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

[2022] SGHC 205

Suit No 1017 of 2020

Between

Writers Studio Pte Ltd

… *Plaintiff*

And

Chin Kwok Yung

… *Defendant*

JUDGMENT

[Confidence — Breach of Confidence]
[Employment Law — Part-time employees]
[Employment Law — Duties]
[Tort — Negligence — Breach of Duty]

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Writers Studio Pte Ltd
v
Chin Kwok Yung

[2022] SGHC 205

General Division of the High Court — Suit No 1017 of 2020
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2–5, 9–12 November 2021, 27 May 2022

25 August 2022 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 The plaintiff filed Suit No 1017 of 2020 on 22 October 2020, claiming against the defendant for damages (including punitive damages) for losses suffered as a result of the defendant's conduct and/or inappropriate behaviour and/or breach of his implied contractual duties and/or breach of his duty of care. The plaintiff also claims damages for losses suffered as a result of the defendant's breaches of a non-disclosure agreement (the "NDA") and/or his duty of confidentiality.[1]

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[1] Set Down Bundle ("SDB") at pp 36–37 (Statement of Claim (Amendment No 2) at paras A–B).

2 On 11 May 2021, parties consented to a bifurcated trial. The trial fixed before me is only in respect of liability, with the quantum of damages to be awarded (if liability is established) to be determined another time.

Facts

The parties

3 The plaintiff, Writers Studio Pte Ltd ("Writers Studio"), is in the business of providing education support services to students in primary school.[2] Oh Yee Yin, Carean ("Ms Oh") is the managing director of Writers Studio.

4 The defendant, Chin Kwok Yung ("Mr Chin"), is a tuition teacher, teaching English, Mathematics and Science. Mr Chin was engaged as a tuition teacher by Writers Studio sometime in early 2018[3] and conducted both group and private tuition. Parties dispute the nature of their working relationship. Mr Chin's position is that he was an employee of Writers Studio at all material times (*ie*, pursuant to an implied contract of service).[4] Writers Studio's position is that Mr Chin was not an employee but was instead a freelancer (*ie*, he was engaged pursuant to a contract for service).[5]

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2 Oh Yee Yin Carean's Affidavit of Evidence-in-Chief ("AEIC") dated 5 October 2021 ("OYYCA") at para 7.

3 Chin Kwok Yung's AEIC dated 1 October 2021 ("CKYA") at para 5; OYYCA at para 8; 4th Defendant's Exhibit ("4DE") (Writers Studio's Cheque to Travis dated 1 March 2018).

4 SDB at p 41 (Defence (Amendment No 2) at paras 3.1–3.2); CKYA at para 5.

5 OYYCA at para 13.

5 Writers Studio created another office called Innova Studios where Mr Chin taught Science and Mathematics. Mr Chin was appointed as the "Centre Head" and sole teacher for Innova Studios.[6]

Background to the dispute

Mr Chin's engagement with Writers Studio

6 As mentioned at [4], Mr Chin started working as a tutor with Writers Studio in early 2018. At that time, no written contract was provided to Mr Chin for him to sign[7] and he only conducted English lessons on two days a week.[8] On 1 March 2018, Mr Chin received his first pay cheque from Writers Studio for the sum of $1,223.20.[9]

7 As early as 30 October 2019, Mr Chin requested to "sit down and have a [formal] talk on [his] future with Writers [S]tudio". He further offered to "find a legal firm" if Ms Oh needed him to "draft a contract for [his] service with Writers [S]tudio". Ms Oh replied that she already "[had] a contract" under "teacher mode" and "[n]ot partnership".[10] Nevertheless, parties did not come to any agreement on a written contract. In early 2020, the parties' relationship soured.

8 On 25 April 2020, Mr Chin signed a non-disclosure agreement ("NDA"). At 10.31am, Ms Oh messaged Mr Chin over WhatsApp stating that

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6 OYYCA at para 8; CKYA at para 12.

7 CKYA at para 13.

8 CKYA at para 5.

9 4DE (Writers Studio's Cheque to Mr Chin dated 1 March 2018).

10 3rd Plaintiff's Exhibit ("3PE") at p 6 (Screenshot of WhatsApp Correspondence dated 30 October 2019); Transcript dated 10 November 2021 at p 153, lines 7–16.

Writers Studio "requests all staff to sign a contract or non-disclosure today within the next 3 hours. Signing on WhatsApp or digitally is fine".[11] In that same message, Ms Oh further elaborated that it was "due to a security breach". Mr Chin eventually signed the document "without seeking legal advice".[12]

9 For completeness, I note that parties disagree on the reason for the urgent request to sign the NDA. At trial, Ms Oh consistently stated that the reason for the urgent request was due to a security breach.[13] Mr Chin, however, believes that Writers Studio "was aware of [his] hectic schedule and deliberately chose 25 April 2020 to demand the signing of the NDA" as he "had back-to-back classes" on Saturdays.[14] However, I emphasise at this juncture that such disagreement on the *factual circumstances surrounding the signing of the NDA* is ultimately irrelevant to the dispute as it is not the defendant's case that the NDA was not binding on him.

10 The NDA contained the following salient terms, including a definition for "Confidential Information":[15]

> **Article II: Confidential Information**
>
> **A. Definitions**. ***Confidential Information*** is *any material*, knowledge, information and data (verbal, electronic, written or any other form) *concerning the Company or its businesses not generally known to the public consisting of, but not limited to, …* ***information concerning*** investors, ***customers***, suppliers, consultants and employees, and any other concepts, ideas or information involving or related to the business which, if

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11 CKYA at para 10; p 69 (Screenshot of WhatsApp Correspondence dated 25 April 2020).

12 CKYA at para 11.

13 Transcript dated 2 November 2021 at p 95, lines 9–13.

14 CKYA at para 11.

15 Agreed Bundle of Documents ("AB") at pp 14–16.

misused or disclosed, could adversely affect the Company's business.

B. Exclusions. For the purposes of this Agreement, information shall not be deemed Confidential Information and the Employee shall have no obligation to keep it confidential if:

(i) the information was publicly known;

(ii) the information was approved for release by Employer through written authorization

C. Period of Confidentiality.

Employee agrees not to use or disclose Confidential Information for their own personal benefit or the benefit of any other person, corporation or entity other than the Company during the Employee's employment with the company or any time thereafter.

D. Limitations. Employee shall limit access to Confidential Information to individuals on a strictly need-to-know basis, involving only those who are carrying out duties related to the Company and its business. Individuals under the Employee's command (affiliates, agents, consultants, representatives and other employees) are bound by and shall comply with the terms of this Agreement.

E. Ownership. All repositories of information (including online folders, servers and other digital platforms) containing or in any way relating to Confidential Information are considered property of the Employer. The removal of Confidential Information from the Company's premises, control or access is prohibited unless prior written consent is provided by the Company. All such items made, compiled or used by the Employee shall be delivered to the Company by the Employee upon termination of employment or at any other time as per the Company's request.

…

Article V: Nature of Relationship

A. Non-contract. The Agreement *does not constitute a contract of employment*, nor does it guarantee continued employment for the Employee.

[Emphasis in underline in original, emphasis added in italics and bold italics]

11 On 29 April 2020, Mr Chin asked Ms Oh if she could "hire [him] full time" as he was working "6 days for Writers [S]tudio and 1 day for [his private

students]" by then. Ms Oh merely replied with a winking face emoji: "😉".[16] Mr Chin continued to request for a written contract in the first half of 2020 to protect his financial interests in the face of proposed pay cuts and reduced benefits.[17]

12 On 2 June 2020, Ms Oh and Mr Chin negotiated various terms of Mr Chin's engagement by way of emails sent at 1.40am (by Ms Oh) and 10.37am (by Mr Chin). Mr Chin thereafter sent a WhatsApp message to Ms Oh to inform her of the same at 10.46am, to which Ms Oh replied that she would "check the email".[18] The two continued to discuss various terms such as the minimum notice period and minimum teaching rate over email.[19]

13 Following their correspondence over email and WhatsApp, on the same day, Ms Oh and Mr Chin agreed to the terms of Mr Chin's engagement by Writers Studio by way of an email chain (the "Agreement").[20] The terms offered by Ms Oh included the following:

> (1) Rate per student per lesson : 45% of tuition fee …
>
> (2a) Existing private students will be taxed at $20 rental for 2h slot. New private students will not be able to take lessons at our premises unless it is on your off days and the rate is $30 per 2h slot.
>
> (2a) payment will go by headcount …
>
> 2b) payment will be made for make up classes taught by you regardless of tutor. If your students go to other tutor for make up, we will pay that tutor.

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16 CKYA at para 17; 3PE at p 3 (Screenshot of WhatsApp Correspondence dated 29 April 2020).

17 CKYA at paras 14–18.

18 AB at p 177 (Screenshot of WhatsApp Correspondence dated 2 June 2020).

19 AB at pp 164–166 (Email Correspondence dated 2 June 2020).

20 AB at pp 164–166 (Email Correspondence dated 2 June 2020).

> 2c) remedial cases: % based on $30 remedial fee if they pay. …
>
> 3) Do inform us in advance should you decide to quit teaching at our centre and should teach the classes under you until the end of term.
>
> (3) The tutor's teaching hours is according to current tuition timetable. … Classes will be capped at a maximum of 2 hours, after which extension charges apply. Extension charges will be charged to the client.
>
> (4a) … Payment for tutor's fees is to be remitted within 5 working days for group students.
>
> (4b) Private tuition fee will be made to tutor directly to their bank account. The tutor pays rental/admin fee based on Clause 2a. …
>
> (5) The tutor can use Science / Math materials produced with the company's human resources for private jobs but such materials cannot be used for setting up of a rival tuition centre or for other tuition centres. The Science/Math logo remains as company property unless the company and tutor enters into a separate contract to release such logo. The avatars for Science and Math designed by the tutor remain his creative property. Science and Math materials that are produced by the tutor himself shall not be the property of the company.
>
> …
>
> (7) This contract is implemented for 12 months.
>
> 8) This email represents a draft agreement until both parties have reached amicable and agreeable terms which which [*sic*] a black and white document will be drawn and signed.

14 In the end, no "black and white document" was drawn up under cl 8.[21] Nevertheless, it is undisputed that Mr Chin replied to Ms Oh, later in the day at 3.53pm, agreeing to various terms:[22]

> 1) fair and agree
>
> 2a) private students condition – agree …
>
> 2b) pay rate only for current day headcount, make up students will not be included in my headcount – agree …

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21 CKYA at para 18.4.

22 CKYA at para 18.3; AB at pp 164–166 (Email Correspondence dated 2 June 2020).

> 2c) remedial students rate - agree
>
> 3) extra charges to students upon my approval.
>
> Will give a month notice or until end term if I am to discontinue my service
>
> 4a) group payment salary to be done by 7th of every month.
>
> 4b) admin fee/rental fee for private students … - agree
>
> 5) previous material prepared by typist for math and sci materials will be Writers [S]tudio's property and will not be used for new tuition centre. Current new materials to remain as personal materials.
>
> …
>
> 7) agree for 12 months period.
>
> 8) await your confirmation

15 Significantly, there were no further replies from Ms Oh to that email on that day. Ms Oh and Mr Chin did correspond over WhatsApp thereafter, which I elaborate upon in the next paragraph. However, for completeness, I highlight at this juncture that it was only on 18 September 2020 that Ms Oh replied to the same email chain. In that reply, she stated, "Here [are] the contractual terms we agreed on by email".

16 Later that day (*ie*, on 2 June 2020), from 9.06pm to 9.20pm, Ms Oh and Mr Chin corresponded by way of WhatsApp concerning potential contributions to Mr Chin's Central Provident Fund ("CPF") account:[23]

[Ms Oh]	I need to add a clause on CPF. Freelance – no need to incur CPF. Contract – have to. Pls advise
[Mr Chin]	I worked private previously so no cpf contribution for many years. I'm open to that idea but I will not insist.
[Ms Oh]	I am not sure about your reply actually

[23] 3 PE at p 4 (Screenshot of WhatsApp Correspondence dated 2 June 2020).

> [Mr Chin] If Writers [S]tudio gives, I will contribute mine. If Writers [S]tudio don't, back to square one with no cpf.

It is not disputed that at all material times, Writers Studio did not make any contributions to Mr Chin's CPF account.

The souring of relationship between Mr Chin and Writers Studio

17 Apart from the late payment of Mr Chin's remuneration and the dispute over Writers Studio's lack of provision of materials for the Science class which led to Mr Chin's breaking point on 16 September 2020 (on which I elaborate below), two points of contention relating to communications that soured the relationship between Ms Oh and Mr Chin were the request by Writers Studio for Mr Chin to transfer his personal phone number ending with "4599" to Writers Studio and Mr Chin's subsequent communication with Writers Studio's clients privately.

18 As to the former, Mr Chin explained at the trial that his second number ending "4599" (the "4599 Number") was of sentimental value as he had received it on his "18th birthday" to commemorate the birth of his sister's child. Mr Chin explains that a variation of the phrase "I am an uncle" in Chinese, spoken as "*shi wo jiu jiu*" sounds like "4599".[24] For some reason, the 4599 Number was never transferred to Writers Studio despite the agreement to attend at an M1 outlet to effect transference.[25] Ms Oh's position on the matter is that, despite the number not being registered under Writers Studio, it still belonged to Writers Studio because Mr Chin "has said that it belongs to the

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24 Transcript dated 12 November 2021 at p 116, lines 23–31 and p 124, lines 4–29.

25 AB at pp 220–221 (WhatsApp Correspondence dated 13 November 2019).

company".[26] On 3 November 2020, Mr Chin gave an undertaking to the Court (the "Undertaking") that he would, *inter alia*, terminate the 4599 Number within five days in summons no 4627 of 2020 ("SUM 4627").[27] That Undertaking put an end to the matter (*ie*, the failure to effect transference) and is therefore not an issue before me. I need not say more on the matter.

19 The latter point of contention, however, remains before me. Mr Chin sought Writers Studio's permission to contact his students privately. This is in contrast with Writers Studio's policy that "the teachers have to contact the parents using a landline located in our office".[28] Mr Chin likewise knew that Writers Studio had "quite a strict policy against using a personal or private line to contact the clients or the clients' parents".[29] Pursuant to such a policy, Mr Chin was to contact the students through Writers Studio's landline before there was any agreement to use the 4599 Number.[30] Writers Studio eventually ceded to Mr Chin's multiple requests to contact his students privately on 13 November 2019, on the condition that Ms Oh was to be included in group chats. It was in that context that he had agreed to transfer his 4599 Number to Writers Studio for it to be used as a company number. In that way, Mr Chin could protect his own personal interests (by mitigating the risk of being backstabbed or having words put in his mouth) and Writers Studio could include that company number on their brochures promoting Innova Studio and/or Writers Studio.[31]

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26 Transcript dated 2 November 2021 at p 116, lines 14–31.

27 OYYCA at p 533 (Certified Transcript for SUM 4627 dated 3 November 2020 at p 2).

28 Transcript dated 2 November 2021 at p 123, lines 2–6.

29 Transcript dated 12 November 2021 at p 1, lines 29–32.

30 Transcript dated 12 November 2021 at p 106, line 27 to p 107, line 3.

31 OYYCA at paras 26–28; CKYA at pp 163–167; Transcript dated 2 November 2021 at p 123, lines 7–17.

20 What is in dispute is whether Mr Chin was given the latitude to contact students and/or their parents (the "Clients") using the 4599 Number *only*, or whether he could do so using either of his personal numbers. While Writers Studio takes the former position, Mr Chin takes the latter. Nevertheless, Mr Chin admitted that there is no evidence that he was allowed to use his other personal number to contact the Clients (the "9693 Number").[32]

Mr Chin's ceasing to work at Writers Studio

21 On 16 September 2020, Mr Chin ceased to work at Writers Studio. However, parties disagree on whether Mr Chin had resigned (as Ms Oh contends)[33] or whether he had been terminated by Writers Studio (as Mr Chin contends). Writer's Studio's position is somewhat inconsistent – as counsel confirmed at the trial, Writers Studio's claim is *not* even that Mr Chin had resigned.[34] None of Writers Studio's claim against Mr Chin turns on this factual dispute and I thus need not say any more on the issue.

22 Two issues that led to the parties parting ways was Writers Studio's late payment of his fees and failure to share certain teaching materials with him. In respect of the first issue, it is not disputed that Writers Studio had paid Mr Chin late on more than one occasion.[35] Mr Chin's position is that his salary was "supposed to be paid on the 7th of each month",[36] which is in accordance with cl 4a of the Agreement. Writers Studio failed to pay Mr Chin his salary in time on the following occasions:

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32 Transcript dated 12 November 2021 at p6, lines 8–20; AB at p 297.

33 Transcript dated 3 November 2021 at p 131, lines 2–3.

34 Transcript dated 3 November 2021 at p 134, lines 6–14.

35 Transcript dated 2 November 2021 at p 86, lines 20–31.

36 CKYA at para 9.

(a) August 2018 (only paid after 23 September 2018);[37]

(b) October 2018 (only paid after 5 December 2018);[38]

(c) May 2019 (only paid after 3 July 2019);[39] and

(d) August 2020 (only fully paid on 17 September 2020).[40]

23 On 12 September 2020, Writers Studio suspected that Mr Chin was taking some worksheets as his own. Ms Oh received messages from Writers Studio's typist, Michelle Phu ("Ms Phu"), informing her that "[n]ormally, Travis don't want to put the header on the doc" and asked confirmation from Ms Oh that they were to "use ***[I]nnova [S]tudio*** *as header right*?" [emphasis added]. Based on the WhatsApp messages between Ms Oh and Ms Phu, Mr Chin had been requesting the typist to send him the Microsoft Word versions of the worksheets that Ms Phu had prepared for him, and to remove Innova Studio's header from the documents. Ms Oh instructed the typist not to send Mr Chin the materials that he had requested as the documents belonged to Writer's Studio and was confidential information under the NDA.[41]

24 On 16 September 2020, Mr Chin was scheduled to teach classes from 3.00pm to 9.00pm. Prior to his 3.00pm class, he "once again requested" for his salary and teaching materials for the classes but "no assistance was given". In

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37 CKYA at p 64 (Screenshot of WhatsApp Correspondence dated 23 September 2018).

38 CKYA at p 65 (Screenshot of WhatsApp Correspondence dated 5–6 December 2018).

39 CKYA at p 66 (Screenshot of WhatsApp Correspondence dated 3 July 2019).

40 2 PE at p 3 (DBS Statement for September 2020 at p 9); 1 DE (Screenshot of Mr Chin's Saving Account).

41 1st Affidavit of Oh Yee Yin, Carean dated 22 October 2020 at para 13; OYYCA pp 405–417 (Screenshots of WhatsApp Correspondence dated 12 September 2020).

support, Mr Chin ("Travis" in the transcript) relies on a conversation over WhatsApp from 3.08pm to 3.33pm:[42]

Travis:	Hi. No materials for science?
Writers Studio:	? Since when materials is given by us? For science [r]esources matter under Carean side, is better for you to ask her straight because we know nothing here.
…	
Writers Studio:	Travis, Rwinn and Huifang here. We both work for so long and this is the first time we heard you asking Science Materials from us[.] Can you enlighten me on what is that you wanted?
Travis:	Sci Materials Loh

The conversation continued, from 3.34pm to 3.38pm:[43]

Writers Studio:	Like previously also you provide one wasn't it? Is there a changes [*sic*] that we dont [*sic*] know?
Travis:	Cannot be I provide my own materials right. Provide Liao then get into trouble. No appreciation but being wrongfully accused. To be frank My [*sic*] pay doesn't include typing. Plus I haven't receive my salary I'm sending student down to collect salary.
Writers Studio:	Salary side is already settled by our side. … Funds is released by [Ms Oh]. …

[42] CKYA at para 31; AB at p 39 (Screenshots of WhatsApp Correspondence dated 16 September 2020).

[43] AB at pp 40–41 (Screenshots of WhatsApp Correspondence dated 16 September 2020).

At 4.15pm, Mr Chin followed up with "[a]pologies. To give late notice[.] Can cancel all my 5pm and 7pm classes pls [f]or today".[44]

25 Lee Pak Sing ("Rwinn"), an administrative staff of Writers Studio,[45] thereafter informed Ms Oh ("Carean" in the transcript) of the same at 4.35pm:[46]

Rwinn:	Travis want to cancel his class today
	…
	He is asking for the salary today [a]nd he blamed on us for not ensuring the transaction
	…
	He also ask for sci material from us
Carean:	No, we do not have. The staff have given them to him, and he has not reverted on the matter. We brought the pen drive today.
	…
Rwinn:	… he asking us for material
Carean:	We provide materials, he took away letterhead. Sent personal message to staff. And inserted own materials and ran classes in our company premises under an agreed email contract.
	…

26 Based on the audio recording captured by the closed-circuit television camera ("CCTV"), Mr Chin had made the following remarks to another staff, Soo Foong Peng Elaine ("Ms Soo"), at about 4.51pm in the presence of some students:[47]

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44 AB at p 44 (Screenshot of WhatsApp Correspondence between Mr Chin and Writers Studio dated 16 September 2020).

45 Lee Pak Sing's AEIC dated 5 October 2021 ("LPSA") at para 1.

46 AB at pp 45–49 (Screenshots of WhatsApp Correspondence between Mr Chin and Writers Studio dated 16 September 2020).

47 AB at p 20 (Transcripts of CCTV Recording).

Mr Chin:	There's no more classes later, I'm just going home already
Ms Soo:	No more classes?
…	
Mr Chin:	You better check with them because yah, I did not get a pay yet, so no point teaching them

27 At 4.59pm, Mr Chin had the following conversation with his students:[48]

Boy 1:	Are you leaving?
Mr Chin:	Yes, obviously. Teach here also no money to take teach for what
Boy 2:	Yeah, duh
Boy 1:	I thought you were faking about that
Boy 3:	Yeah, I thought we were just joking about that or some sort
Mr Chin:	No, actually ah (Inaudible). Please tell your parents about that, that WS is not paying me money and they are not (inaudible).

28 Sometime at about 7pm, Mr Chin conveyed similar statements to his students present at that time:[49]

Boy:	Did you quit here?
Travis:	Ya
Boy:	You actually quit, oh my god.
	Why didn't they give him the salary?

29 The following day, "an official confirmation" was sent to Mr Chin that "there [were] no classes" that day. Mr Chin thereafter asked for confirmation of his termination on 17 September 2020, for which no further correspondence was

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48 AB at p 21 (Transcripts of CCTV Recording).

49 AB at p 28 (Transcripts of CCTV Recording).

forthcoming from Writers Studio.[50] On 19 September 2020, Writers Studio issued a termination letter to Mr Chin.[51] While this may have led to the disagreement as to whether Mr Chin had resigned or had his employment terminated by Writers Studio, as mentioned at [21], nothing turns on this.

30 In summary, on 16 September 2020, Mr Chin had:

(a) informed his students that he had not been paid his remuneration;

(b) encouraged his students to inform their parents that Writers Studio had not paid him his remuneration;

(c) ended his 3.00pm class early;

(d) cancelled his 5.00pm and 7.00pm classes on short notice; and

(e) declared to the students that he was resigning.

In this judgment, I refer to these acts as his "Conduct". Mr Chin agreed that he had "behaved unprofessionally on 16th September 2020" and such behaviour had caused Writers Studio "to suffer damage".[52]

Other disputes between the parties arising thereafter

31 Three further disputes arose after Mr Chin had resigned. The first relates to teaching materials generated by the parties such as worksheets, PowerPoint slides and notes for Mr Chin's classes. Writers Studio also engaged a typist to

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50 AB at p 52 (Screenshot of WhatsApp Correspondence dated 17 September 2020); Transcript dated 3 November 2021 at p 100, lines 25–27.

51 AB at pp 54–55 (Writers Studio's Termination Letter dated 19 September 2020).

52 Transcript dated 12 November 2021 at p 107, lines 7–11.

help Mr Chin convert his handwritten notes into typed documents.[53] While Writers Studio demands that such materials should be returned, according to Mr Chin, all such teaching materials in his possession were returned on 21 and 22 September 2020. Writers Studio demanded, by way of its solicitor's letter, that the following materials to be returned by Mr Chin:[54]

> a. All Mathematics and Science materials, including any and all PowerPoint slides, concept maps; (will provide) various styles of documents
>
> b. All worksheets used by [Mr Chin] for Term 3;
>
> c. The actual worksheets used by [Mr Chin] during his sessions;
>
> d. All holiday programme materials; and
>
> e. All trial lesson materials for Science and Mathematics.

32 Through his solicitors, Mr Chin refuted Writers Studio's allegation that certain documents were missing (*ie*, not returned) and highlighted that it "did not specify what documents were missing".[55] Even up to and at the trial, Writers Studio did not particularise the missing documents which it sought to recover from Mr Chin.[56] Instead, Ms Oh merely referred to the same list reproduced above.[57] Ms Oh elaborated that what was given back to Writers Studio was "bits and pieces of worksheets, and they are not even in the complete whole [*sic*]" and asserted that "he took the documents that the typist has typed, right, and it is in his possession".[58]

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53 OYYCA at paras 23–25.

54 AB at pp 66–67 (Letter from Writers Studio's Solicitors to Mr Chin's Solicitors dated 25 September 2020 at para 7).

55 AB at p 88 (Letter from Mr Chin's Solicitors to Writers Studio's Solicitors dated 2 October 2020 at paras 7–8).

56 Transcript dated 3 November 2021 at p 146, lines 13–22.

57 Transcript dated 3 November 2021 at p 143, lines 4–9.

58 Transcript dated 3 November 2021 at p 143, lines 13–20.

33 The second dispute relates to Mr Chin's continued teaching of one student, [B], in breach of his Undertaking to the Court. This issue was raised at the trial and is not pleaded in the statement of claim. The Undertaking was for Mr Chin to "not initiate contact with any of [Writers Studio's Clients] whom [he] taught whilst he was employed by [Writers Studio] except for the six students identified in para 4 of the 2nd affidavit of [Ms Oh] dated 12 October 2020" and "[e]xcluding [Mr Chin's] students whom he taught before he joined [Writers Studio's] employ".[59] Ms Oh's affidavit filed in support of SUM 4627 included six addresses, of which only students living at five of these addresses were identified by Writers Studio.[60] The student who resided at the second address ("the second student's address") was not identified by Writers Studio. According to Mr Chin, [B] resides at that address.[61] However, according to Writers Studio, since that student was not named as one of the students excluded from the Undertaking, Mr Chin had breached the Undertaking.

34 The third dispute relates to Mr Chin's inappropriate behaviour with Writers Studio's students. Sometime in October 2020, another mathematics tutor with Writers Studio who took over Mr Chin's mathematics classes, Ting Kwai Meng ("Mr Ting"), was "very alarmed" by what the students had told him about Mr Chin's classes. In that regard, Mr Ting recorded a conversation with himself, the students and other employees of Writers Studio:[62]

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59 OYYCA at pp 532–533 (Certified Transcript for SUM 4627 dated 3 November 2020 at pp 1–2).

60 Ms Oh's Second Affidavit in SUM 4627 dated 22 October 2020 at para 4.

61 Transcript dated 11 November 2021 p 77, lines 8–10.

62 Mr Ting's AEIC ("TKMA") at pp 7–9.

Girl 1	Everyone here is innocent at first. But then later [Mr Chin] come and we all become corrupted people.
Boy 2	Yes.
…	
Boy 2	His discussion, he like, everything he mention about the balls balls balls.
Boy 1	He says, er, no, this man and that man have, er, have, er, 50 balls and they share the balls, share it with the woman.
Boy 2	And then after that, how many balls do they all have together?
	He always underline the 'balls' word
	Then he bold it
…	
Girl 1	And then he also nipple-lise [another student]
…	
[Mr Ting]	… the French fry, he said he picked the longest one ah?
Boy 1	Yes, he took a French fry from us and then he picked the longest French fry
Boy 2	He always pick the longest one.
Boy 2	And then he says that it is his penis.
Boy 1	And then he eats it.
[Mr Ting]	He said this is my penis then
Boy 1	No, he said this is my dick and then he eats it up …
…	
Boy 2	And then he always like squeeze my …
…	
	My nipples.
…	
	Yeah, then he said let's have a barbeque party and then there was one time, he was like "let's

> do a rate question", then [another student] was like "let's do a rape question", then he said "oh yeah, let's rape the girls. And there were like 4 girls in the classroom.
>
> …
>
> Girl 2 Yeah, then he said oh yeah let's rape the girls and then [the other student] will say do we do it now?

On 10 November 2020, the Singapore Police Force called Mr Chin to give his statements on a report made against him for such conduct.[63] I refer to Mr Chin's alleged touching and/or alleged inappropriate communication (including interactions) with his students as "Inappropriate Behaviour".

Issues over CPF contributions and impact on Writers Studio's case

35 As mentioned at [16] above, parties did not agree for Mr Chin to be considered a contracted employee for whom Writers Studio had to make CPF contributions. Nor did Mr Chin negotiate to be considered as such. Both parties understood that Writers Studio did not have to pay CPF contributions to a freelancer and Mr Chin was at all material times engaged "privately". Mr Chin also agrees that he ultimately gave Writers Studio the "choice" to contribute to his CPF.[64] Nevertheless, at the trial before me, the issue of CPF contributions was hotly debated.

36 Mr Chin contacted the CPF Board regarding Writers Studio's lack of CPF contributions "since the beginning, as an employee" only *after* his resignation from Writers Studio.[65] The CPF Board commenced an investigation

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63 CKYA at paras 66–67.

64 Transcript dated 11 November 2021 at p 21, lines 8–23 and p 26, lines 5–20.

65 Transcript dated 11 November 2021 at p 29, line 6 to p 30, line 7.

into the matter and informed Writers Studio of such investigation by way of letter.[66]

37 Although Ms Oh could not remember the specific date on which Writers Studio was notified of CPF's investigation, Ms Oh did receive the letter ***prior to*** Writers Studio's Statement of Claim (Amendment No 2) dated 21 September 2021.[67] It was only in that last version of Writers Studio's pleaded case that Mr Chin was allegedly engaged pursuant to a contract. That is in stark contrast to its earlier versions of the Statement of Claim dated 2 November 2020 and 23 March 2021 respectively, wherein Writers Studio referred specifically to Mr Chin's employment contract with it. Nevertheless, Ms Oh testified that she had always used the word "employee" in a "colloquial sense".[68]

The parties' cases

Writers Studio's pleaded case

38 Writers Studio claims for:[69]

(a) Damages (to be assessed) for losses suffered as a result of Mr Chin's Conduct and/or Inappropriate Behaviour and/or breach of his implied contractual duties.

(b) Punitive damages (to be assessed) for Mr Chin's Conduct and/or his Inappropriate Behaviour and/or breach of his duty of care owed to Writers Studio.

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66 Transcript dated 2 November 2021 at p 37, lines 25–28.

67 Transcript dated 2 November 2021 at p 37, line 25 to p 39, line 17.

68 OYYCA at para 15; Transcript dated 2 November 2021 at pp 54–56.

69 SDB at pp 36–37 (Statement of Claim (Amendment No 2)).

(c) Damages (to be assessed) for the losses suffered as a result of Mr Chin's breaches of the NDA and/or duty of confidentiality.

I elaborate on each of the duties as pleaded by Writers Studio in turn.

39 Writers Studio pleads that there is "no written contract" between the parties. Nevertheless, the "following terms were implied into [Mr Chin's] engagement": (a) a duty of obedience "to comply with [Writers Studio's] orders" (namely, to "comply with the schedule of classes set out" and teach such classes); and (b) a duty of fidelity and good faith (namely, to be "professional in the carrying out of his duties, to and to [*sic*] ensure that [Writers Studio's] confidential information is not abused by him during his engagement and after his termination").[70] It was only in its later pleading that Writers Studio avers that Mr Chin breached such duty of fidelity and good faith by his "usage of social media platforms and mobile gaming applications to contact and/or interact with the Clients" in that it is "wholly unprofessional for [Mr Chin] to do so".[71] Writers Studio made no averments as to whether the duty of obedience was breached by Mr Chin, save that he had ended his 3.00pm class prematurely and refused to teach the 5.00pm and 7.00pm classes on short notice on 16 September 2020.[72] Nevertheless, Writers Studio does not plead that Mr Chin breached the implied duty of obedience as such.

40 Writers Studio also avers that Mr Chin owed it a duty of care "by virtue of the fact that [Mr Chin] was engaged to provide tutoring services" to its

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70 SDB at pp 20–21 (Statement of Claim (Amendment No 2) at para 6).

71 SDB at pp 62 (Reply (Amendment No 1) at para 11).

72 SDB at pp 29–30 (Statement of Claim (Amendment No 2) at para 17.4–17.5).

Clients. That duty of care entailed Mr Chin "conduct[ing] himself n [*sic*] a manner which could be expected of a reasonable tutor to young children".[73]

41 As for Mr Chin's duty of confidentiality, Writers Studio avers that Mr Chin was "well aware of his confidentiality obligations". Such confidentiality obligations include Mr Chin refraining from contacting Writers Studio's Clients privately (save for in certain situations such as that elaborated at [19] above). This is because Writers Studio considers its Clients' contact details as confidential information.[74] Writers Studio avers that Mr Chin breached such duty by his "habitually [giving] out his mobile number" to Writers Studio's Clients in his classes and "encouraged them to contact him privately". Writers Studio's Clients did so and "communicate[d] with [Mr Chin] privately". Mr Chin also "had been contacting [the] Clients through social media platform(s)".[75] These alleged breaches were discovered on 12 September 2020. Furthermore, by "failing to return" the 4599 Number to Writers Studio, Mr Chin "had been in breach of the NDA as he had accessed and/or used the Confidential Information" through the 4599 Number.[76]

42 However, as against the conditions under which Mr Chin was allowed to communicate with Writers Studio's Clients privately, Writers Studio's averments are inconsistent. In the earlier part of its pleadings, Writers Studio avers that Ms Oh "had to be added into a WhatsApp group chat with the Client and/or be made aware of the communications".[77] In the later part of its

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73 SDB at p 21 (Statement of Claim (Amendment No 2) at para 6A).

74 SDB at pp 24–25 (Statement of Claim (Amendment No 2) at paras 10–12).

75 SDB at pp 28–29 (Statement of Claim (Amendment No 2) at para 16).

76 SDB at pp 61 (Reply (Amendment No 1) at para 8.9).

77 SDB at p 25 (Statement of Claim (Amendment No 2) at para 12).

pleadings, Writers Studio avers that the "only form of client communication [it] had approved for [Mr Chin's] usage was via WhatsApp group chats with the Clients and Ms Oh".[78]

43 Writers Studio also pleads that it had discovered "further breaches" by Mr Chin from 23–29 September 2020. In particular, Writers Studio found that Mr Chin had visited five addresses (*ie*, the six addresses, save for the the second student's address) which correspond with the addresses of Writers Studio's Clients who had withdrawn following Mr Chin's termination. Writers Studio "strongly believe[s] that [Mr Chin] has been conducting tuition" at those addresses and "would have only gotten these addresses and/or contact information through his employment with [Writers Studio]". As such, Writers Studio applied for an injunction *vide* SUM 4627.[79]

44 Mr Chin's confidentiality obligations also extended to "the materials created by [Writers Studio], and/or materials used in teaching at [Writers Studio's] premises". The materials provided to Mr Chin "bore [Writers Studio's] letterhead".[80] Also on 12 September 2020, Writers Studio discovered that Mr Chin "had been requesting for the typist to send him the Microsoft Word versions of the worksheets" and to "remove" Writers Studio's and Innova Studio's header from such documents. Writers Studio's typist was thus informed to not send such materials to Mr Chin as the documents "belonged to [Writers Studio]" and is "confidential information under the NDA".[81]

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78 SDB at pp 61–62 (Reply (Amendment No 1) at para 10).

79 SDB at pp 33–35 (Statement of Claim (Amendment No 2) at paras 28–30).

80 SDB at pp 24–25 (Statement of Claim (Amendment No 2) at para 10).

81 SDB at p 28 (Statement of Claim (Amendment No 2) at para 15).

45 To clarify, Writers Studio adopts a slightly different meaning for the abbreviation "Conduct". Writers Studio's definition of "Conduct" includes Mr Chin's statement that Writers Studio did "not provide him with any materials despite the fact that [it] provide[d] the materials to [Mr Chin] on a weekly basis" as well as Mr Chin's declaration to "*relief teachers* present that he was resigning" [emphasis added] in addition to only his students.[82] For completeness, Writers Studio avers that it terminated Mr Chin on 19 September 2020 "due to his Conduct".[83] Nevertheless, as Writers Studio did not address those specific sub-points *as such* (*ie*, these specific statements made to specific persons and how such statements to such individuals caused any loss to Writers Studio), I gather that Writers Studio's true contention is in respect of Mr Chin's other acts which I abbreviated at [30] above.

46 Writers Studio pleads that it suffered loss of goodwill and/or reduction in business due to Mr Chin's Conduct and/or Inappropriate Behaviour and/or breach of duty of care. It avers that its business is "based firmly on their reputation and goodwill with their clients". Mr Chin's conduct in "defaming" Writers Studio and/or "poaching" and/or "approaching [Writers Studio's Clients]" and/or Conduct and/or Inappropriate Behaviour and/or breach of duty of care damaged Writers Studio's reputation "and caused them to suffer irreparable financial harm". Writers Studio avers that 39 students "including the Primary 6 students who would have engaged [it] to prepare for Secondary 1" had withdrawn since Mr Chin's termination on 19 September 2020, as compared to 11 students who had withdrawn in 2019. Such an "unprecedented" rate of withdrawal is "due solely to [Mr Chin's] [c]onduct".[84]

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82 SDB at pp 29–30 (Statement of Claim (Amendment No 2) at para 17).

83 SDB at p 30 (Statement of Claim (Amendment No 2) at para 20).

84 SDB at pp 35–36 (Statement of Claim (Amendment No 2) at paras 31–34).

Mr Chin's pleaded case

47 Mr Chin denies Writers Studio's amendment to the statement of claim that he is not an employee but was instead engaged as a contractor.[85] Rather, Mr Chin pleads that there is an "implied contract of service" between the parties pursuant to which he was employed as an employee. However, the terms of employment were "deliberately not put into writing" as Writers Studio "wanted to keep [Mr Chin's] contractual relationship with [it] vague" so as to enable it to "unilaterally change terms of [his] employment".[86]

48 According to Mr Chin, the parties' "agreement and arrangement" was that he "had the right not to attend, not to extend and/or reject classes".[87] It was also "an implied term" of his employment that "salary was to be paid on the 7th of each month". As such, by failing to pay his salary on time on multiple occasions, Writers Studio "is in breach of its implied employment contract".[88] Mr Chin's employment was eventually terminated on 19 September 2020.[89] Mr Chin's pleading, however, goes no further to particularise the denial of the "implied contractual duties" which Writers Studio pleaded (see [39] above). Nor does it particularise the denial of a duty of care owed to Writers Studio (or any breach of such duty).[90]

49 Mr Chin denies his Conduct, save for the early dismissal of the 3.00pm class and cancellation of his 5.00pm and 7.00pm classes on

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85 SDB at p 41 (Defence at para 3).

86 SDB at pp 41–42 (Defence at para 3).

87 SDB at p 43 (Defence at para 5).

88 SDB at p 47 (Defence at para 19).

89 SDB at p 47 (Defence at para 21).

90 SDB at p 43 (Defence at paras 6–6A).

16 September 2020.[91] In respect of those classes, Mr Chin avers that he did so as he "was feeling unwell and thus had to end his lessons early and cancel the rest of his scheduled classes for the day".[92] Mr Chin also denies any Inappropriate Behaviour and avers that he "did not molest, touch[,] [interact] and/or [communicate] with [Writers Studio's] Clients inappropriately". In particular, Mr Chin avers that he has "never made sexual comments and/or describe[d] sexual matters to the students while teaching in class and/or touch[ed] the students inappropriately".[93]

50 Mr Chin denies that he owed a duty of confidentiality and that he breached such duty. Mr Chin avers that Ms Oh was "inconsistent on her position on what was confidential information and whether [he] could use" such information. In particular, Writers Studio told Mr Chin that he could "contact the clients on his own", "take all the clients" and "even added [his] private [numbers] together in WhatsApp group chat with parents". The 4599 Number had also been printed on brochures and "circulated to the public" by Writers Studio. Writers Studio's clients' contact details "lost its quality of confidentiality" when they "reached out to contact [Mr Chin] voluntarily disclosing and making available their contact details". Therefore, once the Clients "initiated contact" in such a manner, Mr Chin "would not be in breach of the NDA in maintaining contact" with the Clients.[94]

51 Mr Chin denies any breach of the NDA. As against the first manner of breach (*ie*, editing Writers Studio's teaching materials as mentioned at [44]

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91 SDB at p 47 (Defence at para 17).

92 SDB at p 47 (Defence at para 18).

93 SDB at p 51 (Defence at para 30).

94 SDB at pp 44–45 (Defence at paras 10–11).

above), Mr Chin avers that he had "only requested for the typist to remove the header … as they were causing formatting issues" which is "different from removing Innova's Studio [*sic*] logo".[95] As for the Clients' social media and mobile game accounts, these are "not confidential information protected by the NDA".[96]

Substantive issues to be determined

52 As mentioned at the outset, the trial before me is bifurcated and I only need to determine liability. The following issues arise for my determination:

(a) Whether Mr Chin was engaged by Writers Studio pursuant to an implied employment contract at the material time and, consequently, whether Mr Chin was an employee of Writers Studio ("Issue 1").

(b) Whether Mr Chin caused loss by breaching implied terms containing the duty of obedience and duty of fidelity and good faith ("Issue 2").

(c) Whether Mr Chin caused loss by breaching a general duty of care ("Issue 3").

(d) Whether Mr Chin caused loss by breaching the NDA and/or duty of confidentiality ("Issue 4").

53 I address each issue in turn.

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95 SDB at p 46 (Defence at para 15).

96 SDB at p 46 (Defence at para 16.2).

Issue 1: the parties' contractual relationship and the nature of Mr Chin's engagement with Writers Studio

The parties' contractual relationship

54 It is not in dispute that Mr Chin had entered into an engagement of some form with Writers Studio; it is also not disputed that this engagement has not been captured in writing. However, before I can proceed to determine the exact nature of this engagement, I note that Mr Chin has pleaded the presence of an *implied contract* between the parties. There are two points of concern arising from this. The first is that the fact that the contract is not put into writing does not automatically militate against the existence of an express contract. The second is that the pleadings confusingly flit between references to implied contracts and implied contractual duties and terms, which are distinct concepts. The former is concerned with making out the existence of a contractual relationship; the latter is concerned with making out the terms of an existing contract. In light of the looseness with which the descriptor "implied" has been used in Mr Chin's pleadings, I think it appropriate to briefly allude to the legal principles governing the concept of an implied contract.

The applicable legal principles

55 In the law of contract, contracts can be implied from a course of conduct; dealings between the parties; from their correspondence or from all other circumstances. However, "all the requirements for the formation of a contract, *viz*, offer and acceptance, consideration, intention to create legal relations, and certainty of terms must be satisfied before the court will imply the existence of a contract": *Cooperatiehahahave Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [46] citing *Modahl v British Athletic Federation Ltd* [2002] 1 WLR 1192 at [49]–[51]. Such an implied contract could also,

conceptually, take the form of a collateral contract: *Eng Chiet Shoong and others v Cheong Soh Chin and others and another appeal* [2016] 4 SLR 728 ("*Eng Chiet Shoong*") at [29]. That being said, an implied contract will only be found in very limited circumstances, based on necessity and having regard to the intentions of the parties. The precise facts and circumstances of each case will therefore be important: *Eng Chiet Shoong* at [29].

56 The policy consideration behind such a high threshold is clear – that commercial certainty must be ensured in the business context. As the Court of Appeal observed in *Ang Sin Hock v Khoo Eng Lim* [2010] 3 SLR 179 at [76]:

> There is, admittedly, the danger of too much commercial uncertainty being generated. However, this danger can be met by the court requiring clear proof that the legal requirements of a binding contract have, indeed, been satisfied on the facts … as well as (from an attitudinal perspective) being generally reluctant to find a collateral contract which ought to remain a finding of last resort.

Analysis and findings

57 Notably, neither party made any submissions as to the subsisting contract between parties at the material time although they both agree that there was no written contract governing their relationship. In any event, I did not think it necessary to consider whether a contract needs to be *implied*. It is clear that there was an oral contract in existence because Mr Chin had been teaching in Writers Studio and the latter had been paying him for the work.

58 In my judgment, it is sufficiently clear that at the material time, Mr Chin was engaged by Writers Studio pursuant to their Agreement which is recorded in the email chain between Ms Oh and Mr Chin (see [13]–[16] above). Ms Oh's initial email constituted the terms of engagement offered by Writers Studio, while Mr Chin's reply constituted an acceptance to some of those terms (by

expressly indicating "agree") and a counteroffer to others (by proposing slightly different terms). Even though no reply to Mr Chin's counteroffers were immediately forthcoming, I take that Ms Oh accepted Mr Chin's counteroffers for two reasons.

59 First, Ms Oh replied to that same email thread on 18 September 2020 that those were the "contractual terms [they] agreed on by email". Secondly, parties also conducted themselves *in accordance with* the terms which Mr Chin had set out in his email. For example, Mr Chin and Ms Oh proceeded on the basis that Mr Chin was to be paid 45% of the tuition fees collected (see cl 1 which Mr Chin agreed to).[97] Furthermore, and in accordance with cl 4a of Mr Chin's email, parties operated on the understanding that Mr Chin was to be paid by the 7th of every month. At trial, Ms Oh also accepted that if Mr Chin did not receive his pay by the 7th of every month, then such payment would be considered "late".[98] On the evidence before me, it is sufficiently clear that such a term (*ie*, the date by which Mr Chin was to be paid) is an *express term* and ***not*** *an implied term in an* ***implied contract*** as Mr Chin pleads.[99]

60 In light of my finding that an express oral contract existed between the parties, the next question is whether under this contract, Mr Chin had been engaged as an employee or as a freelancer.

Employment relationships

61 Whether a person is an employee (as opposed to a freelancer) depends on the totality of the factual matrix of any given case. In contractual terms, the

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97 AB at p 243 (Screenshot of WhatsApp Correspondence dated 16 August 2020).

98 Transcript dated 2 November 2021 at p 85, lines 19–31.

99 SDB at p 47 (Defence (Amendment No 2) at para 19).

issue is whether a person is engaged under a contract *of* service (in which case a person would be considered an employee) or only a contract *for* service (in which case that person would be considered an independent contractor). There is no *single* test or factor which is decisive of the issue (*Kureoka Enterprise Pte Ltd v Central Provident Fund Board* [1992] SGHC 113 ("*Kureoka*")). In *Kureoka*, Chan Sek Keong J (as he then was) found the following factors relevant in the case before him:

(a) the factor of control over the worker's services;

(b) the rendering of services personally without being able to use a substitute;

(c) the worker's responsibility for investment in, or management of, the business or financial risk in it;

(d) the worker's right to price the value of services to clients;

(e) the worker's opportunity to deploy individual skill and personality;

(f) the contractual right to terminate the worker's services;

(g) whether the worker is performing services as a person of business on his/her own account; and

(h) the mutuality of obligation between the parties.

62 The Court of Appeal in *BNM (administratrix of the estate of B, deceased) on her own behalf and on behalf of others v National University of Singapore and others and another appeal* [2014] 4 SLR 931 ("*BNM*") also confirmed that the control test is "not the only test for determining whether a

contractor is an independent contractor, nor is it even necessarily the decisive factor" (at [28]). In *BNM*, the Court of Appeal found the following factors relevant in finding that a company provided a contract *for* services to the respondent (at [31]–[32]):

(a) that the company bore the responsibility for paying the worker's wages;

(b) that the company had the responsibility for scheduling the worker's roster;

(c) that the company had the power to dismiss worker from employment;

(d) the company's supervision and oversight of the worker in his/her duties;

(e) the company's responsibility for training the worker in the use of equipment;

(f) the company's power and authority to dictate how the worker discharged his/her duties;

(g) the company's responsibility for providing the worker's equipment;

(h) the company's undertaking of the financial risks of running its business;

(i) the company selected the worker for deployment at the respondent's premises;

(j) the company provided services to other institutions apart from the respondent's; and

(k) the company retained the profits from its business and took out its own insurance.

The parties' submissions

63 Writers Studio takes the position that Mr Chin was, at all material times, not an employee and makes two points in that regard. First, it submits that the following facts show that Mr Chin was an independent contractor:[100]

(a) Mr Chin had the freedom to: (i) set his own teaching schedule and/or working hours, (ii) set the fees to be charged for each student and/or class taught and (iii) continue teaching private lessons to his own clients outside of Writers Studio's premises.

(b) Mr Chin's remuneration was based on the number of students and/or classes taught at Writers Studio (including earning a percentage of the revenue earned from his group classes).

(c) Mr Chin did not receive a basic salary or any leave benefits.

(d) Mr Chin left open the issue of whether he should receive CPF from Writers Studio.

64 Second, Writers Studio submits that the use of the word "employment" in its pleadings was, as Ms Oh had testified, intended to refer to "employment"

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100 Plaintiff's Written Submissions at paras 10–13.

in a ***colloquial*** *sense*. Writers Studio relies on *Halsbury's Laws of Singapore* vol 9 (LexisNexis, 2019) at para 100:[101]

> In common parlance, the term 'employment' may be used to indicate a variety of distinct relationships, including the relationship between a principal and his agent as well as the relationship between an independent contractor and the person seeking his services.

65 Mr Chin submits that he was nevertheless an employee, based on the following factors:

(a) Mr Chin drew a "salary" and had to teach the classes which Writers Studio had given to him.

(b) The email negotiations on 2 June 2020 (see [13]–[14] above) "allude to the terms which one can expect of typical employer-employee relationships".

(c) Writers Studio maintained that Mr Chin is an employee in "various correspondences, pleadings and even on affidavit up until the CPF Board commenced investigations".

(d) The non-payment of CPF is a neutral factor which was part of Writers Studio's intention to keep Mr Chin's status as an employee "ambiguous".[102]

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101 Plaintiff's Written Submissions at paras 5–6; Plaintiff's Bundle of Authorities ("BOA") at pp 205–208.

102 Defendant's Written Submissions at paras 146–148.

Analysis and findings

66 While the determination of an employee-employer relationship is informed by the totality of the factual matrix of the case, one reasonable starting point is to consider the contractual relationship between the worker and the entity that engaged that worker.

67 Considering the terms of the parties' Agreement, I find that Mr Chin was engaged as an independent contractor under an employment *for* service. Contrary to Mr Chin's submissions, whether the parties used the word "salary" instead of "remuneration" is not indicative of an *employee-employer* relationship. The terms in the Agreement likewise do not indicate a contract *of* service but rather, a contract *for* service:

(a) Mr Chin did not earn a fixed salary but was remunerated with 45% of the tuition fees of the students whom he taught at Writers Studio.

(b) Mr Chin paid rent for the rooms at Writers Studio's premises when he taught private students.

(c) There was no term conferring Writers Studio the right to terminate Mr Chin's engagement (and, to the contrary, Mr Chin could simply quit teaching if he wished to do so).

(d) Teaching materials prepared by Mr Chin remained his own property (and not Writers Studio's property).

(e) Mr Chin received no benefits from Writers Studio (such as paid leave, medical benefits and dental benefits unlike Writers Studio's other employees[103]).

68 Furthermore, Mr Chin set his own teaching schedule subject to Writers Studio's approval. In particular, Mr Chin could give Writers Studio a schedule which he could commit to, and parties would mutually agree on such timings which worked for both of them.[104] The degree of control which Writers Studio exercised over Mr Chin's services was, at best, limited.

69 My conclusion is also supported by the parties' correspondence at the time they were confirming Mr Chin's contract. The contemporaneous evidence between the parties (see [16] above) clearly demonstrate that *both* Ms Oh and Mr Chin appreciated that Writers Studio need not contribute to a freelancer's (*ie*, independent contractor's) CPF. When asked specifically about that, Mr Chin was happy to let Writers Studio decide whether to keep engaging him as a freelancer without the need to make any CPF contributions. In this regard, Mr Chin had "left the CPF issue" to Writer's Studio and their arrangement was not changed.[105]

70 For completeness, I make one final point on Writers Studio's pleadings and Ms Oh's testimony regarding the use of the word "employment". I agree with Mr Chin's position that Writers Studio initially pleaded that Mr Chin was an employee *only to support its own case* that he owed certain duties (such as the duty of obedience, fidelity and good faith).[106] Such litigation tactics also

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103 Transcript dated 5 November 2021 at p 50, lines 20–24.

104 Transcript dated 2 November 2021 at p 81, lines 16–29.

105 Plaintiff's Reply Submissions at para 6.

106 Defendant's Written Submissions at paras 92.6–92.7, 96–98.

explain why Writers Studio made such changes so late in the day to delete most references to an "employment" contract (save for one reference[107]) – by then, it simply was no longer to Writers Studio's advantage to plead that Mr Chin was its employee due to the CPF Board's investigations.

71 However, after changing its pleaded case, Writers Studio did not bother to make any consequential amendments to its pleadings. In particular, despite now pleading that Mr Chin is *not* an employee, it pleaded that he nevertheless owed duties of obedience, fidelity and good faith without further particulars of how such duties arose *in the circumstances of the present case*. I consider this point further below.

Issue 2: whether Mr Chin caused loss to Writers Studio by breaching a duty of obedience and duty of fidelity and good faith

72 The duties of obedience, fidelity and good faith are not implied in law into contracts *for* services. Any such duties may only be implied in fact.

The parties' case

73 Writers Studio submits that it pleaded the following terms "should be implied into [Mr Chin's] engagement": a duty of obedience (*ie*, to "comply" with Writers Studio's "professional standards and client contact protocol"); and a duty of fidelity and good faith (*ie*, to be "professional in the carrying out of his duties" and "ensure" that Writers Studio's "confidential information is not abused by him during his engagement and after his termination")[108]. Even though Writers Studio appreciates that the "implied duties typically apply to employment contracts", they are "necessary for the business efficacy of the

107 SDB at p 28 (Statement of Claim (Amendment No 2) at para 13.6).

108 Plaintiff's Written Submissions at para 18.

contract for service" between parties. In particular, if Mr Chin was "allowed to flout" Writers Studio's professional standards, it would suffer "damage, and the quality of the teaching services provided by [Mr Chin] would be poor and unacceptable".[109] The alleged duties are thus to be implied in fact.[110] Writers Studio relies on Mr Chin's Conduct and Inappropriate Behaviour to substantiate its claim.[111]

74 Mr Chin's position is that "any assertion of a duties [*sic*] would need to be implied" as there was "no written contract (save for the NDA) between the parties".[112] Mr Chin submits that there is no implied duty of obedience, good faith and fidelity if he is not an employee.[113]

The applicable legal principles

75 It is common ground that there is no implied term for a duty of obedience and duty of fidelity and good faith in law since there is no employer-employee relationship in the present case. Such duties are implied terms in law in employment contracts (*Man Financial (S) Pte Ltd (formerly known as E D & F Man International (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 ("*Man Financial*") at [193]). As such, the applicable legal principles for an implied term *in fact* are relevant.

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109 Plaintiff's Written Submissions at para 20.

110 Plaintiff's Reply Submissions at paras 12–16.

111 Plaintiff's Written Submissions at paras 21–22.

112 Defendant's Written Submissions at para 193.

113 Defendant's Written Submissions at para 196.

76 The Court of Appeal in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp*") set out a three-step test for implying a term in fact (at [101]):

(a) Step 1. Ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap (*ie*, there is a "true" gap).

(b) Step 2. Determine whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.

(c) Step 3. Consider whether the specific term to be implied is one to which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at time of the contract. If it is not possible to find such a clear response, then, the gap persists and the consequences of that gap ensue.

77 In *Sembcorp*, the Court of Appeal explained that "not all gaps in a contract are "true" gaps in the sense that they can be remedied by the implication of a term" and in that respect, there are at least three ways in which a gap could arise (at [94]):

(a) The parties did not contemplate the issue at all and so left a gap.

(b) The parties contemplated the issue but chose not to provide a term for it because they mistakenly thought that the express terms of the contract had adequately addressed it.

(c) The parties contemplated the issue but chose not to provide any term for it because they could not agree on a solution.

However, it is only in scenario (a) where it would be "appropriate for the court to even consider if it will imply a term into the parties' contract" (at [95]).

78 Bearing the foregoing principles in mind, I turn to consider whether the alleged duties of fidelity, obedience and good faith may be implied in fact in the present case.

Analysis and findings

79 I begin with two preliminary observations on Writers Studio's pleaded case. From the outset, I find Writers Studio's submissions to be somewhat disingenuous. In particular, Writers Studio gives the impression that it had pleaded that a duty of "obedience" meant the duty to "comply" with *Writers Studio's professional standards and client contact protocol* (see [73] above). That is a deviation from its pleaded case that a duty of "obedience" meant compliance with "the schedule of classes set out" and to teach such classes (see [39] above). This demonstrates to me that Writers Studio is not even clear of its own case and shifted the goal posts as part of its own litigation strategy.

80 My second observation is that Writers Studio *does not even plead the contract into which such alleged terms are to be implied in fact*. The three-step test summarised above assumes and *necessarily* ***hinges on*** *the existence of some subsisting contract between the parties* before the first step can even be considered. Without the proper identification of ***any*** *contract* (such as an *oral* contract) between the parties, the three-step test is simply inapplicable. In my judgment, this is fatal, and sufficient to dispose of Writers Studio's claim for breach of such implied terms.

81 For completeness, I consider whether the duties of obedience, fidelity and good faith are implied terms in the parties' Agreement. In my judgment,

this issue must be answered in the negative. Based on the parties' contemporaneous correspondence, I accept that there is a "true" gap in relation to the alleged duties. Nevertheless, I am not persuaded by Writers Studio's argument that the alleged duties to be implied pass the business efficacy test. Writers Studio's argument that such duty must be implied to prevent Writers Studio from suffering damage and to ensure the "quality" of teaching services were acceptable to it is *not* the test to determine business efficacy. I am also of the view that the alleged duties to be implied flatly fail the officious bystander test. These alleged implied terms are not entirely clear. Consequently, I am of the view that had such *unclear* terms been put to parties at the time of contracting, the response would not have been an emphatic "Oh, of course!".

82 Even if such duties were implied in fact, the facts upon which Writers Studio seeks to substantiate its claim for breach of the same (*ie*, the Conduct and Inappropriate Behaviour) are insufficient to make out its case. I elaborate on this at [115] below. As for the breach by failing to comply with Writers Studio's client contact protocol, Writers Studio made its submissions in relation to the NDA, which I consider at Issue 4 below.

Issue 3: whether Mr Chin caused loss to Writers Studio by breaching a duty of care

83 Apart from its claim in contract, Writers Studio also claims against Mr Chin in the tort of negligence. The specific acts complained of are Mr Chin's alleged Conduct and Inappropriate Behaviour – which also found Writers Studio's claim for punitive damages against Mr Chin.

The applicable legal principles

84 Where Singapore is concerned, the *locus classicus* remains the Court of Appeal decision in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"). In the present case, applying the *Spandeck* framework, I was satisfied that there was legal proximity between the parties which justified the imposition of a *prima facie* duty of care. Further, there were no policy reasons which militated against the imposition of a duty of care. I explain.

85 In *Spandeck*, the Court of Appeal set out a two-stage test to determine whether a defendant owes a plaintiff a duty of care. The two-stage test is preceded by the threshold requirement of factual foreseeability which is concerned with the "requirement of reasonable foreseeability from a *factual* perspective" [emphasis in original] (*Spandeck* at [75]–[76] citing *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric (practising under the name and style of W P Architects* [2007] 1 SLR(R) 853 at [55], *AYW v AYX* [2016] 1 SLR 1183 ("*AYW*") at [51]).

86 The threshold question of factual or reasonable foreseeability, *ie*, whether the defendant ought to have known that the claimant would suffer from the defendant's carelessness, is a requirement which would be fulfilled in almost all cases as the two parties are likely to be in some degree of physical relationship (*Spandeck* at [75]–[76]). In the present case, I was satisfied that this threshold requirement of factual foreseeability was crossed. I therefore move on to consider the first stage of the *Spandeck* framework. Here, the key question is whether there is sufficient legal proximity between the plaintiff and the defendant. The focus of the inquiry at this stage is the *closeness* of the *relationship* between the parties which includes physical, circumstantial and

causal proximity, supported by the twin criteria of voluntary assumption of responsibility and reliance (*Spandeck* at [77] and [81]; *Go Dante Yap v Bank Austria Creditanstalt AG* [2011] 4 SLR 559 ("*Go Dante Yap*") at [19]–[20], *Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146 ("*Animal Concerns*") at [29]–[74]),

87 In the present case, Writers Studio submits that Mr Chin "should be found to owe a duty of care" to them since it had "entrusted" the "young and impressionable" students to Mr Chin[114]. Writers Studio argues, citing *Spandeck*, that there is a "clear proximity" between the parties and there are "strong policy considerations that support the imposition of a duty of care".[115] I make one observation about the manner in which Writers Studio has presented this argument in its written submissions. While it is perfectly fine to state the elements of the *Spandeck* framework, more attention should be paid to the facts of the cases adduced in support of one's argument that the court should find that a duty of care is owed in the present case. The *Spandeck* framework is not a magic spell, the mere invocation of which, without more, will automatically compel the court to find that a duty of care is owed.

88 That much is clear from *Spandeck* itself. In that case, the Government of Singapore (the "Government") had awarded the appellant a contract to redevelop a medical facility at an army camp. Pursuant to the contract, the respondent was appointed as the superintending officer of the project and was responsible for certifying interim payments in respect of the appellant's work done. While the contract precluded the appellant from claiming against the Government damages for the failure or delay of the respondent in certification,

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114 Plaintiff's Written Submissions at para 15.

115 Plaintiff's Opening Statement at para 11.

the contract did provide that the appellant had the right to claim the amounts which were under-certified and interest thereon by commencing arbitration proceedings against the Government.

89 Because of this, the appellant chose not to continue with the revision of the summary of tender and the cost breakdown for the contract, and subsequently novated the contract to another contractor, suffering losses in the process. The appellant claimed against the respondent, arguing that the respondent owed it a duty of care. The Court of Appeal was satisfied that no duty of care was owed because the requirement of legal proximity was not met (*Spandeck* at [108]). In arriving at this conclusion, the Court of Appeal took the view that the salient facts in *Pacific Associates Inc v Baxter* [1990] 1 QB 993 ("*Pacific Associates*") were materially the same as the facts before it (*Spandeck* at [97] – [98]):

> [97] Adopting an incremental approach with respect to the requirement of proximity, we found the salient facts in *Pacific Associates* to be materially the same as those in the present case. The claimant in *Pacific Associates* was a contractor engaged in dredging work under the supervision of the defendant engineer who was retained by the employer. The claimant's contract with the employer contained clauses providing that the engineer would not be personally liable for acts under the contract and providing for the arbitration of disputes between the contractor and the employer. The contractor claimed that the geological information in the tender document issued by the engineer had under-estimated the amount of hard materials to be dredged and that the engineer had acted negligently in rejecting the contractor's claims for extra payment for removal of unforeseen hard materials. The contractor recovered some of its alleged losses from the employer following an arbitration settlement and then sought to recover the balance through a negligence action against the employer.
>
> [98] The Court of Appeal held (at 1032) that it would not be reasonable to impose a *Hedley Byrne* … duty on the engineer because it "would cut across and be inconsistent with the structure of relationships created by the contracts, into which the parties had entered".

90 To unpack this a little, the Court of Appeal in *Spandeck* arrived at its decision in the following manner: in *Pacific Associates*, the court there made a finding that there was no legal proximity based on certain material facts. The same material facts were also present in *Spandeck*, and so this justified a finding that there was no legal proximity and thus no *prima facie* duty of care owed.

91 Here, the facts are slightly different from that in *Spandeck* – in that case, the appellant and respondent had no direct contractual relationship, whereas in the present case, Writers Studio had engaged Mr Chin as an independent contractor under an employment for service (above at [67]). The more appropriate decision for comparison, in my view, would be the decision in *Go Dante Yap*. In that case, the appellant had opened two accounts with the respondent bank. Both accounts were handled by one Ms Ching, who was employed by the respondent. In opening the accounts, the appellant executed three sets of contractual documents which, amongst other things, gave the appellant the final say in deciding what securities to purchase or sell. Ms Ching entered into 16 investments on the appellant's behalf, and met the appellant on a monthly basis to review the performance of the investments and their projected returns. The investments were subsequently liquidated, but the appellant suffered significant losses on three of the investments as a result of the Asian Financial Crisis. The appellant sued the respondent, alleging, amongst other things, that the respondent owed him a duty of care to advise him on his investments.

92 The Court of Appeal found, when it heard the appeal, that there was clearly legal proximity between the parties: *Go Dante Yap* at [31]. As the court reasoned (at [34]–[35]):

> [34] As we alluded at [20] above, the implied contractual duty of skill and care owed by the Respondent to the Appellant

under the Account-opening Documents was sufficient to create the necessary proximity required by a duty of care in tort. Indeed, it was difficult to imagine a clearer example of "an assumption by one party of a responsibility to take care to avoid or prevent injury, loss or damage" to another party (see [31] above) than a contractual duty to exercise care and skill, and it was plain that Lord Goff had just such a possibility in mind in *Henderson v Merrett* (at 180 (see [33] above) and 187), a conclusion which was also reached by Lord Devlin with specific reference to banks and their customers in *Hedley Byrne* (see [32] above).

[35] However, even leaving aside the contractual framework established by the Account-opening Documents, by analogy with Lord Goff's reasoning, there was unmistakeably an assumption of responsibility in the relevant sense by the Respondent towards the Appellant. The Respondent accepted the Appellant as someone whose money and assets were under its control, and on whose behalf it could and was expected to expend considerable sums in order to acquire various investments. It could hardly be denied that the Respondent, in offering private banking and wealth-management facilities, held itself out as possessing special skill or expertise (a concept that was to be understood broadly (see *Henderson v Merrett* at 180)) to manage investments and transact in emerging market securities, or to search for and recommend such investments (which Ms Ching in fact did (see [100] of the Judgment)). The Appellant, as Ms Ching well knew, placed implicit reliance upon that expertise, in that he gave her (and therefore the Respondent) authority to bind him to purchases of the Bakrie bonds and the Rossiyskiy notes, as well as other securities. Given that Ms Ching was so placed that the Appellant could reasonably rely upon her judgment, skill or her ability to make careful inquiry, and given also that she was actively giving information or advice to the Appellant (in the form of recommending suitable investments to him and, by her own evidence, advising him of the pros and cons of those investments), who, as she should have known, would place reliance on her judgment, skill and ability to take care (see Lord Morris's statement of principle at [32] above), it was difficult to resist the conclusion that, in line with *Hedley Byrne* and *Henderson v Merrett*, there was sufficient proximity between the parties to give rise to a *prima facie* duty of care in the tort of negligence on the part of the Respondent. The point was reinforced in *Jackson & Powell* ([24] *supra*), where it was stated at para 15-032 (albeit without any authority being cited) that "[a] financial practitioner will *generally* owe a duty of care in tort to his client quite apart from any contract that exists between them" [emphasis added].

> [emphasis in original]

93 In my view, *Go Dante Yap* can be sufficiently analogised to the present case. In *Go Dante Yap*, the court ruled (at [24], citing *Lister v Romford Ice and Cold Storage Co Ltd* [1957] AC 555 ("*Lister*") at 572–573) that "in contracts under which a skilled or professional person agrees to render certain services to his client in return for a specified or reasonable fee, there is at common law an implied term in law that he will exercise reasonable skill and care in rendering those services". The court further noted that "it is trite law that a bank in carrying out the instructions of its customer is under an implied contractual duty to exercise skill and care". This implied contractual duty to exercise skill and care therefore meant that, as the court reasoned (at [34]), there was an assumption of responsibility by the respondent to take care to avoid or prevent injury, loss or damage to the appellant.

94 In the present case, I would take the view that there was an implied term in the contract that Mr Chin would exercise reasonable skill and care in rendering services to Writers Studio. In *Lister*, the court reasoned (at 572–573) that it was an implied term of the contract that the appellant would perform his duties with the proper care because:

> The proposition of law stated by Willes J in *Harmer v Cornelius* has never been questioned: "When a skilled labourer," he said, "artizan, or artist is employed, there is on his part an "implied warranty that he is of skill reasonably competent to "the task he undertakes, —*Spondes peritiam artis*. Thus, if an "apothecary, a watch-maker, or an attorney be employed for "reward, they each impliedly undertake to possess and exercise "reasonable skill in their several arts. … An express promise "or express representation in the particular case is not necessary." *I see no ground for excluding from, and every ground for including in, this category a servant who is employed to drive a lorry which, driven without care, may become an engine of destruction and involve his master in very grave liability.* Nor can I see any valid reason for saying that a distinction is to be made between possessing skill and exercising it. No such distinction

> is made in the cited case: on the contrary, "possess" and "exercise" are there conjoined. *Of what advantage to the employer is his servant's undertaking that he possesses skill unless he undertakes also to use it?* I have spoken of using skill rather than using care, for "skill" is the word used in the cited case, but this embraces care. For even in so-called unskilled operations an exercise of care is necessary to the proper performance of duty.
>
> [emphasis added]

95 It was therefore apparent to me, from the passage above, that the court in *Lister* had found that there was an implied contractual term of a skilled person to exercise reasonable skill and care in the context of an employer-employee relationship. Where employees are concerned, it is trite law that there is an implied term "in the employer's favour that the employee will serve the employer with good faith and fidelity, and that he or she (the employee) will also use reasonable skill and care in the performance of his or her duties pursuant to the employment contract: *Man Financial* at [193]. In the present case, while I have found that Writers Studio had engaged Mr Chin *qua* independent contractor, I am of the view that such a term should also be implied in law where independent contractors are concerned. Terms implied by law reflect considerations of fairness and policy (*Chua Choon Cheng and ors v Allgreen Properties Ltd and another appeal* [2009] 3 SLR(R) 724 at [68]). To hold that there is no such term of reasonable skill and care implied in law where the tutor is hired *qua* independent contractor would be to draw a fine and unsustainable distinction. In my view, where a tutor is hired by a tuition centre to teach young children, there must be an implied term of reasonable skill and care in the contract between the tutor and the tuition centre regardless of the nature of the tutor's engagement.

96 I would also observe that the role in which Mr Chin was engaged by Writers Studio was akin to that of a professional providing services to a client

such that a term of reasonable skill and care should be implied. While structured as a business arrangement (see [67] above), the reality was that Mr Chin was hired as a tutor who specialised in teaching English, Mathematics and Science, to teach classes.

97 In any event, even if I was wrong, and there was no implied contractual term at law to exercise reasonable skill and care on the part of Mr Chin, I am of the view that he had voluntarily assumed responsibility on his part, and that Writers Studio had placed reliance on his expertise. In *Go Dante Yap*, the respondent bank had held itself out as possessing special skill or expertise to manage investments and transact in emerging market securities, or to search for and recommend such investments. The respondent had, in accepting the appellant as someone whose money and assets were under its control and on whose behalf it could and was expected to expend considerable sums in order to acquire various investments, voluntarily assumed responsibility. Further, the appellant had placed implicit reliance upon that expertise by giving the respondent the authority to enter into investments on his behalf. It was on this basis which the Court of Appeal concluded that there was "sufficient proximity between the parties to give rise to a *prima facie* duty of care": *Go Dante Yap* at [35]. The facts in that case allowed the Court of Appeal to find that there was both an implied contractual term to exercise reasonable skill and care, as well as legal proximity between the parties.

98 In the present case, I would similarly hold that Mr Chin had voluntarily assumed responsibility in the relevant sense by accepting the appointment from Writers Studio to teach its students. Similarly, Writers Studio had placed reliance on Mr Chin's expertise – they had placed their students under his tutelage and let him run his classes as he saw fit.

99 For the reasons above, I therefore find that there was sufficient legal proximity to found a *prima facie* duty of care in the present case. I turn now to consider the second stage of the *Spandeck* test. Here, the court considers whether any policy considerations which are applicable to the factual matrix negate that *prima facie* duty of care, and must be careful to differentiate "such considerations from the requirement of proximity in the first stage" of the Spandeck framework: *Spandeck* at [83] and [85]. The rationale for this, as explained by the Court of Appeal in *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] 3 SLR 284 at [89]–[90], was that the *raison d'être* of the tort of negligence is to render interpersonal justice – cogent policy considerations must therefore be adduced to "displace the *prima facie*" position that interpersonal wrongs should be remedied.

100 In essence, what this means is that while the law of tort deals with interpersonal wrongs, in certain situations, policy reasons may militate against the imposition of a duty of care, and that these interpersonal wrongs be dealt with by other means. For example, the availability of alternative statutory remedies and processes is a policy reason militating against the imposition of a duty of care (*The Law of Torts in Singapore* at [05.077]–[05.078]). The reason for this is that the plaintiff can seek relief for interpersonal wrongs through statutory remedies and processes. Another example of a policy reason militating against the imposition of a duty of care would be the existence of a contractual relationship. In *Spandeck* (at [111]–[113]), the court ruled that even if there was proximity between the parties, the policy reason weighing against imposing a duty of care was the existence of a contract which clearly defined the rights between parties.

101 In the present case, while there was a contractual relationship between Writers Studio and Mr Chin, I did not think that this negated the imposition of

the *prima facie* duty of care. The situation here was quite different from that in *Spandeck*. The court in that case took the view that "a duty of care should not be superimposed on a contractual framework" (*Spandeck* at [114]). The reason for this, however, was because the appellant had freely entered into the contract which provided that claims against the Government had to be brought in arbitration. The court therefore held that because parties sought to regulate their relationship via contract which stipulated that in the event of under-certification, that would be dealt with through arbitration, there should not be imposed on the respondent a duty which the appellant had chosen not to make a contractual one: *Spandeck* at [96], [101] and [114].

102 In the present case, while Mr Chin was engaged by Writers Studio pursuant to a contract, it is evident that parties had not clearly sought to define the boundaries of their contractual relationship. The contract was silent as to what was expected of Mr Chin when it came to the delivery of his lessons and his conduct as a tutor. For this reason, I find that the existence of a contractual relationship between the parties did not negate the imposition of a *prima facie* duty of care. Unlike *Spandeck*, where parties had clearly regulated and defined the boundaries of their contractual relationship to exclude the imposition of a tortious duty of care (see *Animal Concerns* at [71]), parties here had not done so.

103 I would further hold that there were also policy reasons leaning in favour of the imposition of a duty of care (*Animal Concerns* at [86]). It is important that tutors engaged to teach young children are not only held accountable to the students whom they teach, but also the tuition agencies who have hired them to conduct the classes.

104 For the reasons above, I find that Mr Chin owed Writers Studio a duty of care.

Breach of a Duty Owed

105 While I have found that Mr Chin owed a duty of care to Writers Studio, I do not find that Mr Chin had breached that duty of care owed. The standard of care is the objective standard of a reasonable person using ordinary care and skill. As stated in *Blyth v The Company of Proprietors of The Birmingham Waterworks* (1856) 11 Exch 781 at 784:

> Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do; or doing something which a prudent and reasonable man would not do.

106 The reasonable person's conduct, in turn, depends on certain factors which are relevant to the particular circumstances of the particular case such as the likelihood and risks of harm, the extent of harm, costs of avoiding harm, and the industry standards and common practice (*Management Corporation Strata Title Plan No 2668 v Rott George Hugo* [2013] 3 SLR 787 at [27].

The parties' submissions

107 Writers Studio argued that Mr Chin breached such a duty of care by virtue of his Conduct on 16 September 2021 and by his Inappropriate Behaviour. This, in turn, caused them to suffer financial losses because students withdrew, and they were drawn into a criminal investigation arising out of Mr Chin's Inappropriate Behaviour. As a consequence, Writers Studio's reputation and standing as a tuition centre suffered.[116]

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116 Plaintiff's Written Submissions at paras 14–19.

108 Mr Chin, however, in his submissions, does not directly deal with the alleged duty of care owed. Even though he admitted at the trial that he had "behaved unprofessionally on 16th September 2020" and "caused [Writers Studio] to suffer damage",[117] he highlights that Writers Studio finally paid his remuneration "**only after the incident on 16 September 2020**" well after the day on which he was supposed to have been paid (*ie*, 7 September 2020).[118] Furthermore, he did not resign and Ms Oh was "unable to provide any evidence that [Mr Chin] asked the students to demand for his alleged owed salary/remuneration".[119] As such, according to Mr Chin, it can only be shown that he had only told the students that he was not being paid, and as a result of which (together with his "mental state at the time"), he wanted to end the classes slightly earlier. Mr Chin submits that it was Writers Studio's "unprofessional and poor treatment" that caused him to "act out" on 16 September 2020.[120]

Analysis and findings

109 I am, however not persuaded that Writers Studio had proved that Mr Chin breached such a duty of care. Regardless of Mr Chin's admission at trial, the determination for any breach is ultimately to be made by this Court. I consider each of the alleged complaints in turn.

110 In relation to Mr Chin's alleged Inappropriate Behaviour (see [34] above), Writers Studio seeks to rely on what his former students were recorded to have said. While the recording and Mr Ting's testimony supports the finding

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117 Transcript dated 12 November 2021 at p 107, lines 7–11; Plaintiff's Written Submissions at para 16.

118 Defendant's Written Submissions at paras 49 and 49.1.

119 Defendant's Written Submissions at paras 49.2 and 49.3.

120 Defendant's Written Submissions at paras 50–51.

that Mr Chin's former students had made those *statements*, neither the recording nor Mr Ting's testimony could support a finding as to the ***truth*** *of those statements*. In my judgment, such evidence is a classic form of hearsay evidence which is inadmissible unless one of the limbs under s 32 of the Evidence Act (Cap 97, 1997 Rev Ed) can be invoked. For example, in *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ('*Gimpex*'), the Court of Appeal held (at [84]) that a report, the admissibility of which was disputed, was hearsay evidence. The defendants in that case sought to have the report admitted on the basis that one Nonot, who was allegedly the maker of the report, had testified at trial (*Gimpex* at [80]). The court, however, took the view that the report was hearsay evidence as it was factually unclear whether Nonot had signed the report. Moreover, even if Nonot was the maker of the report, he had not been personally involved in the entire process of sampling, testing and loading the coal. He hence could not testify as to whether the statements in the report about the quality of the coal were true as he had no first-hand knowledge of the facts (*Gimpex* at [83]–[84]). In a similar vein, Mr Ting here was, by his own admission, not the one who conducted the recording and did not know if any prior discussions had not been captured by the recording.[121] He also had no first-hand knowledge of the facts contained in the recording, and thus could not have testified as to the truth of those facts. The recording is hence hearsay evidence. I also do not see how any of the limbs in s 32(1) of the Evidence Act apply such that the recording may be admitted into evidence.

111 Even if I am wrong on this, I did not think that this recording, even if admitted, could have been given any weight. In *Gimpex*, the report had been found to be admissible under s 32(1)(*b*)(iv) of the Evidence Act but the court

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[121] Transcript dated 3 November 2021 at p 31, lines 24–25; p 34, lines 1–6.

then exercised its discretion to exclude the report in the interests of justice under s 32(2) of the Evidence Act, as the report was not shown to have a minimal degree of reliability (at [120]). Similarly, while Mr Ting claims that he had conducted the recorded discussion in an "appropriate" manner,[122] he responds to the children's allegations in recording with lines such as "why he like [*sic*] your nipple so much" and "then ask him go back and squeeze the wife *lah*."[123] Counsel for Mr Chin has also highlighted that Mr Ting also made references to sexual remarks allegedly made by Mr Chin, *before* the same remarks were raised by the children in the recording.[124] Owing to the manner in which the recorded discussion had been conducted, its reliability as a record of the children's recollection of Mr Chin's Inappropriate Behaviour towards them is hence highly suspect.

112 I would further note that the reports filed with the Singapore Police Force, which were alluded to by Writers Studio, are also not before me. Even if they were, they do not necessarily prove the ***truth*** *of the statements alleged*.

113 As to Mr Chin's Conduct on 16 September 2020 (see [30] above), I did not think that he had breached any duty of care owed to Writers Studio. In determining whether Mr Chin had acted below the objective standard of a reasonable person using ordinary care and skill, the Conduct must be understood in its proper context. In particular, the undisputed fact that Writers Studio paid Mr Chin late on multiple occasions up to 16 September 2020 is relevant and cannot be ignored.[125] Stated thus, as of 16 September 2020, Writers Studio was

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122 Transcript dated 3 November 2021 at p 40, line 17 to p 41, line 7.

123 Transcript dated 3 November 2021 at p 42, line 23 to p 43, line 27.

124 Transcript dated 3 November 2021 at p 44, line 13 to p 45, line 4.

125 Transcript dated 2 November 2021 at p 86, lines 20–31.

in a continued breach of its contractual obligation to pay Mr Chin. In view of Writers Studio's continuing breach, it is not unreasonable for Mr Chin feel frustrated to the point that he dismissed his 3.00pm class early and cancelled the later 5.00pm and 7.00pm classes. Bearing this in mind, and taking into account the fact that his students saw him packing up and ending class early, and those students asking him what had happened, it can hardly be said that it was unreasonable of Mr Chin to have explained to his students that he was "quitting" because he was not being paid. It cannot – in these circumstances – be for Writers Studio to push Mr Chin over the edge *by its own conduct* and then turn around to claim that he had breached his duty of care.

114 In my judgment, it would be a travesty of justice if Mr Chin, being made to work without his remuneration under financial pressures, cracks under such pressure by his Conduct and be held liable in negligence.

115 For the same foregoing reasons, even if Writers Studio could show that there is an implied term of a duty of fidelity and good faith (see Issue 2 above), I would have held that there would not have been a breach of the same.

Issue 4: whether Mr Chin caused loss by breaching the NDA and/or duty of confidentiality

The parties' submissions

116 Writers Studio submits that the NDA protects Confidential Information which includes its Clients' contact information and teaching materials (see [10] above).[126] Writers Studio raises three factual issues in support of its claim – Mr Chin's use of the "4599 Number",[127] Mr Chin's breaching of the

[126] Plaintiff's Written Submissions at para 26; Plaintiff's Reply Submissions at para 21.

[127] Plaintiff's Written Submissions at paras 28–32.

Undertaking,[128] and Mr Chin's tampering with Writers Studio's teaching materials.[129] I summarise the parties' submissions on each issue and consider them in turn.

117 As against that mentioned at [20] above, what is in dispute is whether Mr Chin was given the latitude to contact Writers Studio's Clients using *either* his 4599 Number and his 9693 Number *and* the conditions under which he could do so. Writers Studio submits that Ms Oh "had to be added into a WhatsApp group chat with the Client and/or be made aware of the communications".[130] However, on 12 September 2020, Writers Studio discovered that (a) its Clients had taken up Mr Chin's offer to contact him privately on his 4599 Number "and/or" his 9693 Number; and (b) Mr Chin contacted its Clients through social media platforms.[131]

118 Mr Chin's position is that Writers Studio has been "inconsistent" on whether he could contact its Clients on his own. In particular, his phone numbers had been added in WhatsApp group chats with parents "on occasion".[132] Mr Chin also submits that the Clients' contact information lost its quality of confidentiality when Clients had reached out to Mr Chin and "voluntarily disclosed and made available their contact details" to him.[133]

119 Somewhat relatedly, Writers Studio claims that Mr Chin breached the NDA to tutor students whose addresses and/or contact information he "would

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128 Plaintiff's Written Submissions at paras 43–45.

129 Plaintiff's Written Submissions at paras 33–38.

130 Plaintiff's Written Submissions at para 29.

131 Plaintiff's Written Submissions at para 30.

132 Defendant's Written Submissions at para 9.2.

133 Defendant's Written Submissions at para 9.3.

have only gotten … through his employment with [Writers Studio]".[134] The matter was resolved by Mr Chin's Undertaking. However, Writers Studio now argues that Mr Chin had breached the Undertaking by his continued teaching of [B] (see [33] above). In that regard, if [B] is a "7th student outside of the scope of the [U]ndertaking", then Mr Chin should have informed Senior Judge Andrew Ang.[135] Mr Chin denies the allegation of breach as [B] has been Mr Chin's "private student since 2018 for Math". It was Mr Chin who had introduced [B] to join Writers Studio for group tuition. As such, *after* Mr Chin's resignation, [B]'s parent requested Mr Chin to continue teaching [B].[136]

120 On the second matter (*ie*, the teaching materials), Writers Studio raises two arguments in support of its claim for breach of the NDA and/or duty of confidentiality. First, Ms Oh was informed by Ms Phu on 12 September 2020 that Mr Chin instructed her to remove the "header" of the teaching materials which included Writers Studio's or Innova Studio's logo. As against Mr Chin's position that he had requested for the header to be removed for formatting issues (and not the logo), Writers Studio submits that Mr Chin "did not clarify" that or "correct" Writers Studio when the issue was raised.[137]

121 Second, Mr Chin failed to return all of the teaching materials and/or "failed to account for the whereabouts" of the "missing teaching materials".[138] Mr Chin's position is that Writers Studio is "unable to specify what documents

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134 Plaintiff's Written Submissions at para 40.

135 Plaintiff's Written Submissions at paras 43–45.

136 Defendant's Written Submissions at para 184(2); Defendant's Reply Submissions at paras 4–5.

137 Plaintiff's Written Submissions at paras 36–37.

138 Plaintiff's Written Submissions at para 38.

were missing from the handover" after Mr Chin had returned the teaching materials on 21 and 22 September 2020.[139]

Analysis and findings

122 I dismiss Writers Studio's claim against Mr Chin for breach of the NDA and/or duty of confidentiality. I am not persuaded that Writers Studio has proved its case on a balance of probabilities.

The law on confidentiality

123 In *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 ("*I-Admin*") at [64], the Court of Appeal noted that the breach of an NDA and the breach of an equitable obligation of confidentiality are distinct causes of action. Writers Studio, however, has not drawn a distinction between either in their written submissions, despite having claimed damages for Mr Chin's breach of the NDA and/or the duty of confidentiality. Given the differences between the breach of an NDA, and the breach of the duty of confidentiality, it is important that such a distinction be drawn. For one, an action for the breach of an NDA is rooted in contract – here, the terms of the NDA must be interpreted to determine whether there has been a breach.

124 The duty of confidentiality, however, is an equitable obligation. The traditional approach to an action for breach of confidence, laid down in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 ("*Coco*") (see also *X Pte Ltd v CDE* [1992] 2 SLR(R) 575) requires that the plaintiff establish the following elements:

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139 Defendant's Written Submissions at para 216.11.

(a) That the information in question has the necessary quality of confidence about it.

(b) The information must have been imparted in circumstances importing an obligation of confidence.

(c) There must be an unauthorised use of the information, and in appropriate cases, this use must be to the detriment of the party who originally communicated it.

125 This obligation of confidence may arise by way of a contractual relationship – this usually occurs in cases such as the present one where there was a contract between the plaintiff and the defendant which contained express or implied terms which prohibit the defendant from using or disclosing the confidential information (see *Total English Learning Global Pte Ltd and another v Kids Counsel Pte Ltd and another suit* [2014] SGHC 258 at [82]; *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd and another* [2014] 2 SLR 1045 at [155]–[158]). It is this obligation of confidence which is the "*raison d'etre* of the law of confidence – the defendant must honour, or be made to honour, this obligation of confidence": Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore* at [40.1.1] – [40.1.4] ("*Law of Intellectual Property of Singapore*"). In this regard, it is perhaps useful to canvass the fresh developments as to how the Singapore courts have exercised their equitable jurisdiction.

126 The first decision of interest is that in *LVM Law Chambers LLC v Wan Hoe Keet and another and another matter* [2020] 1 SLR 1083 ("*LVM Law Chambers*"). There, the respondents had applied for an injunction to restrain the appellant law firm from acting in suit no 806 of 2018 ("Suit 806"), which was a proceeding commenced against them for their alleged roles in a Ponzi scheme.

Prior to the commencement of Suit 806, the appellant had acted for the plaintiff in suit no 315 of 2016 ("Suit 315"), which involved similar proceedings brought against the respondent. Suit 315 was resolved on the first day of trial – the settlement agreement, which the appellant was not expressly made party to, contained a confidentiality clause. The respondents contended that the appellant owed them an obligation of confidentiality by virtue of having participated in the settlement negotiations in Suit 315, and that there was a real risk that it would misuse or disclose confidential information if the injunction was not granted. At first instance, the injunction was granted, and the appellant law firm appealed against that decision.

127 The primary issue on appeal concerned the applicable legal principles in deciding whether a lawyer or law firm should be restrained from acting for a plaintiff against the same counterparty in a previous set of proceedings resolved by means of a settlement or mediation (*LVM Law Chambers* at [12(a)]). In this regard, the Court of Appeal noted (*LVM Law Chambers* at [13]–[15]):

> [13] It is clear that if *the lawyer* has *contractually agreed* to be bound by a duty of confidentiality, then that agreement will operate accordingly and whether or not he can act for a subsequent party against the same counterparty in a previous set of proceedings will depend on the precise scope of the duty embodied in the contract itself. However, this was *not* the situation in this appeal as the Appellant never entered into such an agreement, although one did exist between the *parties* to the previous proceedings (see [5] above). Indeed, this particular point *distinguishes* this case from that of the New Zealand Court of Appeal in *Carter Holt Harvey Forests Ltd v Sunnex Logging Ltd* [2001] 3 NZLR 343 ("Carter Holt"), where the lawyers in question had signed confidentiality agreements in their personal capacity prior to taking part in the mediation. We also note that in this last-mentioned case, the confidentiality agreements which the lawyers signed were "sufficiently wide to encompass everything which occurred as part of the mediation process" (see *Carter Holt* at [23]).
>
> 14 However, even if (as is the situation in this appeal) the lawyer concerned has not entered into a contractual agreement of confidentiality, that is not necessarily an end to the matter.

> In *limited* circumstances, an *equitable duty of confidence may* be imposed by the court, such that it may be inappropriate for the lawyer (or law firm) concerned to act for a party against the same counterparty in a previous set of proceedings. What, then, might these circumstances be?
>
> 15 In our view, a good starting point would be the test for breach of confidence laid down by Megarry J in the seminal English High Court decision in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 (which has been cited and applied by the Singapore courts (see, *eg*, the decision of this court in *ANB v ANC and another and another matter* [2015] 5 SLR 522 at [17])) – albeit *modified* slightly having regard to the nature of the precise issue before this court and the relevant case law which will be considered briefly below. In this connection, we also gratefully draw (in part) from the learned judgment of Gummow J in the Australian Federal Court decision of *Smith Kline & French Laboratories (Aust) Limited v Secretary, Department of Community Services and Health* (1990) 22 FCR 73 (at 87). Put simply, the counterparty in the previous set of proceedings must establish that:
>
> > (a) the information concerned must have the necessary quality of confidence about it;
> >
> > (b) that information must have been received by the lawyer (or law firm) concerned in circumstances importing an obligation of confidence; and
> >
> > (c) ***there is a real and sensible possibility of the information being misused***.
>
> [emphasis in original in italics; emphasis added in bold italics]

128 Just three days later, the Court of Appeal handed down the judgment in *I-Admin*, where the court observed that the equity-based action for breach of confidence protected two interests:

> (a) Wrongful gain interest: where the defendant has made unauthorised use or disclosure of confidential information and thereby gained a benefit; and
>
> (b) Wrongful loss interest: where the plaintiff is seeking protection for the confidentiality of the information *per se*, which is loss suffered

so long as a defendant's conscience has been impacted in the breach of the obligation of confidentiality.

129 The court in *I-Admin* further laid down, what has been termed the "modified approach" (*I-Admin* at [61]). Under the "modified approach", if the relevant information had the necessary quality of confidence about it and if it was imparted in circumstances importing an obligation of confidence, an action for the breach of confidence would be presumed. This presumption could be rebutted if the defendant could adduce proof that his/her conscience was not affected in the circumstances in which the plaintiff's wrongful loss interest had been harmed or undermined.

130 If there was any doubt as to the scope of the decision in *I-Admin*, and the extent to which it had changed the law on breach of confidence, that was subsequently clarified by the Court of Appeal in *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] SGCA 29. There, the Court of Appeal stated that the decision in *I-Admin* did not set out to turn the law on breach of confidence on its head by replacing the traditional *Coco* approach in its entirety (*Lim Oon Kuin* at [39]). The *I-Admin* approach was intended to specifically fill the lacuna in the law in so far as the legitimate objective of protecting the wrongful loss interest was concerned. Here, a legal burden was imposed on the defendant to show that his/her conscience was not affected – an evidential burden would be simply insufficient to protect the plaintiff's interest in the confidential information.

131 The court in *Lim Oon Kuin* further cited, with approval (at [41]), the following passages from the *Law of Intellectual Property* (at [41.3.10]–[41.3.11]):

> It is also likely that the Court of Appeal intended to further limit the application of the 'modified approach' to cases involving unauthorised acquisition of the confidential information, that is, the 'taker' cases. This conjecture is based on the fact that the court placed a fair amount of emphasis on the defendants' acquisition (via [*the former employees*]) of the confidential information without the plaintiff's knowledge, and more generally, how technology had made it much easier for a person to access and download confidential information without consent.
>
> There is another reason for this conjecture. Three days before the issuance of the judgment in *I-Admin*, the Court of Appeal issued a judgment in *LVM Law Chambers LLC v Wan Hoe Keet*, where breach of confidence was raised as a cause of action. The defendant in this case was not a 'taker' of confidential information. The defendant was a lawyer who had acted for a party in a dispute against the plaintiffs arising out of a Ponzi scheme. After negotiations conducted by the parties' solicitors, this dispute was eventually settled. When the defendant was engaged to act for another party *ABC* in a suit against the plaintiffs in relation to the same Ponzi scheme, the plaintiffs sought an injunction to prevent the defendant from acting for *ABC* in this second suit. The plaintiffs claimed that there was confidential information arising out of the circumstances surrounding the settlement of the first dispute, and that the defendant being privy to this confidential information was bound by an equitable obligation of confidence. On the third element (misuse of the confidential information), the Court of Appeal held that this element would be satisfied if there was a 'serious and reasonable possibility' of misuse of the confidential information by the defendant. Significantly, the appellate court placed the burden of proving the existence of such possibility of misuse squarely on the *plaintiffs*. In this case, the plaintiffs failed to discharge this burden and, accordingly, the Court of Appeal refused to grant the injunction sought by the plaintiffs.
>
> [emphasis in original]

132 Therefore, if one looks at the decision in *Lim Oon Kuin*, and the court's discussion of its previous decisions, it would appear that there are *at least* two broad approaches to the law of confidence in Singapore. Here, the "modified approach" would apply to what Prof Ng-Loy terms "taker" cases – these are cases where the defendant has acquired the plaintiff's confidential information without their knowledge. In such cases, it was the "wrongful loss" interest that

would be at stake. Because the traditional approach to the law of confidence imposed a requirement of unauthorised use and detriment, the wrongful gain interest had been overemphasised at the expense of the wrongful loss interest: *I-Admin* at [58]. This necessitated the "modified approach" and the shifting of the legal burden onto the defendant to prove that their conscience was unaffected – this serves to protect the plaintiff's right to preserve the confidentiality of its information, which was the substance of the wrongful loss interest: *Lim Oon Kuin* at [38].

133 The traditional approach in *Coco*, however, would continue to apply in cases where the "wrongful gain" interest was at stake: *Lim Oon Kuin* at [39] and [41]. Here, the Writers Studio would bear the burden of proof in showing that there had been an unauthorised use of the information, to Writers Studio's detriment.

134 Writers Studio, however, did not appear to be aware of the development in *I-Admin* despite the fact that the present claim was commenced after the Court of Appeal had handed down its decision in that case. This was evident from the manner in which Writers Studio had framed their pleadings which were based on the requirements set forth in *Coco*. Subsequent amendments made to the statement of claim in September 2021 also did not affect Writers Studio's pleadings on the confidentiality point insofar as the equitable obligation of confidence was concerned. Writers Studio, therefore, appeared to have proceeded on the basis that the law was as it stood prior to *I-Admin* (*ie*, the traditional approach under *Coco*).

135 This, to my mind, means that it is now not open to Writers Studio to rely on the "modified approach" in *I-Admin* and assert that Mr Chin bears the legal burden of proof of showing that his confidence was not affected. While there

may have been some uncertainty as to whether the burden imposed on Mr Chin in the "modified approach" was an evidential or legal one (see Saw Cheng Lim, Chan Zheng Wen Samuel and Chai Wen Min, "Revisiting the Law of Confidence in Singapore and a Proposal for a New Tort of Misuse of Private Information" (2020) 32 Singapore Academy of Law Journal 891 at [22]), it was always open to Writers Studio to have pleaded the point. After all, pleadings are meant to give the other party notice of one's case. Writers Studio, having not pleaded whether it was the wrongful loss or wrongful gain interest that was at stake, must now let the chips lie where they have fallen. I would add that in future cases, now that *Lim Oon Kuin* has provided clarity on the "modified approach" in *I-Admin*, counsel should take care to plead with specificity, whether they are proceeding on the basis of the "wrongful loss" or "wrongful gain" interest.

136 In any event, I would further hold that the wrongful loss interest was not engaged in the present case. That interest is only engaged in cases where the defendant has 'taken' the confidential information – for instance, in *I-Admin* itself, the appellant's source code was copied by the first and second respondents, who were former employees which later left to set up their own rival company (the third respondent). The present case is quite different. Unlike the situation in *I-Admin*, where the respondent had acquired the confidential information without the appellant's knowledge or consent, whatever confidential information Mr Chin possessed was passed to him by Writers Studio.

137 I therefore proceed on the basis that it was the wrongful gain interest that was at stake in the present case, and the traditional formulation in *Coco* applied. As I explain below, the Writers Studio's claims for breach of the NDA

and the duty of confidentiality fail because they have been unable to prove their case on a balance of probabilities.

The Confidential Information

138 As regards Mr Chin's private contacting of Writers Studio's Clients, I make one preliminary observation. Writers Studio seems to be itself unclear as to the condition upon which Mr Chin could do so. For example, the contemporaneous evidence upon which Writers Studio relies shows that Ms Oh acceded to Mr Chin's request on the condition that the "liaising is uniform and done in a group with me". Ms Oh also explained that group chats are "safer" and expressed her concern of legal suits against Writers Studio.[140] Ms Oh later confirmed that same stance, instructing Mr Chin that he was to "use this line to communicate to them. Once they join, form sales chat".[141] Nevertheless, Writers Studio's case is that Mr Chin *could* contact its Clients privately if Ms Oh was "made aware of the communications". If so, then it is for Writers Studio to show that Mr Chin communicated with its Clients *without Ms Oh being made aware of any such communications*.

139 More pertinently, Writers Studio did not even cite the evidence upon which it seeks to rely in support of its alleged discovery of Mr Chin's breaches on 12 September 2020 (see [117] above) in either the body of its submissions or in the footnotes. That particular part of its submissions appears to me a mere repetition of its pleadings.[142] Quite apart from the allegation of Writers Studio's *discovery* of the alleged breach, Writers Studio also did not point me to the

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140 SDB at p 60 (Reply (Amendment No 1) at para 8.5); Plaintiff's Written Submissions at para 29; AB at p 217 (Screenshot of WhatsApp Correspondence); Transcript dated 5 November 2021 at p 115, lines 20–31 and p 116, lines 8–14.

141 AB at p 222 (Screenshot of WhatsApp Correspondence dated 17 November 2019).

142 SDB at pp 28–29 (Statement of Claim (Amendment No 2) at para 16).

specific evidence which proves its allegation that Mr Chin "encouraged" Writers Studio's Clients to "contact him privately" in breach of the NDA – whether through the 4599 Number, the 9693 Number or social media platforms. I am satisfied that the Clients could have received Mr Chin's number by *another* way – that is, by Ms Oh adding the 9693 Number to group chats on her own initiative[143] and the publication of the 4599 Number on Writers Studio's brochures.[144]

140 In the circumstances, I am not satisfied that Writers Studio has proved the alleged breaches of the NDA and/or duty of confidentiality by Mr Chin. I thus need not consider whether the Confidential Information had lost its quality as confidential when Clients had reached out to Mr Chin and "voluntarily disclosed and made available their contact details" to him. *Even if* Mr Chin did contact Writers Studio's Clients privately without making the same known to Ms Oh, Writers Studio has not demonstrated the loss or detriment suffered *as a result of such private communication*.

141 As to the continued teaching of [B], I am likewise of the view that Writers Studio did not prove that Mr Chin gave an undertaking *not* to continue teaching *[B]* in particular. Indeed, taking its case at its very highest, Writers Studio merely argued that Mr Chin should have *expressly indicated* the teaching of [B] to be excluded from the Undertaking. With respect, I cannot agree with Writers Studio's submission. The Undertaking *expressly excludes* Mr Chin's "students whom he taught before he joined" Writers Studio.[145] I am thus unable

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143 CKYA at p 170 (Screenshot of WhatsApp Group Chat Participants dated 9 February 2019); Transcript dated 12 November 2021 at p 110, lines 2–23.

144 CKYA at pp 159–160 (Brochures for Innova Studio).

145 OYYCA at p 533 (Certified Transcript for S 1017/2020 dated 3 November 2020 at p 2).

to agree that it is then for Mr Chin to expressly *name* [B] to be excluded from the Undertaking. On the evidence before me, I find that Mr Chin had taught [B] *prior* to [B] even joining Writers Studio and Mr Chin did not thereby breach the Undertaking.[146]

The teaching materials

142 I begin by addressing the teaching materials which Mr Chin allegedly failed to return. On 21 and 22 September 2022, Mr Chin did return some teaching materials. The only issue is whether Mr Chin failed to return *all* of the teaching materials in his possession during that handover. In my judgment, Writers Studio failed to prove its case that Mr Chin had indeed failed to do so. I agree with Mr Chin's position that it is for ***Writers Studio*** to particularise and show precisely *what documents Mr Chin had failed to return which he had in his possession*. It is not enough to simply list generic types of documents such as "worksheets", "holiday programme materials" and "trial lesson materials" (see [31] above) as they do not indicate the *documents* which Mr Chin has yet to return (see *Risk-X Sdn Bhd v Capital Market Risk Advisor Sdn Bhd & Ors* [2017] 8 MLJ 475 at [40]–[43]).

143 For completeness, I note that Mr Chin submits that not all of the teaching materials are confidential as it copies questions from common assessment books available for sale to the public.[147] Given my findings, there is no need for me to determine whether the teaching materials are confidential for the reason that Mr Chin raises. That is because *even if* all of the teaching materials are confidential, I find that Writers Studio fails to prove its case on a balance of probabilities.

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146 Yik Kar Weng's AEIC dated 29 September 2021 at paras 5 and 7.

147 Defendant's Written Submissions at para 25.

144 In respect of Mr Chin's alleged request to remove the headers of certain teaching materials, I find two difficulties with Writers Studio's case. First, Writers Studio does not dispute that there might have been a misunderstanding between parties as to what *header* Mr Chin sought to remove. Writers Studio only emphasises that Mr Chin failed to raise such misunderstanding contemporaneously. However, I find that Mr Chin had sufficiently explained that he was unable to clear the misunderstanding as he was "kicked out" of the WhatsApp group chat shortly after the issue was brought to his attention.[148] Mr Chin also did not wish to clarify with Ms Oh separately thereafter because she was unavailable and he did not want to "pester" her about it.[149] I accept Mr Chin's consistent testimony that he had sought to remove the worksheet header for formatting issues and not specifically Writers Studio's logo.[150] Ms Oh's testimony as to what Ms Phu had informed her was Mr Chin's intention (*ie*, removal of Writers Studio's or Innova Studio's logo) is insufficient to found Writers Studio's claim against Mr Chin in this regard.

145 The second – and insurmountable – difficulty is that Writers Studio fails to establish any *loss and/or detriment suffered*. Taking Writers Studio's position at its highest and *even if it could prove that Mr Chin asked Ms Phu to remove its* ***logo***, it is unclear to me how such a request could have caused Writers Studio to suffer loss and/or detriment. Even though this is a bifurcated trial and Writers Studio need not tender evidence on the *quantum* of losses suffered, it must – for the purposes of *liability* – nevertheless demonstrate that it *did suffer loss or detriment*.

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148 Transcript dated 12 November 2021 at p 43, lines 18–25.

149 Transcript dated 12 November 2021 at p 49, lines 29–30.

150 Transcript dated 12 November 2021 at p 44, lines 9–14 and p 48 at lines 8–18.

146 I am thus not persuaded that Writers Studio proved its case on a balance of probabilities in this regard.

Conclusion

147 The present dispute should have been fairly straightforward. But the manner in which parties pleaded their cases and framed their submissions resulted in this case being both longer and more complicated than it should have been. The haphazard manner in which parties pleaded their cases obfuscated the true issues at the core of Writers Studio's claim against Mr Chin. It was only at the trial that counsel for Writers Studio indicated that it would like this Court to make a finding as to whether Mr Chin was an employee of Writers Studio so as to assist with the CPF Board investigations (even though this was not strictly necessary to determine Writers Studio's claim against Mr Chin). Time was also wasted at the trial when counsel spent time pursuing lines of inquiry that were immaterial to the determination of the present dispute.

148 Having regard to the parties' arguments and the evidence before me, I dismiss Writers Studio's claim against Mr Chin for the reasons above. I shall hear the parties on costs.

Lee Seiu Kin
Judge of the High Court

Koh Weijin, Leon and Elsie Lim Yan (N S Kang) for the plaintiff;
Hsu Sheng Wei Keith and Nico Lee Yin Hao (Emerald Law LLC) for the defendant.