FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Wallet Ventures Pty Ltd [2025] FCAFC 93

Appeal from:	*Australian Securities and Investments Commission v Finder Wallet Pty Ltd* [2024] FCA 228
File number:	NSD 406 of 2024
Judgment of:	**STEWART, CHEESEMAN AND MEAGHER JJ**
Date of judgment:	24 July 2025
Catchwords:	**CORPORATIONS** – meaning of debenture in s 9 of the *Corporations Act 2001* (Cth) – where respondent operated a digital currency exchange through which customers could buy and sell certain cryptocurrencies – where respondent also offered a Finder application (**Finder App**) on mobile device platforms through which its customers could, amongst other things, access the "Finder Earn" product – where by investing in the Finder Earn product customers could exchange funds in their account to obtain "TrueAUD" stablecoins ownership of which was transferred to the respondent enabling the customer to earn a "return" quantified in TrueAUD which upon expiry of the term was credited to the customer's Finder Wallet account in AUD – where primary judge held the respondent's "Finder Earn" product was not a debenture on the basis that there was no money "deposited with or lent to" the respondent or in the alternative that there was no undertaking by the company to repay as a debt that money
Legislation:	*Corporations Act 2001* (Cth), ss 9, 761B
Cases cited:	*ABN AMRO Bank NV v Bathurst Regional Council* [2014] FCAFC 65; 224 FCR 1 *Australian Securities and Investments Commission v Finder Wallet Pty Ltd* [2024] FCA 228 *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd* [2024] FCA 64 *Beconwood Securities Pty Ltd v Australia and New Zealand Banking Group Ltd* [2008] FCA 594; 246 ALR 361 *Hawkins v Bank of China* (1992) 26 NSWLR 562 *Re Blockchain Tech Pty Ltd* [2024] VSC 690 *Re Opes Prime Stockbroking Ltd (No 2)* [2009] FCA 813;

179 FCR 20

Division:	General Division
Registry:	New South Wales
National Practice Area:	Commercial and Corporations
Sub-area:	Regulator and Consumer Protection
Number of paragraphs:	46
Date of hearing:	22 August 2024
Counsel for the Appellant:	J C Giles SC and E L Beechey
Solicitor for the Appellant:	Corrs Chambers Westgarth
Counsel for the Respondent:	N J Owens SC and G O J O'Mahoney
Solicitor for the Respondent:	Holley Nethercote Lawyers

ORDERS

NSD 406 of 2024

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Appellant
AND:	**WALLET VENTURES PTY LTD** Respondent

ORDER MADE BY:	**STEWART, CHEESEMAN AND MEAGHER JJ**
DATE OF ORDER:	**24 JULY 2025**

THE COURT ORDERS THAT:

1. The appeal be dismissed.

2. The appellant pay the respondent's costs of and incidental to the appeal.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

THE COURT:

Introduction

1 This appeal concerns whether a particular product marketed by the respondent, then known as Finder Wallet Pty Ltd, between 26 February and 10 November 2022 was a "debenture" as that term is defined in s 9 of the *Corporations Act 2001* (Cth). If it was a debenture, the respondent was required to have held an Australian Financial Services Licence. It did not hold such a licence.

2 The product was known as "Finder Earn". There is no dispute as to the nature of the product. The dispute is as to its characterisation.

3 The term "debenture" is defined in s 9 of the Corporations Act relevantly to mean:

> ***debenture*** of a body means a chose in action that includes an undertaking by the body to repay as a debt money deposited with or lent to the body. The chose in action may (but need not) include a security interest over property of the body to secure repayment of the money. However, a debenture does not include:
>
> …

4 The term "money" is defined non-exhaustively in s 9 to include a payment order.

5 The primary judge held that Finder Earn was not a debenture: *Australian Securities and Investments Commission v Finder Wallet Pty Ltd* [2024] FCA 228 (**PJ**). That was on the basis that there was no money deposited with or loaned to the respondent (PJ [94]). Alternatively, if there was a deposit or loan of money to the respondent, it is doubtful that the deposit or loan was made to the respondent as part of its working capital (PJ [98]). In appealing from the orders her Honour made dismissing its proceeding for declarations of various statutory contraventions and pecuniary penalties, the appellant challenges both those conclusions. The appellant accepts that to succeed in the appeal, it is necessary for it to succeed on both its appeal grounds.

6 For the reasons that follow, we have concluded that the appeal fails on the first point. It is therefore unnecessary to consider the second one.

7 The primary judge found that the respondent's relevant terms of service (**Terms**) governed the product, its nature and the relationship between the respondent and its customers (PJ [69]-[83]). In reaching that finding, the primary judge rejected the appellant's contention that the terms of the product are found "across the [Terms], the Finder App, the marketing material accessible

through both the Finder App and the [Finder Website] and the individual customer's investment of a certain amount for a particular period of time" (PJ [69], also PJ [101]). There is no appeal from that finding. The description of the product can therefore be drawn from the primary judgment.

The "Finder Earn" product

8 The respondent is a digital currency exchange (**DCE**) provider registered with the Australian Transaction Reports and Analysis Centre through which customers can buy and sell cryptocurrency assets (PJ [19]).

9 The respondent offered a product marketed as "Finder Earn" to its customers, defined in the Terms as the "Cryptocurrency Earn Option". The product was accessible via the Finder application (**Finder App**) on mobile device platforms. The Finder App provided various money and finance management services. It was owned by Finder Ventures Pty Ltd. Throughout the relevant period, the Finder App allowed customers to do several things including accessing services offered by the respondent and Finder Ventures, such as accessing the DCE service provided by the respondent to buy and sell cryptocurrency and accessing services not offered by the respondent such as home loan comparisons or insurance policies. (PJ [20]-[21].)

10 The Finder Earn product was conceived for the dual purposes of giving the respondent's DCE customers the opportunity to sell cryptocurrency to the respondent and to earn a return, and as a novel way to promote the growth and adoption of the Finder App (PJ [22]).

11 In order to participate in the Finder Earn product, a customer was required to download the Finder App and then apply for an account with the respondent to access the DCE services provided by it (PJ [23]). Upon opening an account with the respondent (referred to as their "Finder Wallet account"), a customer was assigned a unique ID allowing the customer to track balances across AUD and cryptocurrency holdings. The customer's Finder Wallet account:

(1) recorded the Australian dollars (which the Terms described as "Fiat") in that account; and

(2) was the way in which the customer accessed the DCE provided by the respondent and, if they chose to, the Finder Earn product.

(PJ [24].)

12 Although other cryptocurrencies and Bitcoin were available utilising the respondent's DCE (PJ [86]), the Finder Earn product only made use of a cryptocurrency called "TrueAUD" during the relevant period (PJ [26]). TrueAUD is neither created nor issued by the respondent; it is issued on the Ethereum Network and administered by a US-based company, TrueCoin LLC (PJ [27]). It is a type of digital asset known as a "stablecoin" which is described as pegged to the value of the Australian dollar meaning that 1 TrueAUD token can be redeemed for 1 AUD and vice versa (PJ [27]). The cryptocurrencies available to purchase from the customer's Finder Wallet account utilising the respondent's DCE included Bitcoin and Ethereum and, from on or about 1 July 2022, Shiba Inu, Cardano, XRP, Binance Coin, Solana, Dogecoin, Chainlink, Stellar and Polkadot (PJ [86]). It was common ground that TrueAUD was not available to purchase from the customer's Finder Wallet account utilising the respondent's DCE (T16.17-19).

13 To access the Finder Earn product a customer had to allocate an amount of TrueAUD to the Finder Earn product, which was a transfer of that TrueAUD to the respondent and that, once transferred, the TrueAUD was owned by the respondent. This could be done by exchanging AUD in the customer's Finder Wallet account to acquire TrueAUD and then transferring that TrueAUD to the respondent. The TrueAUD transferred to the respondent as a result of using the Finder Earn product was defined in the Terms as the Allocation. Each part of that process was initiated in a single action by the customer selecting a "Transfer and Convert" button in the Finder App. (PJ [29].)

14 Although the governing terms of service were updated from time to time during the relevant period, the material terms remained the same (PJ [32]). The terms were applicable to the customer's use of the DCE generally as well as to the Finder Earn product in particular. Relevantly, the Terms included the following (by reference to version 3.1 published on 4 July 2022 – see PJ [32]):

(1) in the recitals under the heading "Introduction":

> A. These Terms of Service ("**Terms**") govern your access to, and use of, our services, and constitutes a legal agreement between Finder Wallet Pty Ltd (ABN 11 149 012 653) ("**Finder Wallet**"), with its offices at Level 10, 99 York St, Sydney, NSW 2000, and the person agreeing to these Terms, who may be referred to as "you" or "your". Finder Wallet may be referred to as "we", "us" or "our" in these Terms.
>
> …
>
> I. When you buy Cryptocurrency through Finder Wallet, you will hold a

beneficial interest, and not the legal title, to the Cryptocurrency, therefore your rights to the Cryptocurrency are restricted.

K. When you allocate Cryptocurrency through Finder Wallet to earn a return, ownership will pass to Finder Wallet. You will only have a contractual right to an amount of Cryptocurrency equal to the Allocation and the Return at the end of the Earn Term.

L. The details we give to you for the purposes of transferring funds to your account, while unique to each account, do not represent a bank account being opened in your name, nor controllable by you. We do not issue BSBs, and we do not provide banking services.

(2) at cl 1 "Definitions and Interpretation":

"**Account**" means the account you must apply for, and be approved for, prior to using the Services …

"**Allocation**" means the Cryptocurrency that is allocated to Finder to participate in the Cryptocurrency Earn Option, in accordance with these Terms …

"**Cryptocurrency Earn Option**" means the service offered by Finder Wallet for you to earn a Return in Cryptocurrency for allocating ownership of an amount of Cryptocurrency to Finder during the Earn Term in accordance with these Terms.

"**Earn Term**" means the period during which the Allocation is allocated to Finder Wallet, which period will either be:

- the fixed term selected by you when you activate the Cryptocurrency Earn Option, if we provide this option; or
- the period from the activation of the Cryptocurrency Earn Option until termination of the Cryptocurrency Earn Option or the Account (whichever occurs first).

"**Fiat**" means Australian dollars, or other government issued currency if expressly referred to as such.

…

"**Return**" means the payment from Finder Wallet to you for the use of your Allocation during the Earn Term, which payment will be calculated in accordance with the rate of return published on the Platform at the time you make your Allocation.

…

"**Terms**" means the terms and conditions of this agreement, which may be amended by Finder Wallet at its sole discretion.

(3) at cl 2 "Sale and purchase of Cryptocurrency":

2.1 Terms

…

(e) You will not be purchasing the legal title to the Cryptocurrency. You will be purchasing the beneficial interest in the cryptocurrencies.

…

2.3 Transfer of funds

(a) You can instruct us to transfer the Fiat we hold for you to your nominated bank account, which must be solely under your name, and not a joint account with someone else or another entity.

...

2.4 Ownership and use of Cryptocurrency

(a) You acknowledge that the Cryptocurrency is not legally held by you.

(b) When you purchase Cryptocurrency we allocate the relevant amount of Cryptocurrency to your Account by updating our internal ledger. Although you have beneficial interest in the amount of Cryptocurrency displayed in your Account you do not have legal title in that Cryptocurrency.

(c) You authorise us to use the Cryptocurrency in which you have a beneficial interest in our sole discretion at all times for our own purpose and acknowledge that our use of the Cryptocurrency is for our benefit only.

(d) Subject to these Terms, including your participation in the Cryptocurrency Earn Option, you will retain a beneficial interest in the Cryptocurrency at all times.

(4) at cl 3 "Earning a Return on Cryptocurrency" – ie the clause specific to the Finder Earn product:

3.1 How to earn a Return

(a) You can earn a Return by allocating an amount of Cryptocurrency that is held in your Account to Finder Wallet. We will pay you the Return as payment for our use of the Allocation during the Earn Term.

(b) To activate the earning process you must login into your Account, follow the prompts to select the Cryptocurrency Earn Option and issue an instruction via the App for Finder Wallet to make your Allocation to Finder Wallet.

(c) If you select the Cryptocurrency Earn Option you must allocate an amount of Cryptocurrency to Finder Wallet. You can only allocate Cryptocurrency that is held in your Account. You will be instructing Finder Wallet to:

(i) convert an amount of your Fiat currency held in your Account into Cryptocurrency, and,

(ii) subsequently, to allocate the Cryptocurrency to the Cryptocurrency Earn Option.

3.2 Ownership and use of the Allocation

(a) Ownership of the Allocation will pass from you to Finder Wallet. Your Allocation may be pooled with the Allocation(s) and Cryptocurrency of other members and with Finder Wallet's own property. For the avoidance of doubt, Cryptocurrency allocations may be pooled in

Finder Wallet's wallet.

(b) During the Earn Term, Finder Wallet has the right to use the Allocation without limitation, including to generate value for Finder Wallet. We do not have any obligation to own or control an amount of Cryptocurrency that is equivalent to the Allocation and we may use or invest your Allocation at our risk in our sole discretion.

(c) Your only right in relation to the Allocation during the Earn Term is a contractual right to an amount of Cryptocurrency equal to the Allocation and the Return at the end of the Earn Term. We will not use the Allocation, or intend to use the Allocation, to generate a return or other benefit for you. You acknowledge and agree that the Return is in no way linked to Finder Wallet's use of the Allocation and you do not intend for Finder Wallet to use the Allocation to generate a benefit for you.

…

3.4 End of the Earn Term

(a) The Earn Term will end:

(i) at the expiry of the fixed term selected by you when you made your Allocation, if we provide this option; or

(ii) by default, the Earn Term will be open-ended, and can be terminated at any time by signing into your Account and following the relevant prompts, or upon Finder Wallet terminating the Earn Term in its sole discretion; or

(iii) upon termination of your Account.

(b) Subject to clause 12, at the end of the Earn Term we will return an amount of Cryptocurrency in Cryptocurrency Earn Option that is equivalent to the Allocation plus the Return accrued to your Account, then convert that Cryptocurrency to an equivalent amount of Fiat currency in your Account.

…

(5) at cl 4 "Risk Warning":

4.3 Insolvency risk

You do not maintain a legal interest in the Allocation or Cryptocurrency, and we do not hold Fiat currency in a trust account. Accordingly, if Finder becomes insolvent, you will be an unsecured creditor in relation to your Allocation, Cryptocurrency or Fiat currency held with us.

15 In order to participate in the Finder Earn product, a customer was required to transfer to the respondent an amount of TrueAUD. That could be done after selecting the Cryptocurrency Earn Option by the following "Transfer and Convert" mechanism in the Finder App (PJ [33]):

(1) Subject to the Terms, to acquire TrueAUD through the DCE service using the "Transfer and Convert" mechanism, the customer was required to deposit Australian dollars into their Finder Wallet account.

(2) After depositing Australian dollars into the Finder Wallet account, the Australian dollars could be exchanged for TrueAUD, which could be allocated to Finder Earn. Using the Finder App, the customer had to select "Wallet", then select "Transfer".

(3) At the next screen the customer could choose the amount of TrueAUD to acquire from and transfer to Finder Wallet by inputting the amount and selecting "Transfer and Convert".

(4) By selecting "Transfer and Convert", the AUD were "converted" or exchanged for TrueAUD, and the TrueAUD were "allocated" to Finder Earn (referred to in the Terms as the "Cryptocurrency Earn Option", although the only cryptocurrency which could be converted and allocated was TrueAUD). The conversion from AUD to TrueAUD and the allocation of the TrueAUD to the respondent occurred when the customer selected "Transfer and Convert". That is, subject to the Terms, TrueAUD was acquired by the customer and transferred to the respondent.

(5) In accordance with the Terms, the respondent bought and sold TrueAUD to customers by updating an internal ledger.

16 Once an Allocation was made, the Earn Term commenced. During that period the customer earned a "return" of 4.01% p.a. paid daily or a promotional rate of 6.01% p.a. from about 4 May 2022 until about July 2022 (PJ [34]).

17 The Terms provided various ways in which the Earn Term could come to an end, unrelated to the performance of the TrueAUD. When the Earn Term came to an end, the respondent would credit the customer with an amount of TrueAUD that was equivalent to the Allocation plus the accrued Return. (PJ [35].)

The primary judge's reasons

18 With reference to the definition in the Corporations Act of "debenture", her Honour first considered whether in the case of Finder Earn there was a chose in action. Noting that "[t]here did not appear to be any dispute between the parties" on this point, her Honour concluded that upon acquiring or investing in Finder Earn, a customer had a contractual right at the end of the Earn Term as against the respondent to be paid an amount of TrueAUD equivalent to the

customer's Allocation and the Return which could be enforced. That contractual right constitutes a chose in action within the meaning of the definition of "debenture" (PJ [84]). There is no challenge to that analysis in the appeal.

19 Her Honour next considered whether there was any money deposited with or loaned to the respondent. Her Honour recorded that it was not in dispute that once funds were transferred by a customer into their Finder Wallet account, they could use those funds for the purchase and sale via the DCE of different cryptocurrencies (PJ [86]). Customers had a right to the return of any monies held in their Finder Wallet account which remained unspent. A customer could use the funds in their Finder Wallet account as they wished either to acquire the Finder Earn product on which they would earn a Return, to acquire other cryptocurrencies or to do neither and/or to return or transfer the funds held in their Finder Wallet account back to their own bank account (PJ [87]). Her Honour observed that the purpose for which a customer paid moneys into their Finder Wallet account was to enable the use of the respondent's services such as investing in various products. Hence, at the stage of depositing money to their Finder Wallet account, the funds were not "deposited with or lent to" the respondent in the way envisaged by the definition of debenture (PJ [92]).

20 Her Honour held that when the customer purchased TrueAUD using funds held by that customer in their Finder Wallet account, that was in effect the customer simply purchasing TrueAUD (PJ [93]). Her Honour reasoned that that could not be characterised as a deposit of monies or a loan to the respondent; it was a payment by the customer of AUD held in their Finder Wallet account in exchange for an equivalent amount of TrueAUD. It was the TrueAUD, a cryptocurrency which could, her Honour accepted, be regarded as a species of property that was then transferred or loaned to the respondent for it to use as it saw fit (PJ [94]).

21 Her Honour held that the respondent's obligation at the end of the Earn Term, as set out in the Terms, was to repay the TrueAUD allocated or transferred to it by the customer plus the Return in TrueAUD, to convert that amount to AUD and pay the AUD equivalent amount into the customer's Finder Wallet account (PJ [95]).

22 Finally, and in the alternative if there was in fact a deposit or loan of money, her Honour considered whether the chose in action included an undertaking by the respondent to repay monies deposited or lent as a debt. In that respect, her Honour adopted what had been said in ***ABN AMRO*** *Bank NV v Bathurst Regional Council* [2014] FCAFC 65; 224 FCR 1 at [675] per Jacobson, Gilmour and Gordon JJ, namely that the words in the chapeau to the s 9 definition

of debenture "to repay as a debt money deposited with or lent to" the company when read in light of the regulatory provisions in Chs 2L and 6D of the Corporations Act import the "notion of an undertaking to repay a debt comprising a loan made to the company *as part of its working capital*." (PJ [97], emphasis added.)

23 Her Honour then reasoned that any deposit or loan of money from the customer to the respondent was not done as part of the respondent's working capital. That was on the basis that the purpose of the Finder Earn product was to promote the growth and use of the Finder App which offered a range of services as well as giving customers an opportunity to sell their cryptocurrency to the respondent and earn a return (PJ [98]).

The grounds of appeal

24 The appellant puts its grounds of appeal as follows:

> Deposit of money or loan
>
> 1. The primary judge erred in holding that the Finder Earn product was not a debenture as defined by s 9 of the Corporations Act 2001 (Cth) (Act) because there was not a deposit of moneys or a loan to the Respondent when an investor used the Finder Earn product (at J[94]-[95]). Her Honour ought to have held that there was a loan or deposit [sic]:
>
>   a. on the proper construction of the Terms (as defined in the Judgment), the investor lent money to or deposited money with the Respondent on using the Finder Earn product and entering into a single arrangement to acquire TAUD and transfer and allocate that TAUD to the Respondent; or in the alternative,
>
>   b. by s 761B of the Act and because it is reasonable to assume that the parties to the Finder Earn product regarded the arrangements as constituting a single arrangement, the acquisition of TAUD and transfer of that TAUD to the Respondent were to be treated as if they together constituted a single arrangement for the purpose of determining whether the Finder Earn product was a debenture.
>
> Undertaking to repay moneys "deposited or lent" as a debt
>
> 2. The primary judge erred in holding that the Finder Earn product was not a debenture as defined in the Act because there was no undertaking by Finder Wallet to repay money as a debt (at J[98]-[100]) because:
>
>   a. the definition required that the money deposited or lent had to be used for the Respondent's working capital when, on the proper construction of the definition, there is no requirement that the money be so used (to the extent the Full Court in *ABN Amro Bank NV v Bathurst Regional Council* (2014) 224 FCR 1; [2014] FCAFC 65 at [675] held that the definition of debenture in the Act imports the notion of an undertaking to repay a debt comprising a loan made to the company as part of its working capital it is wrongly decided); or in the alternative

b. the primary judge held that the money was not deposited or lent as part of the Respondent's working capital when the use was as part of the company's working capital.

The parties' submissions on ground 1: deposit of money or loan

25 In relation to ground 1, the appellant makes two principal submissions. First, it submits that on a proper construction of the Terms, the investor lent money to the respondent on using the Finder Earn product, entering into a single arrangement to acquire TrueAUD and transfer and allocate that TrueAUD to the respondent. Secondly, it submits that by s 761B of the Corporations Act, because it is reasonable to assume that the parties regarded the arrangements as constituting a single scheme, the exchanging of AUD for TrueAUD and the transfer of that TrueAUD to the respondent were to be treated as if they together constituted a single arrangement.

26 In relation to the first principal submission, the appellant submits that the deposit of AUD to the Finder Wallet account, the conversion on a 1:1 basis of AUD to TrueAUD and the allocation of the TrueAUD to the respondent was, "both in point of effect and from the investor's perspective, a single and indivisible action, a loan of money to [the respondent]". The appellant submits that there was no option for the customer to take only one of those steps: there was no option for customers to convert AUD to TrueAUD without also lending the TrueAUD to the respondent, and there was no option for the customer to deposit their own TrueAUD and lend that to the respondent.

27 In relation to the second principal submission, the appellant submits that it is reasonable to assume that the parties regarded the Finder Earn product as a "single scheme" because both the Terms (at cl 3) and the respondent's FAQ treated the conversion, the loan and the conversion back on repayment as constituting a single product. So analysed, the appellant submits, the Finder Earn product had the effect of a loan of "money" by the investor to the respondent. It submits that the series of events constituting the product amounts to an unsecured loan which meets the definition of debenture.

28 In its reply submissions, the appellant places particular emphasis on the fact that under the Finder Earn product AUD was converted to TrueAUD at a 1:1 ratio and, when exiting the product, TrueAUD (including any accrued Return) was converted back to AUD at a 1:1 ratio. It submits that the exact equivalence between AUD and TrueAUD means that customers were not investing in TrueAUD to profit from any fluctuation in the price of TrueAUD and they

could invest without taking an exchange rate risk; the only financial benefit of the investment for the customer was the interest received on the loan.

29 The respondent's submissions essentially support the reasoning of the primary judge.

Consideration

30 In our view, there is no error in the primary judge's conclusion that the Finder Earn product did not involve "an undertaking by the [respondent] to repay as a debt money deposited with or lent to [it]" within the meaning of debenture in s 9. There are a number of considerations that lead us to that conclusion.

31 First, it is not part of the appellant's case that the Finder Earn product was in any sense a sham; it does not contend that the transactions as provided for in the Terms were anything but genuine. The appellant does not contend that there was not in fact a conversion of AUD to TrueAUD, or that the Allocation of the TrueAUD to the respondent was not for its use and to its benefit and that at the end of the Earn Term an amount of TrueAUD equal to the Allocation plus the Return was converted from TrueAUD to AUD which was then credited in AUD to the customer's Finder Wallet account.

32 Secondly, the Finder Wallet account that a customer had to apply and be approved for was available for purposes other than only to invest in the Finder Earn product. The customer had a range of other options, including purchasing other cryptocurrencies. Or the customer could change their mind and merely claim a refund from their Finder Wallet account, not having done anything with the credit. Purchasing TrueAUD through the Finder Earn product was only one of the customer's available options. That is highly significant because it rules out any contention that the deposit of money to the customer's Finder Wallet account was part of a single transaction with the (subsequent, if at all) conversion of money to TrueAUD.

33 Significantly, the appellant disclaimed relying on the deposit of money to the customer's Finder Wallet account as forming part of a single transaction with any transfer and conversion to TrueAUD. In doing so, the appellant acknowledges that the single (overarching) transaction on which it relies was comprised of the steps between the selection of the Cryptocurrency Earn Option (as the first step) and the receipt by the customer of an AUD credit into their Finder Wallet account equivalent to the value of the TrueAUD plus the return on that investment (as the last step): T41:1- 42:9.

34 Thirdly, while we appreciate that there is some controversy, or at least uncertainty, as to the nature of cryptocurrency at law, it was common ground on the appeal, and accepted by the primary judge, that TrueAUD is a species of property. The appellant did not contend that cryptocurrency, specifically TrueAUD, is money; it expressly eschewed that contention. The bundle of rights and entitlements conferred on the holder of TrueAUD are not the same as those conferred on the holder of money.

35 Fourthly, at the stage of converting an AUD credit in their Finder Wallet account to TrueAUD, the customer acquired the TrueAUD. The ownership of that TrueAUD (being, relevantly, fungible property) was then passed to the respondent which assumed a contractual obligation to give property of like type to the customer in a greater quantity in the future in accordance with the Terms governing the Finder Earn product including as to the Return (see Introduction recital cl K, cll 3.1(c) and 3.3 quoted above). The customer would allocate a species of fungible intangible property to the respondent for its sole use and benefit and had the right to the return of its equivalent plus the return. That is not aptly described as a money debt, notwithstanding that the term "debt" may not be "of precise and inflexible denotation": cf *Hawkins v Bank of China* (1992) 26 NSWLR 562 at 572C per Gleeson CJ.

36 That arrangement is more readily analogous to the concept of the word "lend" as it is used in securities lending, as described by Jackman J in *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd* [2024] FCA 64 at [11] citing *Beconwood Securities Pty Ltd v Australia and New Zealand Banking Group Ltd* [2008] FCA 594; 246 ALR 361 at [3]–[7], [56]–[58] and [63]–[74] per Finkelstein J and *Re Opes Prime Stockbroking Ltd (No 2)* [2009] FCA 813; 179 FCR 20 at [3] per Finkelstein J. That is where securities are actually transferred outright by way of sale and purchase from the "lender" to the "borrower", with the borrower being contractually obliged to redeliver to the lender at a later time securities which are equivalent in number and type.

37 Fifthly, there is nothing significant in the fact that TrueAUD is pegged to AUD at a 1:1 ratio. That gave the customer greater comfort as to volatility than they would have had in relation to a non-stable cryptocurrency, but the overall analysis remains the same; TrueAUD remains a species of property but it is not money in the sense used in the definition of debenture.

38 In summary on the appellant's first principal submission, we accept as correct the respondent's submission that the customer's use of the Finder Earn product involved the customer using a funded account, the funds in which had already been paid to the respondent, to: (a) acquire a

form of fungible intangible property, namely cryptocurrency known as TrueAUD; (b) pass title to that property to the respondent; (c) receive fungible property of like kind from the respondent in an amount referable to the Allocation plus the Return at the end of the Earn Term; and (d) exchange the fungible property for an AUD credit to the Finder Wallet account.

39 The way that the appeal ground is framed, namely that "the investor lent money to or deposited money with the Respondent on using the Finder Earn product and entering into a single arrangement to acquire TAUD and transfer and allocate that TAUD to the Respondent", by identifying the relevant action being "using the Finder Earn product", omits from the analysis the initial step of the customer depositing money to their Finder Wallet account. However, once that step is excluded, the subsequent steps, as explained, cannot answer the statutory requirement of "*money* deposited with or lent to" the respondent.

40 The appellant's reliance on s 761B of the Corporations Act, in its second principal submission, does not materially change the analysis. To recap, the appellant submits that the use of AUD to acquire TrueAUD and the transfer of that TrueAUD to the respondent were constituent parts of a single arrangement by which the investor lent "money" to the respondent and the respondent agreed to repay the money.

41 Section 761B provides as follows:

> **761B Meaning of arrangement**
>
> (1) For the purposes of this Chapter, ***arrangement*** means a contract, agreement, understanding, scheme or other arrangement (as existing from time to time):
>
> (a) whether formal or informal, or partly formal and partly informal; and
>
> (b) whether written or oral, or partly written and partly oral; and
>
> (c) whether or not enforceable, or intended to be enforceable, by legal proceedings and whether or not based on legal or equitable rights.
>
> (2) For the purposes of this Part, if:
>
> (a) an arrangement (as defined in subsection (1)), when considered by itself, does not constitute a derivative, or some other kind of financial product; and
>
> (b) that arrangement, and one or more other arrangements, if they had instead been a single arrangement, would have constituted a derivative or other financial product; and
>
> (c) it is reasonable to assume that the parties to the arrangements regard them as constituting a single scheme;
>
> the arrangements are to be treated as if they together constituted a single arrangement.

42 For s 761B to have application, it must be "reasonable to assume that the parties to the arrangements regard them as constituting a single scheme" (s 761B(2)(c)). The appellant focuses on the transfer and conversion of AUD to TrueAUD and then back again at the end of the Earn Term plus the payment of a return as being the relevant arrangements that are to be regarded as constituting a single scheme. The trouble with that narrow focus is that, in leaving out the initial deposit of money to the customer's Finder Wallet account, the product cannot answer the statutory requirement in the definition of debenture of "money deposited with or lent to" the respondent. On that narrow focus, it is not "money" that might be regarded as deposited with or lent to the respondent, but rather fungible intangible property of a different kind. The submission therefore fails.

43 Also, if the focus is broadened to include the initial deposit of money by the customer to their Finder Wallet account, it would not be reasonable to assume that the parties to the arrangements regarded them as constituting a single scheme for the reasons already given. That is principally that following such a deposit the customer had a number of options of which investing in the Finder Earn product was only one. Thus, the parties to the Terms would not regard the deposit and the subsequent investment in the Finder Earn product as constituting a single scheme. In any event the appellant expressly disclaimed that this was its contention.

44 Clause 3 of the Terms, which the appellant specifically relies on, is extracted above (at [13(4)]). Relevantly, it makes clear that it was not money that was deposited or lent to the respondent when the customer invested in the Finder Earn product. The FAQ referred to by the appellant gives "an example of Finder Earn in action". It sets out various steps commencing with the deposit of a sum of money by the customer into their Finder Wallet account. It also explains that on investing in the Finder Earn product, the money is converted to the TrueAUD cryptocurrency. That description of the relevant steps is consistent with the Terms and with the primary judge's findings in relation to the nature of the product set out above. For the reasons already given, reference to s 761B does not support a conclusion that the Finder Earn product amounts to a debenture.

45 Having reached the above conclusion on ground 1 of the notice of appeal, it is unnecessary to consider ground 2, as to whether in the alternative there was an undertaking to repay any moneys deposited or lent as a debt to the respondent as part of its working capital.

Conclusion

46 For those reasons the appeal should be dismissed. There is no reason why the costs should not follow the result.

I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justices Stewart, Cheeseman and Meagher.

Associate: 

Dated: 24 July 2025