Bae Junho *v* Daimwood, Samuel Lathan and another
[2019] SGHCR 9

Case Number	: Suit No 1261 of 2018 (Summons No 355 of 2019 & Summons No 796 of 2019)
Decision Date	: 06 June 2019
Tribunal/Court	: High Court
Coram	: Jean Chan Lay Koon AR
Counsel Name(s)	: Anil Narain Balchandani (Red Lion Circle) for the plaintiff; Yeo Yan Hui Mark, Lew Shaun Marc, Charmaine Lim (Engelin Teh Practice LLC) for the 1st defendant; Bhargavan Sujatha (Gavan Law Practice LLC) for the 2nd defendant
Parties	: Junho Bae — Samuel Lathan Daimwood — London School of Business & Finance Pte Ltd —

Civil Procedure – Pleadings – Striking out

6 June 2019 Judgment reserved.

Jean Chan Lay Koon AR:

1 Summons No. 355/2019 is the 1st defendant's application to strike out the plaintiff's claim against the 1st defendant under O 18 rule 19(1)(a) of the Rules of Court (Cap. 332, R 5, 2006 Rev Ed) ("ROC"). Summons No. 796/2019 is the 2nd defendant's application to strike out the plaintiff's claim against the 2nd defendant under all four limbs of O 18 r 19(1).

Relevant background facts

2 At all material times, the plaintiff was lawfully married to a woman named Jenna. Both the plaintiff and Jenna were South Korean nationals and had moved to Singapore. They are now undergoing divorce proceedings or have been formally divorced. It is undisputed that the primary cause of their marital breakdown was due to an affair between Jenna and the 1st defendant.

3 At all material times, the 1st defendant was an English language lecturer in the employment of the 2nd defendant. The 2nd defendant is a private educational institution which conducts various business and finance courses. It also conducts preparatory courses in English to help equip students who are not proficient in the English language. Sometime in January 2018, the plaintiff helped to enrol Jenna in a preparatory course in English ("PCE") with the 2nd defendant school. Jenna formally commenced her PCE on 31 January 2018. The 1st defendant and Jenna got to know each other as a result of the PCE classes conducted within the 2nd defendant's school premises.

4 According to the statement of claim ("SOC"), the plaintiff started experiencing marital problems with Jenna sometime in March 2018. The plaintiff started to suspect that Jenna might be having an affair. Just before he left for a business trip to Bangkok in May 2018, the plaintiff installed a surveillance camera in the living room of his matrimonial home which he shared with Jenna. He also engaged the services of a private investigation firm to carry out an investigation to ascertain whether the 1st defendant and Jenna were having an affair.

5 Between 13 May 2018 to 18 May 2018, while the plaintiff was away in Bangkok, the 1st defendant and Jenna had multiple occasions of consensual sex in the matrimonial home. These sexual acts were caught on surveillance camera footages which the plaintiff viewed from his mobile phone and laptop. The plaintiff was naturally very shocked and upset by what he saw on the surveillance camera footages and he continued to view the footages even after the sexual acts were over.

6 The plaintiff subsequently returned to Singapore and confronted Jenna. He chased her out of the matrimonial home and cancelled her dependant's pass. He then commenced divorce proceedings in South Korea.

Plaintiff's alleged causes of actions against the two defendants

7 It is pleaded in the SOC that the plaintiff was shocked and stricken by what he saw on the surveillance camera footages and continued to remain in this devastated state of mind as at the time of commencement of these legal proceedings. As a result of the illicit affair, it is pleaded that he is now in clinical depression and he is seeking psychiatric treatment from Dr Lim Yun Chin ("Dr Lim"), a consultant in psychological medicine, Raffles Hospital. A copy of Dr Lim's medical report dated 24 August 2018 was attached to the SOC. In his medical report, Dr Lim opined that the plaintiff is suffering from depression associated with anxiety as a result of his wife's extra-marital affair.

8 The plaintiff claimed that the psychiatric injury suffered by him was caused by and is directly attributable to the 1st defendant's conduct of engaging in an illicit affair with Jenna when the 1st defendant was fully aware that Jenna was married to him. The plaintiff therefore claimed that the 1st defendant stood in a proximate relationship with the plaintiff arising from his knowledge that Jenna was his wife and that it was reasonably foreseeable that if he had an illicit sexual relationship with Jenna, the plaintiff would most certainly sustain psychiatric injury to the extent which he had sustained, upon learning of the illicit affair. It is further submitted by the plaintiff in his written submissions that his cause of action against the 1st defendant is based on the 1st defendant's breach of duty of care owed to him in causing a "recognisable psychiatric injury" arising out of his negligence towards the plaintiff.

9 In respect of the 2nd defendant, the plaintiff's main cause of action is based primarily on vicarious liability of the 1st defendant's wrongdoing as an employee of the 2nd defendant during the course of his employment with the 2nd defendant. The plaintiff also pleaded an alternative ground of non-delegable duty of care owed to the plaintiff.

10 The plaintiff set out several facts in [15] and [16] of his written submissions to establish how proximity existed between the 1st defendant/ 2nd defendant and the plaintiff, which if proven at trial would result in a prima facie duty of care owed by the two defendants to him under the two-stage test to determine duty of care as pronounced in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"). The duties of care which the plaintiff claimed the 2nd defendant owed to him are summarised in [17] of his written submissions, although these should have been properly pleaded in the SOC in the first place. These duties of care are stated as:

(a) not to impair or damage the marital relationship between the plaintiff and Jenna;

(b) not to cause any physical or psychiatric harm or damage to Jenna and/or the plaintiff;

(c) to provide a safe environment for Jenna to be in so as to assure the plaintiff that Jenna was safe;

(d) for the 2nd defendant to censure and reprimand its employees for wrongdoing brought to the 2nd defendant's attention.

It surmises that the plaintiff's cause of action against both defendants are grounded on the tort law of negligence as it is repeatedly pleaded and submitted to me that the two defendants owed him a duty of care.

Main issue of the applications

11 I am of the considered view that the main issue of the two applications for striking out is largely the same. The issue is whether the plaintiff's SOC discloses a reasonable cause of action against both defendants based on the pleaded facts.

The test of duty of care

12 In the recent case of *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd* [2018] 2 SLR 588 ("*NTUC Foodfare*"), the Court of Appeal has summarised the test of duty of care set out in *Spandeck*:

> The *Spandeck* test
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> 38 A duty of care will arise in tort if (a) it is factually foreseeable that the defendant's negligence might cause the plaintiff to suffer harm; (b) there is sufficient legal proximity between the parties; and (c) policy considerations do not militate against a duty of care: see *Spandeck* at [73], [77] and [83].
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> 39 The key issue in this appeal is whether the proximity requirement is made out. The proximity requirement focuses on "the closeness of the relationship between the parties": see *Spandeck* at [77]. The crux of the inquiry is whether the plaintiff was so closely and directly affected by the defendant's actions that the latter ought to have had the former in contemplation in acting: see *Donoghue v Stevenson*[1932] AC 562 at 580 (*per* Lord Atkin) and Andrew Robertson, "Justice, Community Welfare and the Duty of Care" (2011) 127 LQR 370 at 374. The proximity requirement serves the normative role of determining whether, as a matter of interpersonal justice between the parties, the defendant should be held to have owed a duty of care to the plaintiff: see *ACB* ([4] *supra*) at [49].
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> 40 What are the factors which a court should consider in assessing whether there was sufficient legal proximity between the parties?
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> (a) In *Spandeck*, we held, endorsing the observations of Deane J in *Sutherland Shire Council v Heyman* (1985) 60 ALR 1, that proximity includes physical, circumstantial and causal proximity, and incorporates the twin criteria of voluntary assumption of responsibility (by the defendant) and reliance (by the plaintiff): see *Spandeck* at [81].
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> (b) In *Anwar Patrick Adrian v Ng Chong & Hue LLC*[2014] 3 SLR 761 ("*Anwar*"), we developed the proximity requirement by holding that it may be apt to consider "proximity factors" in applying that requirement, citing David Tan & Goh Yihan, "The Promise of Universality: The Spandeck Formulation Half a Decade On" (2013) 25 SAcLJ 510 ("*Tan &*

Goh"). We recognised two proximity factors: the defendant's knowledge in relation to the plaintiffs (see *Anwar* at [148]–[149]) and control over the situation giving rise to the risk of harm and the plaintiff's corresponding vulnerability (see *Anwar* at [154]). With regard to the proximity factor of knowledge, the relevant knowledge is knowledge of the risk of harm, or of reliance by the plaintiff, or of the vulnerability of the plaintiff: see *Tan & Goh* at paras 26–29.

13 Another relevant case on point is the High Court case of *AYW v AYX* [2016] 1 SLR 1183 ("*AYW v AYX*"). In *AYW v AYX*, the plaintiff was a student studying in the defendant school from 2010 to 2013. The plaintiff sued the defendant school in the tort of negligence for failing to effectively intervene in the bullying she claimed to have faced from her schoolmates. The alleged bullying comprised of rude, insensitive and sarcastic remarks made by her schoolmates both online and in school. There was no threatened or actual physical violence.

14 The plaintiff's parents were involved and had many discussions with the teachers and principals of the school. Eventually, the plaintiff left the school and moved to the United Kingdoms ("UK") to complete her A-level education in a specialist music school. The plaintiff claimed that she was forced to leave Singapore to complete her A-level education and suffered from eczema because of the bullying. She thus claimed the costs of her A-level education in the UK, medical expenses arising from her eczema and aggravated damages. The school applied to strike out the plaintiff's claim. The assistant registrar refused to strike out the entire suit, but struck out the plaintiff's claim for the costs of her A-level education in the UK. The plaintiff and the defendant appealed.

15 In allowing the defendant's appeal and dismissing the plaintiff's appeal, the High Court held that novel questions of law should not be resolved at the striking out stage and should generally be litigated in full at trial. This was so even if the novel questions were pure questions of law. Although a school's duty of care in respect of school bullying was a novel question of law in Singapore, the court had to, nevertheless, seriously consider whether the pleaded facts remotely formed the basis of an actionable tort: at [35] and [41].

16 It is further emphasised in *AYW v AYX* that duty of care in negligence is always framed generally as a duty to take reasonable care, rather than a duty to act in a particular way. Some of the duties pleaded in the statement of claim against the school would have been struck out in any event as they were framed as a duty to act in particular ways: at [46] and [57]. The question in each case is always whether a duty of care existed on the pleaded facts: at [63], [65] and [66]. A school owed its students a duty of care in law. However, a school did not have the duty to take reasonable care to protect its students from all types of harm, no matter when, where and how the harm was caused: at [69] and [70].

17 The High Court then held that the school's duty of care was not engaged on the facts of the present case. This was because it was not foreseeable that any actionable damage would result from the alleged bullying. While ostracisation, mocking and critical comments both online and offline of a sufficiently persistent and severe nature could on some facts justify school intervention as a matter of law, the conduct pleaded was not of an intensity, gravity or persistence to disclose even a remote basis of an actionable tort such as to justify a full trial: at [75], [77], [89] and [90].

18 The above observation in *AYW v AYX* is helpful as it is also a case involving an application to strike out a plaintiff's claim against a school for breaching its duty of care. It is the duty of the Court to seriously consider whether the pleaded facts remotely formed the basis of an actionable tort and to be reminded that a duty of care in negligence is always framed generally as a duty to take reasonable care, *rather than* a duty to act in a particular way. The fact that there may be novel issues of law is not a bar for a striking out order.

19 The principles relating to striking out under O 18 r 19(1) are well established. In *Gabriel Peter & Partners v Wee Chong Jin* [1997] 3 SLR(R) 649, the Court of Appeal ("CA") stated that the power to strike out should only be exercised in plain and obvious cases and should not be exercised by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action. As to what the threshold is for a "reasonable cause of action", the guiding principle was said to be a cause of action which has some chance of success when only the allegations in the pleadings are considered and as long as the statement of claim discloses some cause of action or raises some question fit to be decided at trial, there mere fact that the case is weak and is not likely to succeed is no ground for striking it out: at [21].

20 In *Ng Chee Weng v Lim Jit Ming Bryan* [2012] 1 SLR 457 at [110], Andrew Phang Boon Leong JA also held that the more draconian power of the court to strike out a claim at the interlocutory stage under limb (a) of O 18 r 19(1) can only be exercised if it is patently clear that there is no reasonable cause of action on the face of the pleadings. In *Bunga Melati 5* [2012] 4 SLR 546, the CA also noted at [34] that prior local case law centred the test on whether the action is "plainly or obviously unsustainable" and that the generality of the test of sustainability is precisely what enables a court to do justice based on the facts before it. The CA then went on at [39] to set out some guidelines to assist the courts in applying the test. The first guideline was that a claim is legally unsustainable if it is clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove, he will not be entitled to the remedy that he seeks. The second guideline is that a claim is factually unsustainable if it is possible to say with confidence before the trial that the factual basis for the claim is entirely fanciful because it is entirely without substance. An example was said to be a case where it is "clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based".

Summons No. 355/2019: 1st defendant's application for striking out

21 Bearing the above principles in mind, I now deal with the issue in the 1st defendant's application. The 1st defendant relied on the sole ground that the SOC discloses no reasonable cause of action against him under O 18 r 19(1)(a).

22 In *Spandeck* at [81], the Court of Appeal held that proximity includes physical, circumstantial and causal proximity and incorporates the twin criteria of voluntary assumption of responsibility (by the defendant) and reliance (by the plaintiff). In *Anwar*, the Court of Appeal recognised two proximity factors: the defendant's knowledge in relation to the plaintiffs (at [148] – [149]) and control over the situation giving rise to the risk of harm and the plaintiff's corresponding vulnerability (at [154]). With regard to the proximity factor of knowledge, the relevant knowledge is knowledge of the risk of harm, or reliance by the plaintiff, or of the vulnerability of the plaintiff

23 By applying the *Spandeck* test to the present case, the Court has to ask itself whether it is factually foreseeable that the 1st defendant's conduct of having illicit sexual relationship with Jenna in their matrimonial home on the relevant dates would have caused the plaintiff to suffer the psychiatric injury which he now allegedly suffers. Much as the Court's sympathy is with the plaintiff for his marital breakdown arising out of the affair, I am of the considered view that it is not factually foreseeable. It is clear that the 1st defendant and Jenna had deliberately chosen to engage in consensual sex while the plaintiff was away in Bangkok because they did not want the plaintiff to find out about their affair. Is it factually foreseeable to the 1st defendant that their sexual acts would have been caught on surveillance camera which had been surreptitiously installed by the plaintiff? The answer is clearly no. The plaintiff had only found out about the affair through his own surreptitious use of a

surveillance camera and this is something that is not within the reasonable foreseeability or contemplation of the 1st defendant. In the same vein, it cannot be reasonably held that the 1st defendant has any form of control over the situation giving rise to the alleged risk of psychiatric harm which had been caused to the plaintiff from his continual viewing of the surveillance footages on his mobile phone and laptop.

24 As held in *Anwar*, with regard to the proximity factor of knowledge, the relevant knowledge is knowledge of the risk of harm. On the facts of this case, the Court is unable to find that the 1st defendant has the relevant knowledge of potential risk of harm that would have been caused to the plaintiff. There is therefore insufficient proximity between the plaintiff and the 1st defendant to give rise to a *legal* duty of care. Does the 1st defendant owe a moral duty not to have an affair with the plaintiff's wife? The answer is yes but that does not translate into a *legal* duty of care under the tort law of negligence. On this count alone, the plaintiff's claim against the 1st defendant is legally unsustainable and should be struck out.

25 It is undisputed by Counsel for the plaintiff that a claim for damages for adultery and the tort of enticement have no known presence in Singapore and that the tort of enticement has been abolished in England. Counsel for the 1st defendant submitted that the plaintiff is effectively seeking compensation from the 1st defendant for the fact that he had consensual sex with the plaintiff's wife. He is essentially seeking damages for adultery and loss of consortium under the defunct tort of enticement. He is just disguising such a claim as a claim for alleged "psychiatric injury".

26 In *TPY v DZI* [1997] 1 SLR(R) 843, the plaintiff's wife left him for the defendant. He brought an action against the defendant claiming damages for loss of consortium under the tort of enticement. The defendant applied to strike out the statement of claim on grounds that it disclosed no reasonable cause of action and was frivolous or vexatious or in the alternative an abuse of the process of court. The assistant registrar dismissed the application with costs. The defendant appealed. The issue on appeal was whether in Singapore a husband, whose wife had left him for another man, could maintain an action against the interloper for damages.

27 The High Court allowed the appeal and struck out the statement of claim on the grounds that the action was frivolous, vexatious and an abuse of the process of the court. MPH Rubin J held that to give currency to a cause of action which had no presence in Singapore and one which had been abolished in the place of its origin would be to lend a hand to encouraging fruitless litigation for vindictive purposes. Even though the tort of enticement might have been received in Singapore under the Charter of Justice 1826 (c 85), it could not continue to serve any useful purpose particularly when society no longer subscribed to the view that women were mere chattels whose existence was only to be in the service of their husbands: at [14].

28 MPH Rubin J also made it clear at [11] – [13] of the judgment that the tort of enticement is not part of the law in Singapore and what the plaintiff was seeking under the guise of loss of consortium was damages for adultery from his wife's lover: -

> 11. In so far as Singapore is concerned, there does not appear to be any reported case where a spouse has brought an action based on the tort of enticement, despite the view that this cause of action would have been received by Singapore through the Second Charter of Justice and indeed a case could be made that it is part of the law of Singapore.
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> 12 The question before me was whether this tort is still part of the law in Singapore,

particularly when it was abolished in the place of its origin on the ground that it had outlived its usefulness and fallen into desuetude. Tan Cheng Han, the author of *Matrimonial Law in Singapore and Malaysia* (Butterworths Asia, 1994) expresses the view that the torts of enticement and harbouring must be regarded in today's world as anamalous in the light of the changed attitude towards marriage and divorce. He says that though these causes of action may still be part of the common law of Singapore and Malaysia since neither jurisdiction has expressly abolished them, it is possible however for the courts in both countries to refuse to follow the old English cases since these causes of action do not have much of a history in Singapore and Malaysia as they are clearly inappropriate to social conditions in both societies. He comments further that even if such actions were made out, it would be unlikely for the plaintiff to obtain more than nominal damages.

13 Returning to the pleadings at hand, it is clear that what the plaintiff was seeking under the guise of loss of consortium was damages for adultery from his wife's lover. Prior to 1980, by virtue of s 104 of the Women's Charter (Cap 47, 1970 Ed), a husband in a petition for divorce or for judicial separation was at liberty to claim damages from any person on the ground of his having committed adultery with the petitioner's wife. However the said provision was repealed by amendments to the Women's Charter in 1980 (Cap 353, 1985 Ed) (also see ss 85, 88(3)), the effect being the right of a petitioner husband to claim damages against a co-respondent for damages had been taken away (see the observations of Chao Hick Tin JC in *Tan Kay Poh v Tan Surida* [1988] 2 SLR(R) 515). Though I do recognise that the tort of enticement and a claim for damages for adultery are separate causes of action, there is no denying as has been acknowledged by the UK Law Commission (Cmnd No 25) that there is a close connection between them. This meant even if the tort of enticement were to be subsisting in Singapore despite its disapproval and consequent abolition in England, the damages payable, if any, would be at best nominal or derisory.

14 Having regard to the perfunctory nature of the pleadings and taking the pleadings at its face value, it is my view that to give currency to a cause of action which had no known presence in Singapore and one which had been given a final farewell in its place of birth would be to lend a hand to encouraging fruitless litigation for vindictive purposes. In my opinion, though the tort of enticement might well have been received in Singapore under the Second Charter of Justice, it cannot continue to serve any useful purpose particularly when society no longer subscribes to the view that women are mere chattels and whose existence is only to be in the service of their husbands. Sections 45, 46, 48 and 49 of the Women's Charter clearly underscore the aspect that a wife is a person in her own right and not someone who is subordinate to, or a chattel of her husband.

29 The plaintiff's claim that the 1st defendant owed him a duty of care not to damage his marital relationship by having an affair with Jenna within the lecturer-student relationship is essentially a claim that the 1st defendant has a duty to act or rather not to act in a particular way *viz.* he should not have engaged in consensual sex with Jenna outside her marriage as her lecturer or sought her consortium. Such a claim smacks of a claim for damages for adultery or loss of consortium under the tort of enticement. However, as the plaintiff is keenly aware that these are not valid causes of action in Singapore, he has couched his claim as a claim that the 1st defendant owed him a duty of care under the tort of negligence. The fact that he is unable to establish sufficient proximity between him and the 1st defendant which would give rise to a legal duty of care under the tort law of negligence on the pleaded facts underscores the point that his true cause of action is that of the tort of enticement and his claim for damages for alleged psychiatric injury is no more than a guise for damages for adultery or loss of consortium with Jenna.

Summons No. 796/2019: 2nd defendant's application for striking out

30 I now deal with the 2nd defendant's application to strike out the plaintiff's claim. The 2nd defendant relied on all four limbs under O 18 r 19(1).

31 As set out in [9] above, the plaintiff's cause of action against the 2nd defendant is based primarily on vicarious liability of the 1st defendant's wrongdoing as an employee of the 2nd defendant during the course of his employment with the 2nd defendant and alternatively, on the ground of a non-delegable duty of care owed to the plaintiff. The plaintiff pleaded that the 2nd defendant had at all material times, created and /or facilitated the risk of the 1st defendant's wrongdoing towards the plaintiff, and that the extent of power conferred by the 2nd defendant on the 1st defendant in relation to the plaintiff makes it just, fair and reasonable that the 2nd defendant should bear legal responsibility for the psychiatric damage caused to the plaintiff. The plaintiff further pleaded that the 2nd defendant turned a Nelsonian "blind" eye to the 1st defendant's dalliances with Jenna: at [45(d)] and [45(e)] of the SOC.

32 In *Ong Han Ling v American International Assurance Co Ltd* [2018] 5 SLR 549, the High Court held that vicarious liability should be imposed where (a) the relationship between the tortfeasor and the defendant was capable of giving rise to vicarious liability *i.e.* there existed a special relationship between the defendant and the tortfeasor making it fair, just and reasonable to impose liability on the defendant for the wrongful acts of the tortfeasor; (b) the conduct of the tortfeasor possessed a sufficient connection with the relationship between the tortfeasor and the defendant, particularly where the relationship materially increased the risk of the tort being committed. Ultimately, vicarious liability should only be imposed when it was fair, just and reasonable to do so, having regard to the aims of effective victim compensation, deterrence of future harm, and in the light of the concept of enterprise risk. These aims should also be balanced against the competing public policy consideration militating against holding a person liable for another person's tort: at [160].

33 It is undisputed that the 2nd defendant and the 1st defendant were in an employer-employee relationship at all material times. Having earlier found that the 1st defendant has not committed any tortious act against the plaintiff, the plaintiff's claim against the 2nd defendant on vicarious liability must necessarily fail. Even if I had found the conduct of the 1st defendant of having consensual sex with Jenna at the matrimonial home during the relevant period to be tortious (which I had not), such a conduct has absolutely no connection with the employer-employee relationship between the two defendants. The 1st defendant and Jenna might have known each other and grew close as a result of the PCE classes conducted by the 2nd defendant. However, this does not necessarily mean that the employment relationship between the two defendants had *materially increased* the risk of the affair happening. there is nothing which the 2nd defendant had done which created and/or facilitated the risk of the 1st defendant's dalliances with Jenna. Ultimately, Jenna and the 1st defendants are two consenting adults who went into the affair willing and voluntarily. To plead that the 2nd defendant had created and/ or facilitated the risk of the affair happening is just patently incomprehensible and void of any legal basis.

34 There is also nothing fair, just or reasonable to hold an employer vicariously liable for the personal indiscretion of an employee whose acts were committed outside his working hours and the school premises. To borrow the words of MPH Rubin in *TPY v DZI*, a holding otherwise is to open the

flood-gate to fruitless litigation with serves nothing more than for a vindictive purpose.

35 The plaintiff's contention that the 2nd defendant owed him a non-delegable duty of care is even weaker. In *Spandeck*, the Court of Appeal held that proximity includes physical, circumstantial and causal proximity, and incorporates the twin criteria of voluntary assumption of responsibility (by the defendant) and reliance (by the plaintiff). In the present fact scenario, it is incomprehensible how the 2nd defendant has in anyway voluntarily assumed the responsibility of ensuring that the 1st defendant does not interfere with the plaintiff's marriage. The 2nd defendant already has in place a Lecturer's Code of Conduct which prohibits lecturers from having romantic relationships with their students. When the affair was exposed, they terminated his employment. The 2nd defendant cannot possibly be held to be the moral gate-keeper for all acts of its employees and adult students in its programmes. The plaintiff's claim for breach of contract is even more tenuous as the contract was entered into between the 2nd defendant and Jenna. The contract was never entered into for the benefit of any third party. It is irrelevant that the plaintiff was the one who had liaised with the school's representatives before Jenna's enrolment and that he was the one who had decided to enrol her with the school.

Pleadings relating to "closed-door meetings" and complaints

36 The plaintiff also pleaded some facts relating to: (a) a few "closed-door meetings" held by the 2nd defendant to deal with allegations of inappropriate behaviour towards Jenna by another lecturer by the name of Nick; and (b) complaints regarding 1st defendant's allegedly inappropriate behaviour in taking Jenna to a bar. The pleadings in these areas were both confusing and incoherent. It is firstly unclear how the closed-door meetings or sessions which related to a completely different lecturer necessarily translate to the 2nd defendant having facilitated an increased risk of an affair happening between the 1st defendant and Jenna. It is secondly unclear how the complaints regarding the 1st defendant's allegedly inappropriate behaviour of taking Jenna out to a bar can give rise to a claim that the 2nd defendant necessarily owed him a duty of care as Jenna's husband.

37 If the plaintiff is alleging that the 2nd defendant had mishandled the complaint process, this is not clear from the SOC. The plaintiff simply pleaded that the 2nd defendant had turned "the Nelsonian 'blind eye' to the 1st defendant's unethical and reprehensive dalliances with the plaintiff's wife". Little or no particulars are provided to support the claim. Even if we should assume for a moment that the 2nd defendant had been reckless or wilfully blind to the fact that the 1st defendant was having an affair with Jenna and did absolutely nothing to stop it, this is at best a breach of their *ethical* duty as an educational institution to prevent an inappropriate relationship between a teaching staff and student. This does not necessarily translate into a *legal* duty of care under the tort of negligence that is owed to a student's spouse. The fact that the plaintiff is unable to plead clearly the nexus or proximity between him and the 2nd defendant which will give rise to such a *legal* duty of care, is not because of clumsy pleadings by his lawyer or insufficient particulars. It is clearly an attempt to obfuscate the fact that he does not have a reasonable cause of action against the 2nd defendant. The plaintiff's claim against the 2nd defendant is therefore struck out under O 18 r 19(1)(a). As the SOC against the 2nd defendant has been struck out pursuant to limb (a), it is not necessary to deal with the remaining limbs under the rule.

38 I shall hear parties on costs.