Artistes and Cryptocurrencies: A Crashed Collaboration

Pun Kwan Lum (David) v AboutU Pte Ltd and another [2023] SGDC 265

Introduction

Our Managing Partner, Mr Peter Doraisamy, and Counsel, Ms Yzabel Dumaguing, acted for the successful Plaintiff in a case pertaining to an initial coin offering (ICO). The case centred on whether monies paid for future digital tokens – on a blockchain network that had yet to, and did not eventually, launch – are refundable.

After delving into the nuances of the case in a judgment spanning 84 pages, the Court in *Pun Kwan Lum (David) v AboutU Pte Ltd and another* [2023] SGDC 265 answered this question in the affirmative. This case appears to be the first reported decision in Singapore that discusses simple agreements for future tokens.

The Honourable District Judge Vince Gui ("**Gui DJ**") allowed all of the Plaintiff's claims in breach of contract, misrepresentation, and unjust enrichment.

NOTE:
The summary below does not represent Gui DJ's full grounds of decision and does not reflect all the facts, issues, factors, legal points considered by Gui DJ in arriving at his decision. To read Gui DJ's full Judgment, please refer to *Pun Kwan Lum (David) v AboutU Pte Ltd and another* [2023] SGDC 265.

Background Facts

Early March 2018, the 2nd Defendant pitched his own project as an investment opportunity to the Plaintiff. According to his pitch deck, the project aimed to help artistes issue their proprietary tokens and manage their own assets by creating a decentralised network powered by blockchain technology.[1] Smart contracts in the network would allow artistes to issue their own digital tokens and monetise their popularity, eliminating high intermediatory fees which were allegedly common in the music industry. Proprietary "About U tokens" would be issued together with the artistes' own tokens, which were to be launched in conjunction with the network.[2] It was allegedly envisioned that the value of the tokens would then increase as the artistes become more popular. Eventually, the tokens would be tradeable for products like albums, concert tickets, and possibly cash.

The 2nd Defendant's email to the Plaintiff on 3 March 2018 stated, among other things, that: (a) the project would be done through a Singapore company (which would later be the 1st Defendant, AboutU Pte Ltd); (b) the target for the private fundraising round is US$6 million; (c) the plan is to list its own token on an exchange in 30 days; (d) the "*project team*" has deep international artist relationships, including "Maroon 5… Asap Rocky, Flo Rida, Tiesto … and many more"; and (e) the project had "committed investors" including "Former Chairman UBS Asia, Former Chairman Singapore Telecom, Chairman Singapore Airlines, Chairman DBS Bank, Chairman & CEO major tech company and on Board of world's largest entertainment company, Billionaire Biotech Entrepreneur, GP of Top Crypto Fund in China".[3]

[1] Judgment, [13] and [23(a)].
[2] Judgment, [23(b)].
[3] Judgment, [12].

The Plaintiff signed a contract with the 1st and 2nd Defendants as sellers indicating that they would launch the network by "*on or around 15 March 2018*" and wired the sum of US$100,000 to a bank account authorised by the 2nd Defendant.

15 March 2018 came and went. The network had not launched, and the tokens had not been issued to the Plaintiff. The Plaintiff demanded for a return of his money and the 2nd Defendant declined to do so.

On 20 March 2019, the Plaintiff issued a letter of demand to the 1st and 2nd Defendants. On 15 April 2019, the 1st Defendant was placed in creditors' voluntary winding up. On 18 April 2019, the Plaintiff commenced the action against the two defendants, but discontinued against the 1st Defendant as it had been wound up.[4]

The Claims

Misrepresentation

Under this head of claim, the Plaintiff pursued fraudulent misrepresentation, negligent misrepresentation under common law and a statutory claim under s 2(1) of the Misrepresentation Act.[5]

Before finding the 2nd Defendant liable for fraudulent misrepresentation, statements of future event / intention were assessed. This is because only statements of fact are actionable. It was then found that a statement intention can become actionable if the claimant shows that the representor had no intention of doing what he asserted he would do at the time he made the statement or honest belief with that intention.[6]

Additionally, the Court found that the 2nd Defendant misrepresented the Project's status and knew that his claims that there were "committed investors" including a heavyweight line-up of C-suites and that the network was at the cusp of being launched, were false.

The 2nd Defendant's attempt at relying on exclusion of liability clauses in the Contract failed.[7] Gui DJ determined that the clauses in the Contract do not protect the 2nd Defendant from liability as they were not clearly worded to have the alleged effect and they fail the test of reasonableness (see s 3 of the Misrepresentation Act read with s 11 of the Unfair Contract Terms Act) and are therefore unenforceable:[8]

(a) The Plaintiff was transacting on the 2nd Defendant's terms, without any evidence that they were open for negotiation.
(b) The 2nd Defendant created a sense of urgency and placed the Plaintiff in a "*take it or leave it*" situation by giving the Plaintiff a short deadline.
(c) Resultantly, the Plaintiff's decision was hasty, driven by the 2nd Defendant's misrepresentations and without the benefit of legal advice.

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[4] Judgment, [22].
[5] Judgment, [52].
[6] Judgment, [47].
[7] Judgment, [143] – [145].
[8] Judgment, [160], [254(a)].

Therefore, DJ Gui was satisfied that the Plaintiff successfully established the misrepresentation claim against the 2nd Defendant, entitling him to rescind the Contract or damages in lieu of recission pursuant to s 2(1) of the Misrepresentation Act. Either way, the 2nd Defendant had to pay the Purchase Monies to the Plaintiff.[9]

Breach of Contract

The crux of the 2nd Defendant's defence was that he was allegedly not obligated to do the launch and the Plaintiff allegedly accepted the risk that the launch would not occur at all. According to the 2nd Defendant, this was a feature of simple agreements for future tokens – purchasing the "*right to receive*" future tokens "*if*" the network launched.

The 2nd Defendant's contentions were rejected by Gui DJ.

In light of the "*time is of the essence*" clause and the fact that the draft Contract was issued to the Plaintiff on 10 March 2018, the Court interpreted the phrase "*on or about*" before the date 15 March 2018 in the Contract to mean that the launch was imminent and would occur either shortly before or after 15 March 2018, but not that it could be delayed indefinitely.[10]

As the network was never launched, Gui DJ found that the 2nd Defendant committed a repudiatory breach of contract by failing to perform the obligation of carrying out the network launch on or about 15 March 2018 or at all. As a result, the Plaintiff was deprived of the AboutU tokens meant to be issued after the launch, being the substantial benefit that the Plaintiff was supposed to receive under the Contract. Without the launch, there would be no tokens, the Plaintiff received no tangible benefit from the Contract, and the Plaintiff was entitled to terminate the Contract as he had by way of letter.[11]

Apart from the above, Gui DJ found that: (a) the "refund clause" in the Contract was enforceable and entitled the Plaintiff to a return of his Purchase Monies in the event of a failed network launch; and (b) the Plaintiff would have been entitled to reliance damages.

Unjust Enrichment

Gui DJ disclaimed that this issue would only arise for consideration if, on appeal, the 2nd Defendant is found not to be liable for misrepresentation and breach of contract. However, he determined that all of the requirements for an unjust enrichment claim were met in the present case.

To address the 2nd Defendant's claim that he was not obliged to initiate the network launch on or about 15 March 2018 (for argument's sake), the Court noted that unjust enrichment is a claim based on strict liability. Therefore, restitution of payment should be ordered even if there was "no promise that a contract would materialise" and conditions which "no party was obligated to bring about, but which the parties expected would be fulfilled in the future".[12]

[9] Judgment, [170].
[10] Judgment, [175].
[11] Judgment, [179] and [181].
[12] *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd* [2018] 1 SLR 239 at [50].

Change of position defence

The 2nd Defendant attempted to invoke the change of position defence by claiming that the Purchase Monies had been spent on the network launch. This was dismissed by the Court due to a lack of evidence to show that the Purchase Monies were eventually wired to the 1st Defendant, let alone that they were used towards the network launch.[13]

Gui DJ found that the 2nd Defendant had been unjustly enriched by the receipt of the Purchase Monies through his agent, the consideration for the Purchase Monies failed to materialise, and the 2nd Defendant failed to establish the change of position defence.

Conclusion

The Court found that it would be just and fair for the 2nd Defendant to pay US$100,000 (equivalent of the Purchase Monies) to the Plaintiff.

The decision shows that, in Singapore, simple agreements for future tokens are not immune from the application of basic contractual principles and the laws of equity based on the contractual form alone.

While not specifically mentioned, it appears that the principles of contractual interpretation in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131] were adhered to, with a strong focus on assessing the relevant context of the Contract – inspecting the circumstances in which such an agreement was made. Such principles also include ascertaining the meaning which the contractual language would convey to a reasonable businessperson and basing the interpretive exercise on the whole contract.

Parties will not be allowed to escape liability in respect of their contractual obligations and "*their word*" (e.g., representations) by attempting to find or create loopholes in contracts, hide behind the guise of marketing puffs, false urgencies, and statements of intention or future fact to secure funding, without being held responsible for the project proper.

In niche industries with higher investment risks such as cryptocurrencies (the launches of which are particularly prevalent in this generation) this is especially important and helps to safeguard investors' interests.

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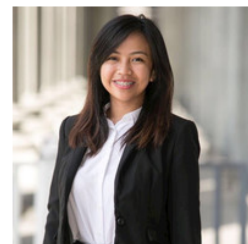

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[13] Judgment, [251].