

**SUPREME COURT OF SEYCHELLES**

---

**Reportable**  
[2022] SCSC  
CS 99/2021

In the matter between:

**GEORGIOS BAIZANIS & ORS** **Plaintiffs**  
**(representing other plaintiffs by virtue of a Power of Attorney)**  
*(Represented by Mr Audric Govinden)*

And

**WM BRANDS ONE LIMITED** **Respondent**  
**(represented by its director c/o its registered agent Nobel Capital Group Ltd, Room B11,  
First Floor Providence Complex, Providence, Mahe, Seychelles)**  
*(Absent/Unrepresented in Court's proceedings)*

---

**Neutral Citation:** *Baizanis & Ors VS WM Brands One Limited (CS 99/2021) [2022] SCSC*  
(30<sup>th</sup> November 2022)

**Before:** B Adeline J

**Summary:** Cause of action in delict/Plaintiffs allege fault on the part of the  
Defendant/claiming losses and damages suffered for breach of delictual  
responsibility.

**Heard:** (Zoom hearing) 19<sup>th</sup> May 202 and 20<sup>th</sup> May 2022

**Delivered:** 30 November 2022

---

**JUDGMENT**

---

**Adeline, J**

INTRODUCTION

[1] This is a civil suit, commenced by way of a plaint, filed in court on the 26<sup>th</sup> October 2021 by one Georgios Baizanis of 25<sup>th</sup> March Street, 36 Radopolis, Greece on his own behalf and on behalf of the other Plaintiffs (“the Plaintiffs”) by virtue of their power of Attorney, exhibit P1 collectively, against WM Brands Limited (represented by its director

c/o its registered agent, Nobel Capital Group Ltd, Room B11, First Floor, Providence Complex, Providence, Mahe, Seychelles, an international business company incorporated in Seychelles under the International Business Companies Act 2016, bearer of Incorporation number 211809 (“the Defendant”).

[2] By their plaint, the Plaintiffs sues the Defendant in delict claiming damages from the Defendant in the total sum of USD 853,625.90, representing the Plaintiffs’ individual claim in the following proportions;

1. The 1<sup>st</sup> Plaintiff USD 175,953.71
2. The 2<sup>nd</sup> Plaintiff USD 13,964.88
3. The 3<sup>rd</sup> Plaintiff USD 110, 679.74
4. The 4<sup>th</sup> Plaintiff USD 109, 271.31
5. The 5<sup>th</sup> Plaintiff USD 94, 273.92
6. The 6<sup>th</sup> Plaintiff USD 51, 910.21
7. The 7<sup>th</sup> Plaintiff US 9,216.81
8. The 8<sup>th</sup> Plaintiff USD 9,271.66
9. The 9<sup>th</sup> Plaintiff USD 15,885.17
10. The 10<sup>th</sup> Plaintiff USD 55,775.14
11. The 11<sup>th</sup> Plaintiff USD 9,895.80
12. The 12<sup>th</sup> Plaintiff USD 8,654.91
13. The 13<sup>th</sup> Plaintiff USD 9,271.85
14. The 14<sup>th</sup> Plaintiff USD 8,569.75
15. The 15<sup>th</sup> Plaintiff USD 18, 900.02
16. The 16<sup>th</sup> Plaintiff USD 90,.636.17
17. The 17<sup>th</sup> Plaintiff USD 7,512.88
18. The 18<sup>th</sup> Plaintiff USD 54, 281.98

## PLEADINGS

[3] In their pleadings the Plaintiffs aver, interalia, that;

*“2. The Defendant operates world markets, an online cryptocurrency and a forex investmet PAMM platform*

*3. The Plaintiffs are from all over the world and have made investments into worldmarkets.*

*4. Worldmarkets has been advertised on a Youtube Channel called Cryptoexposed to entice investors to invest into cryptocurrency within worldmarkets on its online platform <https://worldmarkets.com/aimanagedaccount.htm> at the material time.*

*5. On the above website, worldmarkets provided its Certificate of Compliance stating that. The present Certificate attest that properly identified services in financial markets provided by the company “WM Brands One Limited” and states its legal address as “suite C, 2<sup>nd</sup> Floor, Orion Mall, Palm Street, Victoria, Mahe, Seychelles”.*

*6. During the period of May 2019 to early October 2020, further to the Plaintiffs being enticed by the Defendant, the Plaintiffs made investments into worldmarkets which created individual accounts for the Plaintiffs. Worldmarkets at all time accepted investment payments from the Plaintifs, and even allowed some initial and furter partial withdrawals. However, when it came to requests from the Plaintiffs to withdraw all or substantial amounts from their accounts with worldmarkets sometime mid October 2020 onwards, worldmarkets gave unfounded reasons and ignored the requests and Plaintiffs completely thereby operating a scam to defraud the Plaintiffs.*

*7. The Plaintiffs have further found out that worldmarkets had been fraudulently misrepresentting past performance figures on their site by uploading links to fake results through links to an external software “FXste” with which world markets does not, in addition, have their approval to place on their website.*

*8. February 1<sup>st</sup> 2021, onwards, the Plaintiffs have also realised, worldmarkets started posting fake trades, resulting in massive losses for their account, in an attempts by*

*worldmarkets to artificially eliminate any liabilities against the Plaintiffs. So open positions that started being closed 1<sup>st</sup> February 2021 onwards, instead being depicted with a positive PnL as closing prices for those days would have resulted in a positive PnL compared to the prices those positions were opened, worldmarkets was posting massive negative PnL results on a dishonest act to cheat all the Plaintiffs.*

*9. As a result of the faute of the Defendant, the plaintiffs have, severally suffered loss and damages.*

*10. In an attempt by the group to settle the matter in an amicable way with the Director of worldmarkets Ms Liz Lulo Rascón, a legal letter of demand was attempted to be served to her. However, it was found that she had given a fake/incomplete address to its registered agent hence the lawyer of the group, in Mexico, where Ms Rascón is supposed to be residing, failed to serve the legal letter of demand on behalf of the group”.*

[4] In their prayer, the Plaintiffs pray this honourable court to enter judgment in their favour ordering the Defendant to pay the Plaintiffs, severally, the total sum of USD 853,625.90 with interest and cost, to be distributed in the proportion as specified at paragraph [2] of this judgment.

[5] The Respondent who had been served with summons pursuant to Section 30 and 35 of the Seychelles Code of Civil Procedure, Cap 213, read with Section 172 (1) (b) and (2) of the International Business Companies Act 2016, Cap 774 on the 9<sup>th</sup> of March 2022, failed to put appearance in court, in person or otherwise, to answer the plaint. The Plaintiff was granted leave of this court for the hearing of the plaint ex parte.

#### THE EVIDENCE

[6] The 1<sup>st</sup> Plaintiff, Georgios Baizanis was the star and only witness who testified at the hearing of this suit, ex parte. He testified on his own behalf and on behalf of the 17 other Plaintiffs listed at paragraph [2] of this judgment by virtue of a power of attorney

received from each of the other Plaintiffs, exhibit P1 collectively. Georgios Baizanis is a business analyst for a Crypto Trading Platform, and has been doing this job for about a year.

[7] Georgios, Baizanis also testified, that he and the other Plaintiffs in this suit are suing WM Brands One Limited, a Limited Liability Company incorporated in Seychelles under the provisions of the International Business Companies Act. Its incorporation number is 211809. Mr Baizanis further testified, that the registered agent of WM Brands One Limited is Nobel Capital Group Ltd which last known registered office is Room 5, second floor Olivier Maradan Building, Victoria, Mahe, Seychelles, exhibit P2.

[8] It is the testimony of Mr Baizanis that the Defendant operates an online crypto currency and forex investments platform known as worldmarkets, and that he has had communications with worldmarkets confirming that one of their entities is WM Brands One Limited. Hence, WM Brands One Limited operates worldmarkets which is a forex investment financial exchange platform, exhibit P3.

[9] Mr Baizanis deponed about PAMM which he said stands for Percentage Allocation Money Management Program. As per his deposition, PAMM is a market term in the foreign industry where investors invest in a strategy. In his own words, he stated that, “it is a standard market for strategy providers to offer the strategy followers”. As regards to the instant case, Mr Baizanis explained that, worldmarkets has a PAMM account that is trading, and would create an account which every months investors would sent any amount of money to them under that account.

[10] As per Mr Baizanis’ testimony, every trade the trader or worldmarkets was doing in the PAMM accounts automatically replicated in their account with the lauching proportion but the percentage profit was the same. All investors made the same profit. Worldmarkets was making money by every months charging the investors 10 percents profit on the profit that it made for the investors.

[11] Mr Baizanis testified, that all of the Plaintiffs did invest into the accounts or crypto deposits. They did so, after they were informed, that worldmarkets is regulated by an international relationship regulatory Centre IFMRRC, exhibit P4. Mr Baizanis added, that they did contact the regulator regulating the activities of worldmarkets before he and the other Plaintiffs invested their money in worldmarkets and the feedback they received were positive, exhibit P4. Mr Baizanis stated, that the regulator had a YouTube Channel called Crypto exposed, through which channel there were marketing efforts by way of video representations, for example, to sell worldmarkets products. The channel was accessible through the link <https://worldmarkets.com/aimanageaccount.hd>. Mr Baizanis tendered in evidence a Certificate of Compliance as exhibit P5.

[12] It was the testimony of Mr Baizanis, that it was sometime in 2020 that, the Plaintiffs started to invest in worldmarkets. After making their investment, they all received an account proof of which were the accounts statements pertaining to the individual account. Mr Baizanis tendered in evidence as exhibits statements of the individual accounts as follows;

1. The 1<sup>st</sup> Plaintiff, Mr Baizanis himself, account No: 574558303107917, exhibit P6
2. The 2<sup>nd</sup> Plaintiff, Mr Sergei Schlichting de Lorenzi Pires, account No: 57455813471093, exhibit P7 collectively.
3. The 3<sup>rd</sup> Plaintiff, Mr Roberto Oblatore account No: 57455808230914, exhibit P8.
4. The 4<sup>th</sup> Plaintiff, Mr Richard Grainger, account No: 5745581384487, exhibit P9.
5. The 5<sup>th</sup> Plaintiff, Ms Sarah Woolley, Account No: 57455853462868, exhibit P10.
6. The 6<sup>th</sup> Plaintiff, Mrs Gail Woolley, Account No: 5745580161821, exhibit P11.
7. The 7<sup>th</sup> Plaintiff, Mr Nnamdi Ucho, Account No: 5745580942195, exhibit P12.
8. The 8<sup>th</sup> Plaintiff, Mr Gary Brandon de Ruiter, Account No: 57455829296137, exhibit P13.
9. The 9<sup>th</sup> Plaintiff, Mr Haseeb Akram, Account No: 57455883914857, exhibit P14.
10. The 10<sup>th</sup> Plaintiff, Mr Wim Van Nevel, Account No: 574455803536200, exhibit P15.

11. The 11<sup>th</sup> Plaintiff, Mr Peter Colpoys, Account No: 57455827267016, exhibit P16.
12. The 12<sup>th</sup> Plaintiff, Mr Flemming Buhl, Account No: 57455830603416, exhibit P17.
13. The 13<sup>th</sup> Plaintiff, Mr Felix Moser, Account No: 57455870645912, exhibit P18.
14. The 14<sup>th</sup> Plaintiff, Mrs AM Janssen, Account No: 574558368111757, exhibit P19.
15. The 15<sup>th</sup> Plaintiff, Mr Philippe Van Poppel. Account No: 57455801287910.
16. The 16<sup>th</sup> Plaintiff, Mr Mathew Sweeting, Account No 574455873882800, exhibit P21.
17. The 17<sup>th</sup> Plaintiff, Mr Karl Bohn, Account No: 57455828480261, exhibit P22.
18. The 18<sup>th</sup> Plaintiff, Christopher John Hughes, Account No: 57455876970795, exhibit P23.

[13] Mr Baizanis testified that, these statements (exhibit P6-P23), give detailed information about the investments made by the individual Plaintiffs into worldmarkets. He confirmed, that the November and December 2020 statements are missing from Mr Wim Van Nevel statements, and that these statements have been used as the basis for the claims because at the end of each and every months, he logged and downloaded all his statements. As such, he has all the statements from October 2020 to January 2021, although the statement for the months of November and December 2020 was missing.

[14] It was the testimony of Mr Baizanis, that after the Plaintiffs had invested into worldmarkets, worldmarkets did initially accept some withdrawals from the Plaintiffs' accounts which happened up to September 2020. As per Mr Baizanis' testimony, after September 2020, the requests for withdrawals from the Plaintiffs' accounts were not honoured, as they received several excuses from worldmarkets. Mr Baizanis testified, that after worldmarkets ceased to make withdrawals from the Plaintiffs' accounts some of the Plaintiffs requested for a substantial amount from their accounts to be withdrawn, while others, requested for the whole amount from their accounts to be withdrawn, which requests worldmarkets did not entertained as they did not honour the requests.

- [15] Mr Baizanis testified, that worldmarkets gave unfounded excuses for not carrying out the withdrawals from the accounts blaming a Nigerian Forex broker, Swift, which claimed that they were using HYCM to trade, and that they are regulated by the FCA in the UK, when in actual fact, Swift Exchange, the forex broker in Nigeria, was never operational and was not yet regulated. Mr Baizanis also stated, that another excuse that was related to them was that the crypto broker, Okex was holding up the withdrawals from Okex accounts to other external accounts. According to his testimony, at around 28<sup>th</sup> October 2020, he did inform worldmarkets that they could issue payments of the withdrawals through internal Okex account transfers, exhibit P24. The response they received from worldmarkets was that the issue of non-payments is due to technical problems with swift exchange.
- [16] Mr Baizanis testified, that the list of statements for the individual Plaintiffs from worldmarkets shows the calculation up to January 2020, whereas, the basis of their claims have been calculated up to the 30<sup>th</sup> January 2021. He stated that, some of the Plaintiffs, for different reasons, were unable to obtain their statements up to the 31<sup>st</sup> January 2021. As per his testimony, they base all the claims as per what the 18 Plaintiffs' statements would have been on the 30<sup>th</sup> January 2021 using the extra-logic which he said is based on the concept of PAMM.
- [17] That is to say, the percentage profit are exactly the same for all the investors in the PAMM account, although, the actual amount of profits are different. To illustrate how the calculation works, Mr Baizanis referred the court to the statement of November 2020 of Sergei Schlichting de Lorcuzi Pires, the 2<sup>nd</sup> Plaintiff. Using an extrapolated formulae applied to the statements of Mr Vim Van Nevel of November 2020 and January 2021 statements, they found an income of 8.2% during that period that he said led to a profit of 1.082 which is 8.2% to derive from the total value of the account of Mr Sergei Schlichfing de Lorenzi Pires as at 31<sup>st</sup> January 2021.



[18] Mr Baizanis testified, that the Plaintiffs who could not get their statements up to the 30<sup>th</sup> January 2021, and which the extra-factor calculation had to be applied to ascertain the sum that would have been in their account are;

1. Himself, Mr Georgios Baizanis the 1<sup>st</sup> Plaintiff
2. Mr Sergei Schlichting de lorenzi Pires, the 2<sup>nd</sup> Plaintiff
3. Mr Nnamdi Ucho, the 7<sup>th</sup> Plaintiff
4. Mr Gary Brandon de Ruiter, the 8<sup>th</sup> Plaintiff
5. Mr Peter Colpoys, the 11<sup>th</sup> Plaintiff
6. Mr Felix Moser, the 13<sup>th</sup> Plaintiff, and
7. Mr A.M Janssen, the 14<sup>th</sup> Plaintiff (exhibit P15 collectively)

[19] It was the testimony of Mr Baizanis, that the Plaintiffs subsequently discovered that, worldmarkets was fraudulently misrepresenting their performance figures by uploading their links on an external software called FXste. When he was asked whether worldmarkets had approval to put these past fraudulent performance figures on FXste, Mr Baizanis had this to say;

“First of all two things they could not get approval because this was not their own performance. This was the performance of an external account, actually multiple external accounts by the FXste software. Number 2, they were not using that software, they have not got any kind of approval to sell that information in their site and later if may be, I will comment on what happened when I contacted the owner of the software”.

[20] Mr Baizanis testified, that when he contacted the owners of FXste, the reply he received was that they have no relationship at all with worldmarkets, and that they were not aware of them, and by an Email, exhibit P25, FXste confirmed, that worldmarkets did not have any authority to put their performance figures on their platform.

[21] It was the testimony of Mr Baizanis, that some of the Plaintiffs do have their statements of accounts after the 30<sup>th</sup> January 2021, but said that they have not presented them as the

basis of their claims. Mr Baizanis explained, that at the end of February 2021, worldmarkets started placing some fake figures, and manipulated numbers in their closing trade of February 2021, that were shown to the Plaintiffs, indicating huge losses for the accounts when in actual fact, they should have been making big profits. He explained, that these trades figures were fake because the net closing PnL for those were always a considerable negative figure while for the day the positions were closed and as per the average market price for that day for those assets, the closure of the trade positions should have resulted into considerable profits instead. As per Mr Baizanis' testimony, they all as investors, were affected percentage wise after the 30<sup>th</sup> January 2021 by the fake figures. Mr Baizanis explained, that some of the Plaintiffs had the statements of February 2021, but not the statement for the end of February and end of January 2021. Mr Baizanis referred to Mr Felix Moser's statement dated 27<sup>th</sup> February 2021, stating that, a calculation was made to bring the valuation of his account back to the 31<sup>st</sup> January 2021.

[22] Mr Baizanis testified, that similar exercise was carried out in respect of the two accounts of Mr Mathew Sweeting, which exercise was carried out to put the accounts in the position they would have been on the 30<sup>th</sup> January 2021 but for the fake trades figures. Mr Baizanis tendered in evidence as exhibit marked P26, a table which he said he prepared with inputs from the other Plaintiffs. He explained that, he received the statements from the other Plaintiffs and that the exercise entailed placing the information in excel to produce records of all deposits, withdrawals and valuation based on the claims. Mr Baizanis confirmed that, the table does show the information about the extra-calculation as well as the reduction of the fake losses in respect of some of the accounts as discussed in preceding paragraphs.

[23] Mr Baizanis stated, that based on the activities after the 30<sup>th</sup> January 2021, worldmarkets came up with these fake numbers in respect of certain accounts in order to reduce their liabilities towards the Plaintiffs as investors, when in reality, based on their position price compares to the position exit price, there was a big positivity difference which means that a very good profits was expected rather than big losses, exhibit P27.

[24] Mr Baizanis testified that, as a consequence of the fraudulent scheme of the Defendant, he and the other Plaintiffs suffered losses and damages which they hold the Defendant liable towards them. Particularising the Plaintiffs' losses and damages, Mr Baizanis stated the losses and damages of the Plaintiffs individually to have been;

1. The 1<sup>st</sup> Plaintiff (Mr Baizanis himself) USD 175,953.71
2. The 2<sup>nd</sup> Plaintiff, Sergei Schlichting de lorenzi Pires, USD 13,964.88
3. The 3<sup>rd</sup> Plaintiff, Roberto Oblatore, USD 110, 679.74
4. The 4<sup>th</sup> Plaintiff, Richard Grainger, USD 109, 271.31
5. The 5<sup>th</sup> Plaintiff, Sarah Wooley, USD 94, 273.92
6. The 6<sup>th</sup> Plaintiff, Gail Woolley, USD 51, 910.21
7. The 7<sup>th</sup> Plaintiff,
8. The 8<sup>th</sup> Plaintiff, Garry Brandon de Ruiter, USD 9,271.66
9. The 9<sup>th</sup> Plaintiff, Haseeb Akram, USD 15,885.17
10. The 10<sup>th</sup> Plaintiff, Wim Van Nevel, USD 55,775.14
11. The 11<sup>th</sup> Plaintiff, Peter Colpoys, USD 9,895.80
12. The 12<sup>th</sup> Plaintiff, Flemmy Buhl, USD 8,654.91
13. The 13<sup>th</sup> Plaintiff, Felix Moser, USD 9,271.85
14. The 14<sup>th</sup> Plaintiff, AM Janssen, USD 8,569.75
15. The 15<sup>th</sup> Plaintiff, Philippe Van Poppel, USD 18, 900.02
16. The 16<sup>th</sup> Plaintiff, Mathew Sweeting, USD 90,.636.17
17. The 17<sup>th</sup> Plaintiff, Karl Bohn,USD 7,512.88 and
18. The 18<sup>th</sup> Plaintiff, Christopher John Hughes, USD 54, 281.98

[25] Mr Baizanis told the court that, the Plaintiffs did engage a lawyer to draft a legal letter of demand which they attempted to serve on the sole Director of worldmarkets, one Lise Rascon from Mexico city without success because the address was incomplete, exhibit P28. According to Mr Baizanis, they received the address from the registered agent of the Defendant. Mr Baizanis completed his testimony by praying this court to enter judgment

in favour of the Plaintiffs ordering the Defendant to pay the total sum of USD 853,625.90 to the Plaintiffs severally to be distributed as per the losses and damages suffered by the Plaintiffs individually.

#### THE SUBMISSION

- [26] In his endeavour to simplify the technical aspects of the Plaintiffs' testimony, learned counsel submits, that the Defendant, WM Brands One Limited, operates worldmarkets which is an online cryptocurrency and forex investment PAMM program platform. PAMM, meaning Percentage Allocation Money Management Program. The way it works, is that, worldmarkets acting as a fund manager creates a pool of funds accounts and the returns that the Plaintiffs as investors make as in exact percentage as the fund manager's one. The absolute returns in USD equivalent are in proportion to the capital investment of the investor, which in the instant case were the Plaintiffs.
- [27] Learned counsel also submits, that to entice the Plaintiffs and other investors to invest on its website <https://worldmarkets.com/aimanagedaccount.htm>, worldmarkets exhibits a certificate of compliance that reads as follows;
- “The present certificate attests that properly identified services in financial markets provided by the company WM Brands One Limited”. It also stated, that its legal address is “suite C, 2<sup>nd</sup> Floor, Orion Mall, Palm Street, Victoria, Mahe, Seychelles.
- [28] It is the submission of learned counsel, that based on the Certificate of Compliance, WM Brands One Limited is the company that operates the services through the online website of worldmarkets.
- [29] It is also the submission of Learned counsel, with specific reference to exhibits P6 to P23, that the evidence shows, that for the period from December 2019 to October 2020, the Plaintiffs made investments into worldmarkets, which as a consequence, individual accounts were created for each investor/Plaintiff.

- [30] Learned counsel submits, that as per the evidence laid before this court by the Plaintiffs, their investments were accepted by worldmarkets, and that at the beginning, worldmarkets did make withdrawals from the Plaintiffs' individual accounts upon their requests, until sometimes around and up to mid October 2020. As per learned counsel's submission, from then on, worldmarkets ignored their requests giving them different informed reasons.
- [31] Learned counsel also submits, that based on the evidence, exhibit P25, the Plaintiffs eventually discovered that worldmarkets were fraudulently misrepresenting past performance figures by posting unauthorised links on a website named FXste, exhibit P25.
- [32] It is the submission of learned counsel, that the evidence adduced before this court, indicates, that it was on the 1<sup>st</sup> February 2021, and thereafter, that the Plaintiffs came to realise, that worldmarkets were posting fake trades, that resulted in massive losses for their accounts, and that, these were deliberate attempts by worldmarkets to exclude their liabilities towards the Plaintiffs.
- [33] Learned counsel submits, that the open positions that started being closed as of 1<sup>st</sup> February 2021 onwards, instead being depicted with a positive PnL since closing prices for those days would have resulted in a positive PnL compared to the prices this positions were opened. Learned counsel refers the court to exhibit P27 as evidence that worldmarkets was posting massive negative PnL results in a dishonest act that cheated all the Plaintiffs.
- [34] It is the contention of learned counsel for the Plaintiffs, that what the Defendant did constituted a faute in law, which as a consequence, caused the Plaintiffs to severally sustain loss and damages which the Defendant, by law, has to make right.
- [35] Submitting on the law, learned counsel submits, that the law to be applied for the Plaintiffs to obtain the reliefs being sought for is delict under Article 1382 (1) of the Civil

Code of Seychelles Act. Learned counsel cites the provision of Article 1382 (1) that reads;

“Every human act that causes harm (damage) to another requires the person by whose fault the harm occurred to repair it”

[36] Learned counsel also submits, that the case of *Joubert v Suleman* [2010] SLR 2048, is the case law authority for the proposition that, to establish liability under Article 1382 of the Civil Code of Seychelles Act, the Plaintiffs had to prove that the Defendant had committed a *faute* against them, that they have sustained damage as a result, and that there is a causal link between the fault and the damage.

[37] Expanding on the delictual concept of “fault”, learned counsel refers this court to Article 1382 (2) of the Civil Code of Seychelles Act. Learned counsel proceeded to quote Articles 1382 (2) (a) and (b) of the Civil Code of Seychelles Act that read as follows;

“2 (a) Fault if an error of conduct that would not have been committed by a prudent person in the circumstances

2 (b) Fault may be the result of an act or omission”

[38] The cause of action in the instant case, being based on Article 1382 (1), means, that to establish liability, one must show the existence of a fault, the damage caused as a result of the fault and a causal link. (see *Joubert vs Suleman* SC 49/1996 LC 117). It is, therefore, necessary to spell out the statutory provisions of Article 1382 (1), that reads;

(1) “Every act whatever of man that causes damage to another, obliges him by whose fault it occurs to repair it”.

[39] It is the submission of learned counsel for the Plaintiffs, that as per the evidence, “the objective of the investment made by the Plaintiffs with worldmarkets was to grow their savings with worldmarkets PAMM Platform program while having full access to their

funds, being able to withdraw full or part of their balance if and when required”. Learned counsel contends, that based on the evidence, worldmarkets had an obligation to execute withdrawal requests made by the Plaintiffs in their respective accounts, and that around mid October 2020, worldmarkets failed and omitted to execute further withdrawal requests made by the Plaintiffs without any good and founded reasons.

[40] It is submitted by learned counsel for the Plaintiffs, that the evidence shows that, world markets first refused to execute the withdrawal requests on the basis that the platform SwiftXchange was the one pending the withdrawals, which the Plaintiffs found did not even exist.

[41] Learned counsel submits, that the evidence also shows, that worldmarkets did inform the Plaintiffs that another platform, Okex, with which it had a trading account, had suspended external withdrawals from Okex accounts to other external accounts, and that the 1<sup>st</sup> Plaintiff, Mr Baizanis himself, after establishing contact with Okex customer support, learnt that internal transfers were still functioning, and therefore, asked worldmarkets to do an internal transfer between Okex accounts to his own account with Okex from worldmarkets Okex operated account, and no reply was ever communicated back.

[42] It is the submission of learned counsel, that as per the evidence of Mr Baizanis, when Okex a week later started processing external withdrawals again, worldmarkets never processed reciprocally the Plaintiffs’ pending withdrawals. Learned counsel submits, that by refusing to execute the withdrawals of the Plaintiffs, the Defendant acted in such a manner that no prudent investment company would have acted, and that it deliberately omitted to undertake its obligations to execute the withdrawal requests of the Plaintiffs.

[43] It is the contention of learned counsel, that by refusing to execute the necessary withdrawals from the Plaintiffs’ account, that constituted an omission, and by its conduct in general, the Defendant committed a fault in law, in that, it acted in such a manner that no prudent investment company would have acted.

- [44] It is submitted by learned counsel for the Plaintiffs, that the testimony of Mr Baizanis on his own behalf and that of others, is evidence that the Plaintiffs sustained damage which the Defendant has to put right, and that their claims against the Defendant are the outstanding amounts that were or ought to have been in each Plaintiff's individual account with the Defendant as of 30<sup>th</sup> January 2021.
- [45] It is also submitted by learned counsel, that as per the evidence of Mr Baizanis, some of the Plaintiffs, including Mr Baizanis himself, could not retrieve their account information as at the 30<sup>th</sup> January 2021 because worldmarkets website was not operational sometime in April 2021 onwards to enable them to download their account statements needed. As per learned counsel's submission, the Plaintiffs have had to make use of "a mathematical calculation" to determine the amount of money that ought to have been in credit in their accounts as of 30<sup>th</sup> January 2021.
- [46] Learned counsel refers the court to the mathematical calculation as explained by Mr Baizanis in evidence, performed via an extrapolated formulae, taking as an example, the facts pertaining to Mr Wim Van Nevel, the 10<sup>th</sup> Plaintiff's worldmarkets account statement to illustrate the basis of the calculation. The said Plaintiff had all months end statements from October 2020 up to January 2021, at a time when no withdrawals were being processed from October 2020 onwards for any of the accounts.
- [47] Given that the percentage returns in the worldmarkets PAMM program are the same across all Plaintiffs' accounts, this was calculated based on the above, the percentage profits for each month, realised by worldmarkets PAMM program starting October 2020 to January 2021. That made it possible to derive the extrapolation factor for each month. The way that this was achieved was by plugging the end values for each month from Mr Win Van Nevel's statement in an excel from the difference between the month end values for the related month end period, was derived the percentage return for that period. That percentage period is then converted to the extrapolation factor for that period by adding the number 1.



[48] Learned counsel gave this example to illustrate how it works based on Mr Baizanis' testimony, and stated the following;

“End value from 30/10/2020 as per 1 above is 44,815.09 USD while the end value from 30/1/2021 is 55,475.14 USD. Hence the percentage return for the period (months of November, December and January is calculated as 23.79 %). By adding 1 to this figure we get 1.2379 as the extrapolation factor for that period. Therefore, for the Plaintiffs who had only the statement of October 2020, we manage to derive the valuation of his account as of 30/01/2021 by using the factor 1.2379 over the October 2020 valuation using this extrapolation logic”.

[49] Learned counsel submits, that in the case of the 1<sup>st</sup> Plaintiff, Mr Baizanis, as per the worldmarkets account statement he had downloaded, is as of 27<sup>th</sup> October 2020 and for the three days until the month ended, the percentage profit on Mr Vim Van Nevel's account has been calculated and hence the extrapolation factor for those 3 days period was produced.

[50] Learned counsel referred the court to exhibit P26 which are the full details of the extrapolation excel used for those calculations. It is submitted by learned counsel that, in his evidence, the 1<sup>st</sup> Plaintiff, Mr Baizanis, did confirm that, the extrapolated formulae had to been used on his account No 57455830107917, exhibit P6, as well as some other Plaintiffs' account, notably, the following;

- (i) 2<sup>nd</sup> Plaintiff, Sergei Schlichfing, account No 57455813471083, exhibit P7
- (ii) 7<sup>th</sup> Plaintiff, Namdi Ucho, account No 57455809421953, exhibit P12
- (iii) 8<sup>th</sup> Plaintiff, Garry Brandon de Ruiters, account No 57455829296137, exhibit P3
- (iv) 11<sup>th</sup> Plaintiff, Peter Colpoys, account No 57455827267016, exhibit P6, and
- (v) 14<sup>th</sup> Plaintiff, AM Jansen, account No 57455836811757, exhibit P19.

[51] As per the submission of learned counsel, it is the evidence of the 1<sup>st</sup> Plaintiff, Mr Baizanis, that on some of those accounts, worldmarkets had posted fake trades post 1<sup>st</sup>

February 2021, and that, “that results posted based on these fake trades, could not have been possible and portrayed massive losses on these accounts. As per Mr Baizanis’ testimony, these trades are fake because as submitted by learned counsel, the “net closing PnL for those accounts was always considerable negative figure, that is massive losses, while for the day the positions were closed and as per the average market price for that day for those assets, the closure of the trade position have resulted in considerable profits instead”.

[52] Learned counsel refers the court to exhibit P27, and to the testimony of Mr Baizanis regarding the same, who, as an example, testified about TRX/USD (Tron) LONG trade that was closed on the 28<sup>th</sup> February 2021. Learned counsel, relying on the evidence of Mr Baizanis submits, that LONG means that the trade was on a leverage contract where TRX (TRON) was purchased against USD. Therefore, if TRX price has moved upwards during that period, profits would have been made for the benefit of the investors, which according to the testimony of Mr Baizanis, this was actually the case. The LONG TRX/USD was opened back on 30<sup>th</sup> November 2020. Referring the court to the price chart for TRX/USD, learned counsel contends, that from the period of 30<sup>th</sup> November 2020 to 28<sup>th</sup> February 2021 there was a strong price increase, and therefore, the considerable losses posted on worldmarkets investors’ accounts were fake.

[53] It is the contention of learned counsel, that based on the oral testimony of Mr Baizanis and the documentary evidence tendered, particularly exhibit P27, that “many such trades with considerable losses posted between February 2021 to March 2021 would have actually resulted into big profits for the Plaintiffs/investors.

[54] Learned counsel notes, that for the reasons explained in the preceding paragraphs, “in calculating the amount of money that ought to have been in the accounts as of 30<sup>th</sup> January 2021, the Plaintiffs discounted the fake and fraudulent results posted by worldmarkets during the months of February and March 2021. Learned counsel refers the court to the testimony of Mr Baizanis and exhibit P21, to the effect that, the deduction of these fake results post 1<sup>st</sup> February 2021, was made on the accounts of the 13<sup>th</sup> Plaintiff,

Mr Felix Moser, bearer of account no 57455870645912, exhibit P18, and the 16<sup>th</sup> Plaintiff, Mathew Sweeting, account no 57455873882800 and account no 57455831627420 exhibit P21.

- [55] Based on his appreciation of the oral and documentary evidence tendered before this court at the hearing of the Plaintiffs' plaint, learned counsel submits, that the evidence points to the fact that the Plaintiffs have sustained direct financial loss and damage because of the money they could never retrieved on their accounts with the Defendant as of 30<sup>th</sup> January 2021. Learned counsel also submits, that the evidence shows, clearly, the causal link between the damage and the fault, (relying on *Grand Jean v Seychelles Breweries Limited* SSC 368/1996) given that, the evidence laid before this court is proof of the losses sustained by the Plaintiffs as a direct cause of the Defendant's deliberate act, or omission to execute the withdrawal requests of the Plaintiffs.

#### THE LAW

- [56] In their pleadings, the Plaintiffs make no mention at all that proceeding has been initiated against the Defenfant under Article 1382 of the Civil Code of Seychelles Act, ("the Code"). They are, of course, right to have not done so because the rules of pleadings require that a plaint contains statements of the circumstances constituting the cause of action, and the relevant material facts. Hence, they did not had to state that the claim against the Defendant is in delict under Article 1382 of the Code. (see the case law authorities in that regards, notably, *Gill vs Gill* SCA 4/2004 LC 265, *Gallante vs Hoareau* [1988] SLR 122, and *Johanson v Renaud* SCA Civil Appeal 5/1994, 7 December 1994). In *Johanson* (Supra) the court held, interalia, that;

*"It is not necessary to plea any particular Article of the Civil Code because pleadings are on facts"*

- [57] Nonetheless, on the face of the pleadings as well as the facts as transpired in evidence, it is clear, that this action is in delict as the basis for the Plaintiffs' claim under Article 1382

of the Code. This is so because a claim in delict points to, either an act or omission, or an error of conduct of the Defendant that has caused damage to the Plaintiff (see *Akinson vs Government of Seychelles* SCA 23/2006 LC 285).

[58] For a claim in delict to succeed under Article 1382 of the Code, the Defendant must be adjudged to be liable towards the Plaintiffs for an act, omission or an error of conduct based on the evidence laid before this court. To determine the Defendant's liability fault has to be established, the damage has to be ascertained, and there must be established a causal link between the fault and the damage. In *Joubert vs Selman* [2010] SLR 248, the court held, inter alia, that;

“A person is liable not only for the damage caused by their own act, but also, for the damage caused by the act of those persons for whom they have responsibility”.

[59] In essence, in the instant case, to establish the Defendant's delictual responsibility, the Plaintiffs needed to satisfy the court of the existence of three conditions by way of evidence, namely;

(i) The damage sustained by the Plaintiffs/victims of the delict.

This must be factual in the sense that there has been actual harm caused to the Plaintiff.

(ii) The 2<sup>nd</sup> condition is fault, which can be comprised of an act or omission as the basis for the action in delict. Thus, under Article 1382, and 1383 of the Code, one has personal responsibility for fault which under Article 1382. 2 “is an error of conduct which a prudent person would not commit”.

(iii) The 3<sup>rd</sup> condition is the causal link between the damage and the fault. That is to say, there must be a causal connection between the act and the damage that must exist at the time of the act (see *Emmanuel v Joubert* SCA 49/1996, LC 117). The injury or damage sustained by the Plaintiffs/victims must be the direct result of the Defendant's fault. (see *Hoareau vs UCPS Ltd* [1979] SLR 155. In *Hoareau*, (Supra) the court had this to say;

“In other words, for liability to arise there must be proved a direct causal connection between the fault, and the injury” (Jumeau vs Savy 1933 MR 44 and Mangroo v Dahal 1937 MR 43). In most cases, that can easily be established. In Fontaine v Lefevre & Anor [1981] SLR 186 the court had this to say;

“In the case of delict, it is immaterial whether the damage done or prejudice suffered was foreseeable or not. The tortfeasor is liable to compensate fully the consequences of this wrong doing”

[60] As discussed earlier, fault comprises of an act or omission as the basis of the action in delict, and that had to be proved by evidence adduced before this court by the Plaintiffs.

[61] The Roman Maxim that a party who asserts must prove (ei incumbit probatio qui dicit, non qui negat) applies both, in common law, and in civil jurisdiction as in this country. In fact, it is suggested, that the maxim is incorporated in our law by virtue of Article 1315 of the Code. (see Brian Mathiot v Jason Camille & Ors Civil Side CS 64/2012). As such, the legal burden of proof lied with the Plaintiffs in this case who assert the existence of certain facts as disclosed by their pleadings. The standard of proof that was expected of them is on the balance of probabilities.

[62] In the case of Suleman (Supra), the case of Re B (Children) [2008] UKHL 35 was cited in which case, Lord Hoffman had this to say about the burden of proof;

*“ If a legal rule requires a fact to be proved (a “fact in issue”) a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned, and the fact is treated as not*

*having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened”.*

[63] At paragraph 19 of the Halsbury’s Law of England (4<sup>th</sup> ed) this Maxim or principle, is put in context as it reads;

*“To succeed on any issue the party bearing the legal burden of proof must (1) satisfy a judge or jury of the likelihood of the truth of his case by adducing a greater weight of evidence than his opponent, and (2) adduce evidence sufficient to satisfy them to the required standard or degree of proof”*

[64] In Brian Mathiot (Supra) Twomey CJ (as she then was) said that, this entails balancing “the Plaintiffs’ claim against the Defendant’s defence and decide which of their version is more likely to be true”. This exercise has to be made on a finding of facts based on credible and cogent evidence. As stated by Denning J in Miller v Minister of Pensions [1947] 2 All ER 372, that;

“If the evidence is such that the tribunal can say “we think it is more probable than not, the burden is discharged, but if the probabilities are equal it is not”.

[65] In the instant case, the Defendant did not put up appearance in court, in person or otherwise, and did not even file a statement of defence. Therefore, although the case is to be decided on uncontroverted evidence, the fact that assertions in the pleadings are not proof, follows that, the Plaintiffs were still required to discharge their burden of proof on the balance of probabilities.

#### DISCUSSION AND DECISION

[66] The hearing of civil dispute in court, as the instant one, is intended to achieve, according to the law and procedure of the court, a judicial determination between the contesting parties over the fact or facts in issue. Opportunities are by law afforded to the interested

parties to present their respective cases on question of law as well as fact, ascertainment of facts by means of evidence tendered by the parties and adjudication by a reasoned judgment of the dispute upon a finding on the facts in dispute or contention, and an application of the law to the facts found. I am reminded, that a judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted by the practice of the court or by law, he must record the ultimate mental process leading from the dispute to its solution.

[67] That, having been said, and for the reason that the determination is to be made on account of uncontroverted evidence, the hearing of the plaint having been ex parte, I am bound to independently examine the case for the Plaintiffs and to satisfy myself of the correctness of the Plaintiffs even in the absence of a statement of defence which evidently has not been done, even if the facts set out in the plaint are to be treated to have been admitted.

[68] Therefore, the oral and documentary evidence (P1-P28) of the Plaintiffs, having been left unchallenged because there was no cross-examination, the court having appreciated it and accepted it as credible and cogent, judgment has to be entered in favour of the Plaintiff against the Defendant.

[69] In the circumstances, I enter judgment in favour of the Plaintiff against the Defendant, in that, I order the Defendant to;

(i) Pay the Plaintiffs severally the total sum of USD 853,625.90 to reflect the Plaintiffs' individual claims in the following proportions;

1. The 1<sup>st</sup> Plaintiff USD 175,953.71
2. The 2<sup>nd</sup> Plaintiff USD 13,964.88
3. The 3<sup>rd</sup> Plaintiff USD 110, 679.74
4. The 4<sup>th</sup> Plaintiff USD 109, 271.31
5. The 5<sup>th</sup> Plaintiff USD 94, 273.92
6. The 6<sup>th</sup> Plaintiff USD 51, 910.21
7. The 7<sup>th</sup> Plaintiff US 9,216.81

8. The 8<sup>th</sup> Plaintiff USD 9,271.66
9. The 9<sup>th</sup> Plaintiff USD 15,885.17
10. The 10<sup>th</sup> Plaintiff USD 55,475.14
11. The 11<sup>th</sup> Plaintiff USD 9,895.80
12. The 12<sup>th</sup> Plaintiff USD 8,654.91
13. The 13<sup>th</sup> Plaintiff USD 9,271.85
14. The 14<sup>th</sup> Plaintiff USD 8,569.75
15. The 15<sup>th</sup> Plaintiff USD 18, 900.02
16. The 16<sup>th</sup> Plaintiff USD 90,.636.17
17. The 17<sup>th</sup> Plaintiff USD 7,512.88
18. The 18<sup>th</sup> Plaintiff USD 54, 281.98

(ii) With interest thereon at the legal rate, and cost of this suit.

Signed, dated and delivered at Ile du Port 30 November 2022.

---

B Adeline, J