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

[2022] SGHC 167

Suit No 744 of 2018

Between

3D Networks Singapore Pte Ltd

… *Plaintiff*

And

(1) Voon South Shiong
(2) Sunway Digital Pte Ltd

… *Defendants*

JUDGMENT

[Contract — Illegality and public policy — Restraint of trade]
[Contract — Misrepresentation — Fraudulent]
[Equity — Fiduciary relationships — Duties]
[Employment Law — Employees' duties]
[Confidence — Breach of confidence]
[Tort — Inducement of breach of contract]
[Tort — Conspiracy]

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v
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18 July 2022 Judgment reserved.

Chan Seng Onn SJ:

Introduction

1 The tale told by the plaintiff in this matter is one familiar to most companies: a trusted employee resigns and collaborates with a competitor, and in so doing, sweeps up with him a large swathe of his former employer's clients and other employees.

2 The defendants, *ie*, the formerly trusted employee (the "first defendant") and the competitor company he collaborated with (the "second defendant"), tell a different story.

The parties

3 The plaintiff is a Singapore-incorporated company in the business of supply, installation and implementation of information technology systems, with affiliated companies in various countries.[1] It is a subsidiary of Planet One Pte Ltd ("Planet One").[2]

4 The first defendant was an employee of the plaintiff. When he left the plaintiff on 15 April 2018, he held the positions of Country Manager, Singapore and Head of Global Accounts Management.[3] The first defendant is also the sole shareholder and director of Juice Master Pte Ltd ("JMPL"), a company incorporated in Singapore on 18 July 2014. JMPL is in the business of selling fresh fruit juice.[4]

5 The second defendant is a company incorporated in Singapore in January 2018.[5] Its chief executive officer and sole director is Sng Sheau Huei ("Mr Sng").[6] Mr Sng describes the second defendant as being in the business of supplying, customising, installing and implementing digital transformation solutions, by which he means the integration of digital technology into all areas of a business.[7] The second defendant has also branched out into various specific niches, such as AI software in the healthcare and education industries.[8] Apart

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1 Statement of Claim (Amendment No 3) dated 19 May 2021 ("SOC") at para 2.

2 Ambrose's AEIC at para 34.

3 Voon's AEIC at paras 7 and 19.

4 Agreed Bundle Vol 16 ("16 AB") 60–61.

5 Defence of the 2nd Defendant (Amendment No 2) dated 4 June 2021 ("2D's Defence") at para 10.

6 Sng's AEIC at para 1.

7 Sng's AEIC at para 13.

8 Sng's AEIC at paras 14 and 15.

from Mr Sng, Mr Samuel Tan, the second defendant's chief operating officer, also features prominently in this matter. Prior to his employment with the second defendant, Mr Samuel Tan was employed by the plaintiff from 2009 to 2013.

Background

The first defendant's employment with the plaintiff

6 The first defendant joined the plaintiff on 9 April 2007. The terms of his employment were initially governed by two documents: the letter offering him employment (the "Employment Letter") and a non-disclosure agreement (the "NDA"). In 2011, the first defendant signed a third document known as the "Conduct Guide", which set out certain practices and procedures which employees of the plaintiff were required to follow.

7 In the 11 years that he was with the plaintiff, the first defendant assumed many positions.[9] By the time he left, he was part of the senior management of the plaintiff, and reported directly to its chief executive officer.[10] His role entailed substantial contact with the plaintiff's clients and suppliers, with his network of connections having been built up over the years.[11] Further, the first defendant had considerable input in setting sales targets for each country manager and for each salesperson in the Global Accounts team. He was also heavily involved in the hiring, promotion and remuneration of sales employees,

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9 Voon's AEIC at para 7.

10 Ambrose's AEIC at para 16.

11 SOC at para 40; Ambrose's AEIC at paras 11–12.

and had the power to approve claims for reimbursement and applications for leave by sales employees.[12]

8 During his employment, the first defendant also incorporated a separate business venture, JMPL, on 18 July 2014, and was its sole director and shareholder.[13] JMPL's primary business was to sell fruit juice under the brand of Beesket Juice Bar ("Beesket").[14] There is no indication that the plaintiff objected to the first defendant's involvement with JMPL *per se*.

The setting up of the second defendant

9 Towards the end of 2017, Mr Sng met the first defendant, the two of them having been acquainted for a number of years already.[15] Mr Sng shared that he was considering setting up a new entity in the digital transformation business. As the first defendant demonstrated some interest in this, Mr Sng asked the first defendant to share his thoughts.[16]

10 As a result of this discussion, the first defendant sent Mr Sng a detailed business plan in October 2017. The two of them continued to correspond over the next few months on this matter.[17]

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12 Voon's AEIC at paras 10–12; Ambrose's AEIC at para 10.

13 Voon's AEIC at paras 124–125.

14 SOC at para 40; Defence of the 1st Defendant (Amendment No 1) dated 14 October 2020 ("1D's Defence") at para 76.

15 Sng's AEIC at para 20.

16 Sng's AEIC at para 20.

17 Sng's AEIC at para 21.

The first defendant's departure from the plaintiff

11 On 16 March 2018, the first defendant resigned from the plaintiff; his last day of work was 15 April 2018.[18] Shortly before the first defendant's last day of work, on 13 April 2018, the plaintiff and JMPL entered into a consulting agreement, whereby JMPL was to provide the plaintiff with consultancy services from 16 April 2018 to 15 July 2018.[19] It is not disputed that the main purpose of this consulting agreement was for the *first defendant* to provide advice and assistance to the plaintiff as an external consultant.[20]

12 Shortly after the first defendant's last day of work, on 17 April 2018, JMPL also entered into an agreement with the second defendant.[21] Under this agreement, JMPL was to provide business development services to the second defendant for a period of 12 months. Once more, notwithstanding the fact that it was JMPL which was party to an agreement with the second defendant, it was the *first defendant* who was providing services to the second defendant.[22] The reason for JMPL's involvement was apparently because the second defendant could only issue invoices to an entity.[23]

13 Shortly after JMPL's agreement with the second defendant, the plaintiff learned that the first defendant was providing services to the second defendant.

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18 Voon's AEIC at para 19.

19 Voon's AEIC at p 39.

20 Ambrose's AEIC at para 7; Voon's AEIC at para 21.

21 Voon's AEIC at para 29.

22 Voon's AEIC at para 30.

23 Voon's AEIC at para 30; Sng's AEIC at para 23.

Hence, on 19 April 2018, the plaintiff terminated its consulting agreement with JMPL.[24]

14 The first defendant's departure from the plaintiff coincided with a steady stream of employees leaving the plaintiff to join the second defendant between March and August 2018. These eight employees were:[25]

(a) Jenny Woo Sok Leng ("Ms Woo"), who held the title of Sales Administrator when she left the plaintiff;

(b) Tay Chek Kwang ("Mr Tay"), Solution Consultant (Pre-Sales);

(c) Alicia Tan Kar Mun ("Ms Tan"), Account Manager;

(d) Liau Ling Kai ("Mr Liau"), Solution Consultant (Pre-Sales);

(e) Cazaria Carol Lee Song Leng ("Ms Lee"), Service Account Manager;

(f) Kurniawan Chandrajaya ("Mr Kurniawan"), Solution Consultant (Pre-Sales);

(g) Lim Puay Koon ("Mr Lim"), Regional Project Manager; and

(h) Yeo Choon Sheng ("Mr Yeo"), Head of Solution (Pre-Sales).

15 For completeness, a ninth employee, Lerraine Chua ("Ms Chua"), who was an Account Manager, also left the plaintiff in this same period. She applied

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24 Ambrose's AEIC at para 9.

25 PCS at para 114.

to join the second defendant but did not accept the employment offer in the end. I shall refer to these nine employees as the "Former Employees".

The parties' cases

16 The primary thrust of the plaintiff's case against the first defendant concerns the events surrounding the first defendant's departure. The plaintiff claims that the first defendant (a) solicited the Former Employees along with suppliers and customers of the plaintiff and diverted them to the second defendant; and (b) misappropriated the plaintiff's confidential and proprietary information. There is also a secondary edge to the plaintiff's case, which has to do with alleged misconduct on the first defendant's part throughout his employment with the plaintiff, through his handling of remuneration and reimbursements as well as the utilisation of the plaintiff's resources for the benefit of JMPL.

17 Arising from these events, the plaintiff submits that the first defendant is liable for breach of contract, breach of fiduciary duties, breach of implied duties of good faith and fidelity, breach of confidence and fraudulent misrepresentation.

18 In addition, the plaintiff claims that both defendants induced the Former Employees to breach their employment contracts. Further, both defendants are said to be liable in both unlawful means conspiracy and lawful means conspiracy in relation to the events surrounding the first defendant's departure from the plaintiff.

19 Regarding the plaintiff's claims in unlawful means conspiracy and lawful means conspiracy, the defendants submit that the discussion between the first defendant and Mr Sng around the end of 2017 did not, in fact, amount to

an agreement. They also argue that the plaintiff has failed to produce sufficient evidence to prove its claims on the balance of probabilities.

Procedural history

20 The plaintiff commenced the present action against the defendants on 25 July 2018. An injunction was granted on 26 September 2018, prohibiting the defendants from using or disclosing the plaintiff's trade secrets and confidential or proprietary information and from soliciting or inducing the plaintiff's employees to terminate their employment with the plaintiff.

21 The trial was bifurcated, and the liability stage of the trial was heard before me.

Issues to be determined

22 The following issues arise for determination in this matter:

(a) whether the first defendant breached the express contractual obligations he owed to the plaintiff;

(b) whether the first defendant breached any implied duties of good faith and fidelity owed to the plaintiff;

(c) whether the first defendant breached any fiduciary duties owed to the plaintiff;

(d) whether the first defendant is liable for fraudulent misrepresentation;

(e) whether the defendants are liable in breach of confidence;

(f) whether the defendants are liable for inducing the Former Employees to breach their employment contracts;

(g) whether the defendants are liable in unlawful means conspiracy; and

(h) whether the defendants are liable in lawful means conspiracy.

23 I shall address each of these issues in turn, starting with the plaintiff's claim in breach of contract against the first defendant, which encompasses most of the wrongdoings alleged to have taken place in this case.

Breach of contract

24 It is not disputed that the documents setting out the contractual obligations between the plaintiff and the first defendant were the Employment Letter, the NDA and the Conduct Guide.[26]

25 The relevant contractual obligations said to have been breached by the first defendant may be summarised as follows:

(a) an obligation, during the period of the first defendant's employment and for a period of 12 months thereafter, to not solicit or encourage any employee of the plaintiff to either terminate their employment with the plaintiff or accept employment with any future employer of the first defendant (the "Non-solicitation Obligation");

(b) an obligation, during the period of the first defendant's employment and for a period of 12 months thereafter, to not take away,

[26] 1D's Defence at para 23.

or solicit, or accept employment from, or otherwise perform services for any of the plaintiff's customers, clients or direct or indirect competitors with whom he may have had contact with over the last 12 months of his employment, without the prior written approval of the plaintiff (the "Non-compete Obligation");

(c) an obligation, during the period of the first defendant's employment and thereafter without limit in respect of time, to not use or disclose any confidential information concerning the plaintiff (the "Confidentiality Obligation"); and

(d) an obligation to avoid conflicts of interest (the "Non-conflict Obligation").

26 The plaintiff also refers to two specific clauses, cll 5 and 7, from the Conduct Guide, which are said to have been breached by the first defendant:[27]

> **5. Discrimination and Harassment**
>
> The diversity of Planet One's Employees is a tremendous asset. We are firmly committed to providing equal opportunity in all aspects of employment and will not tolerate any illegal discrimination or harassment of any kind. Examples include derogatory comments based on racial, ethnic or religious characteristics and unwelcome sexual advances.
>
> …
>
> **7. Record-Keeping**
>
> Planet One requires honest and accurate recording and reporting of information in order to make responsible business decisions.
>
> Some employees may use business expense accounts, which must be documented and recorded accurately. …

[27] 1 AB 185–186.

27 It is not disputed that references to "Planet One" in the Conduct Guide are to be construed as references to the plaintiff.

28 I shall first consider the first defendant's argument that the Non-solicitation Obligation and the Non-compete Obligation are unenforceable, before dealing with whether each alleged instance of misconduct on the first defendant's part breaches any of the obligations as set out above.

Enforceability of the Non-solicitation Obligation and the Non-compete Obligation

29 The Non-solicitation Obligation is set out in the Employment Letter and in the NDA:[28]

> Employment Letter cl 13.1(a)
>
> 13.1 During the term of your employment or engagement and for a period of twelve (12) months thereafter, you will not do any of the acts described in (a), (b) or (c) below, directly or through others, either yourself or for any other person or business entity:
>
> (a) You will not solicit or encourage any employee of [the plaintiff] to either terminate his or her employment with [the plaintiff] or accept employment with any future employer of yours.
>
> …
>
> NDA cl 8(a)
>
> 8. I agree that, during the term of my employment or engagement and for a period of twelve (12) months thereafter ["the Period of Restraint"], I will not do any of the acts described in (a), (b) or (c) below, directly or through others, either for myself or for any other person or business entity:
>
> (a) I will not solicit or encourage any employee of the Company to either terminate his or her employment with the Company or accept employment with any future employer of mine;

[28] 1 AB 134 and 138.

…

30 The Non-compete Obligation is similarly encapsulated in the Employment Letter and the NDA:[29]

> Employment Letter cll 13.1(b) and (c)
>
> 13.1 During the term of your employment or engagement and for a period of twelve (12) months thereafter ["Period of Restraint"], you will not do any of the acts described in (a), (b) or (c) below, directly or through others, either yourself or for any other person or business entity:
>
> …
>
> (b) You will not without the prior written approval of the Company take away, or solicit, or accept employment from, or otherwise perform services for any of the Company's customers or clients whom you (or any of your employees, agents or partners) may have had contact within the last twelve (12) months of your employment or engagement with the Company which would by the nature of the employment or engagement will be detrimental or may be perceived to be detrimental to the best interest of the Company by reference to the Company's Intellectual Property Rights, credibility, stature profitability or business or put such Confidential Information and Confidential Materials at risk of exposure or unauthorized use.
>
> (c) You will not without prior written approval of the Company take away, solicit or accept employment from, or otherwise performs services for any of the Company's direct or indirect competitors which are involved in the same or similar business of the Company which would by the nature of the employment or engagement will be detrimental or may be perceived as detrimental to the best interests of the Company by reference to the Company's Intellectual Property Rights, credibility, stature, profitability or business or put such Confidential Information and Confidential Materials at risk of exposure or unauthorized use.
>
> NDA cl 8(b) and (c)
>
> 8 I agree that, during the term of my employment or engagement and for a period of twelve (12) months thereafter

[29] 1 AB 134 and 138.

> ["the Period of Restraint"], I will not do any of the acts described in (a), (b) or (c) below, directly or through others, either for myself or for any other person or business entity:
>
> …
>
> (b) I will not without the prior written approval of the Company take away, or solicit, or accept employment from, or otherwise perform services for any of the Company's customers or clients whom I (or any of my employees, agents or partners) may have had contact within the last twelve (12) months of my employment or engagement with the Company which would by the nature of the employment or engagement will be detrimental or may be perceived as detrimental to the best interests of the Company by reference to the Company's Intellectual Property Rights, credibility, stature, profitability or business or put such Confidential Information and Confidential Materials at risk of exposure or unauthorized use.
>
> (c) I will not without the prior written approval of the Company take away, solicit or accept employment from, or otherwise perform services for any of the Company's direct or indirect competitors which are involved in the same or similar business of the Company which would by the nature of the employment or engagement will be detrimental or may be perceived as detrimental to the best interests of the Company by reference to the Company's Intellectual Property Rights, credibility, stature, profitability or business or put such Confidential Information and Confidential Materials at risk of exposure or unauthorized use.

31 Both of these obligations are covenants in restraint of trade. It is well-established that there cannot be a bare and blatant restriction of the freedom to trade; there must be a legitimate proprietary interest to be protected (*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 [79]). In an employment context, although the two main legitimate proprietary interests which have been identified are trade secrets and trade connection, an employer may also have a legitimate proprietary interest in maintaining a stable, trained workforce (*Man Financial* at [81] and [121]). However, even where a

legitimate proprietary interest is shown, the court will ensure that the covenant in restraint of trade goes no further than what is necessary to protect the interest concerned (*Man Financial* at [79]). In this respect, the covenant must be reasonable in reference to the interests of the parties concerned and reasonable in reference to the interests of the public (*Man Financial* at [75]–[76]).

Legitimate proprietary interests

32 I accept that both the Non-solicitation Obligation and the Non-compete Obligation protect legitimate proprietary interests. As stated in *Man Financial* (at [121]), the maintenance of a stable, trained workforce is a legitimate proprietary interest that the employer is entitled to protect via a non-solicitation clause. The defendants have not disputed that this applies to the Non-solicitation Obligation in the present case.

33 As for the Non-compete Obligation, the plaintiff submits that it has a legitimate interest in protecting its trade connection. In this respect, I accept that the first defendant had a substantial role in interacting with clients and suppliers. I do not find this to be displaced by the first defendant's protestations that he did not have extensive contact with the plaintiff's clients and suppliers on a day-to-day basis.[30] As he admitted in his affidavit of evidence-in-chief and at trial, the first defendant remained in contact with the upper management of the plaintiff's clients and suppliers,[31] and would step in to seal projects[32] or to entertain the plaintiff's clients all over the world[33]. This was supported by

30 Voon's AEIC at paras 16 and 17.

31 Transcript, 26 November 2020 at p 103 line 11 to p 105 line 1 and p 116 line 9 to p 119 line 21.

32 Voon's AEIC at para 16.

33 Transcript, 26 November 2020 at p 111 line 8 to p 112 line 2.

various emails exhibited by the plaintiff which demonstrated that the first defendant took an active role in liaising with and managing clients between 2016 and 2018.[34]

34 I find the present situation to be similar to that in *Tan Kok Yong Steve v Itochu Singapore Pte Ltd* [2018] SGHC 85 ("*Itochu*"). In that case, the defendant ex-employer brought a counterclaim against the plaintiff ex-employee for breach of a non-competition undertaking. The court found that the ex-employee had strong connections with the ex-employer's customers (at [86]), and that given his knowledge and influence over them, he could have easily diverted business from the ex-employer to himself or his new employer (at [87]). The ex-employer therefore had a legitimate interest in protecting its trade connections by way of the non-competition undertaking from interference by the ex-employer post-resignation (at [87]). Although the nature of the relationship between the ex-employee and the ex-employer's customers in *Itochu* appears to have borne a personal element (see [86] of *Itochu*) that does not appear to be present between the first defendant and the plaintiff's clients and suppliers, I do not find that to be a relevant distinguishing factor. The key point is that the first defendant was in a position to divert business from the plaintiff, and that the plaintiff had a legitimate proprietary interest in protecting its trade connection from interference by the first defendant through the Non-compete Obligation.

35 I do not consider to be persuasive the second defendant's objection[35] that the plaintiff had not pleaded or adduced evidence on the legitimate proprietary interest sought to be protected by the Non-compete Obligation. The

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34 Ambrose's AEIC at pp 94–125.

35 2DCS at para 41–42.

enforceability of the Non-compete Obligation is a matter of law and does not have to be pleaded. What matters, for the purposes of enabling the defendants to know the case being brought against them and to respond, are the underlying facts relevant to the Non-compete Obligation, *ie*, the position of the first defendant *vis-à-vis* the plaintiff's clients and suppliers. These facts were adequately pleaded [36] and substantiated [37], and the plaintiff's case on the legitimate proprietary interest was set out clearly in its opening statement.[38] There is therefore no failure of pleadings, evidence or arguments undermining the defendants' ability to put forth their case on this issue.

Reasonableness

36 I turn now to the reasonableness of the Non-solicitation Obligation and the Non-compete Obligation. There is no indication in this case that either obligation would threaten the interests of the public. I therefore focus on the reasonableness of the obligations in relation to the interests of the parties.

37 In respect of the Non-solicitation Obligation, the sticking point is the prohibition on the first defendant from soliciting "any employee". As noted by the court in *Man Financial* (at [110], "it would generally be more difficult to justify a non-solicitation clause which covers the solicitation of just 'any' employee". Indeed, the court elaborated that:

> … [I]f the non-solicitation clause concerned covers employees whose work entails very minimal (or even no) expertise and does not form an integral part of the employer's operations, it would (absent extraordinary circumstances) be extremely difficult for the employer to justify the reasonableness of that particular clause. …

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36 SOC at paras 3, 5 and 6.

37 Ambrose's AEIC at paras 10–20.

38 Plaintiff's opening statement at para 39.

38 There is, of course, the caveat that everything, in the final analysis, depends on the particular factual matrix of the matter (*Man Financial* at [110]). The notable questions that may be asked include the categories of colleagues over whom the employee in question had influence, and the ease with which the employer might replace departed employees (see *Man Financial* at [108]).

39 The plaintiff argues that the first defendant had "a degree" of influence over and knowledge of all the plaintiff's employees.[39] In support of this, the plaintiff's regional legal counsel, Mr Adrian Anand Ambrose ("Mr Ambrose"), testified that the plaintiff has a relatively flat organisational structure, and that the Singapore sales team and the Global Accounts team reported to the first defendant.[40]

40 I do not think that this suffices to demonstrate that the Non-solicitation Obligation goes no further than what is necessary to protect the plaintiff's interest in having a stable, trained workforce. I note that Mr Ambrose's testimony was given in the context of questioning on the sales operations of the plaintiff and the first defendant's involvement therein. However, there are evidently other departments to the plaintiff: for instance, Mr Ambrose's affidavit of evidence-in-chief draws a distinction between the plaintiff's sales team and its engineers.[41] It is also noteworthy that the first defendant's job scope during his employment with the plaintiff was carefully delineated in respect of sales employees only.[42] The plaintiff has not shown that the first defendant possessed influence over *all non*-sales employees to any significant degree. The

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39 PCS at para 584.

40 Transcript, 17 November 2020, p 54 line 13 to p 56 line 17.

41 Ambrose's AEIC at para 61.

42 Ambrose's AEIC at para 10.

plaintiff has also not shown that *all* of its employees were integral to its operations or difficult to replace.

41 Therefore, I find that the plaintiff has not shown that the Non-solicitation Obligation was reasonable as between the parties. It follows that the Non-solicitation Obligation is not valid or enforceable.

42 Turning to the Non-compete Obligation, I accept the plaintiff's submission that the period of restraint of one year is reasonable as an estimate of how long it would take for the plaintiff to rebuild its trade connection. However, the prohibition on any employment or engagement which "by the nature of the employment or engagement will be detrimental or may be perceived to be detrimental to the best interest of the Company" goes well beyond what is necessary to protect the plaintiff's interest in maintaining its trade connection. I note that the breadth of "best interest of the Company" is qualified with the words "by reference to the Company's Intellectual Property Rights, credibility, stature, profitability or business or put such Confidential Information and Confidential Materials at risk of exposure or unauthorized use". However, "credibility, stature, profitability or business" are each still extremely broad; each of them ostensibly encompasses matters which do not relate to the plaintiff's trade connection. To give just one example: say the first defendant joins a competitor in a non-sales capacity – for instance, as an engineer. He does not engage his prior knowledge relating to the plaintiff's trade connection. The plaintiff and the competitor then compete in a tender for a project from a *new* client. The first defendant works on the tender in his capacity as an engineer, and the competitor wins the tender. In so doing, he affects the profitability and business of the plaintiff – in defiance of the prohibition of the Non-compete Obligation – but has not interfered with the plaintiff's trade connection, in the sense of its existing client base. That the Non-compete Obligation extends

beyond such a scenario to employment which may be *perceived* as detrimental only emphasises the point. I therefore find that the Non-compete Obligation was not reasonable as between the parties, and that it is not valid or enforceable either.

Severance

43 At this juncture, the issue of severance arises: can the Non-solicitation Obligation and the Non-compete Obligation be severed in such a way as to preserve some enforceable remnant? The plaintiff appears to have been content to rest its case on the enforceability of these obligations as they are and did not make any submissions on severance. Nonetheless, where a restraint of trade clause is found to be unreasonable, the court should still consider whether the doctrine of severance could apply so that the reasonable part of the clause can be upheld (*CLAAS Medical Centre Pte Ltd v Ng Boon Ching* [2010] 2 SLR 386 at [68]).

44 The prerequisites for severance are (*Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27 ("*Humming Flowers*") at [155]):

(a) The unenforceable provision must be capable of being removed without adding to or modifying the wording of what remains with the remainder continuing to make grammatical sense.

(b) The remaining contractual terms must continue to be supported by adequate consideration.

(c) The severance must not change the fundamental character of the contract between the parties.

45 For the Non-solicitation Obligation, the prohibition on soliciting "any employee" is not susceptible to the "blue pencil" test in any way. As for the Non-compete Obligation, the words "or may be perceived to be detrimental" are an obvious candidate for the "blue pencil" test, leaving the prohibition on employment "which would by the nature of the employment or engagement will be detrimental to the best interest of the Company". However, as I have already noted at [42] above, this would still go well beyond what is necessary to protect the plaintiff's interest in maintaining its trade connection. I should also note that the "notional severance" approach – whereby the court is entitled not just to delete the parties' words but also to alter or even insert words – has not been accepted into Singapore law (see *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 at [32]–[35] and *Humming Flowers* at [174]–[186]).

46 I therefore find that the doctrine of severability does not apply to the Non-solicitation Obligation and the Non-compete Obligation. Thus, while these obligations protect legitimate proprietary interests, the unreasonableness of these obligations renders them unenforceable.

The first defendant's alleged breaches

47 Given my analysis above, only the Confidentiality Obligation, the Non-conflict Obligation and cll 5 and 7 of the Conduct Guide remain to be considered. Therefore, I now turn to consider whether various instances of misconduct alleged against the first defendant have been made out, and whether these constitute breaches of the remaining contractual clauses.

48 As alluded to above, there are two broad categories of alleged misconduct. The first category relates to the first defendant's alleged involvement with the second defendant, encompassing the first defendant's

assistance in setting up the second defendant; the first defendant's solicitation of the plaintiff's employees; and the first defendant's diversion of the plaintiff's customers. The second category of alleged misconduct relates to other misdemeanours during the first defendant's employment with the plaintiff, *ie*, the first defendant's activities concerning his side business, JMPL/Beesket; and the first defendant's manipulation of records and payments relating to himself and other employees of the plaintiff.

Assistance in setting up the second defendant

49 I begin with the first defendant's assistance in setting up the second defendant. The primary instance of alleged wrongdoing in this regard concerns the first defendant's preparation and communication of business plans for setting up the second defendant. On 6 October 2017, the first defendant sent Mr Sng a document titled "Business Plan Proposal" accompanied by a spreadsheet setting out various figures and projections relating to the proposed business. The first defendant followed these up with emails on 17 October 2017, 16 November 2017 and 7 December 2017, elaborating on various aspects of the business plans.

50 The first defendant does not deny that he prepared and sent the business plans to Mr Sng.[43] His explanation for this is that the drafting of the business plans was purely an exercise for Mr Sng to gauge the first defendant's capabilities.[44] To this end, he suggested on cross-examination that the business plans were merely a "story", or a sort of extended "resume", where he just "came and [wrote] whatever [he felt] like".[45]

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43 1DCS at para 34.

44 1DCS at para 34.

45 Transcript, 26 November 2020 at p 136 lines 6–16.

51 However, it is plain from the documents that were sent to Mr Sng that the business plans were not simply a thought exercise by which the first defendant sought to flex his capabilities in the abstract. Two aspects of the business plans stand out.

52 First, the executive summary of the "Business Plan Proposal" specifically alluded to "key members" of the Sales and Support team of a company referred to as "Company A" that was "looking to move on as a team".[46] The team's achievements were listed in exacting detail: for instance, they "[g]rew the business in Singapore from USD6M to USD60M and Asean business from USD20+M to USD90+M".[47] The spreadsheet also contained a section on salaries of certain employees, whose names were "confidential" but who were given abbreviations, which was "based on [a] current compensation structure".[48] Mr Sng subsequently requested the full names of these employees.[49] The first defendant obliged with an expanded spreadsheet sent on 17 October 2017. The names which were provided were the names of the plaintiff's employees.

53 Second, the plans also contained details of the clients envisioned for the business. While these clients were not explicitly referred to by their names, and were instead given only abbreviations as well, they were sorted by their historical sales from the financial years between 2013 to 2017. Copious projections were also given as to the income which could be derived from these clients. A forensically recovered version of the plans, with full names attached

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46 1PBAEIC at p 238.

47 1PBAEIC at p 249.

48 1PBAEIC at p 230.

49 Transcript, 8 September 2021 at p 85 line 20 to p 86 line 9.

to the clients rather than abbreviations, showed that these were the plaintiff's clients as well.

54 In other words, this was no mere pie-in-the-sky proposal. The level of detail and specificity involved in the proposal undermines the plaintiff's suggestion that he was simply writing whatever he felt like. If he was merely spinning a tale from thin air, the details given in the proposal would have been unnecessary, and indeed counterproductive. Anyone can paint a picture of a financially viable business plan by conjuring a fictitious successful team and positive figures. Such a portrait proves only the painter's imagination and not his business acumen. The only way the proposal could have been meaningful in the least is if the details were backed up by reality – that is, if the plan involved an existing team with a proven client base and established incomes and expenditures. As the evidence showed, what the plan disclosed was the *plaintiff's* team, with the *plaintiff's* client base and the *plaintiff's* incomes and expenditures. Information on all of these items falls comfortably within the restrictions of the Confidentiality Obligation, which prohibits the first defendant from revealing "any information concerning the products, organization, business, finances, transactions or affairs of the Company". I find, therefore, that the preparation and communication of the business plans to Mr Sng was a breach of the first defendant's Confidentiality Obligation.

55 Further, the first defendant's preparation and communication of business plans that explicitly contemplated the poaching of his colleagues and subordinates plainly disclosed a conflict of interest. I therefore find that the first defendant also thereby breached the Non-conflict Obligation, as set out in cl 10 of the Employment Letter and cll 2 and 3 of the Conduct Guide:

> Employment Letter cl 10
>
> **10. CONFLICT OF INTEREST**

> You shall not, at any time, directly or indirectly during your service with 3D Networks and/or its related companies, without consent in writing first obtained from 3D Networks and/or its related companies, engage or interest yourself – whether for reward, commission, compensation, or gratuity – whether paid or unpaid, in cash or in kind – in any work or business, or undertake any such office, which would interfere with the performance of your duties with 3D Networks and/or its related companies.
>
> Conduct Guide cl 2
>
> **2. Conflicts of Interest**
>
> … It shall be a conflict of interest for a Planet One employee to work simultaneously for a competitor, client or supplier. …
>
> Conduct Guide cl 3
>
> **3. Corporate Opportunities**
>
> Employees, officers and directors are prohibited from taking for themselves personal opportunities that are discovered through the use of corporate property, information or position without the consent of the Board of Directors. No employee may use corporate property, information, or position for improper personal gain, and no employee may compete with Planet One directly or indirectly. Employees, officers and directors owe a duty to Planet One to advance its legitimate interests when the opportunity to do so arises.

56 There are two further breaches alleged to have been committed by the first defendant in relation to the setting up of the second defendant. The first is that in January 2018, the second defendant's chief operating officer, Mr Samuel Tan, sent emails to the first defendant, as well as Mr Yeo, Mr Liau and Mr Lim, concerning the second defendant's logo, name cards and website.[50] The first defendant responded to these emails, providing some feedback as to the colour of the name cards.[51] The second breach concerns the first defendant's

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50 2 AB 269–391 and 3 AB 165.

51 3 AB 164.

transmission of various internal manuals from the plaintiff to Mr Samuel Tan on 26 January 2018.[52]

57 I find that these actions clearly constituted breaches of the first defendant's contractual obligations. The feedback provided by the first defendant on the name cards was in service of a competitor and was therefore a breach of the Non-conflict Obligation, though *prima facie*, it is difficult to say what damage was sustained by the plaintiff. The transmission of the plaintiff's internal manuals, meanwhile, was a clear breach of the Confidentiality Obligation.

Solicitation of employees

58 The next instance of alleged misconduct involves the first defendant soliciting, encouraging or otherwise causing the Former Employees to terminate their employment with the plaintiff and/or to accept employment with the second defendant. This is said to be a breach of the Non-solicitation Obligation and the Non-conflict Obligation.

59 I have found above that the Non-solicitation Obligation is unenforceable. I shall therefore only consider whether the first defendant's conduct in relation to the departure of the Former Employees from the plaintiff constitutes a breach of the Non-conflict Obligation.

60 I find that the plaintiff's case in this regard has been proven in respect of two of the Former Employees, Ms Chua and Ms Tan. On 3 April 2018, the first defendant sent Mr Samuel Tan the personal details of Ms Chua, along with

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52 3 AB 312–400 and 4 AB 1–67.

information on her remuneration at the time.[53] Shortly after, on 9 April 2018, the first defendant sent Mr Samuel Tan similar details pertaining to Ms Tan, instructing Mr Samuel Tan to "[p]lease help to make an offer to her".[54] Mr Samuel Tan also confirmed during cross-examination that the first defendant had recommended Ms Chua and Ms Tan to the second defendant.[55] At this juncture, the first defendant, Ms Chua and Ms Tan were still employed by the plaintiff. Notwithstanding the fact that Ms Chua did not ultimately join the second defendant, it is plain that in actively assisting the second defendant's solicitation of Ms Chua and Ms Tan, the first defendant breached the Non-conflict Obligation.

61 In respect of the remaining seven Former Employees, the plaintiff invites me to find that the first defendant had assisted the second defendant in soliciting them, by primarily making the following arguments:

(a) First, these seven Former Employees were all named within the business plans which the first defendant provided to Mr Sng.

(b) Second, a number of them – namely, Mr Yeo, Mr Liau, Mr Lim and Ms Lee – had been providing assistance since January 2018 to the second defendant.

(c) Third, the explanations which the defendants provided for how these Former Employees came to be hired by the second defendant were not believable:

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53 5 AB 359.

54 6 AB 3.

55 Transcript, 10 September 2021, p 76 lines 9–19.

(i) The advertisements on the Jobstreet.com website which had supposedly led to the hiring of Ms Lee, Mr Kurniawan, Mr Lim and Mr Yeo had only been put up to obscure the fact that these individuals had been directly solicited; and

(ii) Mr Samuel Tan had lied when he testified that he could not recall the supposed middleman who had referred Ms Woo, Mr Liau, Mr Tay and Ms Lee to the second defendant; in truth, the plaintiff submits, this middleman was the first defendant.

62 Even if I were to take the plaintiff's arguments at their highest, it is important to note that unlike with Ms Chua and Ms Tan, no direct documentary evidence was furnished by the plaintiff for the involvement of the first defendant in soliciting these remaining Former Employees. In the absence of such evidence, only circumstantial observations are left: for instance, that each of these remaining Former Employees had been named in the first defendant's business plans. While, as I have found, the preparation and communication of those business plans constituted a contractual breach on the first defendant's part, I find that the circumstantial observations made by the plaintiff do not suffice to discharge its burden of proof in demonstrating that the first defendant played a direct role thereafter in procuring the departure of these remaining Former Employees for the second defendant. In other words, I find only that the plaintiff breached his Non-conflict Obligation through assisting in the second defendant's solicitation of Ms Chua and Ms Tan.

63 The plaintiff's case in breach of contract against the first defendant in relation to the solicitation of the Former Employees is therefore dealt with. However, it is convenient to consider, at this juncture, whether the seven Former Employees, apart from Ms Chua and Ms Tan, had been solicited to join the

second defendant. It is the second defendant's position that these seven individuals each approached the second defendant of their own accord. Mr Samuel Tan's evidence was that in his previous employment with the plaintiff, he had made the acquaintance of each of these seven individuals, with the exception of Ms Lee.[56] Mr Kurniawan,[57] Mr Lim,[58] Ms Lee[59] and Mr Yeo[60] had emailed Mr Samuel Tan, citing the second defendant's Jobstreet.com advertisements. Ms Lee had also learned of an opening in the second defendant through a middleman, as had Ms Woo, Mr Liau and Mr Tay.[61]

64 I find that it is more likely than not that the second defendant did solicit the remaining seven Former Employees. These employees were listed in the business plans which the first defendant prepared. Moreover, a number of these Former Employees were providing assistance to the second defendant even before their departure from the first defendant, as I have already discussed. The majority of these Former Employees also joined the second defendant within mere days of their last day of employment with the plaintiff. In the circumstances, it appears likely that there was some form of connection between the second defendant and these employees prior to their respective dates of departure from the plaintiff. The question is whether it was the second defendant who initiated this connection, or whether, as is the second defendant's case, it was the Former Employees themselves who approached it.

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56 Samuel Tan's AEIC at para 32, 36, 39, 42; Samuel Tan's supplementary AEIC at paras 8 and 10.

57 Samuel Tan's AEIC at p 25

58 Lim Puay Koon's AEIC at para 16.

59 Samuel Tan's AEIC at p 32.

60 Yeo Choon Sheng's AEIC at para 11.

61 Transcript, 14 September 2021, p 119 lines 14–22.

65 In this regard, I do not find the second defendant's explanations for how these seven Former Employees came to learn of openings in the second defendant to be believable. As I have alluded to, it is the plaintiff's case that the Jobstreet.com advertisements were manufactured. I am of the view that this is likely to be true. Although the recruitment efforts of the second defendant had begun as early as January 2018, it was not until May 2018 that the Jobstreet.com advertisements were put online.[62] It was the testimony of Mr Samuel Tan that in the interim, the second defendant had been relying on recruitment agencies. If that had indeed been the case, why did the second defendant turn to Jobstreet.com? The plaintiff points out that two days before the second defendant purchased an advertisement package from Jobstreet.com, the plaintiff's solicitors had sent a cease-and-desist letter to the second defendant, citing the defendant's efforts to solicit the plaintiff's employees (though without further details) and demanding an end to such efforts.[63] I agree that the proximity of the cease-and-desist letter to the Jobstreet.com advertisements gives rise to an inference of cause and effect: that is, the advertisements were put up as a cover story for solicited employees to cite. It should also be noted that although the summary report provided by Jobstreet.com showed that around 500 job applicants had responded to the advertisements taken out by the second defendant,[64] according to the second defendant's own records a mere 12 applicants (including Ms Lee, Mr Lim, Mr Yeo and Mr Kurniawan) who were interviewed or had their curriculum vitae reviewed by the second defendant had come to it through Jobstreet.com.[65]

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62 Transcript, 13 September 2021, p 19 lines 15–25.

63 11 AB 75.

64 2PBICP 110.

65 Exhibit (2)D-6.

66 Similarly, I am not convinced that Ms Lee, Mr Woo, Ms Liau and Mr Tay had approached the second defendant of their own volition after hearing of job openings through word of mouth. I find it curious that none of the witnesses called could recall the identity of this helpful middleman. In particular, one would have expected Mr Samuel Tan to bear some gratitude to the person who supposedly introduced four worthy applicants to him, making up a full 20% of the employees hired by the second defendant in 2018.[66] Although I do not agree with the plaintiff that I should infer that this middleman was the first defendant, I am of the view that the evidence as to this supposed middleman is utterly unreliable.

67 Taking all of the evidence into account, I find that on a balance of probabilities, it is likely that the second defendant did solicit these seven Former Employees.

Diversion of customers and opportunities

68 The plaintiff also alleges that the first defendant provided assistance to the second defendant with the aim of diverting customers, opportunities and resources from the plaintiff. Although a litany of such diversions was set out in the pleadings, by the time of closing submissions, the plaintiff's case had sharpened to focus on a select few of its customers. These were: Singapore Power ("SP"), Professional Testing Services ("PTS"), Leap Networks Pte Ltd ("Leap Networks"), Acoustic & Lighting System Pte Ltd ("A&L"), CWT Limited ("CWT") and AT&T Worldwide Telecommunications Singapore Pte Ltd ("AT&T").

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66 Exhibit (2)D-6.

(1) Singapore Power

69 The plaintiff's pleaded case against the first defendant in relation to SP was as follows. From April to May 2018, the first defendant, together with some of the Former Employees, compiled a list of equipment and services which the plaintiff had provided to SP, as well as projects undertaken by the plaintiff for SP. This list, referred to as the "SP Inventory List", was disclosed to the second defendant. Through the use of the plaintiff's confidential information therein, and through leveraging the knowledge of the plaintiff's Former Employees, the first defendant assisted the second defendant in securing a number of projects from SP, in breach of his Non-conflict Obligation and Confidentiality Obligation. These projects are referred to as the "SCADA 227 Project", the "OEM2 Project", the "Remote Access Solution Project", and the "Cisco ESA and SMA Servers Maintenance Project".

70 The plaintiff also submitted that by much the same means, the first defendant assisted the second defendant in obtaining another project from SP in breach of his Non-conflict Obligation, namely the "SCADA 216 Project". However, this claim was not set out in the plaintiff's pleadings. I therefore do not allow this claim.

71 Returning to the plaintiff's pleaded narrative, I note that it suffers from a number of flaws. First, as the second defendant points out, the plaintiff did not ultimately adduce any evidence to show that the first defendant had assisted with the compilation of the SP Inventory List.[67] Indeed, in its written submissions, the "true sequence of events" by which the plaintiff claimed the

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67 2DCS at para 398.

SP Inventory List had been compiled and sent to the second defendant did not feature the first defendant at all.[68]

72 Second, in relation to the SCADA 227 and OEM2 Projects, the plaintiff was able to show in cross-examination that the first defendant was aware of these projects.[69] The plaintiff was also able to show that the second defendant, in the process of submitting and winning with its bids for these projects, had solicited from the first defendant and the plaintiff's Former Employees the plaintiff's pricing strategy.[70]

73 However, it should be noted that the Non-conflict Obligation is limited only to an employee's term of employment. I reproduce the relevant portions of the Non-conflict Obligation here:[71]

> Employment Letter cl 10
>
> **10. CONFLICT OF INTEREST**
>
> You shall not, at any time, directly or indirectly *during your service with 3D Networks and/or its related companies*, without consent in writing first obtained from 3D Networks and/or its related companies, engage or interest yourself – whether for reward, commission, compensation, or gratuity – whether paid or unpaid, in cash or in kind – in any work or business, or undertake any such office, which would interfere with the performance of your duties with 3D Networks and/or its related companies.
>
> Conduct Guide cl 2
>
> **2. Conflicts of Interest**
>
> … It shall be a conflict of interest for a Planet One employee to work *simultaneously* for a competitor, client or supplier. …

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68 PCS at para 189.

69 Transcript, 3 December 2020, p 135 line 22 to p 136 line 4.

70 Transcript, 13 September 2021, p 215 line 20 to p 216 line 25 and p 219 line 13 to p 220 line 24.

71 1AB 133 and 184.

> Conduct Guide cl 3
>
> **3. Corporate Opportunities**
>
> Employees, officers and directors are prohibited from taking for themselves personal opportunities that are discovered through the use of corporate property, information or position without the consent of the Board of Directors. No employee may use corporate property, information, or position for improper personal gain, and no employee may compete with Planet One directly or indirectly. Employees, officers and directors owe a duty to Planet One to advance its legitimate interests when the opportunity to do so arises.
>
> [emphasis added in italics]

74 It is clear that cl 10 of the Employment Letter and cl 2 of the Conduct Guide imposed an obligation only insofar as the first defendant was an employee of the plaintiff. The present tense of cl 3 of the Conduct Guide suggests the same, particularly when contrasted with the manner in which the clauses comprising the Non-solicitation Obligation, the Non-compete Obligation and the Confidentiality Obligation clearly specified the periods of time following employment for which those obligations were to extend (see [25] above).

75 The heart of the objection which the plaintiff takes with respect to the SCADA 227 and the OEM2 projects is the first defendant's disclosure of the plaintiff's pricing strategy. I accept that this information constituted confidential information and fell within the ambit of the Confidentiality Obligation. As the Confidentiality Obligation was to extend following the termination of the first defendant's employment without limit in respect of time,[72] his disclosure of the plaintiff's pricing strategy during his tenure with the second defendant constituted a breach of the Confidentiality Obligation. The same cannot be said,

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72 1AB 134.

however, in respect of the Non-conflict Obligation, since that obligation had ended by the material time.

76 Third, in relation to the Remote Access Solution Project, the plaintiff's case was that prior to an open tender for the project, SP asked it for a budgetary quote in January 2018. The plaintiff reached out to another contractor, Pulse Secure, to collaborate in preparing the quote. *Inter alia*, the plaintiff shared with Pulse Secure certain requirements provided by SP. Pulse Secure then provided a quote to the plaintiff in February 2018.

77 Subsequently, however, when Ms Tan, one of the Former Employees, left the plaintiff to join the second defendant, she informed Mr Samuel Tan of this opportunity and of the plaintiff's collaboration with Pulse Secure. The second defendant therefore approached Pulse Secure, who provided the second defendant with a quote in April 2018. Simultaneously, Pulse Secure provided the plaintiff's Mr Yeo with an updated quote with higher prices than had previously been provided in February 2018. Mr Yeo, who was later to join the second defendant as well, did not question Pulse Secure about this increase in prices, and simply instructed his colleague to prepare the quote to SP using this updated quote. Both the plaintiff and the second defendant submitted budgetary quotes to SP; the second defendant would ultimately go on to win the tender.

78 This is the picture that the plaintiff paints to flesh out its pleaded case against the first defendant. However, as with its submissions as to the SP Inventory List, the first defendant is conspicuous only in his absence. Instead, it appears to be a combination of Ms Tan, Pulse Secure and Mr Yeo whom the plaintiff identifies as taking the actions which enabled the second defendant to submit a budgetary quote of its own.

79 Finally, in relation to the Cisco ESA and SMA Servers Maintenance Project, the plaintiff's only submission is that the second defendant would have utilised the SP Inventory List to pursue this project.[73] Once again, there is no further elaboration as to how the *first defendant* was specifically involved in diverting this opportunity to the second defendant.

80 In other words, apart from the SCADA 227 and OEM2 projects, the plaintiff has not illustrated how the first defendant had *personally* played a role in using its confidential information and diverting its opportunities. After the second defendant pointed this out in its closing submissions, the plaintiff's response was simply to argue that these diversions were but some of the conspiratorial acts committed in the conspiracy between the defendants to solicit the plaintiff's employees and to leverage them to solicit the plaintiff's customers.

81 The plaintiff's allegations against the first defendant in relation to supposed breaches of contract to do with SP are therefore only that (a) he solicited the plaintiff's Former Employees, and (b) he divulged confidential information concerning the SCADA 227 and OEM2 projects to the second defendant. I have already dealt with the former allegation, and in the absence of concrete evidence on the first defendant's involvement thereafter, I do not think that the actions of the Former Employees may be imputed to him for the purposes of the plaintiff's contractual claim. I therefore find only that the first defendant has breached the Confidentiality Obligation in relation to the SCADA 227 and OEM2 projects.

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[73] PCS at para 331.

(2) Professional Testing Services

82 The second customer which the plaintiff claims the first defendant assisted the second defendant in procuring is PTS. In support of this allegation, the plaintiff points to the second defendant's possession of two sets of key documents: the "PTS Inventory List", which contained information on the equipment and services supplied by the plaintiff to PTS; and the "PTS Infrastructure Documents", which comprised the plaintiff's documentation on the infrastructure installed on PTS' behalf. The plaintiff further notes that the second defendant admitted to utilising the PTS Inventory List to prepare its quotes to PTS.

83 Once more, the issue with the plaintiff's arguments is that it is not clear how any of the above constitutes a breach of the first defendant's contractual obligations. It is not the plaintiff's case that the first defendant had a direct hand in connecting the second defendant to PTS, or in conveying the key documents to the second defendant. Rather, the plaintiff's case is pitched at a more general level: that the first defendant had solicited the Former Employees, who then went on to contact PTS and to disclose the plaintiff's confidential information to the second defendant. Similar to its case in respect of SP, this aspect of the plaintiff's pleaded claim against the first defendant for the diversion of customers is in truth a claim for the solicitation of employees. I have already dealt with the plaintiff's claim in this regard. It suffices for me to note that the plaintiff's claim in breach of contract concerning events surrounding PTS is not made out against the first defendant.

(3) Leap Networks Pte Ltd

84 The third customer which the plaintiff claims the first defendant assisted the second defendant in procuring is Leap Networks. In this regard, the plaintiff

provided clear documentation of the first defendant's involvement. Leap Networks sought quotations for Cisco products from the second defendant in January and February 2018. The second defendant then turned to the first defendant and Mr Yeo, as it was not, at the time, a registered reseller of Cisco products, and had no access to the price list of Cisco products. The first defendant then prepared a set of quotations for the second defendant's use.

85 At trial, the first defendant admitted that in doing so, he had been undertaking services for the second defendant. This was plainly a breach of the Non-conflict Obligation.

(4) Acoustic and Lighting System Pte Ltd

86 Similarly, it is equally plain that the first defendant had assisted the second defendant with procuring the business of A&L. On 7 March 2018, A&L sought a quotation for certain products from the second defendant. This was forwarded to the first defendant, who responded with the appropriate prices to be quoted.[74] In so doing, he breached the Non-conflict Obligation.

(5) CWT Limited

87 Turning to CWT, I also accept that the plaintiff has proven on a balance of probabilities that the first defendant provided assistance to the second defendant in breach of the Non-conflict Obligation. The first defendant was kept updated when the second defendant sent CWT a quotation on 21 March 2018.[75] Furthermore, the first defendant was listed in the second defendant's records as the account manager for CWT on 9 April 2018, even before he had left the

74 2PBAEIC at p 235.

75 2PBAEIC at p 268.

plaintiff. Each of these circumstances individually suggests the involvement of the first defendant in the business of the second defendant in breach of the Non-conflict Obligation; together, they paint a compelling picture.

(6) AT&T Worldwide Telecommunications Services Singapore Pte Ltd

88 I turn to the final key customer that the plaintiff has identified, namely AT&T. Once again, that the first defendant has breached the Non-Conflict Obligation is difficult to dispute. The plaintiff exhibited an email chain between 29 and 30 March 2018 between the first defendant and Mr Samuel Tan, where the first defendant responded substantively to the latter's inquiries. This was plainly in breach of the Non-conflict Obligation.

89 A far more substantive aspect of the plaintiff's claim in this regard, however, has to do with what is referred to as the "IBM Sony Project". This was a project undertaken by AT&T as the main contractor, with the plaintiff as the sub-contractor.

90 In January 2018, the IBM Sony Project was due for renewal. A proposal and quote for the renewal were prepared by an employee of one of the plaintiff's affiliated companies and sent to the Global Accounts team, including the first defendant, who was at the time the team's head. However, this quote – a yearly figure of US$930,000[76] – was never submitted.

91 Initially, in his affidavit of evidence-in-chief, the first defendant said that he was not involved in the preparation and submission of this quotation at all.[77] However, on the witness stand, he admitted that it was the responsibility of the

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76 5PBAEIC at p 45.

77 Voon's AEIC at para 42.

Global Accounts team to submit the quote.[78] He further admitted that without reading the explanation of the quote by the employee who prepared it, and without understanding what the quote was about, he did not submit the quote.[79]

92 The only explanation which the first defendant provided for his failure to submit the quote was that the price proposed was too high. He alleged that at a meeting with one Patrick Soh ("Mr Soh"), a representative of AT&T, Mr Soh had informed him that AT&T was looking for a yearly figure of US$700,000 instead.[80] The first defendant also alleged that when he informed Mr Soh of the quote of US$930,000, Mr Soh replied, "Don't need to submit any more, lah."[81]

93 However, this latter embellishment was contradicted by the testimony of Mr Soh, whom the first defendant had himself called as a witness. Mr Soh gave evidence that in his meeting with the first defendant, his reaction to the plaintiff's quote was to seek a detailed proposal to justify the price of $930,000.[82] In other words, the first defendant was acting of his own accord when he apparently deemed the quote to be too high, and when he proceeded to simply not take any further action.

94 By the end of cross-examination on this issue, the first defendant conceded that he had been negligent and that his failure to submit the quote was an oversight.[83] It should be noted, however, that this admission came in the face of a much more serious charge levelled by the plaintiff: that the first defendant

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78 Transcript, 27 November 2020, p 96 lines 22–25.

79 Transcript, 27 November 2020, p 97 lines 6–12.

80 Transcript, 27 November 2020, p 75 line 23 to p 76 line 2.

81 Transcript, 2 December 2020, p 165 lines 2–4.

82 Transcript, 16 September 2021, p 18 line 25 to p 19 line 2.

83 Transcript, 2 December 2020, p 164 lines 5–15.

had *intentionally* sabotaged the plaintiff's renewal of the IBM-Sony Project, so that the second defendant would have the opportunity to step in and make a bid itself.

95 The key piece of evidence which the plaintiff brings to bear in this regard is a spreadsheet containing confidential information relating to the plaintiff's work on the IBM-Sony Project, including the plaintiff's cost for its work (the "Costing Spreadsheet"). According to its metadata, the Costing Spreadsheet was created on 5 February 2018. The plaintiff's Yeo Choon Sheng admitted to having created it. Notably, it was discovered on Mr Samuel Tan's laptop. Mr Samuel Tan could not provide an explanation for this and denied having seen the Costing Spreadsheet, but ultimately admitted that he must have received it.[84]

96 However, I am unable to conclude merely from the presence of the Costing Spreadsheet on Mr Samuel Tan's laptop that the first defendant's failure to submit the plaintiff's quote for the IBM-Sony Project was intentional sabotage. It is true that the quick succession of these two egregious events seems to be an unlikely coincidence and calls for an explanation. Intentional sabotage, however, is a serious allegation demanding proof more substantial than the circumstantial evidence the plaintiff has offered. The plaintiff has not (a) shown that the first defendant was responsible for the conveyance of the Costing Spreadsheet to Mr Samuel Tan; or (b) pointed to any documentation attesting to a more nefarious intent behind the first defendant's failure to submit the plaintiff's quote. It follows that the plaintiff has not discharged its burden of proof in its ultimate case that the first defendant's failure to submit the plaintiff's quote was in service of the second defendant.

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[84] Transcript, 14 September 2021, p 123 line 6 – p 125 line 8.

(7) Other customers and opportunities

97 As I have mentioned, the customers I have considered were the ones which the plaintiff focused on in its closing submissions. I now deal briefly with the remainder of the plaintiff's pleaded case on the diversion of customers and opportunities.

98 I find that there are two instances where the first defendant provided information to the second defendant in breach of his Non-conflict Obligation. The first involved an invitation from the Infocomm Leaders Golf competition to provide sponsorship, which had been sent to the first defendant's Planet One email address. On 19 January 2018, the first defendant forwarded this invitation to Mr Samuel Tan from his personal email address, with the ambiguous message "See want to do marketing launch to get to know us".[85] The second involved email correspondence between the first defendant (in his capacity as a representative of the plaintiff) and a supplier of the plaintiff, Fortinet, concerning the provision of certain products. This correspondence was again forwarded from the first defendant's personal email address on 13 April 2018, this time to Mr Tay, who at that point had recently left the plaintiff to join the second defendant.[86] In forwarding this correspondence, the first defendant did not append any additional message to Mr Tay.

99 The first defendant's evidence is that he had forwarded the Infocomm Leaders Golf invitation to Mr Samuel Tan merely as a "chat among friends",[87] and that he had forwarded the Fortinet correspondence to Mr Tay to obtain

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85 2 AB 256.

86 7 AB 2.

87 Voon's AEIC at para 49.

urgent clarification.[88] In my view, however, had these innocuous explanations been true, there would have been no need for the first defendant to utilise his personal email address. In particular, if the first defendant was legitimately seeking clarification from Mr Tay in relation to some loose end the latter had left behind, he would, logically, have included some message to Mr Tay spelling out exactly what clarification he was seeking. I find that the first defendant's explanations are unbelievable, and that he had in truth forwarded the Infocomm Leaders Golf invitation and the Fortinet correspondence to employees of the second defendant with a view to diverting these opportunities to the second defendant, in breach of his Non-conflict Obligation.

100 There is another category of customers in relation to which the plaintiff alleges that the first defendant was responsible for disclosing information to the second defendant, namely: Yotel Orchard;[89] JAFCO Investment (Hong Kong) Ltd and JAFCO Asia (Shanghai) Equity Investment Management Co Ltd;[90] the Warehouse Boutique Hotel;[91] and Nanyang Polytechnic.[92] The basis for the claims in respect of these customers is apparently that confidential documents originating from the plaintiff relating to these customers had been recovered from a forensic inspection of the laptops and mobile phones of the first defendant and various employees of the second defendant.[93] However – as has been a running theme throughout the plaintiff's case in this regard – it is not at all clear what role the first defendant might have played which resulted in the

88 Voon's AEIC at para 58.

89 SOC para 32(n).

90 SOC para 32(t).

91 SOC para 32(u).

92 SOC para 32(v).

93 PRS at para 278.

second defendant coming into possession of these documents. In the circumstances, I do not see how the plaintiff expects the court to find that the first defendant had breached his contractual obligations in relation to these customers.

101 This leaves three customers which, on the plaintiff's pleaded case, the first defendant had sought to divert to the second defendant: Aberdeen,[94] Diebold Nixdorf Singapore Pte Ltd[95] and the Singapore Institute of Technology.[96] However, no reference was made to these entities in the plaintiff's submissions. I take this to mean that the plaintiff has abandoned its claims in respect of these customers.

(8) Conclusion

102 In summary, it is plain that in the weeks and months leading up to his departure from the plaintiff, the first defendant had been in constant contact with the second defendant, providing information and answering queries in relation to a number of the first defendant's customers. The first defendant thereby breached the Non-conflict Obligation in respect of Leap Networks, A&L, CWT, AT&T, Fortinet and the Infocomm Leaders Golf competition. It is equally plain that in disclosing the plaintiff's pricing strategy in relation to the SCADA 227 and OEM2 Projects, the first defendant breached the Confidentiality Obligation.

103 What should also be noted is the *density* of the first defendant's work for the second defendant. This is not a case where – for instance – a sales executive performs a one-off favour for a friend at a rival company. This is a

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94 SOC para 32(i).

95 SOC para 32(x).

96 SOC para 32(x).

case where such work was apparently *routinely* and *constantly* performed. Coupled with the first defendant's preparation and communication of business plans for the second defendant, this suggests that the first defendant was much more deeply involved with the second defendant than he sought to portray on the stand.

Beesket

104 I turn now to the second category of contractual breaches, namely those involving instances of misconduct from earlier in the first defendant's tenure with the plaintiff, which do not relate to the second defendant.

105 Chief amongst these is the first defendant's running of his personal Beesket business while he was employed with the plaintiff. The plaintiff claims that the first defendant conducted business on behalf of Beesket during his working hours with the plaintiff, as evinced by various dated and timestamped emails. In addition, in one specific instance between 29 June 2015 to 3 July 2015, the first defendant arranged a "team-building activity" for the plaintiff's employees, wherein the plaintiff's employees were tasked with selling fruit juice for Beesket and preparing marketing materials for Beesket.

106 The first defendant responds that the plaintiff had known of his personal Beesket business since in or about June 2015, but had not raised any issue with him until the commencement of this suit.[97] This, however, is neither here nor there. An employer's knowledge of – and even implicit consent to – an employee's activities outside of their work is very different from consent to such activities being performed during working hours, or to the resources of the

[97] Voon's AEIC at para 125, 1DCS at para 156.

employer being diverted for such activities. This, the first defendant has not shown.

107 The first defendant also suggested on cross-examination that the team-building exercise was in fact beneficial to the employees who participated, teaching them to think "out-of-the-box".[98] The implicit argument was that his mobilisation of the plaintiff's employees did not interfere with his duties, but was instead in conformity with them.

108 I reject this argument. There is no evidence that this supposed benefit to the plaintiff's staff materialised. I also find that the first defendant never intended this supposed benefit in good faith. The first defendant admitted that the participating employees were not aware that he owned the Beesket business.[99] Indeed, in his emails to the participating employees, the first defendant took care to refer to Beesket only as "they", "them" and "[t]he shop".[100] This could not have been anything but a deliberate distancing and a purposeful concealment of his personal interest. Further, the first defendant's suggestion that he had not considered how this "team-building exercise" might benefit Beesket[101] is entirely risible. The only conclusion that can be drawn is that this "team-building exercise" was a farce, drawn up by the first defendant to divert the creativity and labour of the plaintiff's employees to benefit his business on the side.

109 I therefore find that the first defendant's work for Beesket during his working hours with the plaintiff, as demonstrated by the exhibited emails, and

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98 Transcript, 2 December 2020 at p 110 line 24 to p 111 line 13.

99 Transcript, 2 December 2020 at p 109 line 14 to p 110 line 20 and p 112 lines 22–24.

100 6PBAEIC at p 219.

101 Transcript, 2 December 2020 at p 112 lines 18–21.

his misuse of the plaintiff's employees for the "team-building exercise" from 29 June 2015 to 3 July 2015 constituted a breach of the first defendant's Non-conflict Obligation.

Manipulation of records and payments

110 Finally, the plaintiff alleges that the first defendant breached the Non-conflict Obligation and cll 5 and 7 of the Conduct Guide through his manipulation of records and payments in order to benefit himself and certain other employees.

(1) Lisa Gwee

111 First, it is the plaintiff's case that the first defendant wrongfully procured payments to one Lisa Gwee ("Ms Gwee"), a salesperson employed by the plaintiff. The plaintiff claims that this misconduct was motivated by a romantic relationship between the first defendant and Ms Gwee,[102] although the first defendant states that they were merely close friends.[103] However, I do not find it necessary to make any pronouncement on the nature of the relationship between the first defendant and Ms Gwee in order for me to determine the plaintiff's claims, save that – as I shall canvass below – it is apparent that the first defendant acted at various junctures with Ms Gwee's interest firmly in mind.

112 The first aspect of these wrongfully procured payments has to do with Ms Gwee's sales commissions. The term used by the plaintiff in respect of these sales commissions was "On-Target Earnings", or "OTE". The OTE payable to

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102 PCS at para 771.

103 1DCS at para 118 and 124.

a sales employee was based primarily on two components: the extent to which the employee met their target for purchase orders received from customers, and the extent to which the employee met their target for the value of invoices issued to customers. In respect of each primary component, if a sales employee did not reach 75% of their assigned target, they would not be entitled to the OTE attached to that component. Conversely, if they reached the 75% mark or beyond, they would be entitled to a correspondingly pro-rated 75% or more of the OTE attached to that component.[104]

113 Notably, in respect of the component to do with purchase orders, a particular procedure was in place for blanket purchase orders. As the plaintiff's then-Group Financial Controller, Michael Wong ("Mr Wong"), testified, the actual order fulfilled on a blanket purchase order might be lower than the face value of the order. Because of this, the approval of the CEO was needed to determine whether a blanket purchase order should be counted towards an employee's purchase order component, and the weight that should be attributed thereto.

114 On 11 May 2015, Mr Wong sent the first defendant an email setting out calculations for the OTE of four sales employees, including Ms Gwee. Ms Gwee's purchase order target for that year was US$20,000,000. Mr Wong's email contained two sets of figures for the purchase orders which Ms Gwee received: one which was inclusive of two blanket purchase orders (US$21,774,543), and another which excluded these orders (US$16,576,623).

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104 Ambrose's AEIC at para 203; Transcript, 19 November 2020, p 15 line 25 to p 18 line 13.

As for the sales invoice component, Ms Gwee was recorded as having issued US$13,048,378 of invoices, against her target of US$16,000,000.[105]

115 On 18 May 2015, the first defendant forwarded Mr Wong's 11 May 2015 email to the CEO of the plaintiff, to seek approval for the OTE of the four sales employees. However, what is notable is that the email from Mr Wong which was forwarded was heavily truncated. All references to her two blanket purchase orders had been removed, and the higher figure inclusive of those orders was presented simply as a single number denoting the value of the purchase orders she received.[106] The first defendant admitted that he had deliberately truncated Mr Wong's 11 May 2015 email.[107] The 18 May 2015 email also stated that Ms Gwee was "very close to meeting 100% of her Revenue", which he attributed to her missing a billing due to an omission on the plaintiff's part. The first defendant therefore recommended that Ms Gwee be paid her full OTE.[108]

116 Ms Gwee was ultimately paid OTE on the basis that she had fully met her purchase order and sales invoice targets.[109] The amount she received in respect of her purchase order component was S$7,737.90 higher than if she had been remunerated without taking into account the two blanket purchase orders. Likewise, the amount she received in respect of her sales invoice component was S$8,339.03 higher.

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105 Ambrose's AEIC at p 1790.

106 15AB 204–205.

107 Transcript, 1 December 2020 pp 111–118.

108 15AB 204–205.

109 15AB 110 and PCS at para 787.

117 The first defendant's sole argument in relation to this instance of manipulation is that his recommendation did not amount to the final approval of the payment, as the OTE payment also had to be approved by the CEO.[110] However, in the context of his contractual obligations, this argument is irrelevant. Clause 7 of the Conduct Guide sets out an obligation to honestly and accurately record and report information. I find that the first defendant's truncation of Mr Wong's 11 May 2015 email to paint a more favourable picture of Ms Gwee's purchase order component amounted to a breach of this obligation. It is also plain that in so favouring Ms Gwee's interests over his own duties to the plaintiff, the first defendant breached the Non-conflict Obligation.

118 The second aspect of the alleged wrongful payments to Ms Gwee has to do with reimbursements said to have been wrongfully made to her, for which the first defendant gave approval. These reimbursements are:

S/n	Dates	Description (as submitted by Ms Gwee)	Amount
Claims for overseas trips			
(1)	27 March 2015	Trip to Taipei, Taiwan (Dinner and limousine service for 5 days and dinner)	S$2,520.85
(2)	2–3 June 2015	Trip to Ho Chi Minh City, Vietnam (airfare)	S$999.00
(3)	17 June 2015	Trip to Ho Chi Minh City, Vietnam (airfare)	S$670.30
(4)	8–10 September 2015	Trip to Taipei, Taiwan (airfare)	S$1,639.30
(5)	18 September 2015	Trip to Ho Chi Minh City, Vietnam (airfare)	S$768.40

[110] 1DCS at para 131; DRS at para 134.

Subtotal for claims for overseas trips:		**S$6,597.85**	
Other claims			
(6)	4 February 2015	Payment to Guardian Health & Beauty	S$677.78
(7)	4 February 2015	Payment to Guardian Health & Beauty	S$23.69
(8)	4 February 2015	Payment to LC Lee Urogynae Centre Pte Ltd	S$78.75
(9)	4 February 2015	Payment to LC Lee Urogynae Centre Pte Ltd for contraceptives	S$47.25
(10)	29 March 2015	Payment to Sardine Jalan Petitenget 21 (Bali) (signed for by one Dr Ganesh)	IDR1,758,240* (S$165.23)
(11)	4 April 2015	Payment to The Rehab Physio Practice Pte Ltd (for Sombra Pain Relief Gel)	S$172.27
(12)	4 April 2015	Payment to Rubato	S$1,105.60
(13)	30 May 2015	Payment to Beesket	S$306.80
(14)	31 May 2015	Payment to Beesket	S$413.00
(15)	Date unclear	Payment to Taste Paradise (signed for by one Dr Ganesh)	S$1,240.56
Subtotal for other claims:		**S$4,230.93**	
Total:		**S$10,828.78**	

119 At the outset, I note that items 6 to 15 – which I shall refer to as Ms Gwee's miscellaneous claims – have no ostensible link to the business of the plaintiff. The first defendant was not able to give any coherent account as to

why he nonetheless approved these claims; his sole response, again, was that the CEO was the one who would finally approve the claims. In the absence of explanation, and in light of the first defendant's admitted closeness with Ms Gwee, I find that it is more likely than not that in approving these claims, the first defendant intentionally favoured Ms Gwee's interests over his own duties to the plaintiff, and so breached the Non-conflict Obligation.

120 As for the claims for overseas trips, the plaintiff's case is that item 4 was in fact a trip taken by the first defendant and Ms Gwee together for the predominant purpose of meeting Ms Gwee's father. In support of this, the plaintiff referred to messages between the first defendant and Ms Gwee, referring to Ms Gwee's father's birthday on 8 September. As acknowledged by the plaintiff, however, those same messages also referred to a meeting with one of the plaintiff's customers.

121 I find that the plaintiff has not discharged its burden of proof in showing that the claim for item 4 was wrongfully made and that the first defendant was therefore remiss in approving the claim. The mere fact that the messages between the first defendant and Ms Gwee referred more to the personal aspects of the trip and less to the business aspects is perhaps understandable, given their admitted closeness; it does not necessarily reflect a corresponding prioritisation of personal affairs over business on the trip itself. In the absence of more concrete proof that the first defendant and Ms Gwee did not tend to the business of the plaintiff to the customary level required for the plaintiff to authorise reimbursement, I am unable to find that the claim for item 4 was wrongfully made.

122 Similarly, the claims for items 1, 2, 3 and 5 are asserted to have been incurred not for the purpose of Ms Gwee's work duties for the plaintiff.[111] However, the plaintiff has not adduced any further evidence to support its case in this regard, and has not discharged its burden of proof.

123 For completeness, I should note that the plaintiff's pleaded case in respect of overpayments to Ms Gwee was much more extensive: it included allegations that the first defendant had recommended a remuneration package for Ms Gwee with an extraordinarily high OTE and that the first defendant had placed deals procured by other employees under Ms Gwee's account. These claims were not pursued by the plaintiff at trial or in its closing submissions. I take this to mean that the plaintiff has abandoned its claims in this regard, and I say no more about them.

(2) The first defendant

124 In relation to the first defendant himself, the plaintiff claims that the first defendant made claims for expenses he had incurred that were not made for the benefit of the plaintiff. The expenses claims are as follows:[112]

S/n	Dates	Description (as submitted by the first defendant)	Amount
Claims for overseas trips			
(1)	3 September 2015	Trip to Ho Chi Minh City, Vietnam (airfare and other claims)	S$1,319.77
(2)	8–10 September 2015	Trip to Taipei, Taiwan (airfare and accommodation)	S$5,498.64

111 Ambrose's AEIC at para 192.

112 SOC para 45.

(3)	1 December 2015	Trip to Ho Chi Minh City, Vietnam (airfare and other claims)	S$1,328.22
(4)	30 January–2 February 2018	Trip to Chengdu, China (accommodation)	CNY1327.62** (S$266.46)
Total:		**S$8,413.09**	

125 The trip to Taipei (item 2) is the same one which the plaintiff claims was undertaken with Ms Gwee for the purposes of visiting Ms Gwee's father. As I have already stated, the plaintiff has not discharged its burden of proof in showing that this claim was wrongfully made.

126 Equally, while the plaintiff has asserted that the other trips to Vietnam and to China were made by the first defendant in order to promote his Beesket business, no further evidence has been adduced; I find therefore that the plaintiff has not discharged its burden of proof in relation to these items.

(3) Andrew Tan

127 The final instance of alleged manipulation has to do with the payment of OTE to one Andrew Tan for his performance in Financial Year 2015 (April 2014–March 2015). The core issue here, unlike with Ms Gwee, relates not to the manipulation of Andrew Tan's *performance*, but rather the manipulation of his *targets*.

128 Andrew Tan joined the plaintiff on 1 September 2014 in the role of Country Manager. It is undisputed that in this capacity, his targets were in effect the targets for the Singapore office, though pro-rated to account for his joining the company in the middle of the financial year.[113]

[113] Transcript, 27 November 2020, p 175 line 2 to p 185 line 21.

129 In May 2015, when calculating the amount of OTE – if any – due to Andrew Tan, Mr Wong noted that Mr Tan did not have a commission plan on record, and therefore took the targets for the Singapore office from September 2014 to March 2015 as the appropriate targets for Andrew Tan. However, in September 2015, the first defendant sent an unsigned commission plan to Mr Wong. Notably, whereas Andrew Tan's performance from September 2014 to March 2015 would not have qualified him for OTE when measured against Mr Wong's initial targets, the lower targets in the first defendant's unsigned commission plan offered a much more favourable backdrop to Andrew Tan's performance, and would allow Andrew Tan to meet the thresholds needed for the claiming of OTE.

130 Mr Wong informed the first defendant that the discrepancy would have to be flagged to the CEO. However, when the first defendant sent the CEO the email seeking his approval for the payment of OTE, he did not raise this issue. He simply stated that Andrew Tan had attained "97.45% and 81.35% respectively on PO and Revenue".[114] What he neglected to mention was that these percentage figures had been derived based on *his* lower targets.

131 The following contemporaneous text exchange between the first defendant and Andrew Tan is telling:[115]

> **Voon, Charles [11:45PM]:**
> will also settle your comm this week
> payout approval
> sorry for the delay
> **Tan Boon Biau, Andrew [11:46 PM]**

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114 7PBAEIC at p 44.

115 7PBAEIC at p 26.

> no worries
>
> thanks
>
> **Voon, Charles [11:46 PM]**
>
> cos based on [Mr Wong's] submission you only did 76%
>
> and PO is 72%
>
> so I am changing it..
>
> so that you can be quite close to the 90%
>
> **Tan Boon Biau, Andrew [11:47 PM]**
>
> THANKS!

132 It is plain that the first defendant deliberately obfuscated the issue of Andrew Tan's sales targets, in order to obtain for Andrew Tan payments which he would otherwise not have been entitled to. Much as with Ms Gwee, I find that in relation to Andrew Tan, the first defendant breached the Non-conflict Obligation, and his obligation under cl 7 of the Conduct Guide to keep honest and accurate records.

(4) Conclusion

133 I therefore find that the first defendant breached the Non-conflict Obligation and cl 7 of the Conduct Guide through his manipulation of records in respect of the payment of OTE to Ms Gwee and to Andrew Tan, as well as through his approval of reimbursement for Ms Gwee's miscellaneous claims.

134 As a final note, I observe that the plaintiff's pleaded case in relation to this manipulation of records and payments was premised on a breach of cl 5 of the Conduct Guide as well. However, I do not see how that clause – which prohibits harassment and discrimination – is relevant in the least. Indeed, the plaintiff made no effort in its written submissions to further its pleaded case on

cl 5 of the Conduct Guide. I find that cl 5 of the Conduct Guide was not breached by the first defendant.

Breach of implied duties of good faith and fidelity

135 I turn now to the plaintiff's claim that the first defendant breached his implied duties of good faith and fidelity. It is well-established that there is an implied term that the employee will serve his employer with good faith and fidelity (see, *eg*, *Man Financial* at [193]).

136 I am satisfied that each breach of the first defendant's express contractual obligations as I have found above constitutes a breach of the first defendant's implied duties of good faith and fidelity as well.

137 Conversely, where I have found that the plaintiff's case as to breach of the first defendant's express contractual obligations to be insufficient, it has been primarily for the reason that the plaintiff has been unable to prove the first defendant's involvement. For that same reason, the plaintiff's case as to breach of the first defendant's implied duties of good faith and fidelity therefore fails. I make special mention of the plaintiff's case in relation to the first defendant's failure to submit the quote for the IBM-Sony Project (see [89]–[94] above). Although I accept that there was plainly a failure on the first defendant's part, I do not find that it amounts to a breach of the first defendant's implied duties of good faith and fidelity.

Breach of fiduciary duties

138 The plaintiff also submits that there was in fact a fiduciary relationship between the first defendant and the plaintiff, owing to the first defendant's

seniority and the scope of his duties, and that the first defendant's conduct amounted to a breach of the fiduciary duties he owed under this relationship.

139 The test for whether such a fiduciary relationship arises in the context of an employment relationship is whether the employee has been placed in a position where he must act solely in the interests of his employer (*Clearlab SG Pte Ltd v Ting Chong Chai and others* [2015] 1 SLR 163 at [273]). I find that, in the broadest of strokes, the first defendant was in precisely such a position. Although he was not a director, he was in a position of substantial seniority, reporting only to the CEO. His oversight of the day-to-day and sales operations of 3DN meant that he was in a position to act in his own interests at the expense of the interests of the plaintiff. There was therefore a fiduciary relationship between the first defendant and the plaintiff.

140 However, the mere existence of a fiduciary relationship is not enough. As was noted in *Clearlab* at [273]:

> … Once a fiduciary relationship is found on the facts, there is further inquiry on whether it is engaged on the matters relied on by the plaintiff. There is no wholesale importation of every kind of fiduciary duty into each case, as that disregards what exactly it is about the particular employee's situation that makes him a fiduciary. Even if the facts do bear a fiduciary relationship, it must be examined, in the particular circumstances, what are the fiduciary duties that arise. …

141 In other words, in order to succeed in a claim for breach of fiduciary duty, a plaintiff must show that a defendant owed specific fiduciary duties arising out of particular circumstances, and that the defendant acted contrary to those duties: see *Clearlab* at [279]–[282].

142 I note that the plaintiff did not plead the contents of the fiduciary duties supposedly owed by the first defendant under this relationship. Its statement of

claim merely pleads "fiduciary duty" as one of the various duties said to be owed by the first defendant.[116] Even as late as in its closing submissions, the plaintiff still only took the position that the first defendant "owes [the plaintiff] a fiduciary duty".[117]

143 In my view, the failure of the plaintiff to plead the specific fiduciary duties owed by the plaintiff was fatal to its claim in this regard. In the absence of particulars on the specific duties and the circumstances giving rise to them, the first defendant is put at a disadvantage in marshalling his evidence and arguments. In such a scenario, the court should not venture to impute upon the first defendant, fiduciary duties against which the first defendant's conduct is to be measured.

144 I therefore dismiss the plaintiff's claim in breach of fiduciary duty against the first defendant.

Fraudulent misrepresentation

145 The plaintiff further claims that through his manipulation of records and payments (see [110]–[132] above), the first defendant is liable for fraudulent misrepresentation.

146 The elements of fraudulent misrepresentation are as follows (*Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 at [238]):

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116 SOC para 31.

117 PCS para 601.

(a) First, there must have been a representation of fact made by words or conduct.

(b) Second, the representation must have been made with the intention that it be acted upon by the plaintiff, or by a class of persons which included the plaintiff.

(c) Third, the plaintiff has acted upon the false statement.

(d) Fourth, the plaintiff has suffered damage by doing so.

(e) Fifth, the representation must have been made with knowledge that it was false, either made wilfully or in the absence of any genuine belief that it was true.

147 I find this claim to be made out in relation to the payment of OTE to Ms Gwee (see [112]–[117] above) and Andrew Tan (see [127]–[132] above). In those instances, it is plain that the first defendant had made representations of fact relating to Ms Gwee's sales performance and Andrew Tan's sales targets. OTE was paid to each of them based on these representations, which would otherwise not have been paid. It is also clear that the first defendant knew that his representations were untrue: his report of Ms Gwee's sales figures had knowingly elided any mention that part of those figures comprised blanket purchase orders, while his report in relation to Andrew Tan deliberately presented as settled sales targets which had not in fact been approved.

148 I also find that the plaintiff has made out its case in fraudulent misrepresentation in relation to the first defendant's approval of Ms Gwee's miscellaneous claims (see [118]–[119] above). Given that the miscellaneous claims plainly had nothing to do with the business of the plaintiff, I find it more

likely than not that the first defendant was aware that the claims were illegitimate. His implicit representation that those claims were in fact legitimate resulted in reimbursements to Ms Gwee.

149 However, the plaintiff has not made out its case in fraudulent misrepresentation in respect of the remainder of the reimbursement claims. As I have noted above, the plaintiff has not shown that those claims were illegitimate.

Breach of confidence

150 I turn to consider the plaintiff's claim in breach of confidence. The approach to breach of confidence claims was most recently set out in *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 at [61]. The court is to consider whether the relevant information had the necessary quality of confidence about it, and if it was imparted in circumstances importing an obligation of confidence. Upon satisfaction of these prerequisites, an action for breach of confidence is presumed. This presumption can be displaced where the defendant proves that its conscience was unaffected (at [61]).

151 The information which the first defendant communicated to the second defendant included the voluminous details as to the plaintiff's clients and financial information contained within the business plan he prepared (see [54] above), the plaintiff's internal manuals (see [56]–[57] above) and the plaintiff's pricing strategy on the SCADA 227 and OEM2 Projects (see [75] above). It is plain that this information bore the necessary quality of confidence. I am also satisfied that this information was imparted in circumstances importing an obligation of confidence.

152 The first defendant made no attempt whatsoever to suggest that his conscience was unaffected. I therefore find that the first defendant has not displaced the presumption of an action for breach of confidence, and is so liable.

153 The plaintiff's closing submissions also appear to extend its claim in breach of confidence to the second defendant. However, I am of the view that this claim as against the second defendant is not disclosed in the plaintiff's statement of claim.

154 The statement of claim is broken down into claims against the first defendant[118] and claims against both the first and second defendants.[119] The plaintiff's cause of action in breach of confidence[120] is pleaded only in the section against the first defendant. This was reinforced in Mr Ambrose's affidavit of evidence-in-chief, which summarised the plaintiff's claims as follows:

> 37. In summary, the Plaintiff's claim against the 1st Defendant is for breach of his contractual obligations under the Employment Contract and breach of his Employee Duties owed to the Plaintiff by reason of the following:-
>
> …
>
> c. Breach of confidence in disclosing and misusing the confidential and/or proprietary information belonging to the Plaintiff (which include the Confidential Materials) to the 2nd Defendant and/or other parties both during and after his employment with the Plaintiff;
>
> …
>
> 38. The Plaintiff also claims against the 1st Defendant for fraudulent misrepresentation in respect of the wrongful payment of commission and reimbursement of claims.

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118 SOC at paras 32–54.

119 SOC at paras 55–60.

120 SOC at paras 37–38.

> 39. The Plaintiff claims against the 1st and 2nd Defendants are for:-
>
> a. Inducing the Plaintiff's employees to breach their employment contracts with the Plaintiffs and accept employment with the 2nd Defendant;
>
> b. Unlawful and/or lawful conspiracy in conspiring to injure the Plaintiff's interests by diverting the Plaintiff's customers, business and resources away from the Plaintiff and/or leveraging on the Plaintiff's former employees and Confidential Material.

155 An amendment was made to the statement of claim on 21 May 2021 (by consent). Among other amendments, the following paragraph was added to the section of the statement of claim dealing with breach of confidence:

> 38A. The 2nd Defendant received and came into possession of the Plaintiff's Confidential/Proprietary Information, including those particularised above, that were wrongfully disclosed and misused the same for its own benefit and to the detriment of the Plaintiff.

156 I do not think that this late amendment was sufficient to put the second defendant on notice that a claim in breach of confidence was being brought against it. Having been appended to the existing section on breach of confidence – which, it bears repeating, was squarely under the header of "Claims against the 1st Defendant" – the natural interpretation of this paragraph was that this was not meant to ground a distinct claim against the second defendant in breach of confidence, but was rather a coda to the plaintiff's existing case against the first defendant. In the circumstances, the plaintiff should not be allowed to extend its claim in breach of confidence to the second defendant now through its written submissions.

Inducement of breach of contract

157 I turn now to consider the plaintiff's claims against both defendants, starting with the claim that the defendants induced the Former Employees to breach their contracts with the plaintiff.

158 The legal principles in this regard are well established. The plaintiff must show that (see *M+W Singapore Pte Ltd v Leow Tet Sin and another* [2015] 2 SLR 271 ("*M+W Singapore*") at [88]):

(a) the defendants knew of the contract and intended for it to be breached;

(b) the defendants induced the breach; and

(c) the contract was breached and damage was suffered.

The plaintiff's pleaded case

159 Throughout its written submissions, the second defendant takes issue with what it considers to be a nebulousness that permeates the plaintiff's pleaded case on this issue of inducement of breach of contract. I reproduce the relevant portions of the plaintiff's statement of claim:[121]

> 55. The Defendants induced the Plaintiff's Former Employees to breach their respective employment contracts with the Plaintiffs, in order to interfere with the contractual rights of the Plaintiff and to procure the Plaintiff's Former Employees to accept employment with the 2nd Defendant, thus causing loss and damage to the Plaintiff.
>
> …
>
> **Particulars**
>
> a. The Plaintiff repeats paragraphs [32(g) to (i), (l), (m), (o), (p) and (w)(iv)].

[121] SOC para 55.

160 The paragraphs referred to under the "Particulars" section concern:

(a) the first defendant's provision of the details of two of the Former Employees to the second defendant (paras 32(g) and (h));

(b) the first defendant's preparation and communication of business plans to Mr Sng (para 32(l));

(c) assistance rendered by the first defendant, Mr Yeo, Mr Lim and Mr Liau in setting up the second defendant's business and website (para 32(m));

(d) assistance rendered by the first defendant and Mr Yeo in soliciting the business of Leap Networks (para 32(o));

(e) assistance rendered by the first defendant and Mr Yeo in soliciting the business of A&L (para 32(p)); and

(f) the disclosure of the SP Inventory List to the second defendant (para 32(w)(iv)).

161 For completeness, I note that para 32(i) of the statement of claim, to which the "Particulars" section of this head of claim referred to, concerned the procurement of Aberdeen, an existing customer of the plaintiff. As I have already noted (see [101] above), no reference was made to Aberdeen in the plaintiff's submissions. It should also be noted that the plaintiff similarly did not pursue in its written submissions a further pleaded allegation that the defendants had sought to induce its employees based in Indonesia and employees of its affiliate in Indonesia to breach their employment contracts.[122]

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122 SOC para 58.

I take this to mean that these aspects of the plaintiff's claim have been abandoned.

162 It should be noted from the extract of the statement of claim reproduced above that the plaintiff did not specify the contractual obligations owed by the Former Employees which were allegedly breached. In the particulars served pursuant to the second defendant's request, the plaintiff specified that the obligations which had been breached were the Former Employees' Non-compete Obligations and Confidentiality Obligations.[123]

163 In other words, as the second defendant pointed out, it was not the plaintiff's pleaded case that the defendants had induced the Former Employees to breach their Non-conflict Obligations and Non-solicitation Obligations. I therefore make no finding in relation to the plaintiff's belated attempts in its written submissions to make precisely this argument.[124]

164 Further, as I have already found (at [36]–[46] above), the Non-compete Obligation is unenforceable and cannot be severed. It follows that this aspect of the claim must fail.

165 The plaintiff has also made copious submissions on supposed inducements of breach of contract in relation to matters other than those listed at [160] above – for instance, in relation to the Remote Access Solution Project (see [76]–[78] above) and to PTS (see [82] above). However, I do not think that these submissions have an adequate foundation in the pleadings. As may be seen in the extract of the statement of claim reproduced above, for the purposes of its

123 SDB 171–172.

124 PCS para 607.

claim in inducement of breach of contract, the plaintiff chose to repeat only a subset of its overall allegations. The natural understanding of this is that the plaintiff is only pursuing its claim in inducement of breach of contract in respect of that subset. The plaintiff should not be allowed to belatedly broaden the scope of its case through its written submissions.

166 What remains, then, is the plaintiff's claim that the defendants had, in relation to the acts set out at [160] above, induced the Former Employees to breach their Confidentiality Obligations. The provision of the details of two Former Employees and the preparation and communication of business plans are evidently merely the background to this claim. I shall therefore focus on the setting up of the second defendant's business and website, the solicitation of Leap Networks and A&L, and the disclosure of the SP Inventory List.

Setting up of the second defendant's business and website

167 Unfortunately, the plaintiff's submissions did not make clear what exactly it was taking grievance with in relation to the assistance rendered by the first defendant, Mr Yeo, Mr Lim and Mr Liau in the setting up of the second defendant's business and website, for the purposes of its claim in inducement of breach of contract. In the absence of such elaboration, I shall consider whether the feedback provided by these individuals as to the second defendant's logo, name cards and website (see [56] above) indicates that the defendants had induced these Former Employees to breach their Confidentiality Obligations.

168 In examining the feedback highlighted by the plaintiff, it is plain that no confidential information was disclosed. The feedback centred on purely the colour of the second defendant's name cards. No reference was made to any information belonging to the first defendant. I therefore do not consider there to have been a breach of the relevant Former Employees' Confidentiality

Obligations in this regard. It follows that the plaintiff's claim for inducement of breach of contract is not made out in relation to the setting up of the second defendant's business and website.

Solicitation of Leap Networks

169 I turn now to the solicitation of Leap Networks, in relation to which I have already found the first defendant liable for breach of his Non-conflict Obligation, based on clear documentary evidence (see [84]–[85] above). I now address Mr Yeo's involvement.

170 On 30 January 2018, Leap Networks requested by email a quotation from Mr Samuel Tan. Mr Samuel Tan then forwarded this email to Mr Yeo and the first defendant, with the comment "Fya".[125] Mr Yeo responded with a document containing price estimates for certain products from the plaintiff's supplier, Cisco.[126] Mr Yeo conceded in cross-examination that these price estimates had been obtained by him in his capacity as an employee of the plaintiff,[127] and admitted that he was not authorised to send these out.[128] Subsequently, when Mr Samuel Tan forwarded another request for a quotation from Leap Networks to Mr Yeo and the first defendant on 1 February 2018,[129] Mr Yeo responded with another similar document containing price estimates.[130]

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125 2PBAEIC at p 127.

126 2PBAEIC at pp 131–135.

127 Transcript, 9 September 2021, p 79 line 19 to p 80 line 7.

128 Transcript, 9 September 2021, p 84 line 20 to p 85 line 6.

129 2PBAEIC at p 139.

130 2PBAEIC at pp 139–146.

171 These price estimates, which had been obtained from Cisco through the plaintiff's account on its portal, plainly fell within the protection of Mr Yeo's Confidentiality Obligation (which was phrased identically to the first defendant's). The estimates were clearly "information concerning the products … of the Company".[131] Mr Yeo's disclosure therefore constituted a breach of his Confidentiality Obligation. I also accept the plaintiff's evidence that this disclosure, in conjunction with the first defendant's assistance in preparing the quote for Leap Networks, likely caused damage to the plaintiff,[132] though the precise quantification of this damage is not an issue presently before me. His disclosure had also been prompted by Mr Samuel Tan, and it therefore has to be said the second defendant had procured Mr Yeo's breach of contract.

172 The sole remaining question is whether, in procuring Mr Yeo's breach of contract, the second defendant was aware of the contract and intended for it to be breached. In dealing with Mr Yeo when he was in the employ of the plaintiff, the second defendant must surely have known that Mr Yeo was subject to an employment contract. That they might not have been aware of the precise terms of the employment contract – *ie*, that the employment contract contained the Confidentiality Obligation – is immaterial: *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 ("*Tribune Investment*") at [17]. While there is no indication that the second defendant had intended the breach of the Confidentiality Obligation either as an end in itself or a means to an end (see *M+W Singapore* at [90], citing *OBG Ltd v Allan* [2008] 1 AC 1), it suffices for the element of intention that a defendant "is reckless as to the consequence of his actions in the sense of being indifferent whether or not a breach happens" (*Tribune Investment* at [18]). I find that the second defendant was reckless in

131 1 AB 142.

132 Ambrose's AEIC at para 182.

this manner. The entire point of consulting Mr Yeo and the first defendant when faced with a request for a quote by Leap Networks was that the second defendant did not have access to Cisco's prices. Mr Samuel Tan knew that this information was in the possession of the plaintiff – indeed, he acknowledged in cross-examination that it "belong[ed]" to the plaintiff[133] – and yet forged ahead with no regard for the plaintiff's confidentiality or potential contractual restrictions on Mr Yeo relating thereto.

173 It follows that the elements of the tort of inducement of breach of contract have been satisfied by the second defendant's procurement of information from Mr Yeo in breach of his Confidentiality Obligation. As the first defendant was actively involved in this exchange (see [84]–[85] above), I find that he, too, played a role in procuring Mr Yeo's breach, and that he should be held jointly liable with the second defendant.

Solicitation of A&L

174 Turning to the solicitation of A&L, the plaintiff alleges that Mr Yeo:

(a) prepared a quote for the second defendant based on a quote from one of the plaintiff's suppliers, ECS Pericomp Sdn Bhd ("ECS Pericomp"), and sent both quotes to Mr Samuel Tan; and

(b) collaborated with an employee of Sunway on the preparation of further quotes for A&L while still employed by the plaintiff.

175 I find that Mr Yeo breached his Confidentiality Obligation by sending the ECS Pericomp quote to Mr Samuel Tan. I also accept Mr Yeo's evidence that he had prepared his quote and sent both quotes to Mr Samuel Tan as a result

133 Transcript, 13 September 2021, p 83 lines 7–10.

of Mr Samuel Tan's prompting. I further find that, as with the solicitation of Leap Networks, the elements of awareness of Mr Yeo's contract and intention are satisfied as well.

176 However, the plaintiff has not suggested in its evidence or submissions that it has suffered damage as a result of the defendants' procurement of Mr Yeo's disclosure of the ECS Pericomp quote. The only indication in this regard is in the plaintiff's statement of claim, where the catch-all assertion that the plaintiff has suffered "loss and damage"[134] may be read to extend to this aspect of its claim. In this regard, I refer to an exhibit tendered by the first defendant at trial, comparing the customers of the plaintiff to the customers of the second defendant.[135] This exhibit indicates that at no point before or after Mr Yeo's disclosure of the ECS Pericomp quote was A&L a customer of the second defendant. I note that the plaintiff has not challenged the accuracy of this exhibit, and was indeed happy to adopt it to suggest that the second defendant was broadly targeting the plaintiff's customers.[136] The plaintiff has not suggested what form of damage it might have suffered, if the second defendant indeed did not gain the business of A&L at its expense.

177 Given that the plaintiff has essentially put nothing forward to suggest that damage has been suffered, I am unable to find that the tort of inducement of breach of contract has been made out in relation to the defendants' procurement of Mr Yeo's disclosure of the ECS Pericomp quote.

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134 SOC at para 61.

135 Exhibit (1)D2.

136 PCS at para 486.

178 As for Mr Yeo's collaboration with an employee of Sunway while in the employ of the plaintiff, no suggestion has been made by the plaintiff that the Confidentiality Obligation was breached. I therefore do not allow this aspect of the plaintiff's claim.

Disclosure of the SP Inventory List

179 The final aspect of the plaintiff's pleaded claim concerns the disclosure of the SP Inventory List. I have averted to this earlier in this judgment, when pointing out that the "true sequence" of events leading up to its disclosure, as put forth by the plaintiff, did not involve the first defendant at all (see [71] above). I now consider this "true sequence" in greater detail.

180 The plaintiff's case is that Ms Lee, one of the plaintiff's Former Employees, compiled and sent the SP Inventory List to the second defendant's Esther Foo ("Ms Foo"). Subsequently, on 10 May 2018, Ms Foo circulated the SP Inventory List to her colleagues at Sunway.[137]

181 It is not disputed that Ms Lee compiled the SP Inventory List, and that Ms Foo circulated the SP Inventory List to her colleagues at Sunway on 10 May 2018. The wrinkle in this account is that Ms Lee denied on the stand that she had not forwarded it to anyone in the second defendant.[138] However, I reject this assertion. The list compiled by Ms Lee[139] is *identical* to the one circulated by Ms Foo to her colleagues on 10 May 2018.[140] Ms Lee could not explain this

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137 PCS at para 189.

138 Transcript, 1 December 2020, p 202 line 22 to p 203 line 2.

139 8PBAEIC at pp 202–204.

140 7PBAEIC at pp 59–69.

apparent coincidence,[141] though she attempted to conjecture – without basis – that perhaps the other employees of the plaintiff whom she shared the list with might have shared it with SP, who might then have passed it on, until it eventually arrived in the hands of the second defendant.[142] I find that it is more likely than not that Ms Lee had in fact sent the SP Inventory List to Ms Foo. I therefore accept the factual narrative set out by the plaintiff in relation to the disclosure of the SP Inventory List.

182 I further find that Ms Lee's disclosure of the SP Inventory List to Ms Foo constituted a breach of the confidentiality clause in her employment contract (which was slightly different from the corresponding clauses for the first defendant and Mr Yeo). The SP Inventory List was composited from information concerning equipment and services which the plaintiff had provided to SP, as well as projects that were undertaken by the plaintiff for SP. It was therefore "Confidential Information", as defined in Ms Lee's employment contract, being "information … possessed by, used by, or under the control of [the plaintiff] that [was] not generally available to the public".[143] In disclosing the SP Inventory List to Ms Foo, Ms Lee breached cl 13.2 of her employment contract, which obligated her to "keep confidential and not disclosed [*sic*] to any third party … the Confidential Information".[144] I also accept the plaintiff's evidence that this disclosure likely caused loss and damage to it.[145]

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141 Transcript, 1 December 2020, p 203 lines 3–4.

142 Transcript, 1 December 2020, p 203 line 23 to p 204 line 2.

143 1 AB 222.

144 1 AB 227.

145 Ambrose's AEIC at para 182.

183 The next question, then, is whether the defendants had induced Ms Lee's breach. The second defendant submits that on the evidence, the plaintiff has not proven this.[146] I disagree. Ms Foo testified that she had circulated the SP Inventory List to her colleagues in response to a query from Mr Samuel Tan.[147] If there was no inducement, that means that Ms Foo had been charged with this matter, and at or around the same time, Ms Lee *happened* to breach her Confidentiality Obligation by disclosing to the second defendant *the exact information* that Ms Foo required. This is, to say the least, an unlikely series of events. I therefore find that it is more likely than not that the second defendant had induced Ms Lee to breach her Confidentiality Obligation.

184 However, I do not find that the first defendant played a part in inducing this breach. The extent of the first defendant's participation in this disclosure, on the plaintiff's own case, is that he intended for the second defendant to poach SP from the plaintiff, as indicated in his business plans. Without further evidence of the first defendant's direct involvement in procuring Ms Lee's breach of her Confidentiality Obligation, it is difficult for me to find that he had a hand in this, as opposed to the alternative of the second defendant initiating this inducement on its own.

185 I further reiterate my analysis above and find that the elements of awareness of Ms Lee's contract and intention are satisfied as well.

186 I therefore find the second defendant to be liable in inducement of breach of contract in respect of Ms Lee's breach of her Confidentiality Obligation in disclosing the SP Inventory List.

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146 2DCS at para 153.

147 Transcript, 7 September 2021, p 110 line 2 to p 111 line 13.

Conspiracy

187 Finally, the plaintiff claims against both defendants in both unlawful means conspiracy and lawful means conspiracy.

Unlawful means conspiracy

188 Unlawful means conspiracy is constituted when two or more persons combine to commit an unlawful act with the intention of harming the plaintiff's economic interests. The claimant must show (*Bluestone Corp Pte Ltd v Phang Cher Choon and others and another suit* [2020] SGHC 268 at [254]):

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

(e) the plaintiff suffered loss as a result of the conspiracy.

189 In the present case, I find that on a balance of probabilities, it is likely that the defendants worked together to set up the second defendant at the expense of the plaintiff, namely through obtaining the plaintiff's confidential information, diverting the plaintiff's customers and hiring the plaintiff's employees. The second defendant sought to portray the first defendant's actions in this regard as a sort of overzealous assistance, the details to which the second defendant was not privy. I am inclined to disagree. As Mr Sng admitted on the stand, he sought elaboration from the first defendant at various junctures as to

the proposed business plan. His position that this was merely to check that the first defendant had some basis in reality for the plan, as the level of detail in the plan had apparently been not at all expected. He therefore sought to throw the first defendant a "curve ball" by asking for more details. However, I do not find this to be a credible tale. Multiple rounds of "curve balls" were apparently thrown, which does not strike me as necessary if all Mr Sng wanted to do was to verify the plaintiff's mettle and credibility. Further, as I have already alluded to (at [103] above), the density of the first defendant's work for the second defendant suggests a much more tight-knit relationship, as well as the existence of a shared plan. I therefore find it more likely than not that there was in fact an underlying combination between the defendants for the first defendant to assist in the setting up for the second defendant through the transmission of confidential data belonging to the plaintiff, the solicitation of the plaintiff's employees and the diversion of the plaintiff's customers.

190 I have found that the first defendant breached his contractual obligations through providing assistance to the second defendant in (a) setting up the latter, (b) soliciting Ms Tan and Ms Chua and (c) the second defendant's efforts to divert from the first defendant various customers and opportunities (see [102] above). Further, I have found that the second defendant induced Ms Lee's breach of her Confidentiality Obligation in her disclosure of the SP Inventory List, and that both defendants should be held liable for inducing Mr Yeo's breach of his Confidentiality Obligation in respect of Leap Networks. These constitute the unlawful means by which the conspiracy was undertaken. It is also likely that the plaintiff has suffered loss by these acts, though the extent of the loss is not an issue that is presently before me. I find, therefore, that the defendants are liable in unlawful means conspiracy.

Lawful means conspiracy

191 The plaintiff further makes a claim under lawful means conspiracy, which is constituted by (*Tuitiongenius Pte Ltd v Toh Yew Keat and another* [2020] 5 SLR 354 at [114]):

(a) a combination of two or more persons and an agreement between them and amongst them to do certain acts;

(b) the predominant purpose of the combination being to cause damage or injury to the claimant;

(c) the acts were performed in furtherance of the agreement; and

(d) the claimant suffered loss as a result of the conspiracy.

192 Once more, I find that there was a combination between the defendants for the first defendant to assist in the setting up for the second defendant through the transmission of confidential data belonging to the plaintiff, the solicitation of the plaintiff's employees and the diversion of the plaintiff's customers.

193 The alleged conspirators in a lawful means conspiracy will be taken to possess the necessary predominant purpose if they undertake actions knowing that any gain to themselves cannot be brought about without a corresponding loss to the plaintiffs (see *Tuitiongenius* at [115] and *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others and other appeals* [2013] 1 SLR 374 at [63]). In the present case, given that the core of the combination appears to have been to take advantage of the resources and work invested by the plaintiff in its business to jumpstart the second defendant, it can be safely said the defendants' gain could only have come about with a corresponding loss to the plaintiff. The

defendants therefore possessed the necessary predominant purpose to injure the plaintiff.

194 As an aside, I note that in a situation involving the poaching of an employee – a fairly common business practice – the gain to the hiring company necessarily entails a corresponding loss to the company from which the employee was hired from. It would then appear to follow that whenever such poaching is agreed upon between multiple parties and executed, a cause of action in lawful means conspiracy results. Whether the tort of lawful means conspiracy should capture such situations is not a question that is before me, nor one on which the parties in the present case have made submissions, but it is perhaps a question worthy of future consideration.

195 I turn to the acts performed in furtherance of the agreement. In addition to those acts which I have found to constitute unlawful means for the purposes of unlawful means conspiracy (see [190] above), I find that the second defendant's solicitation of the Former Employees apart from Ms Chua and Ms Tan (see [63]–[67] above) was also performed in furtherance of the agreement. It is also likely that the plaintiff suffered loss as a result of these acts.

196 I therefore find that the plaintiff's claim in lawful means conspiracy has been made out as well.

Reliefs

197 In summary, I make the following findings as to liability:

(a) The first defendant is liable for breach of contract and his implied duties of good faith and fidelity for:

(i) Preparing and communicating business plans for setting up the second defendant (at [54]–[55] above), providing feedback on the second defendant's name cards (at [57] above) and disclosing the first defendant's internal manuals (at [57] above);

(ii) Assisting in the second defendant's solicitation of Ms Chua and Ms Tan (at [60] above);

(iii) Disclosing the plaintiff's pricing strategy in relation to the SCADA 227 and OEM2 projects (at [81] above);

(iv) Assisting the second defendant in procuring the business of Leap Networks (at [85] above), A&L (at [86] above) and CWT Limited (at [87] above;.

(v) Responding substantively to the second defendant's inquiries in relation to AT&T (at [88] above);

(vi) Working for Beesket during his working hours with the plaintiff, and misusing the plaintiff's employees for the "team-building exercise" (at [109] above);

(vii) Manipulating records in order to obtain higher payments of OTE to Ms Gwee (at [117] above) and Andrew Tan (at [132] above); and

(viii) Approving reimbursement claims from Ms Gwee with no ostensible link to the business of the plaintiff (at [119] above).

(b) The first defendant is liable in fraudulent misrepresentation for manipulating records in order to obtain higher payments of OTE to Ms Gwee (at [117] above) and Andrew Tan (at [132] above) and approving

reimbursement claims from Ms Gwee with no ostensible link to the business of the plaintiff (at [119] above).

(c) The first defendant is liable in breach of confidence in relation to the business plans he prepared for the second defendant and his disclosure of the plaintiff's internal manuals and the plaintiff's pricing strategy on the SCADA 227 and OEM2 Projects (at [151] above).

(d) The second defendant is liable for inducing Ms Lee's breach of her Confidentiality Obligation in her disclosure of the SP Inventory List (at [186] above), while both defendants are liable for inducing Mr Yeo's breach of his Confidentiality Obligation in respect of Leap Networks (at [173] above).

(e) Both defendants are liable in unlawful means conspiracy for the plaintiff's contractual breaches and the inducements of breach of contract.

(f) Both defendants are liable in lawful means conspiracy for the plaintiff's contractual breaches, the inducements of breach of contract and the solicitation of the Former Employees apart from Ms Chua and Ms Tan.

198 The plaintiff seeks the following reliefs:

(a) damages to be assessed, or in the alternative, at the election of the plaintiff, an account of profits;

(b) an order that the defendants deliver up to the plaintiff all hard and soft copies of the plaintiff's trade secrets, confidential and/or proprietary information and any of the plaintiff's trade secrets,

confidential and/or proprietary information that has been obtained, modified or adapted by the defendants and destroy all copies of the same in their custody, power and control; and

(c) an injunction to restrain the defendants from using or dealing in any way with the plaintiff's trade secrets, confidential and/or proprietary information.

199 I have found that there have been numerous instances where confidential information was conveyed to the second defendant, whether by the first defendant or by others. Further, even though the plaintiff did not succeed in its claim against the first defendant for breach of contract in respect of the confidential information discovered via forensic inspection (see [100] above), it is still troubling that such information was found in the possession of the defendants. I therefore grant the order and the injunctions sought.

200 I also order that damages are to be assessed in respect of each head of liability which has been found.

201 The plaintiff seeks the alternative remedy of an account of profits on the basis that the conduct of the first defendant also amounted to a breach of his fiduciary duties. I have not allowed this claim, and it follows that the alternative remedy of an account of profits is not appropriate in respect of the entirety of the first defendant's conduct. However, insofar as the plaintiff has made out its case in breach of confidence against the first defendant – *ie* in respect of the business plans he prepared for the second defendant and his disclosure of the plaintiff's internal manuals and the plaintiff's pricing strategy on the SCADA

227 and OEM2 Projects – the plaintiff is entitled to elect for an account of profits.

202 The costs of this stage of the trial shall be reserved to the following stage of the trial.

Chan Seng Onn
Senior Judge

Toh Wei Yi, Poon Pui Yee, Leong Shan Wei Jaclyn and Ng Hua Meng Marcus (Huang Huaming Marcus) (Harry Elias Partnership LLP) for the plaintiff;
Hua Yew Fai Terence, Mohamed Fazal bin Abdul Hamid, Nur Izyan binte Mohammad Rahim (IRB Law LLP) for the first defendant;
Loo Choon Chiaw, Chia Foon Yeow and Saw Sheng Cai Leonard (Loo & Partners LLP) for the second defendant.