were given at the "outset of any investment, as opposed to being predicated on profits *per se*".[101] In other words, even if the investment turned out to be massively unprofitable, that is irrelevant as the pre-condition to the payment of referral fees (*ie*, the referrer introduces an investor to invest in the company) has been fulfilled, and the company is obliged to pay the referrer between 0.8% to 2.75% of the referred investment.

67 Nonetheless, in my view, properly understood, the Pre-April 2020 Referral Fees also amounted to extra-contractual payments. These referral fees were agreed upon on the pretext that the Purported Nickel Trading was real and

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100 Yap's AEIC at para 5.4.1.

101 124DCS at para 88.

genuine and thus must objectively be interpreted as being predicated on a *successful* referral of another investor into the Purported Nickel Trading. In other words, the investor must have actually invested capital into the Purported Nickel Trading through the Envy Companies, in order to determine the quantum of referral fees payable to the Fourth and Eighth Defendants. Given that the investors moneys were never put into nickel trading, there was never a successful referral from which the referral fees could be calculated, and thus there would have been no obligation on the Envy Companies' part to pay the Pre-April 2020 Referral Fees either.

68 I turn to the From April 2020 Referral Fees, which were calculated by reference to 30% to 50% of the Companies' Earnings. Similar to the commission and profit sharing payments, these were predicated on the Envy Companies actually turning a profit. As such, there is also no basis to the From April 2020 Referral Fees, since there Envy Companies never actually made any profit.

69 In sum, I find that there was no basis to the referral fees. As they were extra-contractual and paid without valuable consideration given in exchange, the Fourth and Eighth Defendants may not rely on the defence under s 73B(3) of the CLPA.

Conclusion on Payments made before 30 July 2020

70 In conclusion, I find that all the Payments made before 30 July 2020 may be clawed back as transactions that defrauded creditors under s 73B of the CLPA.

Transactions to defraud creditors under s 438 of the IRDA

71 I refer to the Suit 942 Judgment at [233]–[235] for the applicable laws and principles to s 438 of the IRDA. The requirements under s 438 are as follows (*DDP (in his capacity as the joint and several trustees of the bankruptcy estate of [B]) and another v DDR (a minor) and another* [2024] 3 SLR 1457 ("*DDP*") at [30]):

(a) The impugned transaction was entered into at an undervalue as defined under s 438(2) of the IRDA. In this regard, the same principles applicable to s 224 of the IRDA for transactions at an undervalue would apply.

(b) The court must also be satisfied that the transaction at an undervalue was "entered into by the debtor for the purposes spelt out in s 438(4) of the IRDA, which broadly relate to the transaction being entered into with the intent to defraud or prejudice creditors".

(c) Finally, the court can then make an order under s 438(3) of the IRDA.

72 In my view, the requirements under s 438 are made out in respect of the Payments:

(a) As I will explain at [74]–[77] below, the Payments were transactions at an undervalue. They were essentially gifts to the Defendants.

(b) As to the intention behind the transaction, it is sufficient that the debtor (*ie*, the Envy Companies) "subjectively intended to put assets beyond the reach of actual or potential creditors". Moreover, the

specified purpose "need not be the sole or dominant purpose of the transaction" (*DDP* at [34]). Given my finding at [43] above that the Payments were made with the intent to defraud creditors, this requirement is more than satisfied. As outlined earlier, the Purported Nickel Trading was a Ponzi scheme and it is thus presumed that transactions made thereunder were to defraud creditors.

73 In sum, I find that all the Payments made on 30 July 2020 and onwards may be clawed back as transactions that defrauded creditors under s 438 of the IRDA as well.

Transactions at an undervalue

74 I refer to the Suit 942 Judgment at [241]–[242] for the applicable law and principles pertaining to s 224 of the IRDA. The requirements for setting aside transactions on this basis are as follows:

(a) Either: (i) a company makes a gift to a person; (ii) or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or (iii) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(b) Pursuant to s 226(1)(*a*) of the IRDA, the relevant time is three years before the winding up of the company.

(c) Pursuant to s 226(2) of the IRDA, the company must be unable to pay its debts at that time or in consequence of the transaction.

(d) Pursuant to s 224(4) of the IRDA, if the company entered into the transaction in good faith and for the purpose of carrying on its business, and at the time the company entered into the transaction, there were reasonable grounds for believing that the transaction would benefit the company, the transaction will not be set aside.

75 I find that requirements (b), (c) and (d) above are clearly made out (also see Suit 942 Judgment at [243]):

(a) The Payments were made within three years before the relevant winding-up applications (see s 126(2) of the IRDA).

(b) The Envy Companies were insolvent from the outset (see above at [35]–[42]).

(c) The Envy Companies did not enter into these transactions in good faith or for the purposes of carrying on their business, such that they cannot rely on the defence in s 224(4) of the IRDA. There was no Purported Nickel Trading or any legitimate business to speak of.

76 In *Biovest (CA)*, the Court of Appeal held that the over-withdrawn sums paid to an investor were not transactions on terms that provided for EAM to receive no consideration because they were unilateral extra-contractual payments with no form of mutual dealing (*Biovest (CA)* at [92]). However, the over-withdrawn sums were paid by EAM with the intention for the investor to retain the benefits of the moneys and were thus "gifts" falling within the first limb of s 224(3)(*a*) (*Biovest (CA)* at [104]–[108]). In my view, the Payments were similarly "gifts" under the first limb of s 224(3)(*a*), as they were made extra-contractually to the Defendants with the intention that they retain the

benefits of the moneys. In this respect, I do not see any meaningful reason to distinguish the analysis for over-withdrawn sums from the other Payments.

77 Therefore, I find that the Payments were transactions at an undervalue and may be clawed back on this basis.

Unfair preferences

78 I refer to the Suit 942 Judgment at [250]–[251] for the applicable law and principles for s 225 of the IRDA. In *Biovest (HC)* at [83], Goh Yihan J noted that the over-withdrawn sums could not be characterised as "debts" owed by EAM to the investor because EAM was never obliged to pay the profits on the value of the over-withdrawn sums to the investor given the non-existence of the Purported Nickel Trading. As the payment of the over-withdrawn sums to the defendant did not go to the discharge of any liabilities owed by EAM to the investor, they fell outside the realm of unfair preference. Similarly, given my finding that there is no contractual basis for any of the Payments, they would also not fall within the realm of unfair preferences either.

Unjust enrichment

79 On the present facts, I am of the view that no case in unjust enrichment can be had given the absence of any unjust factor. The Claimants contend that the unjust factor that would apply is "total failure of consideration" as there was no contractual basis to the Payments, and the contracts entered into (*ie*, the LOAs and RPAs) are unenforceable as illegal contracts. This is because these contracts were entered into with the object of furthering the Envy Companies' fraudulent business.[102] In my view, the purported unjust factor does not apply

[102] SOC at paras 6.1.2–6.1.3.

on the present facts. In *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [110], the Court of Appeal noted that the requirements for unjust enrichment are four-fold, as follows:

(a) a defendant was enriched;

(b) such enrichment was at the claimant's expense;

(c) there exists a recognised "unjust factor" such that it would be unjust to allow the defendant to retain the enrichment; and

(d) there are no defences available to the defendant.

80 In my view, the Claimants do not have a case in unjust enrichment on the ground of "total failure of consideration". I refer to my findings in the Suit 942 Judgment at [275]–[277]:

(a) Goh J in *Biovest (HC)* at [193]–[194] found that, with regard to the over-withdrawn sums paid by EAM to an investor, there was an absence of consideration rather than a total failure of consideration. The mere absence of consideration or basis is not a recognised unjust factor in Singapore. Similarly, in the present case, the Payments to the Defendants pertained to remuneration for the business involving such excessive "returns" that did not exist.

(b) Second, and in any event, it does not appear to me that there is much scope for the application of unjust enrichment in this case. As I had noted in *Ng Chee Tian and another v Ng Chee Pong and others* [2025] 3 SLR 235 at [52], unjust enrichment is (given my interpretation of the Court of Appeal's decision in *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136) an interstitial cause of action

and consequently, recourse to the doctrine of unjust enrichment cannot *generally* be had where more conventional causes of action are available. As can be seen above, I granted the very remedies sought under unjust enrichment under the other statutory causes of action of transactions defrauding creditors and transactions at an undervalue. In the premises, unjust enrichment has no scope for application.

The court's exercise of discretion

The court has the discretion to decline to order a claw back

81 It is undisputed by the Defendants that in respect of to the Claimants' statutory causes of action, no "change of position" defence is available.[103] Nonetheless, they all broadly submit that they had significantly altered their lives around their receipt of the Payments, and the court should exercise its discretion to decline to order a claw back of these Payments.

82 The basis for the court's discretion in this regard may be found in the permissive language of the provisions:

(a) In respect of transactions defrauding creditors, s 438(3) of the IRDA provides the court "may", where "a debtor enters into a transaction at an undervalue", make such order the court thinks fit to restore the position to what it would have been if the transaction had not been entered into and protect the interests of any person who is, or is capable of being, prejudiced by the transaction. It was similarly observed in *DDP* at [27] that the court retains the discretion whether to make an order under s 483(3) of the IRDA.

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103 124DRS at para 78.

(b) Similarly, for transactions at an undervalue, s 224(2) of the IRDA provides that the court "may", on an application to it, make "such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction".

(c) As to transactions that constitute unfair preferences, s 225(2) of the IRDA also features similar permissive language: the court "may", on an application to it, "make such order as it thinks fit for restoring the position to what it would have been if the company had not given that unfair preference".

83 I note that s 73B of the CLPA does not feature unambiguously permissive language as in the above cited provisions. Instead, s 73B(1) states that "[e]xcept as provided in this section, every conveyance of property, made whether before or after 12th November 1993, with intent to defraud creditors, *shall be voidable, at the instance of any person thereby prejudiced*" [emphasis added]".

84 Nonetheless, it is clear that the court retains the discretion whether to void a transaction even in the context of s 73B of the CLPA. Section 73B is a descendant of the Statute of 13 Elizabethan 1571 (c 5) intituled An Act Against Fraudulent Deeds, Gifts, Alienations, Etc (the "Elizabethan Statute") (*Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 ("*Quah Kay Tee*") at [6]–[9]), which provides as follows:

> For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances … which feoffments, gifts, grants, alienations, conveyances … have been and are devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent, to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts. …

> II Be it therefore … enacted … that all and every feoffment, gift, grant, alienation, bargain and conveyance of lands … had or made to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken … *to be clearly and utterly void, frustrate, and none effect*. …
>
> …
>
> VI Provided also … that this Act … shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed or assured … which Estate or Interest is or shall be upon good consideration and bona fide lawfully conveyed or assured to any person or persons … not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge or such covin, fraud or collusion as is aforesaid …
>
> [emphasis added]

In effect, the Elizabethan Statute provides that "all conveyances and dispositions of property, real or personal, made with the intent to '*delay, hinder or defraud creditors*', shall be null and void as against them, their heirs *etc*, and assigns … subject to the proviso that nothing therein contained shall extend to any estate or interest made by a *bona fide* purchaser for value and without notice of such fraud" [emphasis in original] (*Quah Kay Tee* at [12]).

85 The language in the Elizabethan Statute of the conveyance being "clearly and utterly void" was replaced by the term "voidable" in s 73B of the CLPA. As observed in Tan Yock Lin, "Fraud on Creditors" [2012] SJLS 134 at 139, such a change in the language of s 73B was plausibly to "furnish the courts with discretionary power to adjust the benefits of fraudulent conveyance law among subsequent creditors" and/or to "ameliorate any hardship that might be occasioned to the transferee if the transfer was set aside in favour of the creditors of the transferor".

86 Hence, by virtue of the above, I am of the view that the court does have the discretion to decline to order a claw back of the Payments from the Defendants, even if they may constitute transactions defrauding creditors or at an undervalue. Be that as it may, I would also observe that such a discretion must be carefully and sparingly exercised, particularly in a case like the present where many investors, employees and other parties alike are affected by the fallout of a shockingly large Ponzi scheme. In the context of a statutory clawback involving multiple other interested stakeholders, it is "rarely … appropriate" or even "practical" for the court to engage in a "balancing exercise" between the interests of the transferees (*ie*, the Defendants) on one hand, and the interests of all other parties involved on the other (*DDP* at [39]). Indeed, the case cited by the First, Second and Fourth Defendants, in which the English High Court had exercised its discretion and declined to make a claw back order, involved a bankrupt *individual*, and the balancing of interests of his creditors against that of the transferee (*Claridge (Trustee in Bankruptcy of) v Claridge* [2011] EWHC 2047).[104] This is plainly distinct from the present case, where a vast amount (of S$593,015,240, US$192,220,888 and €880,000) is owed to multiple investors and/or creditors.

87 In any event, I find that the Defendants have not shown any exceptional circumstance which warrants the exercise of the court's discretion:

(a) The Defendants were indeed remunerated for their services *via* their basic salaries and discretionary bonuses which are *not* being clawed back. They have not shown that their salaries and bonuses were disproportionate to the work conducted for the Envy Companies (see [95] above).

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104 124DCS at para 120; and CRS at para 8.2.6.

(b) I note that some of the Payments appear to have gone towards personal investments, purchase of assets such as cars and luxury goods, and other expenditure such as rental expenses.[105] In this regard, the Defendants appear to still retain the benefit of the Payments, and/or the Payments were used for their required expenditure in the ordinary course of life (such as for rent and living expenses). I agree with the Claimants that the Defendants have not shown that their receipt of these Payments has led to their life changing for the worse, rather than the better. Even if a "change of position" defence was available in principle to the Defendants in this context, the Defendants have not shown that "detriment [resulted] from the alleged change of position" as a result of their involvement with the Envy Companies (*Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another appeal* [2011] 3 SLR 540 at [144]). Consequently, I do not see a reason to exercise my discretion to decline a claw back order.

CPF payments

88 The Claimants also seek to claw back the moneys paid to the Defendants' CPF accounts that were paid hand in hand with the commission payments, profit sharing payments and referral fees. Only the Third Defendant disputes this point, and argues that the Claimants should not be allowed to claw back the sums that have been paid into the Defendants' CPF accounts. This appears to be an argument for the court to exercise its discretion against ordering

105 CCS at para 10.3.8.

a claw back of such payments, though this was not explicitly stated by the Third Defendant. She argues as follows:[106]

> (a) The Third Defendant has no right to receive or withdraw the sums paid into her CPF account until such time as she is permitted to do so. As such, any claim to recover the sums paid into the CPF account should be made against the CPF Board rather than the Third Defendant. It is on the Claimants to apply to the CPF Board for the appropriate refunds. It would be unjust for the Third Defendant to repay sums which she cannot receive the benefit of at the present juncture.
>
> (b) The Envy Companies' employer contributions to the Third Defendant's CPF account fall outside the ambit of the commission payments paid to her as they were pursuant to the Envy Companies' legal obligations as the Third Defendant's employer in respect of the additional salaries paid to her. Such payments into the Third Defendant's CPF account cannot be clawed back as transactions defrauding creditors, transactions at an undervalue, unfair preferences and/or be a basis for an unjust enrichment claim.

89 I disagree with the Third Defendant. In respect of (a) above, as I had similarly held in the Suit 942 Judgment at [227], the Defendants remain the beneficial owner of their CPF moneys and there is no reason to distinguish the Payments made to them on the mere basis that some of these moneys were in their CPF account while the rest were in their bank account. Any other outcome would mean that, in theory, a party can act fraudulently and the singular question in recovery would be whether the moneys were transferred to the party's CPF account, even though all these moneys are in substance owned by

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106 3DCS at paras 70–74.

the recipient and can be used in a variety of settings (*eg*, investment, financing of loans or the purchase of property). In any event, I also note that the Claimants are not in any position to claim the moneys from the CPF Board as the prescribed deadline for such applications has long passed.[107]

90 As to (b) above, I do not see the relevance of the Third Defendant's argument. Given that the Payments made to the Third Defendant were extra-contractual and had no basis, the Envy Companies also had no legal obligation to make the employer contributions to her CPF account. As mentioned, since there is no reason to distinguish payments made to a CPF account from those made to a bank account, these sums should similarly be clawed back.

Income tax payments

91 However, in relation to the Defendants' income tax payments, I exercise my discretion to allow the Defendants to essentially "set-off" any excess income tax they paid as a result of their receipt of the Payments against the sums they owe to the Claimants. In my view, the Defendants incurred an elevated amount of income tax as a *direct result* of their receipt of the Payments. Given that the Payments are now being clawed back by the Claimants, as a matter of fairness, I find that any excess amount of income tax paid by the Defendants ought to be subtracted from the sum to be paid back to the Claimants.

Counterclaims

Fraudulent misrepresentation and quantum meruit

92 I now turn to the Defendants' various counterclaims. In their pleaded defence, the First, Second and Fourth Defendants argued that the Envy

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107 CCS at para 5.5.6.

Companies fraudulently misrepresented to them that the Purported Nickel Trading was genuine and profitable, which induced them to invest in the business and enter into LOAs and RPAs.[108] However, in their closing submissions, their case has shifted to revolve around the loss caused to them *qua* employees, *ie*, the Defendants would not have entered into their contracts of employment if they knew about the true nature of the Envy business.[109] For instance, in the Second Defendant's case, he stated that he would not have left his previous employment to join the Envy Companies if he knew that the Purported Nickel Trading was illegitimate. Moreover, his remuneration agreement (which included the Payments made to him) was the key reason that he continued his employment with the Envy Companies. In other words, if the Second Defendant was only paid his basic salary (of S$5,000 per month), he would not have worked under the Envy Companies.

93 The requirements for a claim in fraudulent misrepresentation are well-established (*IM Skaugen SE and another v MAN Diesel & Turbo SE and another* [2018] SGHC 123 ("*IM Skaugen SE*") at [121], citing the Court of Appeal's decision in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]):

(a) there must be a representation of fact made by words or conduct;

(b) the representation must be made with the intention that it should be acted upon by the claimant, or by a class of persons which includes the claimant (*ie*, there must be inducement);

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108 See, for example, Mr Lau Lee Sheng's Defence and Counterclaim (Amendment No. 1) at para 14.5.

109 124DCS at para 101(b).

(c) it must be proved that the claimant had acted upon the false statement (*ie*, there must be reliance);

(d) it must be proved that the claimant suffered damage by so doing; and

(e) the representation must be made with knowledge that it is false; it must be wilfully false, or at least made in the absence of any genuine belief that it is true.

94 In relation to the First, Second and Fourth Defendants' original argument that the Envy Companies fraudulently misrepresented their legitimacy to the Defendants *qua* investors, I agree with the Claimants that it is unclear if the Defendants suffered any loss as a result of the alleged representation. Indeed, these three Defendants were all over-withdrawn investors, *ie*, they received moneys in *excess* of their invested principal.[110] Following a claw back of their over-withdrawn sums, they would still retain their investment principal. Consequently, there does not appear to be financial loss caused to them as investors. I am mindful that the onus is on the Defendants to particularise their claim in fraudulent misrepresentation.

95 In relation to their latter case that the Envy Companies fraudulently misrepresented their legitimacy to the Defendants as *employees*, I find that it is prejudicial to the Claimants for this claim to be raised at this late stage. As pointed out by the Claimants, if the fraudulent misrepresentation claim was pleaded in such a manner, the Claimants would have considered adducing expert evidence "on the appropriate level of *quantum meruit* payments in the commodities investment industry" to show that the basic salary payments made

110 CCS at para 10.5.3.

to the Defendants were appropriate and reasonable remuneration for the work done in their circumstances.[111] For the same reason, the First, Second and Fourth Defendants' failure to plead their *quantum meruit* claim for work done was fatal to that counterclaim as well.

Insolvency set-off

96 All the Defendants, save for the Fourth Defendant, counterclaim for: outstanding commission payments; outstanding profit sharing payments; under-withdrawn sums; and unpaid salary. These claims must fail for the following reasons:

(a) As I have found above, the commission payments and profit sharing payments were without any basis. Consequently, the Defendants were not entitled to them in the first place.

(b) As to the under-withdrawn sums and the unpaid salaries, there is no "mutuality of parties and of debts" as the money clawed back from the Defendants would be for the benefit of creditors. Now that the Envy Companies are insolvent, the Defendants would have to join the ranks of other creditors and file their proofs of debt (*Ng Bok Eng Holdings Pte Ltd and another v Wong Ser Wan* [2005] 4 SLR(R) 561 at [61]).

Quantification of the Payments

The disputed Payments made to the Third Defendant

97 In light of my findings above, the dispute as to how much under-withdrawn sums are owed to the Third Defendant is immaterial. It is on the

[111] CRS at para 4.4.3.

Third Defendant to lodge a proof of debt, as with all other under-withdrawn investors, in the Envy Companies' insolvency.

98 I turn to the dispute over the amount received by the Third Defendant by way of commission payments. To recapitulate, the Claimants submit that, based on internal trackers prepared by LSY, the Third Defendant was recorded to have received a total of S$6,141,892.95 in commission payments.[112] The Third Defendant initially disputed the following alleged commission payments made to her: (a) a S$10,000 commission payment that was paid sometime between 3 July 2016 to 2 July 2017; (b) a S$20,000 commission payment dated 29 August 2017; and (c) a S$11,000 payment that was paid sometime between 3 July 2017 to 2 July 2018.[113]

99 After the Third Defendant raised this dispute in quantum, the Claimants produced an image of the cheque for payment (b), and this transaction is no longer disputed.[114] As such, the Third Defendant is only disputing her receipt of S$21,000 of the approximately S$6m sum. According to the Third Defendant, she did not actually receive the two commission payments amounting to S$21,000, and neither of them are reflected on her payroll or bank documents.[115] She further highlights that the Claimants were only able to provide a one-year date range, rather than a specific date, for when each of the disputed commission payments were paid, and that LSY was not called as a witness to testify whether these payments were indeed made to the Third Defendant.[116]

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112 CCS at paras 4.5.1–4.5.5.

113 3DCS at para 59.

114 3DCS at para 60.

115 3DCS at para 59.

116 3DCS at paras 59 and 61.

100 I note that the Third Defendant did not produce any of her bank statements or records to show that these payments were indeed absent from her bank records. Nonetheless, in the circumstances, I accept that the Claimants have not shown on a balance of probabilities that these payments were indeed made to the Third Defendant. In coming to this conclusion, I place particular weight on the fact that they were not able to pinpoint a more *precise* range of dates in which the transactions occurred. In any event, this was not a significant sum in comparison to the approximately S$6m that would be clawed back from the Third Defendant. In conclusion, I find that the amount of commission payments that was paid to the Third Defendant was S$6,120,892.95.

The Eighth Defendant's re-invested sums

101 In his closing submissions, the Eighth Defendant brought up at the eleventh hour that he had actually re-invested a sum of S$300,000 through his godfather. It would appear that the Eighth Defendant is arguing that he was not actually over-withdrawn by approximately S$250,000, since he had re-invested another large sum into the Purported Nickel Trading. I decline to take this into account at this point:

(a) As the Claimants pointed out, the Eighth Defendant did not raise this in his pleadings or at any point during the trial. His godfather was not called as a witness and there is also no explanation or evidence provided as to the current position of the alleged re-invested sum. For instance, it is unclear if or how much the Eighth Defendant may have withdrawn from the alleged S$300,000 investment. The Claimants have also never had a chance to cross-examine him, or to test his evidence, on this issue.[117]

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117 CRS at paras 8.3.3–8.3.4.

(b) The Eighth Defendant claims that he was unable to retrieve printouts of his tax returns and WhatsApp messages with his godfather before the trial.[118] No evidence or explanation was given to support his assertion.

Conclusion

102 In conclusion, I find that all the Payments (save for S$21,000 in respect of the Third Defendant) may be clawed back from the Defendants on the basis that they were transactions that defrauded creditors and transactions at an undervalue. The Defendants shall pay to the Claimants the following amounts, subject to deductions as a result of any excess income tax payments:

Defendant	**Amount (S$)**
First Defendant	17,932,745.26
Second Defendant	10,204,333.11
Third Defendant	6,120,892.95
Fourth Defendant	4,963,024.65
Sixth Defendant	2,611,675.90
Eighth Defendant	370,881.56

103 I will separately give directions to the parties on the submissions to be filed regarding the computation of the composite quantum the respective

118 8DCS at para 13.

Defendants ought to be liable for, unless these are agreed by the parties. I will deal also with the issue of costs separately.

104 Finally, it leaves me to express my appreciation to all counsel involved in this case for their assistance in this matter. Despite the extremely document-heavy nature of the proceedings before me (spanning hundreds of thousands of pages of documents), counsel on all sides demonstrated commendable industry and discipline in streamlining the issues, mostly agreeing on matters of quantum (as can be seen above) and in focusing the court's attention on the matters truly in contention. Their clarity of advocacy and co-operative approach (while of course, advancing their clients' respective cases to the best of their ability) greatly facilitated the efficient resolution of this case. What could have taken many weeks ended up occupying less than a week of the court's hearing time, and much of the credit for this goes to them.

Mohamed Faizal
Judicial Commissioner

Chan Ming Onn David, Fong Zhiwei Daryl, Lin Ruizi, Swah Yeqin Shirin, Ryan Mark Lopez, Denise Yong Ying Jie, Lai Wei Kang Louis and Tan Wei Sze (Shook Lin & Bok LLP) for the claimants;
Liu Zhao Xiang, Teo Jen Min, Victoria Liu Xin Er and Toh Yong Xiang (WongPartnership LLP) for the first, second and fourth defendants;
Ronald Wong Jian Jie (Huang Jianjie) and Stuart Andrew Peter (Covenant Chambers LLC) for the third defendant;
The sixth and eighth defendants in person.