IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 158

Suit No 667 of 2012

Between

Ten Leu Jiun Jeanne-Marie

… Plaintiff

And

National University of Singapore

… Defendant

JUDGMENT

[Tort] — [Negligence] — [Breach of duty]
[Tort] — [Intimidation]
[Tort] — [Misfeasance in public office]
[Contract] — [Breach] — [Obligation to award academic degree]

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v
National University of Singapore

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1–4, 21–23, 29 August 2017; 1 November 2017; 26 January 2018

9 July 2018 Judgment reserved.

Woo Bih Li J:

Introduction

1 More than ten years ago, Ten Leu Jiun Jeanne-Marie ("the Plaintiff") was a candidate for the degree of Masters of Arts (Architecture) by research ("the Degree") in the School of Design and Environment of the Defendant, National University of Singapore.

2 She commenced her candidature in the January 2002 semester. She was supposed to complete her course and obtain the Degree by mid-2005. Due to her unhappiness with her supervisor and developments which I will elaborate on later, there was a delay of more than a year. Eventually the Plaintiff's candidature was terminated on 4 September 2006 without the Plaintiff obtaining the Degree.

3 The Plaintiff's claim in this action is for the university to award her the Degree and for damages.

4 I use the following acronyms:

Committee of Inquiry	COI
Department of Architecture	DOA
National University of Singapore	NUS
Registrar's Office	RO
School of Design and Environment	SDE
Form RO.85/2003	Form RO.85

5 In addition, I include a table of dramatis personae of some of the persons involved in this saga for easy reference. That table is attached at the end of this judgment as Annex A.

6 I will refer to the pleadings and submissions as follows:

Statement of Claim (Amendment No 3)	SOC
Defence (Amendment No 3)	Defence
Plaintiff's closing submissions dated 7 December 2017	PCS
Defendant's closing submissions dated 28 December 2017	DCS

The background

7 Sometime in 2000, the Plaintiff completed her undergraduate studies at the University of East Anglia.

8 By a letter dated 15 November 2001 from NUS, the Plaintiff was offered admission to the Degree commencing in the January 2002 semester and a research scholarship. She accepted the offer on 22 November 2001. This course was to last a minimum period of one year and a maximum period of three years. It was a requirement that the Plaintiff complete a 40,000-word thesis in order to graduate from the course. Dr Wong was the Plaintiff's sole supervisor for her thesis.

9 On 7 January 2002, the Plaintiff's candidature for the Degree commenced. The Plaintiff also entered into a formal Research Scholarship Agreement with NUS dated 7 January 2002.

10 I will now set out in some detail the events which led to the present action as the Plaintiff relied on the series of events to make many allegations against NUS' officers including conspiracy and malice.

11 During the period of supervision, Dr Wong obtained a grant of $80,200 for a project to create a digital visualisation of Commercial Square which is today known as Raffles Place ("the Visualisation Project"). The idea was to create a virtual reconstruction of Commercial Square to make abstract architectural concepts, space and form more comprehensive to laymen. The idea had been discussed with Dr Stephen Wittkopf, HOD Heng and Professor Chan Yew Lih. According to Dr Wong, they intended to tap on his knowledge from

one of his projects, Visual Collection, which comprised collection of pictures, plans and drawings of Singapore.

12 Between 8 March 2004 and 18 January 2005, Dr Wong sent emails to the Plaintiff to inform her about his intention to employ her as a research assistant for six to eight months for the Visualisation Project. For example, in an email from him to her dated 5 August 2004, he said, "Your work will be an important basis for the digital visualisation work – it is the content."[1]

13 On 26 January 2005, Dr Wong, Dr Wittkopf and HOD Heng submitted an application for a research grant for the Visualisation Project to the NUS Faculty Research Committee.[2] Professor Chan Yew Lih was not named in the Grant Application Form ("Grant Application Form").

14 The Plaintiff completed her thesis on 4 February 2005, one day before an extended deadline for submissions on 5 February 2005. As part of NUS' administrative requirements, the Plaintiff had to complete and sign Form 57/2000A which was a Supervisor's Report Form. She referred to this form as a Thesis Submission Form. The form was also to be completed and signed by Dr Wong.

15 On the same day, *ie*, 4 February 2005, the Plaintiff met with Dr Wong to show him her thesis and to ask him to sign the Thesis Submission Form. The conversation at the meeting turned to the Visualisation Project which the

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1 1Agreed Bundle ("AB") 42

2 4AB 2040-2042

Plaintiff said was based on her work. I set out below the Plaintiff's version of what transpired, unless otherwise stated.

16 The Plaintiff alleged that she asked Dr Wong how he was going to acknowledge her work in the Visualisation Project but Dr Wong turned hostile and defensive and accused her of not trusting him. Dr Wong said he had the right to use all the primary sources referenced in her thesis. This caused the Plaintiff concern as she was of the view that although the primary source documents were not created by her, she had assembled and compiled the data therein and interpreted the data. As Dr Wong had said to the Plaintiff that he had acknowledged the Plaintiff's contribution in the Grant Application Form, the Plaintiff asked Dr Wong to show her the portion of that form which contained that acknowledgment. However, Dr Wong declined to do so. To the Plaintiff, Dr Wong was being evasive and this suggested that he had lied to her about acknowledging her contribution in the Grant Application Form.

17 Dr Wong told the Plaintiff that in view of her distrust of him, he could no longer consider her for the position of a research assistant.

18 The meeting ended abruptly with Dr Wong leaving his office on a family errand and returning the Thesis Submission Form to the Plaintiff.

19 When the Plaintiff learned that Dr Wong had not signed the form, she attempted to contact him. According to Dr Wong, he had left abruptly as he remembered he had to pick up his son at a primary school. He had not realised that he had not signed the Supervisor's Report Form.[3] Coming back to the

[3] Notes of Evidence ("NE") 1/11/2017 p 73–74

Plaintiff's version, she and Dr Wong met again later at about 4pm and he signed the form and returned it to her. In view of the lateness of the hour, the Plaintiff could not get the signature of the head of department, HOD Heng, or his stand-in, that day on the form. The stand-in was Deputy HOD Bobby Wong. She did so on the following Monday, 7 February 2005 and submitted her thesis and the form on 7 February 2005, two days late. However, an extension of the deadline was granted to her.

20 According to Registrar Ang, when the Plaintiff submitted her thesis, she orally requested the RO not to send her thesis for examination yet as she wanted to send a complaint about her supervisor.[4]

21 The Plaintiff believed that Dr Wong's omission to sign the form earlier on 4 February 2005 was deliberate and retaliatory. She was unhappy with what had transpired between Dr Wong and her on 4 February 2005.

22 The Plaintiff said that in the four weeks after submitting her thesis on 7 February 2005, she learned that Dr Wong had not submitted the nomination of examiners for her thesis.

23 The Plaintiff also said that from 17 February 2005, Ms Cheok, an administrative officer of the department, had repeatedly sought a copy of her thesis (or an abstract of her thesis) from her. The Plaintiff took the position that as she had already submitted three copies of the thesis to the RO on 7 February 2005, she was not obliged to hand over another copy to Ms Cheok. However, Ms Cheok continued to press for a copy.

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4 1AB 176

24 The Plaintiff said that the incident on 4 February 2005, Dr Wong's delay in nominating examiners and Ms Cheok's persistence in asking her for another copy of her thesis led her to conclude that there was a conflict of interest on Dr Wong's part between his duty as her supervisor and his personal interest in the Visualisation Project. I add that the question of obtaining another copy of the Plaintiff's thesis was eventually resolved.

25 On 3 March 2005, the Plaintiff wrote to HOD Heng to complain about Dr Wong. She requested that Dr Wong be removed as her supervisor and that an independent committee outside the department be set up to select a new supervisor and that the new supervisor was to nominate the examiners for her thesis.

26 The Plaintiff said that she asked for an independent committee to select a new supervisor because HOD Heng and Prof Chan Yew Lih were named as collaborators for the Visualisation Project and she wanted to remove all possibilities of bias.

27 Eventually HOD Heng informed the Plaintiff on 12 March 2005 that he saw no reason to remove Dr Wong as her supervisor.

28 The Plaintiff then wrote to Dean Cheong on 21 March 2005. She met with Dean Cheong and Vice-Dean Chew on 29 March 2005. From the Plaintiff's point of view, Dean Cheong belittled her concerns about Dr Wong at the meeting.

29 In the meantime, the Plaintiff sent an email to Ms How of the RO to formally request the RO not to send her thesis for examination as yet.[5] On 29 March 2005, the Plaintiff sent another email to Ms How to request that the RO continue to hold onto her thesis instead of sending it for examination.[6]

30 On 1 April 2005, the Plaintiff sent an email to Dean Cheong to express her concerns about what had transpired at the meeting of 29 March 2005. She then decided to escalate the matter to VP Kong as she was of the view that Dean Cheong and the leadership of the school were closing ranks with the department and Dr Wong and that they were all trying to cover up Dr Wong's wrongdoing.

31 On the same day, *ie*, 1 April 2005, the Plaintiff sent an email to VP Kong to seek a meeting with VP Kong. This resulted in an exchange of various emails between the Plaintiff and VP Kong between 1 April 2005 to 7 June 2005 in which VP Kong sought to understand the Plaintiff's concerns and the Plaintiff elaborated at some length. I will mention only the main emails between them.

32 On 3 April 2005, the Plaintiff sent an email to VP Kong.[7] She said that:

(a) Her supervisor (meaning Dr Wong) had used the contents of her thesis to propose the Visualisation Project.

(b) On 4 February 2005 (wrongly stated as "2004" in the email), Dr Wong evaded her question as to how he was going to acknowledge her thesis in the project. Instead, he said that he had the right to use the

5 1AB 126

6 1AB 129

7 1AB 144–145

primary sources from her work in the project because such sources did not belong to her.

(c) She could no longer trust Dr Wong. There was a conflict of interest between his duty as her supervisor and his interest in the project.

(d) She had written to the head of department for a change of supervisor and for an independent committee outside of the department to choose a new supervisor for her as the Head and Deputy Head of Administration were collaborators in the Visualisation Project. Her concerns had not been adequately considered by the head of department and the Dean.

33 VP Kong replied on 8 April 2005 to summarise her understanding of the key issues.[8] These were:

(a) The Plaintiff had already submitted her thesis on 7 February 2005. Her request for a change of supervisor was not supported by the head of department nor the Dean.

(b) The Plaintiff was concerned that Dr Wong was using the primary sources which the Plaintiff had used for her thesis.

(c) There was no satisfactory response to her concerns.

34 The Plaintiff replied to VP Kong on 11 April 2005.[9] She agreed with the issues listed by VP Kong but added other key issues. Essentially, she reiterated

[8] 1AB 210–211

[9] 1AB 208–209

what she had said in her email of 3 April 2005. In particular, she repeatedly referred to the incident on 4 February 2005 when Dr Wong had said to her that he had the right to use the primary sources from her work. To her, Dr Wong was saying in essence that he was going to plagiarise the contents of her thesis.

35 On 11 May 2005, VP Kong sent an email to the Plaintiff.[10] VP Kong said:

(a) There was no need to appoint another supervisor as the work of supervision was already done and the role of the supervisor may be considered to have ended.

(b) On the appointment of examiners, the head of department would make the recommendation to the faculty which then makes the appointment. In the present case, the Deputy Head (Research) had acted in place of the Head and the Vice-Dean and Dean had confirmed that the selection conformed to university expectations and the proposed examiners were qualified and had no connection with the Visualisation Project.

(c) After a thesis was examined, the outcome might be a straight pass or fail or there might be requirements for amendments. If amendments were required, VP Kong would ask the Registrar to work with the Vice-Dean and Dean and Deputy Head (Research) to identify another suitable individual to advise the Plaintiff.

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10 1AB 207

(d) Should any individual substantially reproduce the contents of the Plaintiff's thesis, proper acknowledgement would have to be made. VP Kong would remind the faculty and all relevant individuals of this.

36 This response was not satisfactory to the Plaintiff. She sent a lengthy email to VP Kong on 2 June 2005 to state her responses.[11] I summarise them below:

(a) She had made a complaint against Dr Wong in her earlier email of 11 April 2005. The complaint was about Dr Wong's unprofessionalism as a supervisor based on what he said on 4 February 2005 in that he had the right to use the primary sources that she had researched and assembled in her thesis. She alleged that Dr Wong had already used the contents of her thesis for the Visualisation Project. She noted that VP Kong's email did not mention anything about the issue of Dr Wong's unprofessionalism and what VP Kong's stand was on this issue.

(b) The Plaintiff did not agree that the role of a supervisor ended with the submission of the thesis. She gave a few examples:

(i) the Thesis Submission Form had to be signed by the supervisor and Dr Wong initially omitted to do this on 4 February 2005;

(ii) the supervisor was to submit the names of the examiners promptly but Dr Wong delayed in doing so; and

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[11] 1AB 198–206

(iii) some paperwork had to be re-dated to avoid a fee of $1,042.65 charged by NUS to the Plaintiff and Dr Wong had refused to assist on this.

(c) Although VP Kong had mentioned the process in which the examiners were selected, this was the process in theory. In reality, a supervisor like Dr Wong would nominate the examiners and the Department Head (or Deputy Head) would merely endorse the supervisor's nomination. The choice of examiners could make or break a thesis. Also, two of the persons comprising the faculty who were charged with the duty of approving the choice of examiners, *ie*, Dean Cheong and Vice-Dean Chew had (in the Plaintiff's view) demonstrated, based on their conduct during their meeting with her, that they were biased in favour of Dr Wong. As for the Deputy Head (Research), the Plaintiff gave some reasons why she had no confidence in him. She also took the view that he did not know enough about her thesis to be able to form an opinion about the suitability of examiners.

(d) As for VP Kong's assurance that she would remind the faculty and all relevant individuals to properly acknowledge any substantial reproduction of the Plaintiff's thesis, the Plaintiff stressed that Dr Wong had "already used [her] work" in his proposal for a grant for the Visualisation Project. She also said that Dr Wong "may have already plagiarised" her thesis in his proposal.

37 The Plaintiff ended her email by saying that VP Kong's proposal was unacceptable because she had no confidence in the thesis examination

procedure as long as Dr Wong was involved. She also had reservations about Dean Cheong and Vice-Dean Chew who were biased in his favour. She had made a formal and official complaint about Dr Wong's unprofessionalism which VP Kong's last email did not address.

38 VP Kong replied on 7 June 2005.[12] She said that since the Plaintiff had made a formal and official complaint against Dr Wong, NUS would convene an independent panel to investigate the matter. However, the investigation would necessarily result in delay in the examination of her thesis. If VP Kong did not hear from the Plaintiff by the end of 13 June 2005, VP Kong would assume that the Plaintiff understood the delay consequences.

39 VP Kong and Registrar Ang met with the Plaintiff on 10 June 2005. According to the Plaintiff, VP Kong asked the Plaintiff to revert by 15 June 2005 on two options, *ie*, either to agree to the proposal mentioned in VP Kong's email of 11 May 2005 or the investigation mentioned in her email of 7 June 2005 would proceed. The Plaintiff said that she informed VP Kong by email on 13 June 2005 that she would not accept either option.[13] She elaborated in her affidavit of evidence-in-chief ("AEIC") that the first option was not acceptable for the reasons stated in her reply dated 2 June 2005 and the second option was not acceptable because it was not clear to her what the terms of reference for the investigation were.

40 In an email from the Plaintiff to VP Kong dated 17 June 2005[14], she said she did not understand what NUS was planning to investigate. She said that she

12 1AB 269

13 1AB 458

had never said that Dr Wong had plagiarised her thesis. She emphasized that her complaint was what Dr Wong had said to her on 4 February 2005. Apparently, this was a reference to Dr Wong's statement that he could use the primary sources which she had researched and assembled in her thesis.

41 On 20 June 2005, Ms Seah sent an email message from VP Kong to the Plaintiff.[15] The message said that all her email messages to date would constitute her complaints against Dr Wong. The message further mentioned that as there were contradictions between what the Plaintiff had said (in her last email of 17 June 2005) and her earlier emails, she might wish to clarify her position with the independent panel.

42 The Plaintiff replied on 23 June 2005. She asked what VP Kong had meant by the Plaintiff's contradictions. She also asked other questions including who the members of the independent panel were.[16]

43 On 24 June 2005, Ms Lau sent VP Kong an email to say that she had checked with one Hilda who handled "BoD" (Board of Discipline) cases and that NUS did not disclose who the members of the board were.[17]

44 Also, on 24 June 2005, Ms Lau sent a letter to the Plaintiff to inform her that a COI had been set up to look into her concerns.[18]

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14 1AB 411–413

15 1AB 411

16 1AB 410–411

17 1AB 410

18 1AB 439

45 The members of the COI were:

Chairperson:	Prof Pinsler, Faculty of Law
Members:	Prof Yeo, Department of Geography
	Prof Yu, Vice-Dean, SDE

46 The terms of reference were:

(a) to look into the allegation of unprofessionalism, and to establish, to the extent possible, the validity of this allegation;

(b) recommend to [NUS] the appropriate action to be taken, if any, arising from the findings of the inquiry, including the examination process.

47 The above information is found in a letter dated 21 June 2005 from VP Kong to Dr Wong.[19]

48 Between 24 June and 30 June 2005, NUS sent emails and a letter to the Plaintiff to inform her that the COI would like to interview her on 7 July 2005 at 9.30am and gave her details of the venue. However, the Plaintiff was not given any information about the identities of the members of the COI or the terms of reference.

49 On 2 July 2005, the Plaintiff sent an email to Ms Lau to raise various questions.[20] In her AEIC, she referred to these questions as her "Preliminary Questions". I set out these questions as summarised at para 147 of her AEIC:

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19 1AB 398

147. On 2 July 2005, I sent an e-mail to Ms Lau to seek clarification on the issues that I had previously raised to [VP Kong] in my earlier e-mails to her. I informed her that I would be available and willing to attend the interview before the COI, but that I would like the following preliminary questions to be addressed before the COI's investigations proceeded:

(1) Whether the "*independent panel*" that [VP Kong] referred to in her earlier e-mails to me was the same entity as the COI that Ms Lau referred to.

(2) How the COI was independent, and who it was independent from.

(3) Who would be sitting on the COI.

(4) What [VP Kong's] role in the COI was, and how she would be connected to it.

(5) As [VP Kong] had previously informed me that this was the first time she had encountered a student making a complaint against a faculty member, I asked to be informed regarding what procedures were in place for the constitution of the COI.

(6) Given that Ms Lau had written that the "*formation of this Committee follows established procedures at NUS for such purpose*", I asked to be informed regarding what procedures she referred to, and where these procedures were stated. I also asked Ms Lau to provide me with a copy of these written procedures.

(collectively, "**Preliminary Questions**")

[emphasis in original]

50 Ms Lau replied on 4 July 2005 to ask the Plaintiff to raise her questions with the COI at the interview.[21]

51 The Plaintiff felt that her Preliminary Questions had been ignored. She said she was concerned that if she attended the COI she might have impliedly

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20 1AB 471–472

21 1AB 471

waived her right to object to the legitimacy and independence of the COI.[22] On 5 July 2005, she wrote to inform NUS that she would not attend the interview unless she received answers to her Preliminary Questions.[23]

52 On the same day, Prof Pinsler sent an email to the Plaintiff.[24] He introduced himself as the Chairman of the COI and urged the Plaintiff to attend the interview. When the Plaintiff informed Prof Pinsler that she wanted responses to the Preliminary Questions, Prof Pinsler suggested that the COI could respond to her questions at the interview.[25] This was not satisfactory to the Plaintiff as she wanted the answers before attending the interview. She did not attend the interview on 7 July 2005.

53 On 11 July 2005, NUS sent an email to the Plaintiff to inform her that the COI was giving her one last opportunity to attend before the COI on 14 July 2005 at 9am.[26] However, as the Plaintiff still did not receive answers to the Preliminary Questions, she decided not to attend.

54 The COI continued with its inquiry and issued its report on 20 July 2005.[27] The COI concluded that:

(a) there was no evidence that Dr Wong had plagiarised the Plaintiff's work. Dr Wong's application for a grant had made sufficient

22 Plaintiff's AEIC at para 149

23 1AB 465

24 1AB 496

25 1AB 495

26 1AB 598

27 4AB 1924-2143

reference to the Plaintiff's expected contributions (even though the application did not expressly mention the Plaintiff's name);

(b) Dr Wong had failed to comply fully with his duties as a supervisor (of the Plaintiff); and

(c) the appointments of the two nominated examiners, *ie*, Prof Clancey and Prof Li should be confirmed. VP Kong's proposed process of examination of the Plaintiff's thesis was fair and just and should be confirmed.

55 I note that the Abstract section of the Grant Application Form contained a statement that the Principal Investigator (meaning Dr Wong) was "presently supervising a Masters' candidate in the historical study of this area; the work is close to a first draft. In Annex A of the Grant Application Form, under Manpower Costs, there was a similar statement, "It is most opportune that one of [Dr Wong's] supervisees is close to completing her master's study of the development of this site". Therefore, even though the Plaintiff's name was not specifically mentioned in the Grant Application Form, it was clear that Dr Wong was referring to her. As far as that form was concerned, Dr Wong was not trying to claim credit for her work.

56 It is also useful to stress here that as the COI had concluded that there was no evidence that Dr Wong had plagiarised the Plaintiff's work, the COI's conclusion that Dr Wong had failed to fully comply with his duties as the Plaintiff's supervisor was based on reasons other than any alleged plagiarism of

the Plaintiff's work. It is not necessary for me to elaborate on those other reasons.

57 The COI also recommended that Dr Wong be censured for the manner in which he had supervised the Plaintiff and that appropriate steps be taken to ensure that Dr Wong is fully aware of the role and duties of a supervisor to his student.

58 The Plaintiff was not provided with a copy of the COI report at that time. Instead, VP Kong wrote to her on 3 August 2005[28] to inform her that:

(a) The COI had resolved that there was insufficient evidence to establish that Dr Wong acted unethically. It had also resolved that the examiners were properly appointed and could be trusted to be impartial and professional. The examination of her thesis might proceed.

(b) However, in view of the Plaintiff's tremendous dissatisfaction with the supervision received, NUS was prepared to take the additional step of offering her supervision under a different individual for one more semester before the thesis was sent for examination. This was an alternative if she did not wish to proceed with the examination then.

VP Kong asked the Plaintiff to respond to her letter of 3 August 2005 by 12 August 2005.

59 I would mention here that VP Kong's summary omitted to mention that the COI had also concluded that Dr Wong had failed to comply fully with his

[28] 2AB 689

duties as a supervisor. The Plaintiff learned about this omission after she commenced her action and she sought to make something of the omission in the action.

60 The Plaintiff replied on 12 August 2005 to VP Kong.[29] She alleged that there was no transparency in the "investigation" as till then she still did not know the names of the other two members of the COI. She did not accept that there was insufficient evidence about Dr Wong's misconduct as she had previously stressed what Dr Wong had said to her on 4 February 2005. She said that Dr Wong's minimal and token supervision was not the reason for her complaint but what he had told her on 4 February 2005. She rejected the alternative of having someone else be appointed as a supervisor and the extension of her candidature as she felt she would then be penalised to work another semester because of Dr Wong. She maintained that Dr Wong should be removed as her supervisor and a new supervisor be appointed to help her with the post submission phase and for examiners to be appointed without any influence from Dr Wong.

61 VP Kong replied to the Plaintiff on 18 August 2005.[30] She said that the Plaintiff had been invited twice to meet with the COI but she did not appear. From the Plaintiff's own messages, she had indicated that she was dissatisfied with the quality of Dr Wong's supervision and unethical behaviour in the form of plagiarism. The COI had looked into both issues.

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29 2AB 704–706

30 2AB 703–704

62 On the question of insufficient evidence about Dr Wong's unethical conduct, the COI had concluded that the reference in the application for a research grant to the work of a Master's candidate was sufficient acknowledgement of her thesis. There was as yet no other written work or research on the Visualisation Project itself which would be considered by the COI.

63 VP Kong was of the view that continuing correspondence was no longer productive. She noted that the Plaintiff had rejected the offer of a new supervisor to supervise her for another semester. Thus, the examination of her thesis would proceed. I will refer to this decision to send her thesis for examination as "VP Kong's Decision".

64 On 24 August 2005, the Plaintiff sent an email at night to VP Kong to protest VP Kong's Decision.[31] This was the fourth time she was objecting to the examination of her thesis (see [20] for the first time and [29] for the second and third times). VP Kong replied on the same night to say that the Plaintiff's thesis had been sent for examination and she would be informed of the outcome in due course.[32]

65 On 25 August 2005, the Plaintiff sent another email to VP Kong again to protest against VP Kong's Decision.[33] This was the fifth time she was objecting. She believed that the COI's investigation was unjust to her and was not transparent.

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31 2AB 710

32 2AB 710

33 2AB 710

66 About three months later, on 25 November 2005, Ms Lau wrote to the Plaintiff.[34] She informed the Plaintiff of the following:

(a) The examiners would be recommending to the Board of Graduate Studies ("the Board") that the Plaintiff be awarded the Degree subject to her providing a more detailed account and analysis of certain areas of her thesis and making certain changes as suggested by the examiners.

(b) The Plaintiff was to submit the following within one month from the date of the letter:

(i) Form RO.85 – Electronic thesis/dissertation submission form;

(ii) a copy of her finalised thesis stored in CD-ROM/diskette in PDF format.

(c) Upon receipt of the above items, the RO would set a deadline of two months for the Plaintiff to upload her electronic thesis. Once the uploading was verified, the examiners' recommendation would be submitted to the Board for the Board's approval whereupon the Degree would be conferred on her.

(d) Her thesis would be available to the worldwide public after the Degree was conferred if she specified in the Form an unrestricted level of access.

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[34] 2AB 813-821

(e) Prof Li was identified as the person whom the Plaintiff could consult for advice on changes to be made to her thesis. Also, Form RO.85 would be signed by Prof Li instead of Dr Wong. Where a supervisor's action was needed, she could seek help from Prof Li.

67 This letter dated 25 November 2005 from Ms Lau might have crossed with an email dated 27 November 2005 sent by the Plaintiff to VP Kong[35] even though the letter was supposed to have been sent by Local Urgent Mail. NUS had assumed that the Plaintiff had received the letter the same day it was sent but there was no reference in the Plaintiff's email to Ms Lau's letter dated 25 November 2005.[36]

68 In her email of 27 November 2005, the Plaintiff referred to VP Kong's earlier email dated 18 August 2005 and set out a lengthy response. The main points of her email were:

(a) that VP Kong had not addressed her complaint against Dr Wong which was about what he said to her on 4 February 2005;

(b) that VP Kong had not addressed her request for a change of supervisor and she repeated her rejection of VP Kong's suggestion of a new supervisor for another semester;

(c) that the investigation by the COI lacked transparency and she did not agree that all due process had been observed;

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35 2AB 826-829

36 2AB 826

(d) that she was very disappointed that VP Kong had sent her thesis for examination despite her protest.

This was the sixth time she was objecting to her thesis being sent for examination. She was also repeating her complaint about Dr Wong.

69 Even if the Plaintiff had not received Ms Lau's letter dated 25 November 2005 by the date the Plaintiff sent her email dated 27 November 2005 to VP Kong, the Plaintiff did not dispute that she received that letter soon thereafter. Yet, the Plaintiff said that she re-sent the 27 November 2005 email to VP Kong on 31 December 2005, notwithstanding that she must have known by then about the successful outcome of the examination. She said she did so because she had not received any response from VP Kong to her 27 November 2005 email. VP Kong then replied on 31 December 2005 to say that NUS' position had been explained to the Plaintiff and due process had been observed. VP Kong said she would not be responding further to the Plaintiff. The progress on the examination of the Plaintiff's thesis had been communicated to the Plaintiff. VP Kong suggested that the Plaintiff focus on extended revision deadlines.

70 Notwithstanding VP Kong's email that she would not be responding further to the Plaintiff, the Plaintiff sent reminders to VP Kong for a substantive response to her email dated 27 November 2005. The Plaintiff said she continued sending reminders at the frequency of about once a month. In the meantime, the Plaintiff proceeded to make amendments to her thesis and was granted an extension of time to do so.

71 On 6 April 2006, Ms Lau sent an email to the Plaintiff.[37] The email stated that Prof Li was satisfied with her thesis revision and she could submit it without further review. The email also stated that the Plaintiff could then proceed to complete the relevant part of Form RO.85 and then fax it to Prof Li for him to complete his portion of the form. The remaining steps for the Plaintiff to take were (a) to submit Form RO.85, (b) to submit a copy of her finalised thesis and (c) to upload her thesis electronically.

72 These steps should have been non-contentious but, unfortunately for all concerned, the Plaintiff only complied with one of them, *ie*, she submitted a copy of her thesis to NUS but she did not upload it electronically. Neither did she sign and submit Form RO.85 for reasons which I will elaborate on later.

73 The Plaintiff alleged that upon reviewing Form RO.85, she realised that the level of public access to her thesis had to be indicated. Furthermore, clause 2 of Form RO.85 required her to grant a perpetual, royalty-free and transferable licence to NUS to reproduce her thesis in all forms and media. In the light of her issues with Dr Wong, she was afraid that if she signed Form RO.85, Dr Wong could gain easy access to and use her thesis for the Visualisation Project without giving her proper acknowledgement.[38]

74 The Plaintiff said she raised her concerns with Prof Li who passed her concerns to Ms Lau. In turn Ms Lau sent an email to her dated 27 June 2006 to ask what her concerns about Form RO.85 were.[39] In response, the Plaintiff asked

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37 2AB 881

38 Plaintiff's AEIC para 194-196

39 2AB 927

Ms Lau in an email dated 27 July 2006 whether NUS would still award her the Degree if she did not agree to have her thesis on the internet/intranet and did not sign Form RO.85[40].

75 On 11 August 2006, VP Kong wrote to the Plaintiff to ask her to confirm whether she accepted "the University's decisions" ("the Acceptance requirement") and to therefore comply with the uploading requirement and cease all correspondence regarding the contents of the Plaintiff's email of 27 November 2005[41] ("the Cessation of Correspondence requirement"). The Plaintiff alleged that this letter introduced two additional requirements for her to comply with. I will set out the material paragraphs of that letter and elaborate on her allegation later.

76 On 18 August 2006, the Plaintiff emailed Ms Lau.[42] She said VP Kong's letter of 11 August 2006 did not answer her question. She said she wanted to submit her thesis but she did not want her thesis to be on the internet/intranet and did not want to sign Form RO.85.

77 Ms Lau replied on 21 August 2006 to say that para 3 of VP Kong's letter of 11 August 2006 had clearly answered the Plaintiff's question.[43]

78 The Plaintiff sent an email to Ms Lau on 29 August 2006 to disagree that VP Kong had answered her question as VP Kong's letter did not mention Form

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40 2AB 921

41 2AB 899

42 2AB 932-933

43 2AB 932

RO.85.[44] She also asked Ms Lau if Form RO.85 was a new requirement. She said it was not right for VP Kong to link her submissions to other conditions. She needed the question about Form RO.85 to be cleared up.

79 Ms Lau responded to the Plaintiff on 30 August 2006 to refer to an official circular (from the Interim Registrar) which was sent to all graduate research students on 18 August 2003.[45] The official circular[46] mentioned that in March 2003, the Board of Graduate Studies had approved the implementation of electronic submission of thesis for graduate research degree students. A trial had been carried out. NUS was then implementing the electronic submission of thesis from September 2003. Students would be required to submit various forms including Form RO.85.

80 Ms Lau's email also explained that under the University's offer to the Plaintiff for her admission as a candidate for the Degree, the copyright in theses generated by research students with financial support from NUS become the property of NUS. Ms Lau referred to VP Kong's letter of 11 August 2006 requiring the Plaintiff to confirm the Acceptance requirement and comply with the uploading requirement and the Cessation of Correspondence requirement. This meant that the Plaintiff had to:

(a) respond to VP Kong with her confirmation of the Acceptance requirement;

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44 2AB 931–932

45 2AB 923–924

46 2AB 928–929

(b) submit Form RO.85;

(c) provide a soft copy of her thesis; and

(d) upload her thesis electronically.

81 The Plaintiff sent an email to Ms Lau on 31 August 2006.[47] She forwarded a soft copy of her finalised thesis to Ms Lau. She said she would have uploaded a copy of the thesis to the system but apparently had some difficulty in doing so as she did not understand what was meant by "access level". She said that she did not agree with the contents of Form RO.85 and would not sign it. It was not right for VP Kong to link the submission of her thesis to other issues stated in VP Kong's 11 August 2006 letter.

82 Ms Lau replied the same evening at 6.14pm.[48] She referred to Form RO.85 to address the Plaintiff's difficulty about the access level and to remind the Plaintiff she had to:

(a) upload her thesis electronically;

(b) respond to VP Kong's letter to confirm the Acceptance requirement with regard to the examination process of her thesis;

(c) submit Form RO.85 duly completed and signed by her.

These steps had to be done by 11.59pm of that night. Ms Lau acknowledged receipt of the soft copy of the Plaintiff's thesis. She reiterated that if the above

47 2AB 1151

48 2AB 1150

steps were not done by the stipulated deadline, the Plaintiff's candidature would cease with immediate effect.

83 The Plaintiff replied that night at 9.38pm to say she still did not understand what to do after "access level" was reached in the system.[49] She asked if she had to agree with the way VP Kong handled her complaint against Dr Wong before she could be awarded the Degree. There was no response from Ms Lau to this email.

84 On 4 September 2006, Ms Lau sent a letter to the Plaintiff.[50] The letter stated that NUS had not received the following as at 4 September 2006:

(a) her written confirmation of the Acceptance requirement;

(b) Form RO.85 duly completed and signed; and

(c) a copy of her uploaded thesis to the Digital Thesis repository.

As such, her candidature had ceased with immediate effect.

85 This letter apparently crossed with yet another email dated 5 September 2006 which the Plaintiff sent at 1.53am to Ms Lau to remind Ms Lau that she had not responded to the Plaintiff's questions in her last email of 31 August 2006.[51]

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49 2AB 1154

50 2AB 1192

51 2AB 1195

86 On 29 December 2006, the Plaintiff sent an email to President Shih, who was the then President of NUS to complain.[52] Registrar Ang was tasked to respond to the Plaintiff. Registrar Ang replied to the Plaintiff on 12 January 2007.[53] She said that when the Plaintiff had realised that the examiners were prepared to pass her, she had made the recommended amendments to her thesis and sought conferment of the Degree. However, the Plaintiff still had not accepted the circumstances which led to the nomination of the examiners in the first place which included the findings of the COI.

87 The Plaintiff responded by email dated 5 February 2007 to give her comments.[54] Although NUS initially thought of replying to her, it decided not to do so. Its position was that the Plaintiff's response was a repeat of past complaints.

88 About two years later, the Plaintiff sent an email dated 5 January 2009 to President TCC, who was the then President of NUS, to complain.[55] Again, Registrar Ang was tasked to respond to the Plaintiff. She did so on 14 January 2009.[56] She reiterated NUS' position as stated in NUS' letters dated 11 August 2006 and 4 September 2006.

89 About another two years later, the Plaintiff sought help from her Member of Parliament to write to the Ministry of Education ("MOE"). The letter

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52 2AB 1214-1215

53 2AB 1241

54 2AB 1249-1251

55 3AB 1372

56 3AB 1382

to MOE was sent on 11 April 2011. Notwithstanding attempts by MOE to mediate in the dispute, the matter remained unresolved.

90 On 22 August 2011, the Plaintiff wrote to the President of the Republic of Singapore to complain. There was no outcome satisfactory to the Plaintiff.

91 The present action was filed on 8 August 2012. The Plaintiff alleged that NUS' refusal to award the Degree to her prejudiced her further studies and employment prospects. Thus, she sought damages in addition to her claim to be awarded the Degree.

The causes of action

92 Central to the Plaintiff's dissatisfaction was her unhappiness with Dr Wong and, in particular, the comment he made on 4 February 2005 that he had the right to use all the primary resources referenced in her thesis. At trial, she confirmed that she had believed that he had already plagiarised her work in his application for a grant for the Visualisation Project and that, going forward, he was planning to plagiarise her work in the Visualisation Project.[57]

93 She perceived from various responses to her complaints that various persons involved like HOD Heng, Dean Cheong, Vice-Dean Chew, VP Kong, Registrar Ang and the COI were trying to cover up Dr Wong's misconduct and unsuitability to be her supervisor and that they had acted maliciously in some sort of conspiracy towards her in retaliation. In particular, VP Kong and

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[57] NE 2/8/17 pp 87–90

Registrar Ang had put obstacles in her way to prevent her from obtaining the Degree.

94 Her claims against NUS were based on various causes of action:

(a) breach of contract;[58]

(b) the tort of misfeasance in public office;[59]

(c) the tort of intimidation;[60] and

(d) negligence.[61]

I will address them in reverse order.

The arguments and the court's conclusion

Negligence

95 The Plaintiff's claim for negligence was in respect of:

(a) The conduct of President Shih of NUS when she appealed to President Shih on 28 December 2006 and when she replied to NUS on 5 February 2007; and

(b) The conduct of President TCC of NUS when she appealed to him on 5 January 2009.

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58 SOC paras 4 to 8

59 SOC para 9

60 SOC para 10

61 SOC para 11

96 Basically, the Plaintiff considered the responses from NUS to such complaints to be unsatisfactory and amounted to negligence. The Plaintiff did not allege negligence on the part of NUS or on the part of the officers of NUS up to the date of the 4 September 2006 letter from Ms Lau.

97 By the time the Plaintiff wrote to these two presidents, she was no longer a student of NUS. This raised an issue of law as to whether NUS even owed her a duty of care at that time. This issue was not addressed in the PCS.

98 Secondly, aside from the question about the existence of a legal duty of care at the material time, the Plaintiff's allegations of negligence were vague. Her particulars of negligence simply alleged that NUS had failed to give reasonable consideration to her complaints and/or provided an unreasonable response. The PCS did no better. It made a very brief submission (at paras 136–138) about NUS' breach of duty and focussed on the harm caused to the Plaintiff. It omitted to elaborate on any specific conduct which might constitute negligence and a breach of duty.

99 NUS had already communicated extensively with the Plaintiff before her candidature was terminated as I set out above. Whether NUS was right or wrong then, the point is that her subsequent appeals to President Shih and President TCC did not raise anything new.

100 Furthermore, neither President Shih nor President TCC could be expected to personally investigate her complaints. The position which they held allowed them to delegate someone else of sufficient responsibility to respond to her. Indeed the Plaintiff did not suggest that either of them was not entitled to

ask Registrar Ang to respond to her. Neither did she suggest that Registrar Ang was too junior to respond.

101 The DCS set out the work done by Registrar Ang in response to the Plaintiff's appeals. In any event, as mentioned above, there was no real evidence of negligence.

102 In the circumstances, the Plaintiff's cause of action based on negligence fails.

103 I should mention one other point regarding President TCC which the Plaintiff raised. The Plaintiff said that she learned from the process of discovery, that President TCC was Provost at the time of her communication with VP Kong and that VP Kong had also been communicating with him on the Plaintiff's complaints. The Plaintiff accused Provost TCC of being personally complicit in any alleged wrongdoing of VP Kong.[62]

104 The Plaintiff referred to:

(a) an email dated 22 July 2005 which VP Kong sent to Provost TCC asking for his advice;[63] and

(b) an email dated 29 July 2005 from VP Kong to Ms Seah mentioning that VP Kong had discussed the matter with Provost TCC and VP Kong would need to manage the relevant faculty and faculty member as well.[64]

62 Plaintiff's AEIC para 212

63 2AB 680

105 Based on these two emails, the Plaintiff inferred that Provost TCC had approved VP Kong's letter dated 3 August 2005 to the Plaintiff which gave an incomplete summary of the COI's conclusions.

106 The Plaintiff also appeared to assume that because VP Kong had sent an email dated 2 September 2006 to Provost TCC (and a Vice Provost) to update him as she was going to be away, Provost TCC had approved the termination of her candidature by the letter from Ms Lau dated 4 September 2006, at least tacitly, if not explicitly.[65]

107 Yet, for all these allegations, the point which the Plaintiff was making was that had she known about Provost TCC's involvement, she would not have wasted her time in writing to him when he became President of NUS.[66] No additional cause of action was pleaded by the Plaintiff in respect of Provost TCC's involvement at the time when he was Provost. Neither did she suggest how Provost TCC's involvement made her case in any of her causes of action stronger.

108 As it turned out, the Plaintiff's allegation about Provost TCC's involvement was a distraction.

The tort of intimidation

109 For the tort of intimidation, the Plaintiff must meet two requirements.

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64 2AB 685

65 Plaintiff's AEIC at para 212

66 Plaintiff's AEIC at para 212

110 First, the threat must be coercive in nature and not "warnings or advice intended mainly to inform the recipient" (Gary Chan and Lee Pey Woan, *The Law of Torts in Singapore*, Singapore: Academy Publishing, 2nd Ed at [15.044]). I add that the threat must be an attempt to get her to do something to her detriment.

111 Secondly, the Plaintiff must show that she in fact complied with the threat to her detriment. In *Morgan v Fry and others* [1968] 3 WLR 506, the Court of Appeal said at p 512:

> According to the decision in *Rookes v. Barnard* the tort of intimidation exists, not only in threats of violence, but also in threats to commit a tort or a breach of contract. The essential ingredients are these: there must be a threat by one person to use unlawful means (such as violence or a tort or a breach of contract) so as to compel another to obey his wishes: and the person so threatened must comply with the demand rather than risk the threat being carried into execution. In such circumstance the person damnified by the compliance can sue for intimidation.

112 In the SOC, the Plaintiff set out many allegations in respect of her claim for breach of contract and under her particulars for the tort of misfeasance[67] which she repeated for her claim for the tort of intimidation without attempting to identify specifically which of the allegations referred to a threat by NUS which she purportedly complied with to her detriment. For example, none of the following allegations of hers could refer to a threat by NUS to her to cause her to do something to her detriment:

> (a) whether Dr Wong did or did not nominate examiners expeditiously;

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67 SOC para 9

(b) a refusal to change her supervisor;

(c) the appointment of the COI.

113 In the PCS (at paras 133–134), she relied only on the fact that she had submitted a soft copy of her thesis to the RO to argue that she had been compelled to do so and that this was to her clear detriment as she ran the risk of her thesis being made available to Dr Wong. However, this was not the subject of any damage which she was claiming. The losses she claimed arose from her refusal to comply with the outstanding requirements of NUS and the consequent withholding of the Degree from her. It was not her pleaded claim that as a result of the submission of a soft copy of the thesis, Dr Wong had in fact (a) obtained access to it and (b) misused her work in the sense of using her work without proper acknowledgement and (c) damage arose from that misuse. Furthermore, there was no evidence that after she had submitted a soft copy of the thesis, Dr Wong in fact accessed her thesis and misused her work in the sense mentioned above.

114 The Plaintiff's reliance on the submission of a soft copy of her thesis to support her claim for the tort of intimidation was a last ditch unsuccessful attempt to salvage this cause of action. Therefore, the Plaintiff's cause of action based on the tort of intimidation fails.

The tort of misfeasance in public office

115 In *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board and another* [1997] 1 SLR(R) 52 at [138], the High Court cited *Judicial Remedies in Public Law* by Clive Lewis (at Ch 14, pp 59-64) for

the proposition that the essence of the tort of misfeasance in public office is an act done by a public officer or public body where:

(a) the act is done maliciously or with the knowledge that it is *ultra vires* the power of the public body;

(b) it is foreseeable that the act would cause damage to the plaintiffs; and

(c) the act actually does cause damage to the plaintiffs.

116 In *Three Rivers District Council and others v Governor and Company of the Bank of England* (No 3) [2003] 2 AC 1 ("*Three Rivers*") various judgments were issued by the House of Lords on this tort.

117 Not every judge agreed that foreseeability was an appropriate test. For example, Lord Hobhouse of Woodborough said, at p 231, that, "The use of the words foreseen or foreseeable is to be avoided. They are concepts borrowed from the law of negligence. This tort concerns deliberate acts."

118 Likewise, Lord Millett said, at p 235, that the tort is an intentional tort. He added, "From this two things follow. First, the tort cannot be committed negligently or inadvertently. Secondly, the core concept is abuse of power. … They are all subjective states of mind." He went on to say, "It is important to bear in mind that excess of power is not the same as abuse of power."

119 At p 237, Lord Millett said, "In conformity with the character of the tort, the failure to act must be deliberate, not negligent or inadvertent or arising from

a misunderstanding of the legal position." Although this statement was made in the context of an omission rather than a positive step, I am of the view that it applies equally to the latter. Hence, a positive act arising from a misunderstanding of the legal position will also not suffice, regardless of the foreseeability of damage arising from the act.

120 In the discussion that follows, I will use the expression "deliberate" or "deliberately" to mean either limb of the first requirement, *ie*, where the act is done maliciously or with the knowledge that it is *ultra vires* the power of NUS.

Is NUS a public body for the purpose of the tort of misfeasance of a public office?

121 NUS' position was that NUS is not a public body for the purpose of this tort. However, it was prepared to assume that if the court were to conclude otherwise, then the conduct of the above various persons employed by NUS would be conduct of public officers.

122 The Plaintiff's position was that NUS is a public body and the various persons in question who were employed by NUS were public officers.

123 The Plaintiff relied on *Clark v University of Lincolnshire and Humberside* [2000] WLR 1988 at [29] where the Court of Appeal said that, "A university is a public body." However, the Court of Appeal also said that this was not in issue on the appeal before it.

124 Indeed, in that case, the university was contending that it is a statutory body with public functions and hence the plaintiff student ought to have sought judicial review within a three-month period, rather than commence action for breach of contract with a longer limitation period.

125 The Plaintiff also relied on this court's decision in *Tey Tsun Hang v Public Prosecutor* [2014] 2 SLR 1189 at [208] where this court held that NUS is a public body for the purpose of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"). However, it is quite clear that that finding was for the purpose of PCA only and it did not mean that NUS is a public body in all respects and circumstances. The present dispute between the Plaintiff and NUS arises from the contract between them as set out above.

126 In any event, it is not necessary to reach a conclusion as to whether NUS is a public body and its officers are holding public office for the purpose of the present action as the Plaintiff was not able to establish that NUS had acted deliberately as I will elaborate below.

Did NUS act deliberately against the Plaintiff?

127 While the Plaintiff made many allegations about the conduct of various persons along the way, the defining moments are when VP Kong's Decision was made on or about 18 August 2005 (see [61]–[63] above) to send her thesis for examination and this yielded a positive result for the Plaintiff as I set out above.

128 It is important to bear in mind that at about the time of VP Kong's Decision, the Plaintiff was still vigorously objecting to the examination of her

thesis because she did not agree with the process in the nomination of the examiners. As at 25 August 2005, she had explicitly objected five times to the examination of her thesis (see [65]). She had taken the view that Dr Wong did in fact play a part in the nomination and that since she was objecting to his playing any role in that process for the reasons she gave, the process should not proceed. In the light of the Plaintiff's objection, VP Kong would have been entitled to let the matter rest there, *ie*, not to send her thesis for examination until the Plaintiff agreed. That would have resulted in an impasse and the likely result would have been that eventually NUS would have terminated the Plaintiff's candidature in any event in the absence of a resolution of the impasse.

129 Nevertheless, VP Kong took it upon herself to make VP Kong's Decision since the COI was of the view that the appointment of the two nominated examiners, Prof Clancey and Prof Li should be confirmed and her proposed process of examination should be confirmed.

130 Had the result of the examination been negative for the Plaintiff, it would likely have been fodder for her to complain further as she could have used that result to "vindicate" her complaint about the nomination of the examiners.

131 However, the result was positive for the Plaintiff. It ought to have demonstrated to the Plaintiff that her reasons for concern about the nomination of the examiners was no longer relevant because even if Dr Wong was involved in the nomination of the examiners, the examiners had passed her thesis, subject to some amendments which she was able to comply with.

132 Thus, VP Kong's Decision and the successful outcome ought to have laid to rest any lingering suspicion that the Plaintiff had about the *bona fides* of VP Kong. In other words, if VP Kong was trying to cover up Dr Wong's alleged misconduct or to target the Plaintiff in some way, she could have simply withheld the examination of the thesis as mentioned above. That is not to say that had VP Kong withheld the examination, this would have necessarily meant that she was acting deliberately. However, the fact that she did not withhold the examination did demonstrate, in my view, that she did not act in the deliberate manner as the Plaintiff was suggesting.

133 As intimated above, when the outcome of the examination was positive for the Plaintiff, that should have resolved the question of her obtaining the Degree. However, it did not for reasons already mentioned. The Plaintiff insisted that the past conduct of various officers, including VP Kong, were connected to the subsequent decision of NUS to require the Plaintiff to meet certain requirements which she ultimately refused to comply with. From her point of view, the *mala fides* in the past conduct continued and was expressed in the imposition of those requirements.

134 However, it was not suggested by the Plaintiff that Dr Wong or others in the department or the faculty had any input on the imposition of the subsequent requirements. These requirements were mainly the result of decisions taken by VP Kong and/or the RO partly in reliance on the then existing requirements of NUS.

135 Therefore, it is not necessary for me to address all the Plaintiff's complaints about steps taken or not taken by NUS before VP Kong's Decision.

I will mention a few of the Plaintiff's complaints prior to VP Kong's Decision to illustrate the Plaintiff's perception of events before VP Kong's Decision and to show that, in any event, such complaints fell far short of establishing the deliberate conduct necessary for this tort.

136 The Plaintiff complained that when VP Kong sent an email to her on 11 May 2005 to say that the appointment of examiners was recommended by the head of department to the faculty which then makes the appointment (see [35] above), VP Kong had not been candid. As mentioned in the Plaintiff's reply dated 2 June 2005, she was of the view that the process described by VP Kong was the process in theory only. In reality, it would be Dr Wong who would nominate the examiners. The head of department, or in the present case, the deputy head, would merely endorse the supervisor's nomination (see [36(c)] above). The Plaintiff was of the view that this lack of candour was illustrative of *mala fides* on the part of VP Kong.

137 I agree that the evidence showed that Dr Wong was the one who initially recommended Prof Li and Prof TTY to be the examiners. When Prof TTY was not able to agree to be an examiner, he in turn recommended Prof Clancey who then agreed to be one of the examiners. Prof Li and Prof Clancey were then eventually approved as the examiners by the department and then the faculty. The evidence also appeared to suggest that the deputy head of the department and the faculty did not make any extra effort to scrutinize the reason why Dr Wong had recommended Prof Li in the first place. For example, they did not check if Prof Li was particularly close to Dr Wong even though they were aware of the Plaintiff's concern about Dr Wong playing a role in the initial recommendation. There was no need to check on his reason for recommending

Prof TTY since Prof TTY could not agree to be one of the examiners in any event.

138 It also appears that although VP Kong did ascertain that Prof Li and Prof Clancey were not involved in the Visualisation Project, she herself did not make any extra effort to scrutinize how they came to be recommended. Apparently, she left it to the RO to ascertain from the faculty how the process was executed and the RO appeared to have simply accepted the faculty's explanation without inquiring if any extra effort had been put in as mentioned in the previous paragraph. For example, Ms How's email to Registrar Ang dated 4 May 2005 simply stated that the department had nominated Prof Li and Prof Clancey and that the Deputy Head of Department had confirmed that the proposed examiners:[68]

> (a) are not the candidates' research collaborators/co-authors or involved in candidate's research project
>
> (b) are not related to the candidate or the supervisor
>
> (c) did not have common supervisor as candidate's supervisor(s)
>
> Ms Cheok Yin Peng, Administrative Officer of the [DOA], confirmed that the HOD is fully aware of [the Plaintiff's] case and has ensured that the above guidellines [*sic*] were adhered to.

Registrar Ang then contacted Dean Cheong to verify the accuracy of Ms How's statements. She received a response from him with a copy of an email dated 9 May 2005 from Deputy HOD Bobby Wong which confirmed that Ms How's statements were accurate.[69]

[68] 1AB 155–156

[69] Bundle of AEICs Volume 3 p 2068

139 That appeared to be the extent of the scrutiny. While it is arguable whether extra effort should have been put in to ascertain why Dr Wong had initially recommended Prof Li, I am of the view that in any event such an omission did not constitute deliberate conduct.

140 I also agree that it is arguable that VP Kong should have been more candid with the Plaintiff that Dr Wong was the one who made the initial recommendation of examiners. Instead, VP Kong omitted to address this point in her responses. However, I am also of the view that, in any event, this did not constitute deliberate conduct. VP Kong was merely echoing NUS' formal position that the head of department would make the recommendation and the dean of the faculty would then decide whether to confirm.

141 I am of the view that VP Kong honestly assumed, as did all the others involved, that Prof Li and Prof Clancey were persons of integrity. They had also honestly assumed that these persons were nominated purely on merit and not because they were friends of Dr Wong who had been informed that he had an issue with the Plaintiff. While the Plaintiff was concerned that Dr Wong was involved in the nomination of examiners, she stopped short of alleging that: (a) Dr Wong had in fact informed the first two persons that he had recommended, of his issues with the Plaintiff, or (b) that Dr Wong had recommended either of these first two persons because he or she was known to be stricter with the work of candidates, or (c) that either of these first two persons was in fact unqualified to examine her thesis.

142 In the absence of any such suggestion, the Plaintiff's concern about Dr Wong's involvement in the process of the nomination of the examiners fell

by the wayside. It was not sufficient for her to simply say that she did not trust Dr Wong. The lack of trust must lead to a concrete allegation as to how his involvement in the process of nomination had in fact prejudiced her but no such concrete allegation was made. Indeed, I reiterate that by the time she learned of the successful outcome of the examination of her thesis, her concern about Dr Wong's involvement in the process should have been laid to rest. Yet she still persisted in her complaint about his involvement.

143 Secondly, the Plaintiff complained that the process relating to the appointment and deliberation of the COI was not transparent. For example, she complained that she was not informed of the identities of the members of the COI and the terms of reference and that her Preliminary Questions were not answered.

144 After the Plaintiff commenced action and NUS had provided discovery of documents, the terms of reference of the COI were disclosed to the Plaintiff. I have set them out at [46] above. In PCS at paras 111–115, the Plaintiff submitted that the terms for the COI to look into the allegation of unprofessionalism against Dr Wong and to establish the validity of the allegation were vague and mild. That was why VP Kong was unwilling to provide the terms of reference to the Plaintiff. According to the Plaintiff, these terms were inappropriate and VP Kong had dishonestly misrepresented the true nature of the Plaintiff's complaints to the COI in order to deliberately conceal the substance of the complaints.

145 While it is arguable as to whether the Plaintiff, as the complainant, should have been provided with information about the identity of the members

of the COI and the terms of reference, the evidence suggested that it was NUS' practice not to provide information such as the identity of the members of the COI (see [43] above). In any event, there was no evidence that NUS had in the past provided such information to a complainant but withheld such information from the Plaintiff for an ulterior purpose.

146 It will be remembered that Ms Lau had replied to the Plaintiff on 4 July 2005 to ask her to raise her Preliminary Questions with the COI (see [50]). Furthermore, Prof Pinsler, the Chairman of the COI, had sent emails to the Plaintiff to urge her to attend an interview with the COI. He also informed her that the COI could respond to her questions at the interview (see [52]). However, the Plaintiff's position was to insist on an answer first before she attended the interview. Hence she did not attend. Had she attended she would have learned of the identities of all the members of the COI. She could have also asked about the terms of reference of the COI.

147 In the circumstances, NUS' omission to give her information about the identity of all the members of the COI and the terms of reference or to answer her questions did not constitute deliberate conduct. Neither did the terms of reference in themselves suggest any deliberate conduct of VP Kong to be vague.

148 The COI was aware of the Plaintiff's complaint about plagiarism against Dr Wong even though it was the Plaintiff herself who was inconsistent about this complaint. As mentioned at [40] above, in her email dated 17 June 2005 to VP Kong, she said that she had never said that Dr Wong had plagiarised her thesis. Ms Seah's email reply of 20 June 2005, on behalf of VP Kong, said that there were contradictions and the Plaintiff then queried why there were

contradictions. Paragraph 197 of the DCS has listed out various emails of the Plaintiff where she said Dr Wong "had used", "has used", "has already used" or "may have already plagiarised" her thesis. It is not necessary for me to list the emails here. It was quite clear that the Plaintiff did contradict herself when she informed VP Kong that she had never said that Dr Wong had plagiarised her thesis. Indeed, at trial, she admitted that her emails were confusing.[70]

149 Another one of the Plaintiff's complaints about misconduct prior to VP Kong's Decision was in relation to the outcome of the COI's deliberation. As mentioned above at [58], the Plaintiff was not provided with a copy of the COI report dated 20 July 2005. Instead, VP Kong wrote to the Plaintiff on 3 August 2005 to state certain conclusions of the COI. After the commencement of the present action, the COI report was disclosed in discovery by NUS. The Plaintiff learned that VP Kong did not disclose to her one aspect of the COI report which was the COI's conclusion that Dr Wong had failed to comply fully with his duties as a supervisor.

150 In the Plaintiff's view, this omission was another illustration of VP Kong's partiality towards Dr Wong and her bias against the Plaintiff. She accused VP Kong of being dishonest in VP Kong's summary of the COI's conclusions on 3 August 2005.

151 VP Kong's explanation at trial was that the focus then was on continuing with the examination of the Plaintiff's thesis. Indeed at that time, she also did not follow up with Dr Wong on the COI's conclusion that he had failed to comply with his duties as a supervisor. She disagreed that she was being partial

[70] NE 2/8/17 p 111

towards Dr Wong or biased against the Plaintiff. She explained that she did not at that time follow up with Dr Wong on his failure to adequately supervise the Plaintiff because she did not want Dr Wong to take action against the Plaintiff. There was an internal email dated 3 August 2005 from VP Kong to Ms Seah asking Ms Seah to remind VP Kong to send a letter of reprimand to Dr Wong at the end of August when "hopefully the dust with Ms Ten will have settled (!)".[71] Eventually, VP Kong did write to Dr Wong on 23 November 2005, about four months after the date of the COI report, to censure him.[72] After the Plaintiff learned about the letter of 23 November 2005, the Plaintiff took the view that it was not meaningful as the word "censure" did not appear in it.[73] It seems that the Plaintiff regarded the letter as a mere slap on Dr Wong's wrist.

152 The Plaintiff also alleged that Dr Wong was awarded tenure in or around 2006 and was subsequently promoted to Head of Department in or around 2007. It appeared to me that she was insinuating that these developments reinforced her argument that NUS was partial towards Dr Wong. I do not agree. There was insufficient evidence as to the reasons why Dr Wong was granted tenure or appointed Head of Department and it was not appropriate to jump to conclusions.

153 I come back to VP Kong's summary of the COI's conclusions to the Plaintiff. I agree that VP Kong should not have omitted to mention that the COI had also concluded that Dr Wong had failed to comply fully with his duties as a supervisor. Her summary gave an incomplete picture. The omission was not

71 2AB 693

72 2AB 735

73 Plaintiff's AEIC at para 172

inadvertent but it was not necessarily deliberate in the sense that it was malicious or done with the knowledge that it was *ultra vires*.

154 As I have mentioned, VP Kong's conduct at that time showed that she was trying to persuade the Plaintiff to agree to proceed with the examination of her thesis. Although the Plaintiff did not agree to proceed with the examination, VP Kong went ahead. The thesis was sent for examination and yielded the positive result mentioned above.

155 Even if VP Kong had informed the Plaintiff that the COI had also concluded that Dr Wong had failed to comply fully with his duties as a supervisor, how would this information have assisted the Plaintiff in her quest to get a new supervisor appointed or a new process to appoint examiners? After all, the COI did not say that a new supervisor had to be appointed or that the two persons eventually nominated to be the examiners should be replaced. On the contrary, the COI concluded that the examiners' appointments should be confirmed and that VP Kong's proposed process of examination of the Plaintiff's thesis should be confirmed. At most, the omission by VP Kong had saved some face for Dr Wong.

156 Likewise, while the disclosure of that information might have provided the Plaintiff with a limited sense of vindication about Dr Wong's conduct, it would still not have assisted the Plaintiff in her quest for a new supervisor or a new process to appoint examiners. It might even have been a distraction to her.

157 Importantly, for all the Plaintiff's complaint about the omission to disclose as being illustrative of VP Kong's dishonesty, she did not show how the omission to disclose led to the Plaintiff being refused the Degree. The omission had nothing to do with the requirements which she was supposed to meet to obtain the Degree. Neither was the omission an illustration of VP Kong's prejudice against her.

158 I add that although Dr Wong mentioned in an email dated 11 November 2005 from him to one Wong Mei Yin (to respond to a certain query about his Visualisation Project) that he had been cleared of all charges,[74] this was because at that time, VP Kong had not yet written to him to inform him about his failure to comply fully with his duties as a supervisor. Accordingly that statement of Dr Wong did not suggest a lack of integrity by Dr Wong.

159 In the circumstances, I find that VP Kong was *bona fide* focused on proceeding with the examination of the Plaintiff's thesis with the view of moving things along. Her omission to inform the Plaintiff that the COI had concluded that Dr Wong had failed to comply with his duties as a supervisor was a mistake but it was not deliberate.

160 I now move on to the conduct of VP Kong and the RO after the positive outcome of the examination of the Plaintiff's thesis.

161 It will be recalled that when the Plaintiff was informed about the outcome of the examination, she was also informed that she was required to make certain changes or amendments to her thesis (see [66] above). I will refer

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[74] 2AB 720

to this as "the Amendment requirement". Although the Plaintiff appeared to have complied with this requirement without too much difficulty, she made a big issue about it in her pleadings and in her AEIC.

162 In her particulars of misfeasance, the Plaintiff stated (at para 9.2.23 of the SOC) that she had subsequently learned that both the examiners had recommended that the Plaintiff "be awarded the Master's Degree without further examination". The Plaintiff understood this phrase to mean that there was no need for her to amend her thesis. Yet VP Kong directed the RO to include the amendments as set out in NUS' letter dated 25 November 2005.

163 The Plaintiff also elaborated at paras 191–193 of her AEIC in very strong language why she believed that it was VP Kong who "orchestrated" the Amendment requirement and that it was "contemptible that Registrar Ang would collude with [VP Kong]" to ask the examiners to identify areas of her thesis where the examiners could recommend amendments. The Plaintiff also used words like "dishonesty" and "maliciously" to describe their conduct.

164 Yet after the trial, the PCS did not mention the Amendment requirement as one of the terms imposed by NUS which were "unreasonable, unequitable and prejudicial towards the Plaintiff's substantive rights".[75]

165 It was unclear if the Plaintiff was still pursuing this allegation as she did not specifically say in the PCS that she was not doing so. As a matter of caution, I address the allegation below.

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[75] See paras 38–74, 125–126, 128–129 of PCS and in particular, paras 38, 41–42 and 74 thereof.

166 First, I elaborate as to how the Plaintiff appeared to have come to the idea that the Amendment requirement was an example showing that VP Kong and Registrar Ang had acted deliberately against her.

167 Each of the examiners was required to complete a Form 1111/90A as his report on her thesis. The form has a Section A for Examiner's Overall Recommendation and a Section B for Examiner's Detailed Comments.

168 For Section A, there were five options from (a) to (e) and against each option there was a corresponding box to be ticked. The examiner was supposed to tick one of the boxes as his recommendation of the outcome. For present purposes, I need only mention the first three options:

(a) The box against (a) is ticked if the recommendation is that the candidate be awarded the Master's degree without further examination.

(b) The box against (b) is ticked if the recommendation is that the candidate be awarded the Master's degree (after minor corrections and typographical changes as specified in the report/form have been made).

(c) The box against (c) is ticked if the recommendation is that the candidate be awarded the Master's degree subject to the amendments as specified in the report.

169 As mentioned above, Section B was for the examiner's detailed comments. This could be provided as a separate attachment.

170 When Prof Li and Prof Clancey each submitted the form, each of them ticked the box against (a) in Section A instead of the box against (b) or (c) even though each of them included a separate attachment containing detailed comments and suggested amendments.[76] It is not clear why each of them did not tick the box against (b) or (c) instead.

171 As each of them had ticked the box against (a), the Plaintiff wrongly asserted that each of them had given her an "A" grade and that the alleged requirement of amendments which she was informed of suggested a "B" grade instead.

172 On this point, the Plaintiff appeared to have been influenced by an email dated 4 October 2005 from Ms Lau to VP Kong stating that Prof Li had given an "A" grade for her thesis[77] and an email dated 22 November 2005 from Maggie Lau to VP Kong stating that Prof Clancey had given an "(a)" grade for her thesis in his report.[78] Apparently, these emails reinforced the Plaintiff's view of misconduct against VP Kong.

173 However, as NUS explained for the trial, there was no grading system for her thesis. It was either a pass or fail. More importantly, and as the Plaintiff herself should have been aware, upon disclosure of the forms to her before trial, there were separate attachments containing detailed comments and suggested amendments. These comments and suggestions came from each examiner.

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76 See 4AB 2144-2146, 4AB 2147-2149

77 2AB 717

78 2AB 726

174 Furthermore, the internal email showed that VP Kong was relieved at the positive outcome of the examination for the Plaintiff.

175 For example, when VP Kong was informed by Ms Lau that Prof Li had given an "A" grade for the Plaintiff's thesis, VP Kong replied on 4 October 2005 to say that, "I am glad for this outcome."[79]

176 Later, on 22 November 2005, VP Kong was also informed (by a staff writing on behalf of Ms Lau) that Prof Clancey had given a grade "(a)" too. VP Kong sent three emails on the same day:

(a) the first was to ask the RO to move ahead expeditiously to take the necessary next steps[80];

(b) the second was an email she sent to Dean Cheong, Vice Dean Chew and HOD Heng to inform them of developments and she said, "I am relieved"[81];

(c) the third was an email she sent to Ms Seah to inform her that the two reports of the examiners were in and that the Plaintiff had passed. Her email also added, "Phew!"[82]

177 VP Kong's words were not words of someone who was retaliating against the Plaintiff for her complaints about Dr Wong. I add that it would have

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79 2AB 717

80 2AB 730

81 2AB 730

82 2AB 732–733

been in VP Kong's own interest not to impose any requirement that was not suggested by the examiners as that would have meant more work for her and the RO to follow up on.

178 An internal email also showed that VP Kong had asked Ms Lau to identify the amendments which the examiners specified in their reports and in their copies of the thesis.[83] When Ms Lau spoke to the examiners about the amendments to be made, it was to clarify the amendments required and not to instigate the examiners to suggest amendments when none were initially required. Therefore, the Plaintiff's accusation that VP Kong was orchestrating the requirement for amendments with the help of Registrar Ang was baseless.

179 The accusation by the Plaintiff was not only unfair to VP Kong and Registrar Ang but also to the examiners as it also insinuated that the examiners could be and were in fact manipulated by VP Kong and the RO to require amendments to be made.

180 I come back to Ms Lau's letter of 25 November 2005 which mentioned the following requirements that the Plaintiff was to comply with:

(a) the Amendment requirement;

(b) the submission of the thesis;

(c) the uploading of the thesis electronically; and

(d) the submission of Form RO.85.

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83 2AB 742

181 As mentioned above, the amendments were made and a soft copy of the thesis was submitted. However it was not uploaded electronically. Neither was Form RO.85 submitted.

182 After Ms Lau's letter of 25 November 2005, the Plaintiff was still complaining to VP Kong. As mentioned above, even if the Plaintiff's email of 27 November 2005 to VP Kong had crossed with Ms Lau's letter of 25 November 2005 to her, the Plaintiff would have received the letter of 25 November 2005 soon thereafter, if not on that day itself. Yet, the Plaintiff continued to re-send her email of 27 November 2005 to VP Kong repeatedly as she herself said. It will be recalled that her 27 November email still complained that her thesis had been sent for examination despite her protest. She continued to re-send it even though she knew that the outcome of the examination was successful, subject to some amendments of her thesis and she was embarking on the amendments.

183 Ms Lau's email of 6 April 2006 informed the Plaintiff that Prof Li was satisfied with her amendments. She could proceed to complete the relevant portion of Form RO.85[84].

184 After some reminders from Ms Lau, the Plaintiff replied on 27 July 2006 to say that she did not agree to put her thesis on the internet/intranet. She asked if NUS could give her the Degree if she did not agree to this or sign Form RO.85.

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84 2AB 881

185 On 11 August 2006, VP Kong wrote to the Plaintiff. I set out the material paragraphs of the letter below:

> You had earlier been informed on 18 August 2005 that your thesis will be sent for examination. You have protested this decision, and continue to do so by insisting that matters raised in your email of 27 November 2005 be addressed. Your email of 27 November 2005, however, does not cover any new ground that has not already been addressed by the Committee of Inquiry or me. This has clearly been communicated to you on a number of occasions.
>
> While you protested the decision against sending your examination for thesis [*sic*], you have responded by making amendments to the thesis as requested by the examiners. On the other hand, you do not wish to comply with the requirement that an electronic copy of your thesis be uploaded. It is therefore unclear from your protestations, your amendments to your thesis, and your refusal to comply with the uploading requirement, whether you accept or reject the examination process.
>
> This will be a final opportunity for you to confirm whether you accept the University's decisions and will therefore (a) comply with the uploading requirement as well as (b) cease your correspondence regarding the contents of your email of 27 November 2005. If you do accept the University's decisions, then please confirm this in writing via registered post and complete the uploading of your electronic thesis by 31 August. If you do not accept the University's decisions by this date, your candidature will be deemed to have ceased. While the scholarship monies that had been paid to you will ordinarily be recoverable by the university, NUS is prepared to waive this out of goodwill and without prejudice to any rights that the University may have.

186 As mentioned above at [75], the Plaintiff alleged that this letter imposed two additional requirements for her to comply.

187 The first was the Acceptance requirement. The Plaintiff contended that this meant that not only was she required to accept the process of examination

which had taken place but she was also required to accept the COI's decision that there was no evidence that Dr Wong had plagiarised her work.

188 The second was the Cessation of Correspondence requirement.

189 While VP Kong's letter of 11 August 2006 also mentioned the uploading requirement but not the submission of Form RO.85 specifically, the latter had already been mentioned in Ms Lau's letter of 25 November 2005. I add that it was reiterated several times subsequently by Ms Lau.

190 Thus, after VP Kong's letter of 11 August 2006, it appeared that the outstanding requirements which the Plaintiff still had to meet were:

(a) upload the thesis electronically;

(b) submit Form RO.85;

(c) the Acceptance requirement; and

(d) the Cessation of Correspondence requirement.

191 As regards the requirement to upload the thesis electronically and to submit Form RO.85, the Plaintiff's SOC did not say how the imposition of these two requirements constituted deliberate conduct on the part of NUS.

192 In para 9.2.21 of that pleading, she merely referred to the letter dated 25 November 2005 from Ms Lau informing her of the outcome of the examination of her thesis and the need to make amendments. She did not even refer to the uploading requirement or the need to submit Form RO.85. .

193 In para 9.2.25, she then said that she queried Ms Lau on or about 27 June 2006 on the need to submit Form RO.85 without explaining how the requirement of Form RO.85 came to be introduced.

194 More importantly, these bare allegations were made without any suggestion that it was unreasonable of NUS to impose these requirements. On this ground alone, the Plaintiff would not have been entitled to suggest that either or both these requirements were imposed maliciously or with the knowledge that they were *ultra vires*. However, I will address the merits of these allegations as elaborated by the Plaintiff outside of her pleadings.

195 As regards the requirement to upload the thesis electronically, the Plaintiff submitted that there was no need for NUS to impose this requirement since NUS could have itself done it as she had sent a soft copy of her thesis to NUS.[85]

196 However, even if NUS could have itself uploaded the thesis electronically, that was not the point. There was nothing unreasonable in requiring her to do so as she should have been able to do so easily, if she really wanted to. Furthermore it was not only the uploading that was in question but both the uploading and the submission of Form RO.85.

197 The Plaintiff never said in her emails to Ms Lau that the requirement to upload electronically was in itself unreasonable. Indeed, the Plaintiff had amended her SOC to delete references to "onerous" and "unreasonable" when

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85 PCS para 46

referring to the imposition of the requirement to upload electronically. The allegation of unreasonableness was made only in PCS.

198 As for the submission of Form RO.85, the SOC referred to an indemnity clause in the form but not the rest of the terms in the form. Furthermore, the Plaintiff had also amended her SOC to delete references to "onerous" and "unreasonable" for this clause. It was in her AEIC that the Plaintiff said at para 180 that Form RO.85 included an onerous indemnity clause (under cl 6 of Form RO.85). I will refer to this clause as "the Indemnity clause".

199 At para 195 of her AEIC, the Plaintiff complained about another provision in Form RO.85, *ie*, cl 2, in which she said she was to grant NUS a licence to publish, reproduce, distribute, display and store the thesis. I will refer to cl 2 as "the IP clause". She went on to say at para 196 of her AEIC that the terms of Form RO.85 were a cause of concern to her since she had an issue with Dr Wong using her intellectual property without proper acknowledgement. Yet, she did not complain about the IP clause in the SOC.

200 Furthermore, even though she referred to the Indemnity clause and the IP clause in her AEIC, her AEIC did not elaborate how they were so unreasonable that the imposition of the submission of Form RO.85 constituted deliberate conduct on the part of NUS.

201 It was in PCS that she attempted to elaborate. I will first address her submissions on the Indemnity clause and then the IP clause.

202 The Indemnity clause in Form RO.85 was worded widely. It required candidates to fully indemnify NUS against all claims and costs arising out of any claim by a third party alleging that any exercise of NUS' rights under the licence (granted under the IP clause) infringes any intellectual property of the third party. As worded, the clause appeared to require candidates to indemnify NUS for its costs incurred in respect of such a claim by a third party even where the claim was unsuccessful.

203 The Plaintiff argued that it was unreasonable for NUS to impose such a wide indemnity. However, I note that she did not raise any concern over the Indemnity clause to NUS before her candidature was terminated. At that time, the Indemnity clause was not one of her reasons for refusing to submit Form RO.85.

204 I agree that the Indemnity clause was too wide but it seemed to me that this was due to inadvertent poor drafting. Had the Plaintiff raised the width of the Indemnity clause with NUS, I am confident that the issue would have been sensibly resolved by NUS assuring her that she would not be liable to indemnify NUS for costs incurred in respect of an unsuccessful claim by a third party. For completeness, I add that Form RO.85 was revised by NUS in 2009 and became Form RO.667/09 which is Exhibit P2 in the trial. The revised indemnity provision was limited to any breach of a candidate's warranties and covenants.

205 Hence, the inclusion of the Indemnity clause did not suggest deliberate conduct on the part of NUS when it required the Plaintiff to submit Form RO.85.

206 As regards the IP clause, the Plaintiff submitted that there was no need for such a provision as under the terms applicable to her admission as a candidate, NUS was already entitled to reproduce and publicly distribute copies of her thesis.[86]

207 But even if this provision was academic in the Plaintiff's circumstances, that did not make the IP clause an unreasonable requirement to the extent that it illustrated deliberate conduct on the part of NUS.

208 In the first place, while the Plaintiff did inquire of Ms Lau about how the IP clause came to be introduced, she did not allege then that it was unreasonable for NUS to include it in Form RO.85. As she herself eventually accepted in her closing submissions, NUS already had the right to reproduce her thesis even without that provision. Although Form RO.85 included the IP clause which was a provision about a licence to NUS to publish or distribute her thesis and this licence was actually unnecessary as NUS already owned the copyright to her thesis, this did not constitute unreasonable conduct by NUS. It appears from NUS' evidence that the IP clause was included in Form RO.85 because there could be instances where NUS did not already own the copyright to a thesis, for example where the candidate had not entered into a scholarship agreement with NUS.

209 Therefore, the inclusion of the Indemnity clause and the IP clause in Form RO.85 was not the result of deliberate conduct of NUS. Neither was NUS behaving in a deliberate manner when it insisted that the Plaintiff submit Form RO.85.

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86 PCS paras 43–45

210 There was yet another obstacle facing the Plaintiff on the tort of misfeasance in public office. The requirements to upload electronically and the submission of Form RO.85 were generally applicable to graduate students undergoing examination by thesis. In other words, NUS did not impose these requirements on the Plaintiff only. Therefore, neither the uploading requirement nor Form RO.85 suggested any deliberate conduct on the part of NUS.

211 When the Plaintiff wrote to President Shih on 29 December 2006 to complain that she had been denied the Degree, she said that she did not see why she should be required to sign Form RO.85 in order to graduate. She also said that she did not agree to put her thesis on the internet.[87] She did not identify any specific clause in Form RO.85 as being the issue nor any other complaint.

212 From the evidence, I am of the view that the real reason why the Plaintiff refused to upload her thesis and to submit Form RO.85 was that she was afraid that by doing so, she had waived all her rights over her thesis such that if Dr Wong were to somehow access her thesis, he could make use of it with impunity for the Visualisation Project without acknowledging her work. I am of the view that the Plaintiff had conflated the uploading of her thesis and the submission of Form RO.85 with her fear that Dr Wong could make use of her thesis without acknowledging her work.. Even if the intellectual property over her thesis did not belong to NUS and the Plaintiff was effectively granting a licence to NUS to use her thesis by submitting Form RO.85, this did not mean that Dr Wong could make use of her work without acknowledging it. Furthermore, as suggested by NUS' counsel during the trial, it would have been more difficult

87 2AB 1214-1215

for Dr Wong not to acknowledge her work if she had uploaded her thesis and he made use of it.[88]

213 Since the uploading requirement and the requirement to submit Form RO.85 did not constitute deliberate conduct on the part of NUS, I turn to the other two requirements, *ie*, the Acceptance requirement and the Cessation of Correspondence requirement.

214 As regards the Acceptance requirement, what did VP Kong's letter of 11 August 2006 mean when she asked the Plaintiff to confirm acceptance of "the University's decisions"? Was this phrase confined to the COI's decision that the examination process, as suggested by VP Kong, should proceed or did it include the COI's decision that there was no evidence of plagiarism by Dr Wong?

215 NUS submitted that the phrase referred only to the COI's decision on the examination process.

216 I note that there was no mention of the COI's decision on plagiarism in the second or third paragraph of VP Kong's letter of 11 August 2006. The second paragraph had only indicated that it was unclear as to whether the Plaintiff was accepting or rejecting the examination process. The third paragraph then used the phrase "the University's decisions". However, the plural and not the singular noun was used.

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88 NE 3/8/2017 pp 56–60

217 To support its position, NUS submitted that in Ms Lau's email dated 31 August 2006 to the Plaintiff, the email did specifically qualify "the University's decisions" by referring only to the examination process. The relevant part of the email read, "respond to Prof Kong's letter with a confirmation of your acceptance (in writing) of the University's decisions *with regard to the examination process of your thesis*" [emphasis added].

218 NUS also submitted that VP Kong had approved the draft of this email internally before it was sent. However, I point out that there was also other internal evidence that showed that VP Kong took a different stance subsequently. When VP Kong wrote to Provost TCC on 2 September 2006 to explain the situation, she said that she had indicated to the Plaintiff in a most recent correspondence of early August 2006 that the Plaintiff could not protest against the COI's findings and conclusion on the plagiarism issue and the examination process and yet simultaneously accept the outcome of the examination but not the clearance of Dr Wong's name.[89] This suggested that in VP Kong's own mind, she intended to refer to both these decisions of the COI and not just the decision on the examination process in her 11 August 2006 letter to the Plaintiff when she asked the Plaintiff to confirm that she accepted "the University's decisions".

219 Indeed when the draft of the 4 September 2006 letter was sent to VP Kong for her approval, the draft initially mentioned that NUS had not received the Plaintiff's response to VP Kong's letter of 11 August 2006 with a confirmation of her acceptance (in writing) of the University's decisions

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89 2AB 1182

regarding her complaints "with regard to the examination process of her thesis". In other words, the draft contained a similar qualification as found in Ms Lau's email dated 31 August 2006 to the Plaintiff. However, this time, VP Kong deleted the qualification from the draft. Hence, when the letter dated 4 September 2006 was engrossed and sent by Ms Lau to the Plaintiff to inform her that her candidature had ceased with immediate effect, it referred only to "the University's decisions regarding your complaints".

220 I add that more than two years later, Registrar Ang was elaborating to President TCC about the Plaintiff's complaints in her email dated 12 January 2009 to President TCC. In that email, Registrar Ang said that NUS had emphasized to the Plaintiff that, "if she rejects the COI's ruling that there was no plagiarism on her [*sic*] part of her supervisor and rejects their conclusion that the selection of examiners was a fair process, then she cannot accept the positive outcome (passing) of her thesis examination to get her degree … but it is important that the COI conclusion is upheld in toto".[90] Registrar Ang must have reviewed the earlier emails and concluded that NUS had required the Plaintiff to accept the COI's decisions both on the examination process and plagiarism.

221 Interestingly, NUS submitted that the internal emails should be disregarded in ascertaining what was conveyed by NUS to the Plaintiff and the phrase "the University's decisions" should be construed objectively. Yet it was NUS who attempted to bolster its case by referring to VP Kong's internal conduct in approving the draft of the 31 August 2006 email, as mentioned at

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90 3AB 1378

[218] above, before Ms Lau sent it. It was because of this attempt that this court has referred to other internal evidence which shows a different picture.

222 Assuming that the court should not refer to subjective intention, and hence internal emails, to construe the phrase in question, I return to the objective evidence.

223 If VP Kong's letter of 11 August 2006 was considered in isolation, I would have agreed that the phrase "the University's decisions" referred only to the COI's decision on the examination process. This appears to be reinforced by Ms Lau's email of 31 August 2006 to the Plaintiff with the qualification, "with regard to the examination process of your thesis".

224 However, the factual matrix has to be considered. The factual matrix before the letter of 11 August 2006 showed that the Plaintiff was informed about the COI's decision on both the examination process and the issue of plagiarism. She remained unhappy about both these decisions.

225 Also, while Ms Lau's email of 31 August 2006 did add a qualification to the phrase in question, the last email on 31 August 2006 was the Plaintiff's email to Ms Lau at 9.38pm where she asked if she had to agree with the way VP Kong had handled her complaint against Dr Wong. It will be remembered that the genesis of her complaint was the plagiarism issue. There was no response to her email.

226 In the circumstances, I am of the view that the phrase "the University's decisions" in the letter of 11 August 2006 was ambiguous. Applying the *contra*

proferentem rule, I conclude that it was not confined to the COI's decision on the examination process but also to the COI's decision on the plagiarism issue. In other words, the Plaintiff was being required to confirm that she accepted both these decisions failing which her candidature would be terminated. I will refer to the former decision of the COI as the first part of the Acceptance requirement and the latter decision of the COI as the second part of the said requirement.

227 However, I do not think that VP Kong had deliberately used an unclear phrase in her letter. Indeed this was not suggested by the Plaintiff.

228 As for the imposition of the first part of the Acceptance requirement, I appreciate why VP Kong wanted the Plaintiff to expressly confirm that she accepted the examination process. It appeared that the Plaintiff was still complaining about that process. However, it was not really necessary to require the express confirmation since it was quite clear from the Plaintiff's conduct that she had accepted the examination process. After all, she had amended and submitted her amended thesis, as required.

229 More importantly, it was wrong of VP Kong to impose the first part of the Acceptance requirement *as a condition for awarding the Degree*. Put in another way, if the Plaintiff had complied with the uploading requirement and submitted Form RO.85, it would have been wrong of NUS not to award her the Degree because she failed to expressly say that she accepted the examination process. However, it does not follow that the imposition of the first part of the Acceptance requirement suggested deliberate conduct. I will come back to this point later when dealing with the Cessation of Correspondence requirement.

230 In the action, the Plaintiff focussed on the second part of the Acceptance requirement, *ie*, to require the Plaintiff to accept the decision of the COI on the plagiarism issue, as constituting deliberate conduct. VP Kong admitted in cross-examination that it would not be correct for her to impose such a condition but she did not accept that she had in fact imposed such a condition on the Plaintiff.[91] As I have mentioned above, she did impose that condition. I also conclude that it was wrong of her to do so.

231 It was open to the Plaintiff to disagree with the decision of the COI on the plagiarism issue and yet accept the outcome of the examination process. The two were not as inextricably linked as VP Kong had thought at the material time. However, the fact that VP Kong was also wrong in imposing the second part of the Acceptance requirement does not necessarily mean that she did so deliberately to prevent the Plaintiff from getting the Degree. I will address this point later when dealing with the Cessation of Correspondence requirement.

232 Unfortunately, NUS' position on the Cessation of Correspondence requirement was not clear. DCS at paras 307 and 409 gave the impression that NUS was taking the position that the Plaintiff had not even been asked to cease her correspondence with NUS at all. At paras 329 and 338 of the same submissions, however, NUS' position appeared to be that while the Plaintiff was asked to cease her correspondence, it was not a condition which she had to meet in order to obtain the Degree.

233 The 11 August 2006 letter had asked the Plaintiff to confirm that she accepted the "University's decisions and will therefore, (a) comply with the

[91] NE 21/8/17 pp 105–107

uploading requirement as well as (b) cease your correspondence regarding the contents of your email of 27 November 2005". In my view, the letter did require the Plaintiff to cease her correspondence with NUS about the contents of her 27 November 2005 email. This was clearly stated in the letter. I am also of the view that the letter suggested that this was a condition she had to accept in order to obtain the Degree.

234 Since the Plaintiff was not obliged to accept the COI's decision on the plagiarism issue, she was also not obliged to cease correspondence on the issue. Therefore, I am also of the view that VP Kong was also wrong to impose the Cessation of Correspondence requirement that the Plaintiff had to accept in order to obtain the Degree.

235 The question is whether the Acceptance requirement and the Cessation of Correspondence requirement suggested deliberate conduct on the part of VP Kong. VP Kong's conduct has to be considered holistically.

236 It is true that VP Kong said she felt harassed by the Plaintiff's numerous emails which were at times lengthy. There was also an internal email dated 29 August 2006 from Deputy Registrar Chan Ng Chye to Ms Lau observing that VP Kong was "really jittery over this case". The Plaintiff relied on these two points as supporting her case that VP Kong disliked her and was guilty of bias towards the Plaintiff. However, these two points were equivocal.

237 It is understandable why VP Kong felt harassed. The Plaintiff persisted in complaining about Dr Wong and the examination process even though the outcome of the examination was successful. Likewise it is not surprising that

VP Kong felt jittery. From her point of view, she had acted reasonably with a good outcome for the Plaintiff but the Plaintiff was still not satisfied.

238 I come back to the background leading to VP Kong's letter of 11 August 2006. After the Plaintiff was informed of the successful outcome of the examination of her thesis, the Plaintiff appeared to accept the successful outcome by proceeding to amend her thesis as suggested by the examiners. Yet, on the other hand, the Plaintiff sent her email of 27 November 2005 to VP Kong repeatedly. That email included her protest that her thesis had been sent for examination. It was no wonder that VP Kong thought that the Plaintiff was behaving inconsistently on this aspect as well.

239 Furthermore, as mentioned above, the Plaintiff did not initially protest about the uploading requirement or the requirement to submit Form RO.85. In fact, when Ms Lau sent an email dated 7 March 2006 to the Plaintiff to ask whether her submission of Form RO.85 and a copy of her finalised thesis as stated in the letter of 25 November 2005 was on the way to the RO already, the Plaintiff replied on 8 March 2006, "They are on their way."[92]

240 It was only after Ms Lau's email of 6 April 2006 informing the Plaintiff that her amendments had been accepted and then reminding her about Form RO.85 that the Plaintiff began to raise queries about the uploading requirement and the requirement to submit Form RO.85. As mentioned, this resulted in further emails exchanged between Ms Lau and the Plaintiff.

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92 2AB 882

241 It was in such circumstances that VP Kong eventually sent the 11 August 2006 letter. This resulted in further emails from the Plaintiff and she did not upload her thesis or submit Form RO.85. Before the letter of 4 September 2006 to terminate the Plaintiff's candidature was sent, VP Kong explained in her email dated 2 September 2006 to Provost TCC (see [218] above) as to why she believed the Plaintiff could not accept only one decision of the COI on the examination process, but not the other to exonerate Dr Wong on plagiarism. Although VP Kong was wrong to think that the two were inextricably linked, I am of the view that this was a belief she genuinely held.

242 Likewise, I am also of the view that VP Kong genuinely believed that the Plaintiff ought to stop her correspondence, which was inconsistent with her conduct, as a condition for getting the Degree. It did not make sense to VP Kong that the Plaintiff should receive the Degree and continue with her protestations.

243 In summary, the Plaintiff was making allegations about Dr Wong's plagiarism. She believed that there was a cover up by NUS and, in particular, VP Kong. She believed that NUS was acting to retaliate against her and that was why NUS was trying to get her to accept the COI's exoneration of Dr Wong on the plagiarism issue and to cease correspondence, as well as also putting obstacles in her way of getting the Degree. She maintained her beliefs in the action.

244 However, the Plaintiff overlooked other facts which pointed to the contrary.

245 First and foremost, as I have stressed, it was VP Kong who sent her thesis for examination and the outcome was successful. As mentioned at [128] above, had VP Kong not sent the thesis for examination, the likely result would have been that the Plaintiff would not have obtained the Degree anyway.

246 Secondly, as I have mentioned above at [175] and [176], there was internal email to show that VP Kong was relieved when she learned of the successful outcome of the examination. Her relief was most understandable in the circumstances and contradicted any suggestion of ill-will towards the Plaintiff.

247 Thirdly, when the outcome of the examination was successful, NUS informed the Plaintiff that she could consult Prof Li for advice on the amendments to her thesis. Form RO.85 would be signed by Prof Li instead of Dr Wong. Where a supervisor's action was needed, she could seek help from Prof Li. (see [66(e)] above). By doing this, NUS had provided an avenue for the Plaintiff not to have to go back to Dr Wong to complete any outstanding requirement.

248 Fourthly, the Plaintiff was initially required to make the amendments within one month. When she asked for more time to do so, this was readily acceded to by NUS.

249 Fifthly, after the amendments were accepted, Ms Lau followed up with the Plaintiff by reminding her to submit Form RO.85. Thereafter the Plaintiff raised various queries and objections which I have mentioned and Ms Lau sought to address them. Indeed, Ms Lau continued to engage with the Plaintiff

up until the day of the deadline, 31 August 2006, to urge her to fully comply with whatever was still left undone.

250 After reviewing the various emails between Ms Lau and the Plaintiff after the 11 August 2006 letter, I find that Ms Lau did try her best to address the Plaintiff's queries and objections although she was not as precise or clear as the Plaintiff had expected.

251 Sixthly, the initial letter dated 25 November 2005 from Ms Lau to the Plaintiff did not mention the Acceptance requirement or the Cessation of Correspondence requirement. These two requirements were mentioned only about nine months later in the 11 August 2006 letter from VP Kong because the Plaintiff was still reiterating her complaints about Dr Wong and maintaining her objections to the thesis being sent for examination notwithstanding the successful outcome of the examination.

252 Seen in the light of the totality of the circumstances, there was clearly no malice or knowledge that they were acting *ultra vires* on the part of VP Kong or other officers of NUS, although errors were made.

253 Accordingly, the Plaintiff's claim on the tort of misfeasance in public office fails.

Breach of contract

254 It was not disputed that when the Plaintiff entered into an agreement with NUS for her candidature for the Degree ("the Agreement"), she had to meet

all the applicable requirements in order to obtain the Degree. The question is what were the applicable requirements?

255 Each side relied on different provisions of the Statutes of the National University of Singapore ("the NUS Statutes"). The NUS Statutes were incorporated by reference into the Agreement through the letter of offer to the Plaintiff dated 15 November 2001. The letter had informed her to familiarise herself with the requirements of her candidature as set out in the "Statutes and Regulations" handbook.

256 The Plaintiff relied on Statute 9(4) of the NUS Statutes which states:[93]

> 4. No person shall be deprived of any degree or academic award except for good cause and on the resolution of the Senate.

257 The Plaintiff's case was that she had never been informed of any proceeding to deny her the Degree for good cause and she was never informed of any hearing convened under a Board of Discipline, as stipulated in the NUS Statutes, which is vested with the power to terminate a student's candidature.

258 However, I agree with NUS' submission that Statute 9(4) applies only if a candidate has first met all the applicable requirements and NUS then sought to deny her the degree. Therefore, the question still remains as to what the applicable requirements were.

259 NUS sought to rely on Statute 10(8) of the NUS Statutes which states:[94]

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93 3AB 1591

94 3AB 1592

> 8. A student may be awarded a degree or diploma only if
>
> (a) he has completed all of the requirements for that degree or diploma;
>
> (b) he is not in debt to the University (other than through an explicit loan made by the University).

260 NUS was suggesting that "the requirements" in Statute 10(8)(a) of the NUS Statutes referred to both academic and administrative requirements.

261 On the other hand, the Plaintiff submitted that "the requirements" in Statute 10(8) meant only the requirements specifically mentioned in the NUS Statutes such as in Statute 10(3) which states:[95]

> 3. Student performance in graduate research degree programmes may be assessed through a combination of examinations, continuous assessment, and written dissertation. A candidate for the Doctor of Philosophy must pass an oral examination on his thesis and related subject matter.

262 I note that Statutes 10(1) and 10(4) state:[96]

> 1. A student may be admitted into a degree or diploma program only if he satisfies the requirements specified by the relevant Faculty or Institution, and as approved by the Senate.
>
> …
>
> 4. A student may continue in a degree or diploma program only if he satisfies the requirements specified by the relevant Faculty or Institution, and as approved by the Senate.

263 Therefore, I am of the view that "the requirements" in Statute 10 are not confined to those specifically mentioned in the NUS Statutes only.

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95 3AB 1591

96 3AB 1591

264 On the other hand, the references to "the requirements" in Statutes 10(1) and 10(4) refer to "requirements specified by the relevant Faculty or Institution, and as approved by the Senate". Furthermore, Statute 10(9) states that, "The Senate may, in its absolute discretion, waive any of the requirements in clause 8 of this Statute".

265 As there was no evidence or suggestion that administrative requirements, like the ones in question, would have to be and were specified by the "relevant Faculty or Institution" and the Senate, I am of the view that "the requirements" in Statute 10 refers to academic requirements only.

266 However, that does not mean that the Plaintiff only had to meet the applicable academic requirements.

267 NUS cited *Gally v Columbia University* 22 F.Supp.2nd 199 (S.D.N.Y. 1998), a decision of the United States District Court, S.D. New York, where the court said at [7] that "the student must fulfil her end of the bargain by satisfying the university's academic requirements and complying with its procedures if she hopes to receive her degree". This was a bare statement but it encapsulated NUS' position.

268 Furthermore, the Plaintiff's counsel appeared to accept that the Plaintiff had to meet both academic and administrative requirements when he questioned NUS' witnesses at trial.[97] His contention then was that a student who complied with academic and administrative requirements prevailing at the time of enrolment was entitled to obtain her degree.

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97 NE 4/8/2017 pp 54–55, NE 22/8/2017 pp 18–20

269 NUS pleaded at para 4 of the Defence that it was an implied term of the Agreement between the parties that, "the Plaintiff was required to comply with such rules, requirements and procedures as might be implemented by [NUS] from time to time". NUS' case was that the Plaintiff was to meet both academic and administrative requirements as NUS might impose from time to time. The Plaintiff did not agree that she had to meet such requirements as NUS might impose from time to time. Her case was that NUS had breached the Agreement between them by imposing:[98]

(a) the uploading requirement and the Indemnity clause (in Form RO.85). She did not plead that the requirement to submit the entirety of Form RO.85 was a breach of contract;

(b) the Cessation of Correspondence requirement; and

(c) the Acceptance requirement.

270 Relying on the Court of Appeal decision in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*") and para 35A of the Supreme Court Practice Directions, the Plaintiff submitted that para 4 of the Defence was deficient in specificity. The Court of Appeal said at [73]:

> We hasten to add that although the contextual approach is most frequently engaged in the context of interpretation, this is not to say that the contextual approach is irrelevant when it comes to other aspects of construction such as implication or rectification. Indeed, it is trite that the court must have regard to the context at the time of contracting when considering the issue of implication. Therefore, to buttress the evidentiary

98 SOC at paras 4–5

> qualifications to the contextual approach to the construction of a contract, the imposition of four requirements of civil procedure are, in our view, timely and essential:
>
> (a) first, parties who contend that the factual matrix is relevant to the construction of the contract must plead with specificity each fact of the factual matrix that they wish to rely on in support of their construction of the contract;
>
> (b) second, the factual circumstances in which the facts in (a) were known to both or all the relevant parties must also be pleaded with sufficient particularity;
>
> (c) third, parties should in their pleadings specify the effect which such facts will have on their contended construction; and
>
> (d) fourth, the obligation of parties to disclose evidence would be limited by the extent to which the evidence are relevant to the facts pleaded in (a) and (b).

271 I add that at [101], the Court of Appeal set out a three-step process to determine the existence of any alleged implied term. It said:

> 101 It follows from these points that the implication of terms is to be considered using a three-step process:
>
> (a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.
>
> (b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.
>
> (c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at time of the contract. If it is not possible to find such a clear response, then, the gap persists and the consequences of that gap ensue.

272 While NUS denied that its pleading was deficient, by relying on some cases which I need not specify, it did not elaborate how its pleading met the requirements specified in *Sembcorp Marine*.

273 Nevertheless, it is important to bear in mind that in *Sembcorp Marine*, the contract in question was negotiated between commercial parties for a commercial purpose at arm's length. In the case before me, there was no negotiation between the parties of the terms of the contract. Also, while the Plaintiff was supposed to pay fees for her candidature, subject to any scholarship she obtained from NUS, the parties were not quite the kind of commercial parties envisaged in *Sembcorp Marine*. The purpose of the contract of the parties before me was more educational than commercial.

274 That said, the views of the Court of Appeal are still applicable although they should be applied in the context of the circumstances before me.

275 I am of the view that the pleading of NUS on the implied term could and should have elaborated more on the factual matrix giving rise to the implied term. However, that did not mean that NUS' pleading was so deficient that NUS was precluded from relying on the implied term. Indeed, in *Sembcorp Marine*, the Court of Appeal did not say that if the pleading lacked the specificity envisaged, this would necessarily preclude the party raising the implied term from relying on it. Instead, it might be a case of the opponent being entitled to request further and better particulars of the pleading.

276 Here, the Plaintiff did not request such particulars. I agree with NUS that she was not prejudiced by NUS' pleading. The factual matrix was not in dispute.

The Plaintiff was a candidate for the Degree. NUS is a tertiary institution. NUS' case was that as such an institution, it must be entitled to impose requirements from time to time which candidates have to meet even if the requirement is imposed after the contract is entered into.

277 Accordingly, I conclude that NUS is not precluded from relying on an implied term on the ground of deficiency of pleading.

278 I come back to the three-step process mentioned in *Sembcorp Marine* to determine the existence of an implied term.

279 First, was there a gap in the contract between the parties? The Plaintiff submitted that there was no gap. This was because the terms of the letter of offer to her dated 15 November 2001 stipulated clearly that she was to do research under Dr Wong and she was to read and pass some coursework with a minimum average grade as prescribed by the school.[99]

280 However, in my view, these were some of the academic requirements. They did not address the issue of administrative requirements. For example, the requirements to upload and to submit Form RO.85 were more in the nature of administrative requirements. I have intimated above that Statute 10(8) of the NUS Statutes does not apply to such requirements. In my view, there was a gap as the Agreement and the NUS Statutes did not address the issue as to whether a student also had to meet administrative requirements that may be imposed from time to time by NUS in order to obtain a degree.

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[99] PCS at paras 24–26

281 How did the gap arise? As mentioned above, this was not a case of the parties negotiating at arm's length on the terms of the contract. There was no negotiation. The Plaintiff had to accept the terms of the offer from NUS. NUS had omitted to include an express provision which would require a student to meet administrative requirements as may be imposed by NUS from time to time in order to obtain a degree. There was no evidence as to how this omission came about but a reasonable inference would be that it slipped the mind of the person who was assisting NUS to draft the letter of offer or the Statutes and Regulations handbook of NUS.

282 The next question is not so much whether it is necessary in the business or commercial sense to imply a term in order to give the Agreement efficacy but whether it is necessary in the operation of a tertiary institution to imply the term contended by NUS in order to give the Agreement efficacy. Furthermore, would the parties have responded, "Oh, of course!" had the proposed term be put to them at the time of the contract.

283 In my view, it is necessary in the operation of a tertiary institution to imply a term that a student would also have to meet administrative requirements as may be imposed by NUS from time to time before a degree is awarded. This is subject to the qualification that the requirements are reasonable from an objective point of view. For example, for the reasons stated, it was not reasonable of NUS to impose the Acceptance requirement and the Cessation of Correspondence requirement as conditions to be met to obtain the Degree.

284 No one can foresee all the administrative requirements that may be needed at any one given time. Furthermore, such requirements change from time

to time. For example, the requirement for electronic submissions is an attempt to embrace advances in technology and advances in technology may not be anticipated at the time of admission. Aside from that, there may be matters not covered yet, which should be covered, like intellectual property rights. While such rights may go beyond merely administrative matters, it seems to me necessary for a tertiary institution to make provision for them from time to time as terms to be complied with to obtain a degree. As mentioned, this would be subject to the requirement of reasonableness since a tertiary institution should not be permitted to unilaterally impose unreasonable requirements.

285 The denial of any degree to a candidate who has otherwise met the academic requirements is the denial of a substantive right. It is a step not to be taken lightly.

286 While NUS' decision not to award the Plaintiff the Degree for non-compliance of the uploading requirement and the requirement to submit Form RO.85 might appear pedantic, this was not a case where a candidate had inadvertently omitted to comply with an unimportant administrative requirement. The uploading of the thesis and the submission of Form RO.85 were integral steps in the process of electronic submission.

287 Furthermore, Section 1 of Form RO.85 contained various warranties which NUS was legitimately entitled to expect to obtain from candidates. For example, the candidate warrants:

(a) that the thesis does not contain copyright material of NUS or a third party (see clause 3(a));

(b) that the thesis does not infringe any intellectual property right (see clause 3(b)); or

(c) that the candidate is in the process of obtaining all necessary copyright clearances (see clause 3(c)).

288 Under clause 4 of Form RO.85, the candidate warrants that he is in strict compliance with the NUS Guidelines on Research Integrity.

289 Under clause 6 of Form RO.85, the candidate warrants that nothing in the thesis is obscene, defamatory or libellous or violates any right of privacy or any other right of any person.

290 If the Plaintiff had been informed at the time of contract that she would also have to meet administrative requirements as NUS may impose from time to time before the Degree was awarded, provided the requirements were reasonable, I am of the view that she would not have objected. More specifically, if the Plaintiff had been asked at the time of contract if she would upload her thesis electronically and to submit Form RO.85, she would have agreed. She might not have agreed to indemnify NUS for legal costs if the allegation of breach against her by a third party proved unsuccessful eventually but that would have gone to the scope of the indemnity rather than the principle of indemnity.

291 As mentioned above at [79], the uploading requirement and the requirement to submit Form RO.85 had been imposed in 2003 and a circular to that effect had been sent to all graduate students. The Plaintiff must have received it then and did not object to it. Indeed, NUS' case was that the Plaintiff

had used other forms which were introduced after her candidature had commenced. This was not disputed by the Plaintiff.

292 I conclude that there was an implied term that the Plaintiff was required to comply also with reasonable administrative requirements that NUS may impose from time to time in order to obtain the Degree. In principle, she had to meet the requirement to upload and to submit Form RO.85. However, the Indemnity clause in Form RO.85 was too wide in scope as I have mentioned. It was too wide as it required the Plaintiff to indemnify NUS for costs arising from any claim by a third party against NUS for infringement of a third party intellectual property right by the Plaintiff even if the claim was unsuccessful. To that limited extent, the Plaintiff was entitled to reject the Indemnity clause if that was her real complaint but it was not.

293 As discussed above (see [212]), the Plaintiff's true reason for refusing to submit Form RO.85 was her misplaced fear that her work would be used by Dr Wong without proper acknowledgement. Hence, I find that even if the Indemnity clause was properly scoped, the Plaintiff would not have submitted Form RO.85.

294 Since the Plaintiff refused to comply with the reasonably imposed requirements to upload her thesis and to submit Form RO.85, she was not entitled to be awarded the Degree.

295 As for the Cessation of Correspondence requirement and the Acceptance requirement, the Plaintiff was not obliged to comply with such requirements as these were not reasonable requirements. However, the wrongful imposition of

these requirements did not affect the validity of the other reasonably imposed requirements. Hence, my finding that the Plaintiff was not entitled to be awarded the Degree is not affected.

296 Importantly, this was a case of a candidate who was wilfully refusing to comply with the requirements to upload her thesis and to submit Form RO.85. Had it been an inadvertent omission, NUS would have given the Plaintiff time to comply. Indeed NUS had tried for more than a year to accommodate the Plaintiff's concerns although, from the Plaintiff's perspective, NUS was not addressing her concerns either at all or adequately. As mentioned, she considered the various persons she encountered as being partial to Dr Wong, covering up for him and retaliating against her.

297 Accordingly, the Plaintiff's claim under breach of contract fails.

Other developments

298 I would like to add the following. After the trial, I gave directions and timelines for:

(a) the Plaintiff to file and serve her closing submissions by 29 November 2017 (the timeline was later extended by one week to 6 December 2017;

(b) NUS to file and serve its closing submissions by 20 December 2017 (the timeline was later extended to 27 December 2017); and

(c) the Plaintiff to file and serve her closing reply submissions by 8 January 2018.

299 After the first two steps were completed, the Plaintiff sought an extension of time to file and serve her closing reply submissions by 19 January 2018. NUS left it to the court to determine whether this extension of time should be granted to the Plaintiff, but said that if it was granted, it should be the final extension. I acceded to the Plaintiff's request. However, the Plaintiff subsequently said that she was not able to meet this extended deadline. Therefore, she sought a second extension to 9 February 2018. This time NUS objected. I acceded to the Plaintiff's request in principle but granted the extension to 26 January 2018 instead. The Plaintiff was informed that this was to be the final extension. Nevertheless, on 25 January 2018, the Plaintiff made a third request for extension of time to 9 February 2018 which NUS again objected to. This time I rejected her request in toto and she was informed that the deadline of 26 January 2018 stood.

300 From subsequent correspondence, I gather that the Plaintiff's lawyers were ready to file and serve her closing reply submissions by 26 January 2018. However, the Plaintiff had instructed them not to do so. Apparently, she was of the view that the intended submissions to be filed were not as detailed as she wanted and she preferred not to file any closing reply submissions rather than to file the ones that her lawyers were ready with. Hence, this last set of closing reply submissions from her were not filed. I understand that her lawyers have obtained an order to discharge themselves from acting for her.

Summary

301 In the circumstances, I dismiss the Plaintiff's claim. I will hear the parties on costs.

Observations

302 Although I have some sympathy for the Plaintiff, she has only herself to blame. She allowed her view and distrust of Dr Wong to cloud her judgment in her interaction with those she complained to. I agree with the DCS (at para 17) that she viewed the views of others who did not agree with her with irrational suspicion and distrust and perceived them as signs of wrongdoing and/or conspiracy against her. While quick to criticise others, she could not see her own prejudices and how difficult she appeared to others. Her repetitive complaints about the examination process even after the successful outcome of the examination is perhaps one of the best illustrations of her jaundiced perception. Her inability to differentiate between her complaints about Dr Wong and the requirements she had to comply with has led her to the unfortunate situation she finds herself in. Attempts to resolve or mediate the dispute have failed.

303 Nevertheless, it is still this court's hope that the parties will somehow reach a compromise which will see the Plaintiff being awarded the Degree finally.

Woo Bih Li
Judge

Christopher Anand Daniel and Ang Si Yi (Advocatus Law LLP)
for the plaintiff;
Chia Voon Jiet and Koh Choon Min (Drew & Napier LLC)
for the defendant.

Annex A – Dramatis personae

S/No	Names	Designation at the material time	Abbreviation
1.	ANG Siau Gek	Registrar, the Head of the RO	Registrar Ang
2.	CHEOK Yin Peng	Administrative Officer of the DOA	Ms Cheok
3.	CHEONG Hin Fatt	Dean of the SDE	Dean Cheong
4.	CHEW Yit Lin, Michael	Vice-Dean of Research of the SDE	Vice Dean Chew
5.	CLANCEY Gregory	Associate Professor at the Department of History, the Plaintiff's thesis examiner	Prof Clancey
6.	HENG Chye Kiang	Head of the DOA in 2005 and 2006 and Dean of the SDE in 2009, Collaborator in the Visualisation Project	HOD Heng
7.	HOW Puay Cheng, Coleen	Administrative Officer of the RO	Ms How
8.	KONG Lee Lee, Lily	Vice-Provost of Education of NUS	VP Kong
9.	LAU Ai Lee	Senior Administrative Officer of the RO, designated point-of-contact for the Plaintiff and secretary to the COI	Ms Lau
10.	LI Shi Qiao	Professor of the DOA, one of the Plaintiff's thesis examiners and the designated individual to assist the Plaintiff with thesis amendments and Form RO.85	Prof Li

S/No	Names	Designation at the material time	Abbreviation
11.	PINSLER Jeffrey	Professor of the Faculty of Law, Chairman of the COI	Prof Pinsler
12.	SEAH Amy	Management Assistant Officer to VP Kong	Ms Seah
13.	SHIH Choon Fong	President of NUS in 2006	President Shih
14.	TAN Chorh Chuan	Provost of NUS in 2006 and President of NUS in 2009	Provost TCC or President TCC, as the case may be
15.	TAN Tai Yong	Dean of the Faculty of Arts and Social Sciences	Prof TTY
16.	TEN Leu Jiun Jeanne-Marie	Candidate for the degree of Master of Arts (Architecture) by research in the SDE of NUS	The Plaintiff
17.	WONG Chong Thai, Bobby	Deputy Head of Research of the DOA	Deputy HOD Bobby Wong
18.	WONG Yunn Chii	Associate Professor of the DOA, Supervisor of the Plaintiff and Principal Investigator of the Visualisation Project	Dr Wong
19.	YEOH Saw Ai, Brenda	Professor at the Department of Geography, Member of the COI	Prof Yeoh
20.	YU Shi Ming	Vice-Dean of the SDE, Member of the COI	Prof Yu