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

**[2021] SGHC 230**

Suit No 198 of 2019

Between

Gomez, Kevin Bennett

… *Plaintiff*

And

(1) Bird & Bird ATMD LLP
(2) Boey Swee Siang

… *Defendants*

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# GROUNDS OF DECISION

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[Legal Profession] — [Professional conduct]
[Tort] — [Negligence] — [Breach of duty]
[Tort] — [Negligence] — [Causation]

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# Gomez, Kevin Bennett
# v
# Bird & Bird ATMD LLP and another

**[2021] SGHC 230**

General Division of the High Court — Suit No 198 of 2019
Mavis Chionh Sze Chyi J
6–8 April, 30 June 2021

12 October 2021

**Mavis Chionh Sze Chyi J:**

1 In HC/S 198/2019 ("Suit 198"), the plaintiff alleged professional negligence by a law firm and one of their partners. On 30 June 2021, I dismissed the plaintiff's claim. The plaintiff filed a Notice of Appeal on 26 July 2021. I now give my reasons for my decision.

## Background

2 The 1st defendant is a law firm and limited liability partnership, while the 2nd defendant is a partner of the 1st defendant. The plaintiff is their former client. The plaintiff sued the defendants for professional negligence. This was the only cause of action pleaded in his Statement of Claim (Amendment No. 1). The plaintiff claimed that the defendants should bear joint and several liability.

3 The facts of this case are as follows. In 2008, the 2nd defendant (who was a partner at another law firm at that time) was engaged by the plaintiff to

file S700/2008/J ("Suit 700") against Magnetron Insurance & Financial Services Pte Ltd ("Magnetron") for, *inter alia*, commissions that Magnetron had failed to pay the plaintiff when he was previously working for Magnetron.[1] The 2nd defendant joined the 1st defendant as a partner in 2009 and, on the plaintiff's instructions, transferred the matter to the 1st defendant.[2] In 2010, on the plaintiff's instructions, the 2nd defendant joined Mr Kuhadas Vivekananda ("Mr Kuhadas"), the managing director and major shareholder of Magnetron, as a defendant in Suit 700.[3]

4 On behalf of the plaintiff, the defendants entered judgment against Mr Kuhadas and Magnetron in Suit 700 on 1 April and 28 April 2011 (the "April 2011 Judgments"). The April 2011 Judgments were obtained in default of Mr Kuhadas' compliance with a court order to file and serve his List of Documents and supporting affidavit, and in default of Magnetron's compliance with a court order to exchange the affidavits of evidence-in-chief of its witnesses. The judgement sum included a sum of $140,967.87 for "[o]ver-riding commissions" for April and May 2008, with damages to be assessed for "[f]ull commissions" from June to July 2008.[4] Subsequently, the total damages owed to the plaintiff was assessed to be $1,226,289.70, and judgment for this amount was given against Mr Kuhadas and Magnetron jointly and severally on 28 October 2011

1 Agreed Bundle of Documents dated 30 March 2021 ("AB") Vol 9 at pp 1701–1720.

2 Affidavit of Evidence-in-Chief ("AEIC") of Boey Swee Siang dated 28 January 2021 ("BSS AEIC") Vol 1 at para 3; AEIC of Kevin Bennett Gomez dated 28 January 2021 ("KG AEIC") at para 13 and p 121.

3 BSS AEIC Vol 1 at para 6; KG AEIC at para 20; AB Vol 14 at p 3358, 3404.

4 AB Vol 16 at pp 3939–3942, 3998–4001.



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(the "October 2011 Judgment").[5] On 8 November 2011, the defendants sent a letter to Mr Kuhadas requesting payment of the judgment sum within five days.[6]

5 On 23 November 2011, the plaintiff sent an email to the 2nd defendant saying that one of Mr Kuhadas' other creditors had "served on [Mr Kuhadas] a bankruptcy notice", and instructed the 2nd defendant to "proceed with bankruptcy".[7] However, the 2nd defendant advised the plaintiff to let the other creditor "fight" Mr Kuhadas to save the plaintiff costs.[8] On 1 February 2012, the 2nd defendant informed the plaintiff that the case against Mr Kuhadas by the other creditor had been adjourned.[9] On 2 February 2012, the plaintiff instructed the 2nd defendant to "serve [Mr Kuhadas] with the 21 day statutory notice followed by filing of [the] bankruptcy application".[10]

***The first statutory demand***

6 On 18 February 2012, the defendants served on Mr Kuhadas a statutory demand dated 3 February 2012 (the "First Statutory Demand") for the judgment sum with interest.[11]

7 On 8 March 2012, Mr Kuhadas' and Magnetron's solicitors filed two applications, one to set aside the part of the October 2011 Judgment awarding the plaintiff "full commissions" of $1,082,321.92 ("Setting Aside

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[5] AB Vol 18 at pp 4498–4508.

[6] AB Vol 18 at p 4509.

[7] AB Vol 18 at p 4558.

[8] AB Vol 18 at p 4563.

[9] AB Vol 18 at p 4573.

[10] AB Vol 18 at p 4575.

[11] BSS AEIC Vol 1 at pp 196–199; AB Vol 18 at p 4644.



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Application”),[12] and the other to seek an extension of time to appeal against that part of the October 2011 Judgment.[13] On 19 March 2012, the 2nd defendant agreed to a request by Mr Kuhadas’ then solicitors that pending the hearing of the two applications, there be no enforcement action taken against Mr Kuhadas in respect of the full commissions as assessed in the October 2011 Judgment.[14]

8 On 9 May 2012, the Setting Aside Application was dismissed. However, Mr Kuhadas was granted an extension of time to file his appeal against part of the October 2011 Judgment by 5pm on 28 May 2012, on the condition that he pay costs of $4,500 to the plaintiff by 5pm on 23 May 2012, failing which no Notice of Appeal was to be filed.[15]

9 Mr Kuhadas did not pay the $4,500 costs, and no Notice of Appeal was filed within the stipulated time. On 29 May 2012, the 2nd defendant confirmed in an email to the plaintiff that he would proceed with the bankruptcy application against Mr Kuhadas.[16]

***The first and second bankruptcy applications***

10 On 20 June 2012, the defendants filed a bankruptcy application against Mr Kuhadas (“First Bankruptcy Application”), which was fixed for hearing on 19 July 2012.[17]

12 BSS AEIC Vol 1 at pp 210–213.

13 BSS AEIC Vol 1 at pp 214–217.

14 BSS AEIC Vol 1 at p 252.

15 BSS AEIC Vol 1 at p 283.

16 BSS AEIC Vol 1 at p 286.

17 AB Vol 20 at pp 5048–5061.



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11 On 16 July 2012, the plaintiff informed the 2nd defendant via email that Mr Kuhadas owned a 45% share of a property at Ballota Park ("Ballota Park Property"), with the remaining interest in the property being owned by his wife and sister-in-law. The plaintiff also informed that he believed Mr Kuhadas had sold a separate property in Singapore ("Changi Court Property") sometime in May 2012.[18] The Changi Court Property was owned by Mr Kuhadas and his wife.[19]

12 On 18 July 2012, the defendants served another statutory demand ("Second Statutory Demand") on Mr Kuhadas.[20] On 19 July 2012, the First Bankruptcy Application was withdrawn.[21] The 2nd defendant testified that the First Bankruptcy Application was withdrawn because it should have been filed four months after service of the First Statutory Demand but was instead mistakenly filed one or two days out of time. The 2nd defendant had called the plaintiff to apologise for the error and had offered to "absorb the cost" of filing a second bankruptcy application.[22]

13 On the plaintiff's instructions, the defendants then commenced enforcement proceedings against Mr Kuhadas. On 22 August 2012, the 2nd defendant successfully applied for attachment against Mr Kuhadas' interest in the Ballota Park Property.[23] On the same day, the 2nd defendant also

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18 BSS AEIC Vol 1 at p 255; Transcript, 6 April 2021 at p 36 line 14–p 37, line 10.

19 Transcript, 6 April 2021 at p 37 lines 11–15.

20 AB Vol 21 at pp 5293–5294.

21 BSS AEIC Vol 1 at para 18.

22 Transcript, 8 April 2021 at p 73, lines 6–14.

23 AB Vol 1 at pp 181–184.



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commenced garnishee proceedings to garnish money from Magnetron's OCBC bank account.[24]

14 The defendants then filed a second bankruptcy application against Mr Kuhadas on 30 August 2012 ("Second Bankruptcy Application"), which was fixed for hearing on 4 October 2012.[25] On the same day *ie* 30 August 2012, the plaintiff informed the 2nd defendant that Mr Kuhadas had sold a property in Australia (the "Thane St Property").[26] Mr Kuhadas had sold the Changi Court Property on 29 May 2012 and the Thane St Property on 23 May 2012.[27] However, the plaintiff's evidence was that 30 August 2012 was not the first time he had told the 2nd defendant of the sale of the Changi Court Property and Thane St Property; he claimed he had "called [the 2nd defendant] frantically" sometime in July 2012 to inform him, after which the 2nd defendant told him of the "lapse[]" of the First Statutory Demand.[28]

### *Correspondence with Mr Kuhadas*

15 On 29 September 2012, Mr Kuhadas sent an email to the 2nd defendant asking that the plaintiff withdraw the Second Bankruptcy Application on the basis that, *inter alia*, Mr Kuhadas had "on-going expenses" since 2008 and "virtually nil income … since 2009", and bankruptcy would result in him being "totally destroyed". The 2nd defendant replied on 3 October 2012 asking for details of Mr Kuhadas' "alleged debts".[29] The 2nd defendant also asked Mr

24 AB Vol 1 at pp 201–211.

25 AB Vol 21 at pp 5376–5393.

26 BSS AEIC Vol 1 at p 276.

27 KG AEIC at pp 154–161.

28 Transcript, 6 April 2021 at p 124, lines 9–23; KG AEIC at para 42.

29 AB Vol 22 at p 5655–5656.



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Kuhadas for a "more realistic proposal" on how Mr Kuhadas could pay off the judgment debt owed to the plaintiff.[30] Mr Kuhadas said that he was "unable to recommend any installment payment" to the plaintiff, but that if the plaintiff so desired, Mr Kuhadas could "convince [his] wife and sis in law to put up the said property in the market and [the plaintiff] can have [Mr Kuhadas'] share whatever it amounts to".[31]

16 On 4 October 2012, the plaintiff said in an email to the 2nd defendant that Mr Kuhadas' emails "look[ed] promising" as Mr Kuhadas "appear[ed] to be wanting to cooperate to avoid bankruptcy". The plaintiff set out his "suggestion" for following up with Mr Kuhadas. After an email discussion with the 2nd defendant, the plaintiff told him to "draft the letter to [Mr Kuhadas] according to how you see fit."[32]

17 On 16 October 2012, the High Court issued a writ of seizure and sale for Mr Kuhadas' shares in Magnetron ("Magnetron Shares").[33]

18 On 18 October 2012, following up from the 4 October 2012 email from the plaintiff, the 2nd defendant informed Mr Kuhadas that the plaintiff required him to remit $300,000 from the sale of the Changi Court Property within 7 days, or he would proceed with the bankruptcy petition.[34] Mr Kuhadas replied on 22 October 2012 saying that he was a "man of straw" and asking the plaintiff to "postpone the court hearing which will adjudged [him] (*sic*) as a bankrupt".[35]

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30 AB Vol 22 at p 5657–5659.

31 AB Vol 22 at p 5665.

32 AB Vol 22 at pp 5694–5695.

33 AB Vol 1 at pp 215–220.

34 AB Vol 22 at p 5755.

35 AB Vol 22 at pp 5790–5791.



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19 On 23 October 2012, the 2nd defendant told the plaintiff that they should adjourn the hearing of the Second Bankruptcy Application to complete the plaintiff's takeover of the Magnetron Shares, and suggested that they reply to Mr Kuhadas to demand that he sell his Ballota Park Property and "get back his money from his wife" for the sale of the Changi Court Property.[36]

20 On 24 October 2012, the 2nd defendant sent an email to Mr Kuhadas stating, *inter alia*, that the plaintiff was agreeable in principle to the sale of the Ballota Park Property to "realise the cash to make at least part payment of the judgment debt", as long as the sale could "yield a reasonable price".[37]

21 In subsequent email correspondence in November 2012, the 2nd defendant pressed Mr Kuhadas, *inter alia*, for proof that Mr Kuhadas was selling the Ballota Park Property.[38] In an email to the 2nd defendant and the plaintiff's mother dated 24 November 2012, Mr Kuhadas said that it would be difficult for a prospective buyer of the Ballota Park Property to get a loan if one of the owners was a bankrupt.[39] On 7 December 2012, Mr Kuhadas emailed the 2nd defendant stating that he could arrange to sell the Ballota Park Property on the understanding that after payments were made for the bank loan, legal fees, agent's commission and to his sister-in-law and wife, the balance proceeds would be "shared 50/50 between [Mr Kuhadas] and [the plaintiff]", but it would be "vital" for the plaintiff to discontinue the Second Bankruptcy Application.[40] On 12 December 2012, Mr Kuhadas again emailed the 2nd defendant stating

36 AB Vol 22 at p 5798.

37 AB Vol 22 at p 5807.

38 AB Vol 22 at p 5831.

39 AB Vol 23 at pp 5888–5890.

40 AB Vol 24 at pp 6223–6225.



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that the best way to "realize some money is through the sale of BALLOTA PARK" but it would be in the interests of the plaintiff "that the Bankruptcy Action be discontinued to allow the sale to go through quickly".[41]

22 Between December 2012 and February 2013, there followed further email correspondence between the 2nd defendant and Mr Kuhadas, in the course of which Mr Kuhadas provided the plaintiff with a cheque for $50,000, issued by his (Mr Kuhadas') father and post-dated to 1 March 2013.

23 Following a series of email exchanges, the 2nd defendant informed Mr Kuhadas by email on 18 February 2013 that the plaintiff was agreeable to withdraw the Second Bankruptcy Application if Mr Kuhadas' father paid him $25,000 upfront and Mr Kuhadas provided a written undertaking to pay $50,000 to the plaintiff upon completion of the sale of the Ballota Park Property.[42] The plaintiff claimed that he did not "specifically give [the 2nd defendant] these instructions". However, he admitted that he "didn't object" when the email was forwarded to him.[43]

24 Mr Kuhadas replied to the 2nd defendant's email on the same day, *ie* 18 February 2013, asking "can the balance to be paid to be only $25,000 […]".[44] The 2nd defendant forwarded Mr Kuhadas' email to the plaintiff on 18 February 2013 for his views and sent the plaintiff another email to follow up on 20 February 2013.[45] The 2nd defendant then sent an email to Mr Kuhadas on 21 February 2013 where he said he had "taken [the plaintiff's] instructions" and set

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41 AB Vol 24 at pp 6294–6295.

42 AB Vol 26 at pp 6848–6849.

43 Transcript, 6 April 2021 at p 58, lines 12–28; AB Vol 26 at p 6799.

44 AB Vol 26 at p 6816.

45 AB Vol 26 at pp 6847–6848.



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out the plaintiff's conditions for accepting Mr Kuhadas' payment.[46] Mr Kuhadas replied on the same day, indicating his acceptance of the plaintiff's conditions.[47]

***The 22 February 2013 Email***

25 On 22 February 2013, the 2nd defendant sent an email to Mr Kuhadas (the "22 February 2013 Email"):[48]

> Dear Sir,
>
> In response to your e-mail:
>
> 1. The first tranche of S$25,000 shall be paid to us by no later than 1 March 2013 at 4 p.m.
>
> 2. The second tranche of S$25,000 shall be paid to us upon sale of of [*sic*] your unit in Ballota Park, with interest at the rate of 10% p.a. from 1 March 2013 until date of full payment.
>
> 3. We shall continue to retain your cheque of S$50,000 as security for the above payment.
>
> 4. You shall sign and return the properly and duly executed documents for the issuance of new Magnetron shares by today, 4 p.m.
>
> In consideration of the same, our client is agreeable to withdraw the bankruptcy application once items 1 and 4 have been done, and you have unequivocally given your agreement to item 3.

26 Mr Kuhadas replied on the same day with the documents for the issuance of new Magnetron shares and indicating his agreement to the other items.[49] The plaintiff testified that he "did not see the construction" of the 22 February 2013 Email before it was sent to Mr Kuhadas, but he had discussed with the 2nd

46 AB Vol 26 at p 6856.

47 AB Vol 26 at p 6910.

48 AB Vol 26 at p 6909.

49 AB Vol 26 at p 6909.



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defendant over the phone whether withdrawing the Second Bankruptcy Application would "prejudice" any "further enforcement proceedings".[50]

27 On 26 February 2013, Mr Kuhadas emailed the 2nd defendant to inform him that the first tranche of $25,000 had been paid to the plaintiff and requesting that the plaintiff withdraw the Second Bankruptcy Application "unconditionally and indefintely [*sic*]".[51] On 27 February 2013, the 2nd defendant informed Mr Kuhadas that he would withdraw the Second Bankruptcy Application "unconditionally" upon confirmation that the money had been received, and that the latter's use of the phrase "indefinitely" was not "conceptually applicable from a legal perspective".[52] The 2nd defendant was granted leave to withdraw the Second Bankruptcy Application on 7 March 2013, and informed Mr Kuhadas of this on the same day by email (the "7 March 2013 Email").[53]

28 Subsequently, on 26 June 2013, on the plaintiff's instruction, the plaintiff's mother offered to buy all of the Magnetron Shares for $1,000.[54] On 17 July 2013, the plaintiff told the 2nd defendant that he had collected the Magnetron share transfer deed and he would be appointed a director of Magnetron by the following week.[55] On 26 July 2013, the plaintiff informed the 2nd defendant that he "own[ed] Magnetron officially".[56]

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50 Transcript, 6 April 2021 at p 64, lines 24–31.

51 AB Vol 27 at p 7023.

52 AB Vol 27 at p 7050.

53 AB Vol 28 at p 7501.

54 AB Vol 28 at p 7325; Transcript, 6 April 2021 at p 19, lines 23–25.

55 AB Vol 28 at p 7355.

56 AB Vol 28 at p 7362.



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29 The 2nd defendant also testified that the plaintiff had found evidence showing that $200,000 belonging to Magnetron had been used by Mr Kuhadas and his wife to "put up a bail bond for Mr Kuhadas". According to the plaintiff, this was because Mr Kuhadas was then "under investigation by the CAD".[57] On 1 August 2013 the plaintiff sent the 2nd defendant copies of Magnetron's statement of accounts summary for September 2008 and a debit voucher relating to the withdrawal for Mr Kuhadas' bail bond, and instructed the 2nd defendant to "proceed with writing to the CAD as discussed".[58] On 4 August 2013, the plaintiff wrote to the Commercial Affairs Department ("CAD") requesting access to all of Magnetron's documents, and forwarded his email to the 2nd defendant on 14 August 2013. The 2nd defendant suggested on 15 August 2013 that a better way for Magnetron to claim the $200,000 would be to make a police report concerning Mr Kuhadas' misappropriation of funds, and to send a letter of demand to Mr Kuhadas' wife.[59]

30 On 15 October 2013, the plaintiff wrote to the 2nd defendant asking if he could seize the assets of two other companies where Mr Kuhadas was the sole director, and whether he could include Mr Kuhadas' sister-in-law as a co-defendant in his "civil claim". The 2nd defendant replied on 16 October 2013 that the plaintiff could seize the shares of the companies registered in Mr Kuhadas' name, and they could see if there was any possibility of issuing fresh legal proceedings against Mr Kuhadas' sister-in-law as part of any possible claim against Mr Kuhadas, his wife or other family members.[60]

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57 Transcript, 6 April 2021 at p 103, lines 15–17; Transcript, 7 April 2021 at p 74, lines 13–17.

58 AB Vol 28 at p 7376.

59 AB Vol 28 at pp 7377–7378.

60 AB Vol 28 at pp 7408–7409.



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***Appointment of new solicitors by the plaintiff***

31 In November 2013, the plaintiff instructed a different solicitor, one Mr Parwani, to issue another statutory demand against Mr Kuhadas in Singapore dated 26 November 2013 (the "Third Statutory Demand").[61]

32 On 27 November 2013, the plaintiff emailed the 2nd defendant asking him whether the costs awarded pursuant to the October 2011 Judgment were "final" and took into account the disbursements he had incurred for Suit 700. The 2nd defendant replied on 28 November 2013 that the costs awarded were only for the hearing for assessment of damages, and reminded the plaintiff that the costs of the whole matter had not been determined because "we did not want to incur the further legal fees to tax the costs".[62]

33 On 11 December 2013, Mr Kuhadas wrote to the 2nd defendant referring to the 7 March 2013 Email. Mr Kuhadas claimed that he "did not know that [the plaintiff] has not given [him] a unconditional discharge of the judgment debt", and that he found this out only when his father told him the plaintiff had hired another lawyer to "restitute the bankruptcy action" against him. It would appear that until then, the 2nd defendant had not known about the plaintiff engaging Mr Parwani as his new solicitor.[63] The plaintiff explained to the 2nd defendant that his idea was "to close the chapter on [Mr Kuhadas] once and for all by bankrupting him simultaneously in both Singapore and Australia", and that he had "engaged Mr Parwani to make the bankruptcy application".[64]

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61 AB Vol 1 at pp 229–232; KG AEIC at para 60.

62 AB Vol 28 at pp 7454–7456.

63 AB Vol 28 at pp 7497–7500.

64 AB Vol 28 at pp 7497–7500.



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34 Later in the day of 11 December 2013, the plaintiff emailed the 2nd defendant again asking for his feedback on a proposed reply to Mr Kuhadas. The 2nd defendant replied that it "may be better to just tell [Mr Kuhadas] that now he has to deal with Parwani & Co. in respect of the bankruptcy application", and suggested that the plaintiff run through the email with his new solicitors.[65] On 12 December 2013, the plaintiff again emailed the 2nd defendant with another draft of the proposed reply, which stated, *inter alia*, "I **never agreed** that the receipt of the upfront $25,000 and a further $25,000 (with interest at the rate of 10% p.a.) would be considered full and final settlement of the $1.2 million owed to me." [emphasis in original] The 2nd defendant replied: "This looks ok to me."[66]

### *The Australian proceedings*

35 On 14 February 2014, the plaintiff registered the October 2011 Judgment in the Supreme Court of New South Wales.[67] He also served a bankruptcy notice dated 26 February 2014 on Mr Kuhadas (the "Australian Bankruptcy Notice") on 4 March 2014.[68] Mr Kuhadas applied to set aside the Australian Bankruptcy Notice on 21 March 2014.[69]

36 On 30 May 2014, the Federal Circuit Court of Australia ("FCC") set aside the Australian Bankruptcy Notice.[70] In its judgment (the "FCC Judgment"), the FCC said that Mr Kuhadas had at the very least "raised an

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65 AB Vol 28 at pp 7517–7519.

66 AB Vol 28 at pp 7516–7517.

67 AB Vol 4 at p 790.

68 AB Vol 4 at pp 791–794.

69 AB Vol 4 at pp 795–806.

70 AB Vol 5 at pp 1105–1132.



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arguable case that the effect of [the 22 February 2013 Email] was to discharge Mr Kuhadas of his obligation to satisfy the [October 2011 Judgment]".[71] The FCC interpreted the 22 February 2013 Email to mean that the plaintiff would withdraw the Second Bankruptcy Application "and thereby release [Mr Kuhadas] from [his] obligation to pay the judgment on which the bankruptcy application is based" once Mr Kuhadas satisfied items 1, 3 and 4 of the 22 February 2013 Email.[72] The registration of the October 2011 Judgment was thus liable to be set aside.[73]

37 On 4 June 2014, the plaintiff emailed the 2nd defendant informing him of the FCC's decision. The plaintiff stated that his understanding was that the conditions in the 22 February 2013 Email were "to be considered a part-payment of the judgment debt" and he was not waiving his right to file a fresh bankruptcy application against Mr Kuhadas. The 2nd defendant replied the same day to say that he too had the same understanding, that he was "at a total loss" insofar as the FCC's decision was concerned,[74] and that the plaintiff "may want to discuss with [his] Australian counsel about an appeal".[75]

38 The plaintiff appealed to the Federal Court of Australia and acted in person in the conduct of this appeal. The appeal was dismissed on 5 June 2015.[76] According to the plaintiff, he did not inform the 2nd defendant about the

71 AB Vol 5 at p 1119, para 34.

72 AB Vol 5 at p 1126, paras 57, 59.

73 AB Vol 5 at p 1132.

74 AB Vol 29 at p 7666.

75 AB Vol 29 at pp 7666–7667.

76 AB Vol 7 at pp 1673–1691.



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outcome of the appeal as he felt the 2nd defendant had "let [him] down"; it was the 2nd defendant who next contacted the plaintiff on 8 June 2015.[77]

***The third bankruptcy application***

39 On 8 April 2014, Mr Parwani's firm served the Third Statutory Demand on Mr Kuhadas by advertisement in a Singapore newspaper.[78] Mr Kuhadas applied to set aside the Third Statutory Demand, citing the FCC Judgment in support of his application.[79] His application was dismissed by an assistant registrar on 18 July 2014.[80] On 7 August 2014, Mr Parwani's firm filed a bankruptcy application against Mr Kuhadas (the "Third Bankruptcy Application").[81] However, Mr Kuhadas appealed against the assistant registrar's decision; and on appeal, the Third Statutory Demand was set aside on 1 September 2014.[82]

40 On 6 June 2015, Mr Kuhadas emailed the 2nd defendant to demand "important documents" related to Suit 700. On 8 June 2015, the 2nd defendant forwarded this email to the plaintiff, calling it a "rude missive" from Mr Kuhadas, and saying that Mr Kuhadas was "pulling all stops to come after [the 2nd defendant]". The 2nd defendant also offered to "discuss the possibility of utilising Magnetron to go after [Mr Kuhadas]".[83]

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77 Transcript, 6 April 2021 at p 98, lines 23–32.

78 AB Vol 5 at p 1213.

79 AB Vol 3 at p 723 line 32–p 724 line 2.

80 AB Vol 3 at p 719.

81 AB Vol 8 at pp 1692–1693.

82 AB Vol 3 at p 727; AB Vol 5 at pp 1307–1308.

83 AB Vol 30 at pp 7929–7930.



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41 The 2nd defendant testified that in his meeting with the plaintiff on 10 June 2015, they discussed, *inter alia*, checking what items "were incorrectly or unlawfully siphoned off from Magnetron by Mr Kuhadas" so that they "could proceed with bankruptcy against Mr Kuhadas through Magnetron". The 2nd defendant offered to explore the option of having his firm (the 1st defendant) take on the matter *pro bono* such that he would not charge the plaintiff for his legal fees and the plaintiff would simply pay for all disbursements.[84] Alternatively, the 2nd defendant was willing to continue to help the plaintiff by guiding him in the institution of such proceedings, just as he had helped to guide him in the preparations for his appeal to the Federal Court of Australia.

42 The plaintiff agreed that during the meeting on 10 June 2015, the 2nd defendant had proposed "pursuing Magnetron option", but he said that for his part, he had not possessed the energy to "commence a fresh litigation action via Magnetron".[85] The plaintiff also initially testified that the 2nd defendant had never offered him a "free service", though he later said that he could not remember.[86]

43 On 21 February 2019, some three-odd years after his last meeting with the 2nd defendant, the plaintiff commenced Suit 198 against the defendants.

**The issues**

44 The plaintiff pleaded the following particulars of negligence:

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84 Transcript, 8 April 2021 at p 15, lines 4–18; DCS at paras 157, 161.

85 Transcript, 6 April 2021 at p 100, lines 1–7.

86 Transcript, 8 April 2021 at p 25, lines 18–19, 24; p 36, lines 19–20.



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(a) the defendants failed to apply for the taxation of costs of Suit 700;

(b) the defendants had "carelessly allowed" the First Statutory Demand to lapse and provided Mr Kuhadas with a "window of opportunity" to sell two of his properties, namely, the Thane St Property and the Changi Court Property[87]; and

(c) the 22 February 2013 Email was "poorly worded", failed to communicate the plaintiff's intentions to Mr Kuhadas "more clearly", and "ran contrary" to the plaintiff's instructions to "allow Mr Kuhadas the freedom to sell Ballota Park without encumbrances; to receive Mr Kuhadas' share of the proceeds (i.e. an aggregate sum of S$50,000) from the sale … and then to recommence bankruptcy proceedings against Mr Kuhadas so that the Official Assignee can investigate the sale of Thane St and Changi Court, among other things".[88] The 2nd defendant also failed to take steps to "rectify matters when he had the chance to".[89]

45 The defendants did not dispute that in carrying out the work instructed by the plaintiff, they owed the plaintiff a duty of care in tort. In *Lie Hendri Rusli v Wong Tan & Molly Lim (a firm)* [2004] 4 SLR(R) 594 (*"Lie Hendri Rusli"*), VK Rajah JC (as he then was) noted that it "is hornbook law that a solicitor is expected to exercise the care and skill of a reasonably competent solicitor in discharging his duties" under the retainer with the client: the "real issue, in any given case" – as Rajah JC put it – "is whether the court views the standards

87 Statement of Claim (Amendment No. 1) dated 23 April 2019 ("SOC Amendment No. 1") at para 14.

88 SOC Amendment No. 1 at paras 23, 25, 31.

89 SOC Amendment No. 1 at para 31.



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applied and skills discharged by the particular solicitor as consistent with the legal profession's presumed responsibilities and obligations to its clients" (*Lie Hendri Rusli* at [42] and [44]). This definition of the solicitor's duty of care has been repeated in other local cases such as *Su Ah Tee and others v Allister Lim and Thrumurgan (sued as a firm) and another (William Cheng and others, third parties)* [2014] SGHC 159 at [70].

46 I now turn to the plaintiff's first pleaded allegation of negligence.

**Issue 1: Did the 2nd defendant breach his duty of care in failing to apply for taxation?**

47 I rejected the plaintiff's claim that the 2nd defendant breached his duty of care in failing to apply for taxation of the costs of Suit 700. My reasons were as follows.

48 The evidence before me supported the defendants' assertion that the plaintiff had instructed them to "hold off" from "taxing costs for the whole matter" as he was having difficulty paying their fees at the material time. In particular, on 27 November 2013, the plaintiff had emailed the 2nd defendant asking him, *inter alia*, to confirm if the costs awarded pursuant to the October 2011 Judgment were "final" and whether they took into account the disbursements that he had incurred for the "whole suit". In his reply to the plaintiff on 28 November 2013, the 2nd defendant stated[90]:

> … The costs awarded of S$10,000 was only for the hearing for assessment of damages. The costs of the whole matter has not been determined, because, if you remember, we did not want to incur the further legal fees to tax the costs. …

90 AB Vol 28 at pp 7454–7456.



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49 The plaintiff did not respond to refute or dispute the 2nd defendant's statement that the costs of Suit 700 had "not been determined" due to their not wanting "to incur the further legal fees to tax the costs". Indeed, on 2 December 2013, he emailed the 2nd defendant again to ask, *inter alia*[91]:

> … (O)ut of curiosity, what would likely be the cost of obtaining costs for the whole matter[?] …

50 The 2nd defendant replied to the plaintiff's query on the same day to say that his legal fees for taxation of the costs were "estimated to be in the region of about S$6,000 to S$8,000 (not including disbursements and GST)".[92] When the plaintiff next emailed the 2nd defendant on 4 December 2013, the plaintiff stated:[93]

> … As for the issue of taxing costs for the whole matter, I think we will hold off for the time-being as I am already heavily indebted to you.

51 When asked whether withholding the taxation was a decision he himself had made, the plaintiff testified that "[w]hen judgment came out, my precise instructions to him is, go and file for taxation of costs".[94] He also maintained that he "never instructed" the 2nd defendant to "hold off taxation".[95] These assertions could not be believed in the light of the evidence set out above.

52 I add ]that whilst the plaintiff contended during his cross-examination of the 2nd defendant that the above emails were not "contemporaneous" with his instructions to the defendants on the issue of taxation of costs, I did not find

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91 AB Vol 28 at p 7460.

92 AB Vol 28 at p 7468.

93 AB Vol 28 at p 7467.

94 Transcript, 6 April 2021 at p 116, lines 26–28.

95 Transcript, 8 April 2021 at p 81, line 1.



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that this contention in any way assisted him.[96] If he had in fact given the 2nd defendant specific instructions to proceed with the taxation of his costs, then I would have expected him to dispute or to express surprise (at the very least) at the 2nd defendant's remark that the costs had not been determined because they had not wanted to incur the further costs of taxation. Instead, his responses to the 2nd defendant's remark appeared to me to be an implicit but clear acknowledgement of the truth of the latter's remark; and he had no explanation – whether in his affidavit of evidence-in-chief ("AEIC") or in his testimony in cross-examination – for those responses.

53 As I accepted that it was the plaintiff himself who had instructed the defendants to "hold off" from taxing the costs, there was no question of the defendants having breached their duty of care to him by "failing" to apply for taxation. In refraining from doing so, the defendants were simply complying with the plaintiff's instructions.

**Issue 2: Did the defendants negligently allow the First Statutory Demand to lapse?**

54 I also rejected the plaintiff's claim against the defendants for their conduct in allowing the First Statutory Demand to lapse. My reasons were as follows.

55 The plaintiff claimed that the defendants had allowed the First Statutory Demand to lapse and thus provided Mr Kuhadas with a "window of opportunity" to sell two properties. The defendants argued in their closing submissions that the parties had "resolved the matter in relation to" the First

96 Transcript, 8 April 2021 at p 80, lines 29–31.



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Statutory Demand and/or the First Bankruptcy Application.[97] It was not clear to me what the defendants meant when they said the parties had "resolved the matter". If the defendants meant that they and the plaintiff had entered into a full and final settlement of any claims he might have against them in respect of their handling of the First Statutory Demand and the First Bankruptcy Application, or that the plaintiff had waived his rights in respect thereof, this was not specifically pleaded in the Defence (Amendment No. 2).

56 However, the defendants did plead in para 14 of their Defence that the defence of time-bar applied to the plaintiff's claim in respect of their handling of the First Statutory Demand and the First Bankruptcy Application (s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act").[98] Regard must then be had to the plaintiff's response in his Reply to the defendants' pleading of this time-bar defence. In the Reply (Amendment No. 2) filed by the plaintiff (or, more precisely, filed by his then solicitors on his behalf) on 8 December 2020, it was stated in para 14:

> Paragraph 14 of the Defence (Amendment No. 2) is admitted insofar as the 2nd Defendant's error, in allowing the Statutory Demand issued on 3 February 2012 to lapse, is time-barred. …

57 Para 14 of the Reply (Amendment No. 2) went on to state that "but for the 2nd Defendant's error, the Plaintiff could have relied on the powers vested in the Official Assignee to recover the proceeds from the sale of the said properties". This second sentence of para 14 of the Reply (Amendment No. 2) was clearly a response to that portion of para 14 of the Defence (Amendment No. 2) which was not expressly admitted by the plaintiff, *ie* the assertion that in

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97 Defendant's Closing Submissions dated 3 June 2021 ("DCS") at para 17(b).

98 Defence (Amendment No. 2) dated 12 March 2020 ("Defence (Amendment No. 2)") at para 14.



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any event, the First Statutory Demand would not have lapsed in May 2012 and "would not have prevented Mr Kuhadas from selling his properties". This second sentence did not detract from the admission in the preceding sentence that, in respect of para 14 of the Defence (Amendment No. 2), the "2nd Defendant's error, in allowing the Statutory Demand issued on 3 February 2012 to lapse, [was] time-barred".

58 With respect, this admission in the Reply (Amendment No. 2) of the time-bar defence in respect of the alleged error in allowing the First Statutory Demand to lapse was not addressed by the plaintiff, who appeared to have proceeded on the basis that no such admission was made. The plaintiff certainly did not show any reason why I should disregard this admission of time-bar.

59 In the interests of completeness, it should be noted that in the last sentence in para 15 of the Reply (Amendment No. 2), it was stated that the defendants "cannot rely on Section 6(1)(a) of the Limitation Act (Cap. 163) because their error, which resulted in the sale of the said properties, is simply stated to debunk allegations of Mr Kuhadas' impecuniosity". However, para 15 of the Reply (Amendment No. 2) was expressly stated to be a response to para 15 of the Defence (Amendment No. 2), which did not in any way relate to the defendants' reliance on the defence of time-bar. Read in context, therefore, it did not appear that the last sentence in para 15 of the Reply (Amendment No. 2) in any way qualified the plaintiff's clear admission of time-bar in para 14 of his Reply (Amendment No. 2). In any event, with respect, the reason given in para 15 of his Reply (Amendment No. 2) for the defendants' alleged inability to rely on section 6(1)(a) of the Limitation Act appeared garbled and made no sense ("*because their error, which resulted in the sale of the said properties, is simply stated to debunk allegations of Mr Kuhadas' impecuniosity*").



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60 Even if I were to assume, for the sake of argument, that the admission in para 14 of the Reply (Amendment No. 2) could somehow be disregarded, the defendants having raised a limitation defence in para 14 of their Defence (Amendment No. 2), the burden would have fallen on the plaintiff to prove that his claim fell within the limitation period, and in particular, to prove that the date of accrual of his cause of action in negligence fell within the limitation period (*IPP Financial Advisers Pte Ltd v Saimee bin Jumaat and another appeal* [2020] 2 SLR 272 at [36]–[41]). On the evidence adduced before me, it was simply not possible to say that the plaintiff had proven this.

61 In particular, it should be noted that the 2nd defendant had consistently testified that, upon discovering the First Bankruptcy Application had been filed one to two days out of time, he had called the plaintiff to apologise for his fault and to offer to absorb the cost and disbursements related to the filing of another bankruptcy application.[99] According to the 2nd defendant, the plaintiff had accepted his apology and his offer – *which testimony the plaintiff himself informed me he accepted*.[100] The 2nd defendant's evidence was also consistent with the evidence given by the plaintiff himself in his AEIC and in cross-examination. In his AEIC, the plaintiff stated that sometime in July 2012, he had been told by the 2nd defendant that the First Statutory Demand had "lapsed due to an oversight".[101] The plaintiff also recounted in his AEIC the steps taken by the 2nd defendant to "acknowlegde [*sic*] and compensate for his error"[102]: according to the plaintiff, the latter had waived his fees for the refiling of the bankruptcy application and had also offered him "heavily discounted rates" for

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99 Transcript, 8 April 2021 at p 73, lines 6–14.

100 Transcript, 8 April 2021, at p 73, lines 4–15.

101 KG AEIC at para 42.

102 KG AEIC at para 43.



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other applications filed around the same period.[103] In cross-examination the plaintiff repeated much of this evidence, adding that "the fault needed to lie with [the 2nd defendant]" and that he had "agreed" to the latter's offer to "rectify the situation".[104] It was not disputed that the Second Bankruptcy Application was filed on 30 August 2012; and that several other applications were also filed in the period between August 2012 and January 2013, including an application to garnish Mr Kuhadas' bank accounts and a writ of seizure and sale against his shares in Magnetron.

62 On his own admission, therefore, the plaintiff was already aware of the defendants' "oversight" vis-à-vis the First Bankruptcy Application *sometime in July 2012 and certainly prior to 30 August 2012* – more than six years prior to the filing of the present writ on 21 February 2019. On his own admission, he was at the same time aware of – and agreeable to – the 2nd defendant's offer to "rectify the situation".

63 To sum up on this issue, I reiterate that it appeared from the pleadings that the plaintiff had admitted the time-bar defence in respect of the "2nd Defendant's error, in allowing the Statutory Demand issued on 3 February 2012 to lapse"; and even assuming for the sake of argument I were somehow able to disregard this admission, it was also clear from the evidence that the plaintiff was unable to show that his claim fell within the limitation period.

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103 KG AEIC at para 43.

104 Transcript, 6 April 2021 at p 124 line 9–p 128, line 6.



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**Issue 3: Was the 22 February 2013 Email negligently drafted?**

64 I also rejected the plaintiff's claim that the 2nd defendant had breached his duty of care in the drafting of the 22 February 2013 Email. My reasons were as follows.

65 The plaintiff claimed that the 22 February 2013 Email was "poorly worded", failed to "communicate [the plaintiff's] intentions to Mr Kuhadas more clearly", and "ran contrary to [the plaintiff's] instructions", and that the 2nd defendant also failed to take steps to "rectify matters when he had the chance to".

66 In this connection, the defendants made it clear that they, like the plaintiff, always understood that the agreement documented in the 22 February 2013 Email was not intended to be a full and final settlement of the entire judgment sum obtained in Suit 700; it related only to the withdrawal of the Second Bankruptcy Application, and that was only for the purpose of allowing Mr Kuhadas to sell the Ballota Park Property free from encumbrances.[105] The defendants asserted that the 22 February 2013 Email, as drafted, conveyed this intention, and that Mr Kuhadas could not have construed it as a full and final settlement of the entire judgment sum.[106]

67 The plaintiff disputed this. One key source of the plaintiff's grievance arose from the fact that after he had registered the October 2011 Judgment with the Supreme Court of New South Wales on 14 February 2014 and served the Australian Bankruptcy Notice on Mr Kuhadas, the latter's application to set aside the Australian Bankruptcy Notice was allowed by the FCC. The FCC held,

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105 DCS at paras 59, 65.

106 DCS at para 94.



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*inter alia*, that Mr Kuhadas at the very least had "raised an arguable case that the effect of [the 22 February 2013 Email] was to discharge Mr Kuhadas of his obligation to satisfy the [October 2011 Judgment]". As noted earlier, this finding was upheld by the Federal Court of Australia.

68 In respect of the Australian courts' findings on the construction of the 22 February 2013 Email, the defendants raised a preliminary argument that these findings did not bind the Singapore courts in the context of the present proceedings.[107] I thought this was correct because, *inter alia*, the parties to the present proceedings are clearly not the same as the parties in the Australian proceedings (*The "Vasiliy Golovnin"* [2007] 4 SLR(R) 277 at [36]–[38]).

69 However, this was not the nub of the matter. More importantly, as Judith Prakash J (as she then was) pointed out in *Tan & Au LLP v Goh Teh Lee* [2012] 4 SLR 1 ("*Goh Teh Lee*" at [63]–[68]), in determining in the context of a professional negligence claim whether a solicitor has exercised reasonable skill and care, the solicitor should be judged in the light of the circumstances at the time: the court should refrain from assessing the situation with the benefit of hindsight. As a related point, as VK Rajah JA noted in *Zhou Tong and others v Public Prosecutor* [2010] 4 SLR 534 (*"Zhou Tong"*) (at [20]), solicitors are not expected to always "get it right":

> … The essential question is whether the solicitor had faithfully and diligently directed his mind to the facts of his client's case, and to the applicable law. If solicitors make the effort to conscientiously consider and evaluate all pertinent aspects of their client's cases, there is no need for undue concern even if the court determines that there is ultimately no merit in the case. …

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107 DCS at para 66.



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70 The Australian courts' findings on the construction of the 22 February 2013 Email were therefore not conclusive or even directly probative as to any negligence by the 2nd defendant in the drafting of that email. The key question was whether, in drafting the 22 February 2013 Email in the terms that he did, the 2nd defendant was guilty of any error which no reasonably competent solicitor would have made.

71 The plaintiff argued that the 2nd defendant should have stated expressly that there was no full and final settlement of the entire judgment sum and that the plaintiff's rights were reserved in respect of any unpaid balance.[108] The 2nd defendant, on the other hand, contended that in the light of the state of the law at the time and the communications he had with Mr Kuhadas leading up to the 22 February 2013 Email, there was no need for him to make these express stipulations as it was clear that the 22 February 2013 Email related only to the withdrawal of the Second Bankruptcy Application, for the purpose of facilitating the sale of the Ballota Park Property.[109]

72 I accepted the 2nd defendant's submission. For one thing, as the 2nd defendant had noted, at the material time, the caselaw from the Singapore courts indicated that in considering whether an agreement amounted to a settlement agreement, the court would consider the substance of the agreement rather than its form; and in so doing, the court would consider the context in which the agreement was arrived at, including the preceding negotiations between the parties (*Man Financial (S) Pte Ltd (formerly known as E D & F Man International (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 ("*Man Financial*")). Indeed, in *Man Financial* the Court of Appeal ("CA")

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108 KG AEIC at para 55; Transcript, 7 April 2021 at p 71, lines 29–31.

109 DCS at paras 81–82, 86; Transcript, 7 April 2021 at p 74 line 24–p 75 line 9.



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emphasised that if a particular agreement between existing contractual parties is intended to encompass or embody a settlement or compromise, then the prudent thing for the parties to do would be to state this clearly in the contract itself (at [40]):

> *If that is not done*, the court will … construe the contract concerned objectively, having regard to the relevant terms in the *context* in which they were arrived at and the substance of the contract. In the final analysis, substance is more important than form.
>
> [emphasis in original]

73 In *Man Financial*, the CA reviewed the correspondence between the parties leading up to the conclusion of a Termination Agreement executed on 23 June 2005 (at [6] and [25]–[39]), before concluding that the correspondence pointed to the Termination Agreement being "centred on the closure of the existing employment relationship between the appellant and the respondent" (at [40]) – as opposed to its being a contract to compromise or settle existing disputes between the parties in respect of existing covenants in restraint of trade (the latter having been the appellant's contention).

74 In arriving at its decision in *Man Financial*, the CA referred, *inter alia*,to its own decision in *Sandar Aung v Parkway Hospitals Singapore Pte Ltd (trading as Mount Elizabeth Hospital) and another* [2007] 2 SLR(R) 891 ("*Sandar Aung*"). In *Sandar Aung*, the CA noted (at [29]) that:

> … No contract exists in a vacuum and, consequently, its language must be construed in the context in which the contract concerned has been made. We would go so far as to state that even if the plain language of the contract appears otherwise clear, the construction consequently placed on such language should not be inconsistent with the context in which the contract was entered into if this context is clear or even obvious, since the context and circumstances in which the contract was made would reflect the intention of the parties when they entered into the contract and utilised the (contractual) language they did. …



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75 To the above, it should be added that *per* the long-standing House of Lords decision in *Foakes v Beer* (1884) 9 App Cas 605 ("*Foakes v Beer*"), followed by the English Court of Appeal in *In re Selectmove Ltd* [1995] 1 WLR 474 ("*In re Selectmove Ltd*"), a promise to accept part payment cannot found a fresh contract to discharge a larger debt for want of consideration, unless the promisor receives some additional benefit. In the interests of completeness, it may be noted that these cases were referenced by the CA in *Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal* [2009] 2 SLR(R) 332 ("*Gay Choon Ing*"), in a *coda* to its judgment which discussed opposing views on the continued relevance of the doctrine of consideration. The CA noted, *inter alia*, that it was not subject to the same constraints which bound the English CA in *In re Selectmove Ltd* to follow the House of Lords' decision in *Foakes v Beer* (at [103]). In the event, the CA in *Gay Choon Ing* took no final position on the applicability of the English position and concluded its analysis with the caution that its view on the subject of consideration was only provisional (at [117]–[118]).

76 Turning back to the present case: as with the parties in *Man Financial* who had entered into correspondence with each other before executing the Termination Agreement, the 2nd defendant (on behalf of the plaintiff) and Mr Kuhadas too entered into email correspondence over a period of a few months prior to the conclusion of the agreement seen in the 22 February 2013 Email. The context of this email correspondence was clear: from the outset, it was evident that the 2nd defendant (on behalf of the plaintiff) and Mr Kuhadas were concerned with the issue of how the Second Bankruptcy Application should be dealt with. Following the filing of the Second Bankruptcy Application on 30 August 2012, Mr Kuhadas had corresponded with the 2nd defendant in an attempt to persuade the plaintiff to refrain from proceeding with the bankruptcy proceedings. A recurring theme in Mr Kuhadas' emails was his lament that he



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had no money and had been obliged to sell off "whatever assets [he] had to pay for [his] personal expenses/debts".[110] On 3 October 2012, Mr Kuhadas had informed the 2nd defendant that he had "no objection to selling the only property in Singapore" which he still held, together with his wife and sister-in-law (the Ballota Park Property) – though he also claimed that "there may not be much equity left".[111] From the outset, however, it was made clear by the 2nd defendant to Mr Kuhadas that any funds realised from a sale of Ballota Park would only go towards part payment of the judgment debt. This may be seen in the 2nd defendant's email to Mr Kuhadas on 24 October 2012, in which he had told the latter in no uncertain terms:[112]

> … For the Ballota Park property, please let us have an estimate of the outstanding owed to the bank (if any) and the estimated sale price. Our client is agreeable in principle to your sale of the property *so that you can then realise the cash to make at least part payment of the judgment debt*, so long as the sale can yield a reasonable price. …
>
> [emphasis added]

77 As will be seen in the subsequent correspondence, Mr Kuhadas was well aware of the difference between a part payment of the judgment debt and full and final settlement of the same; and it was apparent that he did not initially give up all hope of achieving the latter. In his email on 2 January 2013, Mr Kuhadas enumerated what he thought were the "3 courses of action" open to the plaintiff in respect of the monies owed to him pursuant to the Suit 700 judgment: according to Mr Kuhadas, the plaintiff could choose to have him adjudged a bankrupt; or the plaintiff could postpone the bankruptcy proceedings with a view to tracking down his (Mr Kuhadas') assets; or the plaintiff could

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110 BSS AEIC Vol 3 at p 653, Mr Kuhadas' email of 29 September 2012.

111 AB Vol 22 at pp 5666–5667.

112 BSS AEIC Vol 3 at p 647.



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discontinue the bankruptcy proceedings in return for half of the sale proceeds due to Mr Kuhadas after disposal of the Ballota Park Property.[113] Mr Kuhadas indicated his preference for the last option. However, his suggestion was firmly rebuffed on the same day by the 2nd defendant (on behalf of the plaintiff), who indicated that the plaintiff was inclined to proceed with the second option (postponing the bankruptcy proceedings with a view to tracking down Mr Kuhadas' assets).[114] This rebuff would have signalled clearly to Mr Kuhadas that the plaintiff was not interested in an option that involved accepting from him a part payment in full and final settlement of his liability for the judgment debt.

78 Mr Kuhadas broached the idea of selling the Ballota Park Property again on 21 January 2013.[115] This time, he stated that his sister-in-law (who was one of the three co-owners of the Ballota Park Property together with him and his wife) had agreed to advance him a sum of $50,000 "as a one time settlement inorder [*sic*] for Kevin [the plaintiff] to drop the bankrutpcy [*sic*] against him [Mr Kuhadas] *so that the property can be sold without much difficulty*" [emphasis added]. Mr Kuhadas explained that his sister-in-law was desirous of recouping her CPF contributions to the property and did not want to get "embroiled" in his "dillemma [*sic*]" (presumably his various debts); further, that he himself was running out of funds; that if the plaintiff wanted "some money", then the "best course of action" was for the Ballota Park Property to be sold; and that the sale would "only go through smoothly and fetch a good price" if there were no "emcumbrances [*sic*]" in the form of a bankruptcy application against one of its co-owners (Mr Kuhadas).

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113 BSS AEIC Vol 3 at pp 718-719.

114 BSS AEIC Vol 3 at pp 717.

115 BSS AEIC Vol 3 at pp 716-717.

79 Mr Kuhadas' email of 21 January 2013 was important because this was the first time that the sum of $50,000 was offered; and the email showed the context in which the sum was brought up. As seen above, this was the amount Mr Kuhadas' sister-in-law was willing to lend him to persuade the plaintiff to "drop" the bankruptcy application and to let the sale of the Ballota Park Property go ahead smoothly. This email of 21 January 2013 was also important because it showed that Mr Kuhadas' offer of a $50,000 payment was not stated by him to be in full and final satisfaction of the judgment sum of $1,226,289.70 owed to the plaintiff.[116] Instead, Mr Kuhadas himself stated that the $50,000 payment was being offered "inorder [*sic*] for Kevin [the plaintiff] to drop the bankrutpcy [*sic*]… *so that the property can be sold without much difficulty and [Mr Kuhadas' sister-in-law] will get her CPF investments back*" [emphasis added]. The 2nd defendant's reply to Mr Kuhadas on the same day showed that he was of the same understanding as the latter: he sought more details of "what [the plaintiff] can possibly realise from the sale of Ballota Park" so that the plaintiff could "decide whether this will persuade him to withdraw the bankruptcy application";[117] and as with Mr Kuhadas' own email, there was no mention either in the 2nd defendant's email that any funds received by the plaintiff pursuant to Mr Kuhadas' suggestion would be in full and final settlement of his entire judgment debt.

80 In this connection, I noted that the Australian courts – both at the FCC and the Federal Court level – had opined that it "would be commercial nonsense" for the parties to have agreed that the plaintiff would withdraw the Second Bankruptcy Application on the basis that he was free subsequently to reissue another bankruptcy application or to take other enforcement action in

116 AB Vol 18 at p 4500.

117 BSS AEIC Vol 3 at pp 715.



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respect of the remaining judgment sum: in the words of Gleeson J, "[i]f that was the agreement, all that Mr Kuhadas gained was a delay of the date of his bankruptcy".[118] The Australian courts did not refer to Mr Kuhadas' email of 21 January 2013: indeed, it is not disputed that the email correspondence between him and the 2nd defendant prior to 22 February 2013 was never put before the FCC; and the plaintiff's application to put in evidence this email correspondence on appeal was rejected by the Federal Court of Australia.[119] If Mr Kuhadas' 21 January 2013 email had been referred to, it would have been seen that Mr Kuhadas himself set out certain matters which explained why he was agreeable to the Second Bankruptcy Application being withdrawn simply to facilitate the sale of the Ballota Park Property at a "good price": a sale of the Ballota Park Property would let his sister-in-law recoup her investment in the property and avoid getting embroiled in his financial problems; a sale would certainly help him (Mr Kuhadas) as he had been "cracking [his] head" over the imminent exhaustion of his existing funds and had no job or income or family support at that point; and a sale would also let the plaintiff get hold of "some money" since Mr Kuhadas' sister-in-law was willing to advance him $50,000 to get the plaintiff to "drop" the bankruptcy proceedings to allow the property to be "sold without much difficulty".

81 It should also be noted that in following up with the 2nd defendant on the above suggestion on 23 January 2013, Mr Kuhadas acknowledged that he

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118 AB Vol 5 at p 1125, para 54 (judgment of the FCC); AB Vol 7 at p 1687, para 42 (judgment of the Federal Court of Australia).

119 AB Vol 7 at p 1683, para 26. The Federal Court stated in its judgment that even if the 19 emails which the plaintiff applied unsuccessfully to admit in evidence were considered, "one or more" of these emails might be relevant, but it was "far from clear" that they advanced the plaintiff's case. However, in the present trial of Suit 198, the plaintiff did not adduce any evidence to show which specific emails were the 19 emails he sought unsuccessfully to adduce before the Federal Court.



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was "currently merely buying time".[120] Whilst that remark was made in reference to his facing "a number of creditors waiting in line" and not specifically in reference to the plaintiff, it showed that as far as Mr Kuhadas was concerned, the withdrawal of the Second Bankruptcy Application was not about enabling him to avoid bankruptcy for good, since he knew he could be bankrupted by any of his other creditors. Rather, it was about facilitating the sale of the Ballota Park Property for a better price, paying off his sister-in-law's CPF contributions, getting "some money" for the plaintiff – and replenishing his own dwindling funds.

82 The further emails exchanged between the 2nd defendant and Mr Kuhadas lent support to the former's assertion that both sides understood the 22 February 2013 email was not a full and final settlement of Mr Kuhadas' liability for the full judgment sum. On 16 February 2013, Mr Kuhadas emailed the 2nd defendant to put forward a new proposal which differed substantively from his proposal of 21 January 2013.[121] As seen above, his proposal of 21 January 2013 had been to pay the plaintiff $50,000 with an advance from his sister-in-law, so that the plaintiff would withdraw the Second Bankruptcy Application and allow the sale of the Ballota Park Property to proceed without encumbrance. On 16 February 2013, claiming that he had "no money" and that his immediate family was not supportive, he sought instead to "offer $25,000 as full and final setltlement [*sic*] to discharge [himself] from bankruoptcy [*sic*]", on the basis that this amount would be paid from his share of the Ballota Park Property sale proceeds once the property was sold.

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120 BSS AEIC Vol 3 at pp 774–775.

121 BSS AEIC Vol 3 at pp 769–770.



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83 Unsurprisingly, Mr Kuhadas' new offer was rejected by the 2nd defendant (on behalf of the plaintiff). In his reply on 18 February 2013, the 2nd defendant stated that the plaintiff was "surprised" with Mr Kuhadas "going back on [his] word" and that he did not agree with the latter's proposal for the plaintiff to "accept only S$25,000" instead of the $50,000 which had been "originally agreed, for [the plaintiff] to withdraw the bankruptcy proceedings".[122] Having thus rejected Mr Kuhadas' new offer, the 2nd defendant conveyed the plaintiff's counter-offer to withdraw the bankruptcy proceedings on the following terms: Mr Kuhadas' father could pay the sum of $25,000 upfront to the 1st defendant (as the plaintiff's solicitors); in consideration of this $25,000 payment, the plaintiff would "wait until after completion of the sale of Ballota Park" and "then accept S$50,000 from [Mr Kuhadas' share of the] sales proceeds"; and that upon receipt of the $25,000 and "[Mr Kuhadas'] written undertaking to pay" the $50,000, the plaintiff would agree to withdraw the Second Bankruptcy Application.

84 Mr Kuhadas replied to the 2nd defendant's email on the same day (18 February 2013), stating that he understood "*Kevin's* proposal" [emphasis added] and seeking to modify it to the extent that the balance to be paid to the plaintiff on the sale of the Ballota Park Property be "only $25,000".[123] The reference to "*Kevin's* proposal" showed that Mr Kuhadas knew his attempt to achieve "full and final settlement" via payment of $25,000 was a non-starter. In this email response to the 2nd defendant, he made no further mention of "full and final settlement". That he clearly understood that the $50,000 to be paid to the plaintiff would not in fact constitute full and final settlement of the full judgment debt was seen from his statement that he appreciated the plaintiff's "good

122 BSS AEIC Vol 3 at p 769.

123 BSS AEIC Vol 3 at p 768.



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gesture of accepting $50,000 *in consideration of dropping the bankruptcy action*" [emphasis added]. Indeed, he attempted to demonstrate his own good faith and to assure the plaintiff that he was "not … trying not to honour [their] initial agreement of $50,000" by suggesting that the balance $25,000 to be paid upon the sale of the Ballota Park Property should "incur an interest of 10% p.a. payable to [the plaintiff] till it is paid or when the property is settled whichever is earlier".

85 On 21 February 2013, the 2nd defendant replied to Mr Kuhadas' email of 18 February 2013 to inform that the plaintiff had agreed to accept an upfront payment of $25,000, with the remaining $25,000 to be paid once the Ballota Park Property was sold, with interest on that remaining sum to be paid as suggested.[124] The 2nd defendant also informed Mr Kuhadas of additional conditions requested by the plaintiff: namely, that the post-dated cheque for $50,000 provided by Mr Kuhadas' father would continue to be held as security for the payment of the remaining $25,000; further, that Mr Kuhadas would sign all necessary documents to effect the seizure and sale of his shares in Magnetron. In conveying the second condition, the 2nd defendant added that should Mr Kuhadas fail to sign the documents, "the necessary application" would be made to court "for the company secretary to issue the share certificates anyway": Mr Kuhadas was expressly warned that "[i]n such a case", the plaintiff would "obtain further costs orders against [him] and Magnetron, which will only serve to increase the level of [his] indebtedness to [the plaintiff]". This express warning and the reference to the "level of [Mr Kuhadas'] indebtedness to [the plaintiff]" was not without significance. Had the parties' intention truly been to allow Mr Kuhadas to effect full and final settlement of the full judgment debt with the payment of $50,000 to the plaintiff, then it was anomalous for the

[124] BSS AEIC Vol 3 at p 767.



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2nd defendant to be alluding to potential future increases in the level of Mr Kuhadas' indebtedness to the plaintiff. In his email reply on the same day (21 February 2013), Mr Kuhadas did not raise any protests or objections in respect of the 2nd defendant's remarks. While it is true that he thanked the 2nd defendant for "arranging a very amicable settlement" between him and the plaintiff, it would appear that he had in mind the "settlement" of the issue of the withdrawal of the Second Bankruptcy Application, because no reference was made to the judgment sum in Suit 700 and/or to "full and final settlement" of his liability for that judgment sum.[125]

86 It will also have been seen earlier (at [25] above) that the terms of the 22 February 2013 Email made no reference to the judgment sum in Suit 700 and/or to "full and final settlement" of Mr Kuhadas' liability for the same. That email simply stated that in consideration of the payment of the two tranches of $25,000, the retention of the post-dated $50,000 cheque as security for such payment and the execution of the documents for the new Magnetron shares, the plaintiff was "agreeable to withdraw the bankruptcy application" once Mr Kuhadas had paid the first $25,000, executed the documents for the new shares, and "unequivocally" agreed to the retention of the $50,000 cheque as security.[126]

87 I should stress that the purpose of this examination of the correspondence between the 2nd defendant and Mr Kuhadas was not to arrive at a conclusive finding on whether, in fact, the 22 February 2013 Email did discharge the latter from his obligation to pay the judgment sum once he had carried out and/or agreed to the matter set out in items 1 to 4 of the email. That was not an issue which required adjudication in the present trial. Instead, the

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125 BSS AEIC Vol 3 at p 767.

126 BSS AEIC Vol 3 at p 766.



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purpose of examining the correspondence between the parties prior to the conclusion of the agreement in the 22 February 2013 Email was to ascertain whether the 2nd defendant had breached the standard of care expected of a reasonably competent and diligent solicitor in the drafting of the said agreement. Bearing in mind the state of the law at the material time (see [72] to [75] above) and having regard to the context of the correspondence between the 2nd defendant and Mr Kuhadas in the period leading up to 22 February 2013, I was satisfied that the 2nd defendant was not in breach of the requisite standard of care. On the materials available, there was sufficient basis for a reasonably competent and diligent solicitor to take the view that as drafted, the 22 February 2013 Email went no further than documenting the parties' agreement for the withdrawal of the Second Bankruptcy Application in order to facilitate the sale of Ballota Park free from "emcumbrances [*sic*]" and thus to "fetch a good price" (in Mr Kuhadas' own words).[127] While it is true that the 2nd defendant did not include in the said email an express reservation of the plaintiff's rights to pursue the full judgment debt and/or an express reference to interest accruing on the outstanding sum, having regard to the state of the law at the material time and the correspondence leading up to the said email, I did not think it could be said that no reasonably competent and diligent solicitor would have acted in the same manner as the 2nd defendant.

88 Similarly, while it is also true that the 2nd defendant did not state in the 22 February 2013 Email a "due date for the sale of Ballota Park",[128] I did not think it could be said that this too was something no reasonably competent and diligent solicitor would have done. As the 2nd defendant pointed out in cross-

127 AB Vol 25 at p 6582.

128 SOC Amendment No. 1 at para 24.



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examination,[129] Mr Kuhadas had an implied duty to cooperate in the performance of the terms of the agreement in the 22 February 2013 Email by taking the necessary steps on his part – and this would certainly have included the steps required to bring about the sale of the Ballota Park Property, since it was a term of the parties' agreement that the second tranche of $25,000 would be paid upon such sale (see *Evergreat Construction Co Pte Ltd v Presscrete Engineering Pte Ltd* [2006] 1 SLR(R) 634 at [48]–[50], cited by the High Court in the case of *Tan Chin Hoon and others v Tan Choo Suan (in her personal capacity and as executrix of the estate of Tan Kiam Toen, deceased) and others and other matters* [2015] SGHC 306 (at [141]–[143]) which the 2nd defendant referred to in cross-examination). Furthermore, as the 2nd defendant also pointed out in cross-examination, in the absence of any express deadline, Mr Kuhadas was nonetheless obliged to perform his part of the contract within a reasonable time.[130] This too would have been a well-established principle of contract law at the material time: see for example the judgment of Belinda Ang J (as she then was) in *Pacific Rim Palm Oil Ltd v PT Asiatic Persada and others* [2003] 4 SLR(R) 731 at [31]–[33] and [36], and various English authorities such as *Ford and others v Cotesworth and another* (1868) Law Rep QB 127 at p 133 and *Behzadi v Shaftesbury Hotels Ltd* [1992] Ch 1 at p 23E.

89 As I noted earlier, the Australian courts' findings on the construction of the 22 February 2013 Email were not conclusive or even directly probative as to any negligence by the 2nd defendant in the drafting of that email. For the purposes of the present trial, the key question was whether, in drafting the 22 February 2013 Email in the terms that he did, the 2nd defendant was guilty of any error which no reasonably competent solicitor would have made. In this

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129 Transcript, 7 April 2021 at p 73 line 28–p 74 line 2.

130 Transcript, 7 April 2021 at p 74, lines 2–5.



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connection, apart from relying on the Australian courts' findings as proof of the 2nd defendant's negligence, the plaintiff also gave evidence about the Third Statutory Demand which he had caused to be issued against Mr Kuhadas in Singapore on 26 November 2013. Mr Kuhadas applied to set aside this Third Statutory Demand, and while his application was dismissed at first instance, his appeal was allowed by the High Court, which set aside the Third Statutory Demand.

90 Again, I did not find the High Court's decision in any way probative of negligence on the 2nd defendant's part in drafting the 22 February 2013 Email. Firstly, there was no evidence that the High Court made any finding to the effect that the 22 February 2013 Email constituted a full and final settlement of the entire judgment debt in Suit 700. As the plaintiff himself testified, his own understanding was that the High Court set aside the Third Statutory Demand on the basis that Rule 98(2)(*b*) of the Bankruptcy Rules (2002 Rev Ed) requires the setting aside of a statutory demand if the debt is disputed on grounds which appear to the court to be substantial; and in this connection, the threshold – which requires only the demonstration of a genuine triable issue – is not a high one.[131]

91 Secondly, and more importantly, as I noted earlier (at [69]), in considering whether a solicitor has exercised reasonable skill and care, the solicitor should be judged in the light of the circumstances at the time, rather than with the benefit of hindsight post the occurrence of events such as an adverse court finding. Moreover, in considering whether a solicitor has exercised reasonable skill and care, the fact that the court – or another solicitor – might take a different view from the 2nd defendant on the construction of the

131 Transcript, 6 April 2021 at p 84, lines 12–20; DCS at para 72.



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22 February 2013 Email did not mean that the 2nd defendant's view was one which no reasonably competent solicitor would have taken. Otherwise, any solicitor would have to be in a constant state of anxiety as to whether a court might ultimately disagree with his interpretation of a legal point – and that is not what the law demands of solicitors. As Rajah JA observed in *Zhou Tong*, solicitors are not meant to be "on tenterhooks about whether or not the court might ultimately rule against their clients" (at [20]). A solicitor's tortious duty of care to his client also does not require that he "guarantee" that any advice he gives or any document he drafts will be completely fool-proof and cast-iron. As VK Rajah JC observed in *Lie Hendri Rusli* (at [43]–[44]):

> … A solicitor is not an underwriter for a client's business or generally speaking the commercial wisdom of a transaction. Nor is legal advice equivalent to a warranty that a legal transaction will be free of risk and problems.
>
> The real issue, in any given case, is whether the court views the standards applied and skills discharged by the particular solicitor as consistent with the legal profession's presumed responsibilities and obligations to its clients. …

92 In this connection, I noted that in his Statement of Claim (Amendment No. 1), the plaintiff stated that another Singapore solicitor (Mr Parwani) he had consulted about his "frustrations relating to the enforcement of the Singapore Judgment" had raised questions about alleged omissions in the 22 February 2013 Email, such as the omission to reserve rights to pursue the balance of the sum due under the October 2011 Judgment and to fix a "due date" for the sale of the Ballota Park Property.[132] In cross-examination, the plaintiff similarly said that after he engaged Mr Parwani, the latter had "looked through the emails" and said "this can be interpreted as a full and final settlement".[133] However, Mr Parwani was not called as a witness in these proceedings; this was not a case

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132 SOC (Amendment No. 1) at paras 23–24.

133 Transcript, 6 April 2021 at p 62, lines 19–22.



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where expert evidence was adduced before me of industry standards which the 2nd defendant had failed to live up to.

93 In any event, as I have said, the fact that another solicitor might take a different view from the 2nd defendant on the construction of the 22 February 2013 Email did not mean that the 2nd defendant's view was one which no reasonably competent solicitor would have taken. Indeed, as the 2nd defendant pointed out in cross-examination,[134] Mr Parwani had argued – successfully – before the assistant registrar on 18 July 2014 that the 22 February 2013 Email in no way constituted a full and final settlement of Mr Kuhadas' liability for the full judgment debt: Mr Parwani could hardly have undertaken to put such an argument before the court if he had thought the 2nd defendant's position so unmeritorious to the point that no reasonably competent solicitor would advise the point be taken (see *Goh Teh Lee* at [85(b)].

94 To sum up, therefore: for the reasons I have given in [71] to [93], I was unable to agree with the plaintiff that what the 2nd defendant did in drafting the 22 February 2013 Email fell below the standard of care required of a reasonably competent and diligent solicitor.

95 It follows from the above findings that I did not agree the 2nd defendant had committed errors in the drafting of the 22 February 2013 Email which he came under a duty to "rectify" afterwards.

***Causation***

96 In any event, even if I were to assume for the sake of argument that the 2nd defendant was negligent in the drafting of the 22 February 2013 Email, the

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[134] Transcript, 7 April 2021 at p 82, lines 2–6 and lines 12–32.



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plaintiff would still have to prove on a balance of probabilities that such negligence was the cause of his being unable to recover the sums claimed in his statement of claim.

97 On the evidence before me, I found that the plaintiff was unable to satisfy me on the issue of causation. In particular, I did not find it possible to agree that but for the alleged negligence, he would probably have been able to recover the entire judgment sum from Mr Kuhadas. There was simply no evidence that Mr Kuhadas had the funds or means available to pay up the entire judgment sum; quite the contrary, in fact.

98 For example, even leaving aside what one might consider self-serving declarations by Mr Kuhadas himself, the undisputed evidence showed that Mr Kuhadas could not even muster sufficient funds to pay the $4,500 costs he was ordered to pay as a condition of the leave granted to him to appeal the October 2011 Judgment out of time (see [8]–[9] above). I inferred that if he could, he would have paid this relatively small amount; after all, he had been sufficiently concerned about appealing the judgment that he expended funds, time and effort in engaging counsel to put forward the application for leave.

99 There is one other point which should be made on the issue of causation. Throughout his testimony, the plaintiff stressed that his objective all along was to bankrupt Mr Kuhadas so that he could then get the Official Assignee to "follow the money trail" and to investigate the whereabouts of Mr Kuhadas' alleged funds or assets.[135] The plaintiff felt that the allegedly defective drafting of the 22 February 2013 Email was responsible for thwarting his efforts to bring bankruptcy proceedings, both here and in Australia. However, as the 2nd

[135] Transcript, 6 April 2021 at p 101, lines 9–12 and p 107, lines 7–11; KG AEIC at para 44.

defendant pointed out in cross-examination, assuming the plaintiff had in fact managed to bankrupt the 2nd defendant, he would probably have realised "very little if anything at all" in terms of monies available to satisfy the Suit 700 judgment debt.[136] Mr Kuhadas' claims as to the existence of various other creditors have never been refuted by the plaintiff; and as the 2nd defendant highlighted, there was actually documentary evidence attesting to the existence of multiple credit card and other debts.[137] In other words, once Mr Kuhadas was bankrupted, the plaintiff would have had to line up with all the other unsecured creditors – even assuming there were assets that could be realised for the benefit of the bankruptcy estate.

***Mitigation of loss***

100 Going further, even if I were to assume for the sake of argument that the 2nd defendant was negligent in the drafting of the 22 February 2013 Email and that the plaintiff could also somehow prove causation, I found that the plaintiff had failed to take all reasonable steps to mitigate the consequent losses.

101 In the Defence (Amendment No. 2), the defendants pleaded that the 2nd defendant had informed the plaintiff he could "consider using [Magnetron] to commence an action against Mr Kuhadas" as the plaintiff (or more precisely, his mother) had purchased the Magnetron shares.[138] According to the 2nd defendant, he had suggested to the plaintiff that since Magnetron was jointly and severally liable together with Mr Kuhadas for the judgment sum, and since the plaintiff had control of Magnetron, the plaintiff should consider the option

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136 Transcript, 7 April 2021 at p 117, lines 23–26; Transcript, 8 April 2021 at p 17, lines 1–12 and p 48, lines 24–28.

137 Transcript, 7 April 2021 at p 79, lines 19–30; Transcript, 8 April 2021 at p 69, lines 19–p 70 line 7.

138 Defence (Amendment No 2) at para 26.



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of utilising Magnetron as the vehicle for the recovery of funds allegedly owed to it by Mr Kuhadas, his wife and his father.[139] As noted earlier, the 2nd defendant had even offered to explore the option of having his firm (the 1st defendant) take on the matter *pro bono* such that he would not charge the plaintiff legal fees and the plaintiff would simply pay for disbursements.[140] Alternatively, the 2nd defendant also offered to continue guiding the plaintiff in the institution of such proceedings, just as he had helped to guide him in the preparations for his appeal to the Federal Court of Australia.

102 Unfortunately, the plaintiff refused to consider this option because, in his own words, he "was not interested to use Magnetron to pursue Mr Kuhadas".[141] With respect, this was not a reasonable position to take on the subject of mitigation. Whilst the plaintiff claimed at one point that Magnetron had "no assets",[142] as he himself admitted in cross-examination, he knew that "Mr Kuhadas was siphoning money to his family members" and that he "needed to commence fresh action, utilising Magnetron".[143] Indeed, according to the plaintiff, he had found evidence in Magnetron's "income tax statements" which showed that Mr Kuhadas had siphoned as much as $10 million out of Magnetron.[144] There was also evidence that Mr Kuhadas' wife had taken $200,000 of Magnetron's funds to put up a bail bond for Mr Kuhadas.[145] The plaintiff further conceded that he could recover the judgment sum from either

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139 Transcript, 8 April 2021 at p 14, lines 10–26.

140 Transcript, 8 April 2021 at p 15, lines 4–18; DCS at paras 157, 161.

141 Transcript, 8 April 2021, at p 24, line 27.

142 Transcript, 6 April 2021 at p 23, line 31–p 24, line 5.

143 Transcript, 6 April 2021 at p 102, lines 7–14.

144 Transcript, 6 April 2021 at p 45 line 31–p 47 line 24.

145 Transcript, 6 April 2021 at p 103, lines 6–23.



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Mr Kuhadas or Magnetron.[146] Considering that Magnetron was jointly and severally liable for the Suit 700 judgment debt, it did not make sense for the plaintiff to reject entirely the option of using the company to recover siphoned funds from Mr Kuhadas and then enforcing the Suit 700 judgement against Magnetron. Yet the plaintiff could give no coherent explanation for his conduct. His assertion that it "won't be easy taking on Mr Kuhadas' wife" because "she's a lawyer herself" appeared to be purely speculative, since there was no evidence that he had ever had any dealings with Mr Kuhadas' wife.[147] As for the claim that using Magnetron to pursue Mr Kuhadas for siphoned monies might be a "useless voyage" because Mr Kuhadas might "draft up a document" to excuse his misconduct and/or because proceedings might have to be filed "cross-jurisdictionally", this was equally speculative.[148] In fact, the plaintiff did not even bring up these concerns to the 2nd defendant.[149]

103 As for the plaintiff's assertion that he did not have the money to "utilise Magnetron to commence fresh action" following the Australian proceedings, this appeared to be inconsistent with the evidence adduced.[150] Even leaving aside the 2nd defendant's testimony about his willingness to explore doing the legal work *pro bono*, the plaintiff's own evidence could not be believed. According to the plaintiff, his son had been born prematurely with weak lungs, and he had spent "tons of money" on his son's 11-day stay in intensive care.[151] However, on his own evidence, his son's birth had occurred in 2016 – whereas

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146 Transcript, 6 April 2021 at p 105, lines 11–14.

147 Transcript, 6 April 2021 at p 102, lines 9–18.

148 Transcript, 8 April 2021 at p 66 line 11–p 67 line 21.

149 Transcript, 8 April 2021 at p 67, lines 23–26.

150 Transcript, 6 April 2021 at p 105, lines 28–30.

151 Transcript, 7 April 2021 at p 18, lines 14–17.



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the 2nd defendant had made the suggestion of using Magnetron to pursue Mr Kuhadas as far back as in October 2012 and finally in June 2015.[152] The lack of funds caused by his son's 2016 stay in intensive care could not, therefore, have been the reason for the plaintiff's decision not to use Magnetron to pursue Mr Kuhadas.

104 Instead, on the evidence before me, it was clear that the plaintiff's resistance to any suggestion of using Magnetron to pursue Mr Kuhadas was really due to his obsession with bankrupting the latter. According to the 2nd defendant, when he had broached the possibility on 10 June 2015 of his firm acting *pro bono* or his continuing to guide the plaintiff for free in any proceedings instituted by Magnetron, the plaintiff had retorted: "No, I just want to make Mr Kuhadas a bankrupt now."[153] This was not disputed by the plaintiff, whose own evidence in cross-examination was that his "intention was … to bankrupt Mr Kuhadas which way and ever".[154] Indeed, in the plaintiff 's own words, even at the stage of his subsequent complaint to the Law Society about the defendants, he still wanted "to sue Mr Kuhadas … to make him a bankrupt, [he] wanted the OA to get involved and [he] wanted [his] full 1.2 million".[155] With respect, whilst the plaintiff no doubt felt aggrieved at Mr Kuhadas' behaviour, his insistence that the satisfaction of his full judgment debt had to come from bankrupting this perceived villain prevented him from taking reasonable steps to mitigate his losses from the failed bankruptcy applications by exploring the alternative route of using Magnetron to pursue satisfaction of the judgment debt.

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152 Transcript, 8 April 2021 at p 1, lines 22–23.

153 Transcript, 8 April 2021 at p 16, lines 17–22.

154 Transcript, 7 April 2021 at p 28, lines 27–28.

155 Transcript, 7 April 2021 at p 18, lines 2–5.



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**Pleadings**

105 Lastly, in his written submissions, the plaintiff put forward allegations of negligence by the defendants which were never pleaded: for example, the allegation that the 2nd defendant acted without his instructions in agreeing to stay enforcement action against Mr Kuhadas pending the hearing of the latter's applications to set aside part of the Suit 700 judgment and for extension of time to appeal that part of the said judgment (see [7] above).[156]

106 The general rule is that parties are bound by their pleadings, and the court is precluded from deciding on a matter that the parties have not put into issue (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [38]). The plaintiff failed to show the existence of any circumstances in this case which would justify departing from this general rule. I was therefore unable to accept allegations which were raised in his closing submissions but which were not pleaded. In any event, I should add that aside from the plaintiff's bare assertion, there was no evidence to support the allegation that the 2nd defendant acted without his instructions in agreeing to stay enforcement action against Mr Kuhadas pending the hearing of the latter's applications for setting-aside and extension of time to appeal. On the contrary, the defendants' letter to Mr Kuhadas' then solicitors on this matter was clearly copied to the plaintiff ("cc client"); and there was no evidence of any protest or expression of outrage from the plaintiff following this letter.[157]

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156 Plaintiff's Closing Submissions dated 3 June 2021 at paras 16–17; Transcript, 7 April 2021 at p 107, lines 22–27.

157 BSS AEIC Vol 1 at p 252.



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107 I should also add that in cross-examining the 2nd defendant, the plaintiff had initially sought to put it to him that he was negligent in (allegedly) failing to take immediate enforcement action after default judgment was obtained against Mr Kuhadas: according to the plaintiff, "no advice" was given to him on the steps that could be taken to "seize" or "freeze" Mr Kuhadas' assets.[158] After it was pointed out to the plaintiff that he had not pleaded this alleged failure in his Statement of Claim (Amendment No. 1), he clarified that he was not pursuing this particular allegation as part of his negligence claim.[159] In the interests of completeness, I should point out that in any event, the plaintiff himself conceded in cross-examination that even *before* he obtained judgment in Suit 700, he had already discussed with the 2nd defendant the possibility of freezing Mr Kuhadas' assets. At that stage, the 2nd defendant had already advised him on the costs of an application for a *Mareva* injunction, and he had accepted that he "probably didn't have the money" to make such an application.[160]

**Vicarious liability**

108 As I found that the plaintiff could not make out his claim of negligence against the 2nd defendant, there was no basis for his claim that the 1st defendant was vicariously liable for the 2nd defendant's negligence. In any event, it would appear that the plaintiff's claim of vicarious liability vis-à-vis the 1st defendant was based on the belief that they were the employer of the 2nd defendant – which was not correct.[161] Had the plaintiff been able to establish the 2nd

[158] Transcript, 7 April 2021 at p 94 line 28–p 96 line 5.

[159] Transcript, 7 April 2021 at p 98, lines 24–32.]

[160] Transcript, 6 April 2021 at p 110 line 5–p 111 line 14.

[161] Transcript, 8 April 2021 at p 82, lines 3–24.



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defendant's liability, the correct legal basis for imposition of liability on the 1st defendant would probably have been s 8(4) of the Limited Liability Partnerships Act (Cap 163A, 2006 Rev Ed) – but it was not necessary to decide this question since the plaintiff could not make out his claim against the 2nd defendant.

**Conclusion**

109 After considering carefully the evidence adduced and the submissions made, I found that the plaintiff was unable to make out his claim of professional negligence against the defendants. I therefore dismissed Suit 198 as against both the defendants.

110 As costs should follow the event, I ordered that the costs of the proceedings be paid by the plaintiff to the defendants. The plaintiff did not deny that the defendants had made him an offer to settle on 5 July 2019 which he had failed to beat. In the circumstances, I ordered that costs be awarded to the defendants on the standard basis up to the service of the offer to settle and thereafter on an indemnity basis, with such costs to be taxed if not agreed between the parties within 14 working days from the date of my decision.

Mavis Chionh Sze Chyi
Judge of the High Court

The plaintiff in person;
Ang Cheng Ann Alfonso, Ch'ng Chin Leong James, Cheah Shu Xian and Anneson Neo (A. Ang, Seah & Hoe) for the defendants.

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