

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

[2023] SGHC 317

Suit No 238 of 2021

Between

- (1) Swift Maids Pte Ltd
- (2) Swift Maids Resources Pte Ltd

... Plaintiffs

And

- (1) Cheong Yi Qiang
- (2) Recruitbee Employment Pte Ltd
- (3) Toh Suling, Stephenie
- (4) Thin Thin Aung
- (5) Recruitbee Helpers Pte Ltd

... Defendants

JUDGMENT

[Contract — Breach]
[Employment Law — Employees' duties]
[Equity — Fiduciary relationships — When arising]
[Confidence — Breach of confidence]
[Tort — Conspiracy]

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTS.....	4
THE PARTIES	4
BACKGROUND.....	7
<i>Relationship of Mr Cheong, Ms Aung and Ms Toh with Swift Maids</i>	<i>7</i>
<i>Setting up of Recruitbee Employment</i>	<i>9</i>
<i>Swift Maids' troubles in 2020</i>	<i>10</i>
<i>Allegations of wrongful conduct by Mr Cheong as general manager.....</i>	<i>11</i>
ISSUES TO BE DETERMINED	12
THE CLAIMS AGAINST MR CHEONG.....	14
MR CHEONG'S INVOLVEMENT IN THE SETTING UP AND OPERATIONS OF RECRUITBEE EMPLOYMENT	14
<i>Plaintiffs' case.....</i>	<i>14</i>
<i>Mr Cheong's defence</i>	<i>15</i>
<i>Analysis and findings</i>	<i>16</i>
(1) Clauses 8.3 and 8.4	18
(2) Clause 13.4.....	23
(3) Implied duty of good faith and fidelity	25
(4) Evidence of Mr Cheong's involvement in Recruitbee Employment after his resignation from Swift Maids.....	26
MR CHEONG'S DUTY OF CONFIDENCE	27
<i>Plaintiffs' case.....</i>	<i>27</i>

<i>Mr Cheong's defence</i>	29
<i>Applicable Law</i>	31
<i>Analysis and findings</i>	36
(1) Equitable duty of confidence	37
(A) <i>The applicable test and burden of proof</i>	37
(B) <i>Information possessed the necessary quality of confidence, and imparted in circumstances importing an obligation of confidence</i>	40
(C) <i>Unauthorised use of the information and detriment to the plaintiffs</i>	44
(I) Re-direction of employers and FDWs	45
(II) Re-direction of suppliers.....	49
(D) <i>Application of the modified test and Rebutting the presumption</i>	53
(I) Confidential Information in Mr Cheong's possession	53
(II) Mr Cheong's conscience.....	55
(2) Confidential information allegedly in Ms Peh's, Ms Teo's and Ms Lim's phones	61
(3) Contractual duty of confidentiality	64
PAYMENTS TO PIXELATE	65
<i>Parties' cases</i>	67
<i>Analysis and findings</i>	68
\$8,190 PAYMENT TO MS SULIYANI	71
<i>Parties' cases</i>	71
<i>Analysis and findings</i>	72
WRONGFUL TRANSPORT CLAIMS	74
<i>Parties' cases</i>	75
<i>Analysis and findings</i>	76
THE CLAIMS AGAINST THE DEFENDANTS.....	80

CONSPIRACY TO INJURE BY UNLAWFUL MEANS	80
<i>Parties' cases</i>	80
(1) Plaintiffs' case	80
(2) Mr Cheong's defence	84
(3) Ms Toh's defence	85
(4) Ms Aung's defence	87
<i>Applicable Law</i>	90
<i>Analysis and findings</i>	94
(1) Scope of the alleged conspiracy	94
(2) Combination, accompanied by the intention to injure by unlawful means	94
(3) The plaintiffs' allegations of the defendants' actions in furtherance of the alleged unlawful means conspiracy	96
(4) Diversion and/or solicitation of employees	98
(5) No evidence of loss	105
DISHONEST ASSISTANCE OF BREACH OF FIDUCIARY DUTIES	109
<i>Parties' cases</i>	109
<i>Applicable Law</i>	111
(1) Elements of a claim in dishonest assistance	111
(2) Fiduciary duties	112
<i>Analysis and findings</i>	115
ADVERSE INFERENCES	119
REMEDIES	124
CONCLUSION	126

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

**Swift Maids Pte Ltd and another
v
Cheong Yi Qiang and others**

[2023] SGHC 317

General Division of the High Court — Suit No 238 of 2021
Teh Hwee Hwee J
21–24, 28 February, 1–3, 7–10, 24 March, 26 September 2023

2 November 2023

Judgment reserved.

Teh Hwee Hwee J:

Introduction

1 Both plaintiffs, Swift Maids Pte Ltd and Swift Maids Resources Pte Ltd (collectively referred to as “Swift Maids”), are foreign domestic worker (“FDW”) employment agencies.¹ They share the same directors and shareholders, and their businesses, whilst structured under two companies, were operated as if there was only one business under a single brand name “Swift Maids”.² They bring this action against the first defendant, Mr Cheong Yi Qiang (“Mr Cheong”), for breach of his employment contract with Swift Maids Pte Ltd, breach of confidentiality obligations and breach of fiduciary duties. Mr

¹ Statement of Claim (Amendment No 3) dated 14 April 2022 (“SOC”) at paras 1 and 2 (Set Down Bundle (“SB”) at p 48).

² SOC at para 3 (SB at p 49).

Cheong, who is also referred to variously as “Yi Qiang”, “Daniel” or “Dan”, was employed as a general manager at Swift Maids Pte Ltd.

2 The plaintiffs also claim against the second to fifth defendants for their alleged dishonest assistance of Mr Cheong’s breach of fiduciary duties. The second and fifth defendants – Recruitbee Employment Pte Ltd (“Recruitbee Employment”) and Recruitbee Helpers Pte Ltd (“Recruitbee Helpers”) (collectively referred to as “Recruitbee”) – are engaged in the same line of business as Swift Maids, namely as FDW employment agencies.³ The third defendant, Ms Toh Suling, Stephenie (“Ms Toh”), was a customer of Swift Maids. She also did some work for Swift Maids as a freelance designer, and dealt with Mr Cheong in relation to various design projects while he was working at Swift Maids. The fourth defendant, Ms Thin Thin Aung (“Ms Aung”), is a Burmese national and a former employee of Swift Maids. After she ceased her employment with Swift Maids, she continued to supply biodata of FDWs to them for a period of time. Mr Cheong and Ms Toh were, at various times, registered directors and shareholders of Recruitbee. Ms Aung similarly claims to have been a director and shareholder of Recruitbee, even though she was not registered as such. In addition, the plaintiffs claim against all the defendants for unlawful means conspiracy in setting up and operating Recruitbee to re-direct the plaintiffs’ business and employees to Recruitbee through the use of information which the plaintiffs claim to be confidential.

3 In the present suit, there has been no application to bifurcate the trial in respect of the issues of liability and quantification of damages, and no

³ SOC at paras 10 and 10B (SB at p 50); 1st, 2nd and 3rd Defendants’ Defence (Amendment No 3) dated 28 April 2022 (“1D–3D Defence”) at paras 10 and 10A (SB at p 109).

bifurcation order was made. The trial was in respect of both liability and quantification of damages (if liability was established).

4 At the heart of this suit is the role that Mr Cheong had allegedly played in the wrongful gain that the defendants allegedly made at Swift Maids' expense. In this regard, the plaintiffs allege that Mr Cheong had taken and made unauthorised use of their confidential information, and that he had provided and caused such confidential information to be misused by the other defendants. It is the plaintiffs' case that Recruitbee, being new to the market, could not have achieved its level of performance without the benefit of using Swift Maids' confidential information. The plaintiffs' pleaded case at the outset was that *all* of Recruitbee's business ought to have been transacted by Swift Maids,⁴ and that the defendants wrongfully gained an estimated amount of \$744,359.31 by diverting such business from Swift Maids to Recruitbee.⁵ In their closing submissions, however, the plaintiffs accepted that not all of the defendants' alleged profits were wrongfully gained. Instead, they took the position that the defendants' wrongful gains were limited to profits allegedly made through the taking and misuse of Swift Maids' confidential information.⁶

5 After considering the evidence and the parties' submissions, I find that Mr Cheong was in breach of various obligations under his employment contract. The plaintiffs, however, fail on their other causes of action against Mr Cheong, their causes of action against the other defendants, and their causes of action against Mr Cheong and the other defendants collectively. The plaintiffs have made a litany of allegations against Mr Cheong and the other defendants, and

⁴ SOC at para 39(b)(iii) (SB at pp 73–74).

⁵ SOC at para 39(b)(ii) (SB at p 73).

⁶ Plaintiffs' Reply Submissions dated 23 June 2023 ("PRS") at para 71.

pleaded, in quite blunderbuss fashion, a breach of any conceivable duty related to the allegations. Although I find the plaintiffs' key witnesses to be straightforward and truthful while on the stand, there are significant gaps in the plaintiffs' evidence, which the plaintiffs have sought to bridge by their assertions of what, to their minds, must have happened. Clearly, the plaintiffs cannot succeed on that basis. It is trite that he who asserts must prove, and this, the plaintiffs have simply failed to do.

Facts

The parties

6 Swift Maids was founded by Mr Loh Jit Yong ("Mr Loh"),⁷ who is a director and shareholder of Swift Maids.⁸ Mr Hu Xijian ("Mr Hu") is another director and shareholder of Swift Maids.⁹ At the time of the trial, Mr Lit Jun Hao ("Mr Lit") was the general manager of Swift Maids, having assumed that position from 1 July 2020.¹⁰ Mr Loh, Mr Hu and Mr Lit were all called as key witnesses for the plaintiffs. Three employees of Swift Maids – Mr Ismadi bin Jami Eksan ("Mr Ismadi"),¹¹ Ms Del Rosario Vivian Enano ("Ms Vivian")¹² and

⁷ Affidavit of Evidence-in-Chief ("AEIC") of Mr Loh Jit Yong dated 13 December 2022 ("Mr Loh's AEIC") at para 4 (Bundle of Affidavits of Evidence-in-Chief ("BAEIC") at p 816).

⁸ Mr Loh's AEIC at para 4 (BAEIC at p 816).

⁹ AEIC of Mr Hu Xijian dated 13 December 2022 ("Mr Hu's AEIC") at para 4 (BAEIC at p 271).

¹⁰ AEIC of Mr Lit Jun Hao dated 9 December 2022 ("Mr Lit's AEIC") at para 4 (BAEIC at p 5).

¹¹ AEIC of Mr Ismadi bin Jami Eksan dated 13 December 2022 ("Mr Ismadi's AEIC") at paras 3–4 (BAEIC at p 261).

¹² AEIC of Ms Del Rosario Vivian Enano dated 13 December 2022 ("Ms Vivian's AEIC") at para 4 (BAEIC at p 240).

Ms May Thazin Kyaw (“Ms May”)¹³ – also gave evidence for the plaintiffs. The plaintiffs called a further witness, Ms Nur Nadia binte Nazarudin (“Ms Nadia”),¹⁴ to give evidence for them. Ms Nadia was a former employee of Recruitbee Employment, who had attended a job interview for a role with Swift Maids,¹⁵ and whose conversation with Mr Loh and Mr Hu during that job interview was recorded without her knowledge or consent.¹⁶

7 Recruitbee Employment was incorporated on 23 March 2019.¹⁷ On the date of Recruitbee Employment’s incorporation, Mr Cheong and Ms Toh were its registered directors.¹⁸ While Ms Aung asserts that she was a founder of Recruitbee Employment,¹⁹ she was not registered as its director at the time of its incorporation. She asserts, however, that Mr Cheong had “lent his name” to her and acted as her “nominee director”.²⁰ In this regard, she explained in her affidavit of evidence-in-chief (“AEIC”) that Mr Cheong had offered her the use of his name for the incorporation of Recruitbee Employment because she had some reservations about trusting Ms Toh with her business interest at the initial

¹³ AEIC of Ms May Thazin Kyaw dated 13 December 2022 (“Ms May’s AEIC”) at para 4 (BAEIC at p 250).

¹⁴ Notes of Evidence (“NEs”) dated 28 February 2023 at p 2, line 11.

¹⁵ NEs dated 28 February 2023 at p 5, line 29 to p 6, line 7.

¹⁶ NEs dated 28 February 2023 at p 31, lines 3–20 and p 34, lines 15–17.

¹⁷ Mr Loh’s AEIC at para 31 and p 78 (BAEIC at pp 823 and 892); AEIC of Ms Toh Suling, Stephenie dated 5 January 2023 (“Ms Toh’s AEIC”) at para 21 (BAEIC at p 1556).

¹⁸ AEIC of Mr Cheong Yi Qiang dated 6 January 2023 (“Mr Cheong’s AEIC”) at para 49 and p 52 (BAEIC at pp 1490 and 1546); Ms Toh’s AEIC at para 5 (BAEIC at p 1552).

¹⁹ AEIC of Ms Thin Thin Aung dated 6 January 2023 (“Ms Aung’s AEIC”) at para 10 (BAEIC at p 1628).

²⁰ Ms Aung’s AEIC at para 74 (BAEIC at pp 1647–1648). See also Mr Cheong’s AEIC at paras 48 and 49 (BAEIC at pp 1489–1490).

phase of her partnership with Ms Toh.²¹ At the trial, Ms Aung further explained that she could not meet the requirements for a foreigner to be registered as a shareholder or director of a company in Singapore.²²

8 Recruitbee Helpers was incorporated on 15 August 2021 to continue Recruitbee Employment’s business after the latter’s employment agency licence was suspended by the Ministry of Manpower (“MOM”).²³ On the date of Recruitbee Helpers’ incorporation, Ms Toh and Mr Teo Wei Qiang (“Mr Teo”) were its registered directors.²⁴ According to Mr Cheong, he was also involved in incorporating Recruitbee Helpers,²⁵ although he was only registered as its director on 27 August 2021.²⁶

9 Mr Cheong, Ms Toh and Recruitbee Employment were initially represented, but their counsel ceased to act for them on 3 August 2022.²⁷ Thereafter, Mr Cheong and Ms Toh were self-represented, and Recruitbee Employment was unrepresented. Ms Aung was represented by counsel throughout these proceedings. The fifth defendant, Recruitbee Helpers, did not enter an appearance. Mr Cheong, Ms Toh and Ms Aung gave evidence at the trial. They did not call any other witnesses.

²¹ Ms Aung’s AEIC at paras 73 and 74 (BAEIC at p 1647).

²² NEs dated 24 March 2023 at p 73, line 32 to p 74, line 3 and p 76, lines 15–31.

²³ Mr Cheong’s AEIC at paras 63–64 (BAEIC at pp 1492–1493); Ms Toh’s AEIC at paras 5, 36 and 37 and pp 74–75 (BAEIC at pp 1552, 1560 and 1624–1625); Mr Lit’s AEIC at p 172 (BAEIC at p 175).

²⁴ Mr Lit’s AEIC at p 173 (BAEIC at p 176).

²⁵ Mr Cheong’s AEIC at para 64 (BAEIC at p 1493).

²⁶ Mr Lit’s AEIC at pp 178–180 (BAEIC at pp 181–183).

²⁷ Notice of Ceasing to Act as Solicitor dated 3 August 2022.

Background

Relationship of Mr Cheong, Ms Aung and Ms Toh with Swift Maids

10 Sometime in July 2017, Ms Aung started working for both Swift Maids Pte Ltd and HR Oceanic Pte Ltd,²⁸ another one of Mr Loh’s companies²⁹ which is not involved in this suit. In or around mid-December 2017, she was transferred to work for only Swift Maids Pte Ltd. Ms Aung did not have a written contract of employment,³⁰ and her responsibilities included processing biodata of FDWs,³¹ general marketing³² and providing counselling services to FDWs.³³ She was also tasked to set up an office in Peninsula Plaza, and was in charge of the renovation of Swift Maids’ office at Far East Shopping Centre together with the general manager at that time.³⁴

11 Mr Cheong joined Swift Maids later than Ms Aung, on 21 March 2018.³⁵ Unlike Ms Aung, Mr Cheong had a written employment contract. It was made between him and Swift Maids Pte Ltd, and dated 21 March 2018.³⁶ While Mr Cheong’s employment contract was made with Swift Maids Pte Ltd, it is not in dispute that he had served as general manager for Swift Maids as a whole, and

²⁸ Ms Aung’s AEIC at para 21 (BAEIC at p 1631).

²⁹ NEs dated 23 February 2023 at p 30, lines 1–29.

³⁰ Ms Aung’s AEIC at para 23 (BAEIC at p 1632).

³¹ Ms Aung’s AEIC at para 22 (BAEIC at p 1632).

³² NEs dated 23 February 2023 at p 34, lines 20–23.

³³ NEs dated 23 February 2023 at p 35, lines 4–13.

³⁴ Ms Aung’s AEIC at para 23 (BAEIC at p 1632).

³⁵ Agreed Bundle of Documents (“ABD”) at p 133, para 1.

³⁶ ABD at pp 133–140.

that he was responsible for overseeing the day-to-day operations of Swift Maids.³⁷

12 Ms Aung tendered her resignation from Swift Maids on 3 July 2018, a few months after Mr Cheong joined Swift Maids.³⁸ After her resignation, she remained in contact with Mr Cheong and continued to have dealings with Swift Maids as a supplier of biodata for Burmese FDWs. As for Mr Cheong, he tendered his resignation from Swift Maids on 6 February 2020, and his last day of service was 6 March 2020,³⁹ nearly two years after he started working for Swift Maids.

13 Ms Toh first encountered Swift Maids as a customer. In September 2018, Ms Toh used the services of Swift Maids Pte Ltd to hire an FDW for her family.⁴⁰ In the same month, an events and advertising company for which Ms Toh worked as a freelance project manager was engaged by Mr Cheong to help carry out branding and design works for Swift Maids.⁴¹ In March 2019, Mr Cheong engaged Ms Toh to carry out further works involving the re-designing of Swift Maids' logo, name cards, signage board and corporate folder.⁴²

³⁷ SOC at para 15 (SB at p 51); 1D–3D Defence at para 15 (SB at p 110); Mr Loh's AEIC at para 26 (BAEIC at p 822); Mr Cheong's AEIC at para 9 and pp 1–8 (BAEIC at pp 1481 and 1495–1502).

³⁸ Ms Aung's AEIC at para 44 (BAEIC at p 1639); Mr Loh's AEIC at para 37 (BAEIC at pp 824–825).

³⁹ Mr Cheong's AEIC at p 34 (BAEIC at p 1528).

⁴⁰ Ms Toh's AEIC at para 8 (BAEIC at p 1553).

⁴¹ Ms Toh's AEIC at para 9 and pp 13–23 (BAEIC at pp 1553 and 1563–1573).

⁴² Ms Toh's AEIC at para 10 (BAEIC at p 1553).

Setting up of Recruitbee Employment

14 Mr Cheong, Ms Toh and Ms Aung gave evidence on how Recruitbee Employment came to be set up. According to Mr Cheong and Ms Aung, Ms Aung told Mr Cheong that she was looking for Singaporean partners to join her in opening an FDW employment agency in Singapore.⁴³ Based on the account given by Mr Cheong, Ms Toh and Ms Aung, Mr Cheong introduced Ms Toh to Ms Aung as a potential partner for Ms Aung's endeavour sometime at the end of 2018 or the beginning of 2019.⁴⁴ It is the evidence of Ms Toh and Ms Aung that on 14 March 2019, Ms Aung, Ms Toh and Mr Teo, who was an investor introduced by Mr Cheong,⁴⁵ entered into a shareholders' agreement stipulating that Ms Aung held 53 shares, Ms Toh held 30 shares and Mr Teo held 17 shares, out of a total of 100 shares in Recruitbee Employment.⁴⁶ Although Recruitbee Employment was incorporated on 23 March 2019,⁴⁷ its first branch was officially opened in Kovan only on 15 July 2019, with the first employee being one Ms Renie Chua ("Ms Chua").⁴⁸

⁴³ Mr Cheong's AEIC at para 47 (BAEIC at p 1489); Ms Aung's AEIC at para 64 (BAEIC at p 1644).

⁴⁴ Mr Cheong's AEIC at para 48 (BAEIC at pp 1489–1490); Ms Toh's AEIC at para 14 (BAEIC at p 1554); Ms Aung's AEIC at paras 64–65 (BAEIC at pp 1644–1645); NEs dated 7 March 2023 at p 105, lines 24–30; NEs dated 24 March 2023 at p 9, line 26 to p 10, line 11.

⁴⁵ Ms Toh's AEIC at para 17 (BAEIC at p 1555); Ms Aung's AEIC at para 71 (BAEIC at p 1647).

⁴⁶ Ms Toh's AEIC at para 18 and pp 58–66 (BAEIC at pp 1555 and 1608–1616); Ms Aung's AEIC at para 72 and pp 154–162 (BAEIC at pp 1647 and 1779–1787).

⁴⁷ Mr Loh's AEIC at para 31 and p 78 (BAEIC at pp 823 and 892); Ms Toh's AEIC at para 21 (BAEIC at p 1556).

⁴⁸ Ms Toh's AEIC at para 21 (BAEIC at p 1556).

Swift Maids' troubles in 2020

15 In 2020, Swift Maids ran into some operational difficulties.

16 Mr Loh gave evidence that around March 2020, three suppliers of biodata, namely Ms Aung, Ms Shima and Ms Suliyani, ceased to supply biodata to Swift Maids.⁴⁹ Then, between June and July 2020, three experienced sales staff, Ms Doreen Peh (“Ms Peh”), Ms Tilia Teo (“Ms Teo”) and Ms Alice Lim (“Ms Lim”), resigned in quick succession, and thereafter joined Recruitbee Employment.⁵⁰ Mr Loh’s evidence is that the resignation of these three staff members left Swift Maids shorthanded, and Swift Maids had to temporarily close down one of its branches.⁵¹

17 More broadly, the plaintiffs complain that from March 2020 onwards, during the Covid-19 circuit-breaker period, Swift Maids did not experience the booming business that it had expected. The plaintiffs’ case is that after the borders were closed, the bulk of the business would necessarily be from the transfer of FDWs already working in Singapore, as new FDWs were unable to come into Singapore to work.⁵² In this regard, Mr Loh explained that established employment agencies like Swift Maids had a market advantage because of their large base of customers (*ie*, employers of FDWs) and FDWs, who had previous dealings with them, and who would be willing to do business with them again.⁵³ But Swift Maids’ anticipation of booming business did not materialise. Instead,

⁴⁹ Mr Loh’s AEIC at para 69 (BAEIC at p 833).

⁵⁰ Mr Loh’s AEIC at para 73 (BAEIC at p 834); NEs dated 23 February 2023 at p 116, lines 19–31.

⁵¹ Mr Loh’s AEIC at para 78 (BAEIC at p 835).

⁵² Plaintiffs’ Closing Submissions dated 17 May 2023 (“PCS”) at paras 31(a) and 63.

⁵³ NEs dated 22 February 2023 at p 79, lines 17–30, p 80, lines 8–9 and p 93, lines 6–18; NEs dated 24 February 2023 at p 62, lines 20–27 and p 63, line 2 to p 64, line 8.

Recruitbee Employment, which was newly set up at that time, saw significantly higher than average placement numbers as compared with FDW employment agencies that were started at around the same time.⁵⁴ The plaintiffs attribute this to their business being diverted to Recruitbee Employment, and later to Recruitbee Helpers. It is Mr Loh’s evidence that “many FDWs chose to be transferred with [Recruitbee Employment] instead of with the Plaintiffs”.⁵⁵

Allegations of wrongful conduct by Mr Cheong as general manager

18 Aside from allegations of wrongful acts that involved *all* the defendants, the plaintiffs also allege that Mr Cheong, *alone*, committed further wrongful acts.

19 The first set of wrongful acts that the plaintiffs allege against Mr Cheong relates to five invoices purportedly issued by a deregistered sole-proprietorship, Pixelate, which had been set up by Mr Cheong (the “Pixelate invoices”).⁵⁶ The plaintiffs paid out a total amount of \$21,245 in reliance on the Pixelate invoices. At the time the payments were made, the plaintiffs did not know that Pixelate was previously owned by Mr Cheong.⁵⁷

20 The second set of allegedly wrongful acts relates to a fund transfer of \$8,190 by the plaintiffs to Mr Cheong for the purposes of making advance payment to Ms Suliyani.⁵⁸ The plaintiffs allege that Mr Cheong had misappropriated this sum.

⁵⁴ Mr Loh’s AEIC at para 31 (BAEIC at p 823).

⁵⁵ Mr Loh’s AEIC at para 90 (BAEIC at p 839).

⁵⁶ Mr Lit’s AEIC at pp 53–54 (BAEIC at pp 56–57).

⁵⁷ Mr Loh’s AEIC at para 38 (BAEIC at p 825).

⁵⁸ Mr Loh’s AEIC at paras 60–61 and p 540 (BAEIC at pp 831 and 1354).

21 The third and final set of allegedly wrongful acts relates to 28 transport claims (the “wrongful transport claims”) amounting to \$522.66 that were made by Mr Cheong, and paid out by the plaintiffs to Mr Cheong, from April 2019 to February 2020.⁵⁹ The plaintiffs allege that these trips were carried out by Mr Cheong for Recruitbee Employment’s purposes.

Issues to be determined

22 The issues in this suit can be divided into three broad categories, namely: (a) issues relating to the claims against Mr Cheong alone; (b) issues relating to the claims against Mr Cheong and the other defendants together; and (c) issues relating to the claims against the other defendants.

23 In relation to Mr Cheong alone, the issues are as follows:

(a) whether Mr Cheong was in breach of duties expressly stipulated in the employment contract between him and Swift Maids Pte Ltd,⁶⁰ and whether Mr Cheong was in breach of an implied term of the contract obliging him to serve with good faith and fidelity;⁶¹

(b) whether Mr Cheong was in breach of any duty of confidence;⁶² and

⁵⁹ Mr Loh’s AEIC at paras 52–55 and pp 532–533 (BAEIC at pp 829–830 and 1346–1347).

⁶⁰ SOC at paras 15–16, 21–30 and 37–38 (SB at pp 51–52, 55–64 and 71–73).

⁶¹ SOC at paras 18, 21–30 and 37–38 (SB at pp 52, 55–64 and 71–73).

⁶² SOC at paras 18 and 26–27 (SB at pp 52 and 57–61).

(c) whether Mr Cheong was in breach of any fiduciary duties owed to Swift Maids.⁶³

24 As against the defendants collectively, the issue is whether they were engaged in an unlawful means conspiracy in setting up Recruitbee “as a vehicle to divert and/or solicit business and employee(s) away from the Plaintiffs with the intention of injuring the Plaintiffs’ business, in order to enrich themselves at the Plaintiffs’ expense” and in operating Recruitbee “in a manner which directly injured the Plaintiffs’ business, through the unlawful breaches of [Mr] Cheong’s duties owed to the Plaintiffs and the use of the Plaintiffs’ confidential information”.⁶⁴

25 As against the second to fifth defendants, the issue is whether they rendered dishonest assistance in relation to the purported breaches of fiduciary duties that Mr Cheong allegedly owed to the plaintiffs.⁶⁵

26 There is a fair degree of overlap in the different claims made by the plaintiffs. In relation to the claim for unlawful means conspiracy, the plaintiffs pleaded that the unlawful acts carried out by the defendants in combination with each other involve Mr Cheong’s breaches of various terms in his employment contract (which are separately actionable against Mr Cheong alone), and the misuse of confidential information belonging to the plaintiffs (which is also separately actionable against Mr Cheong alone).⁶⁶ As for the action against the second to fifth defendants for dishonest assistance, it is predicated on the claim

⁶³ SOC at paras 20–30 and 37–38 (SB at pp 53–64 and 71–73).

⁶⁴ SOC at paras 31–35C (SB at pp 64–69).

⁶⁵ SOC at paras 35D–36 (SB at pp 69–71).

⁶⁶ SOC at paras 31 and 35 (SB at pp 64–65 and 68).

that Mr Cheong owed fiduciary duties to the plaintiffs, which he had allegedly breached.⁶⁷ As to *how* Mr Cheong had breached these fiduciary duties, the plaintiffs rely on allegations that they made to support their other claims against Mr Cheong.⁶⁸

The claims against Mr Cheong

27 I turn first to consider each of the duties that Mr Cheong had allegedly breached, save for the alleged breach of his fiduciary duties, which I will analyse alongside the claims against the other defendants.

28 I start by observing that the plaintiffs have relied mostly on the same factual complaints against Mr Cheong in support of the different heads of claims against him. In this case, it is not always entirely clear which particulars the plaintiffs are relying on to establish the breach of each duty and how the particulars pleaded co-relate to the different duties, as the facts relevant to the breach of each duty are not clearly delineated.⁶⁹

Mr Cheong's involvement in the setting up and operations of Recruitbee Employment

Plaintiffs' case

29 The plaintiffs submit that Mr Cheong had breached the express terms spelling out his duties under his employment contract with Swift Maids Pte Ltd,⁷⁰ and that Mr Cheong had also breached an implied contractual term to

⁶⁷ SOC at paras 35D and 35E (SB at pp 69–70).

⁶⁸ SOC at para 35F (SB at p 70).

⁶⁹ See, *eg*, SOC at paras 21 and 29 (SB at pp 55 and 63).

⁷⁰ PCS at paras 55 and 57.

serve with good faith and fidelity.⁷¹ The premise of the plaintiffs' case is that Mr Cheong had been centrally involved in the setting up and operations of Recruitbee Employment, even while he was still working for the plaintiffs.⁷² Further, as Mr Cheong was involved in Recruitbee Employment from its inception, and he continued to be involved after he resigned from Swift Maids, the inference must be that he was invested in growing Recruitbee's business.⁷³

Mr Cheong's defence

30 Mr Cheong argues that his involvement in the setting up of Recruitbee Employment was limited, and that he merely assisted Ms Aung by "offering to lend his name" to a friend in need.⁷⁴ This came about after Ms Aung had expressed some reservations about trusting Ms Toh with her business interest at the initial phase of her partnership with Ms Toh.⁷⁵ In the light of those concerns, Mr Cheong purportedly agreed to "lending [his] name for [Recruitbee Employment's] incorporation purpose".⁷⁶ As for his performance while he was under the employ of Swift Maids, Mr Cheong relies on the fact that Swift Maids had, in or around the end of 2019 to early 2020, offered him a 20% share of their profits for the financial year 2019, payable in monthly instalments over a calendar year beginning from June 2020, provided that he continued to be employed with Swift Maids.⁷⁷ He argues that he had done well and puts

⁷¹ PCS at para 44.

⁷² PCS at paras 10–22.

⁷³ PCS at paras 23–28.

⁷⁴ 1st Defendant's Closing Written Submissions dated 17 May 2023 ("1DCS") at p 6, para 5 and p 7, paras 9–11.

⁷⁵ Ms Aung's AEIC at para 73 (BAEIC at p 1647).

⁷⁶ Mr Cheong's AEIC at para 48(a) (BAEIC at p 1490).

⁷⁷ Mr Loh's AEIC at para 27 (BAEIC at p 822).

emphasis on Mr Loh's confirmation during cross-examination that Mr Loh was satisfied at that time that Mr Cheong had fulfilled his commitments and duties to the plaintiffs.⁷⁸ On this basis, Mr Cheong submits that there had been no breach of his employment contract.⁷⁹

Analysis and findings

31 The plaintiffs refer to cll 8, 11, 12 and 13 of the contract of employment between Mr Cheong and Swift Maids Pte Ltd in their claim against Mr Cheong.⁸⁰ The clauses provide as follows:

8. Duties and Responsibilities

8.1 You will be required to faithfully perform the duties of the position in which you are engaged in your appointment as well as any other duties which you may be required to perform from time to time.

8.2 You will observe the rules and regulations of [Swift Maids Pte Ltd] and comply with the orders and instructions given by your superior or any other duly authorized persons.

8.3 Whilst employed by [Swift Maids Pte Ltd] you shall devote substantially your time, attention and whole skills to the services and affairs of [Swift Maids Pte Ltd] and use your utmost endeavours to promote its interest.

8.4 You are to refrain from any gainful employment and shall not in any way be connected or engaged with any other company business or concern without prior approval or consent by [Swift Maids Pte Ltd] in writing.

...

11. Restriction on Other Employment

You shall not at any time during your service with [Swift Maids Pte Ltd], either directly or indirectly engage in any

⁷⁸ 1DCS at p 12, paras 3–8 and NEs dated 21 February 2023 at p 89, lines 7–13.

⁷⁹ 1DCS at p 12, para 4 to p 15, para 17.

⁸⁰ SOC at para 16 (SB at pp 51–52).

other gainful occupation without the prior written consent of [Swift Maids Pte Ltd].

12. Confidentiality, Proprietary Information and Intellectual Property Rights

12.1 During your employment with [Swift Maids Pte Ltd], you may receive and be exposed to confidential and proprietary information pertaining to secrets, transactions or information relating to [Swift Maids Pte Ltd] and her customers.

12.2 You shall not, during your employment with [Swift Maids Pte Ltd], and at all times after the resignation or termination of your service from any cause or whatsoever, directly or indirectly disclose, divulge, authorize or permit delivery to anyone not properly entitled to such information or any matters relating to [Swift Maids Pte Ltd] and her customers.

...

13. Non-competition/Restraint of trade

13.1 You agree and undertake that you shall not during the term of your employment with [Swift Maids Pte Ltd] (collectively, the “Specified Period”), either jointly or alone together with or as agent for any reason, company or association of any nature whatsoever directly or indirectly –

13.2 Canvass, solicit or approach or cause to be canvassed, solicited or approached, for orders any person who at anytime during the Specified Period is or was a client or customer of [Swift Maids Pte Ltd], where the orders relate to goods and/or services which are competitive with or of the type supplied by [Swift Maids Pte Ltd] during the Specified Period.

13.3 Interfere or seek to interfere with the continuance of goods and/services to [Swift Maids Pte Ltd] from any supplier who has been supplying goods and/or services to [Swift Maids Pte Ltd] at any time during the Specified Period if such interference cause or would cause that supplier to cease supplying, or to materially reduce its supply of those goods and/or services to [Swift Maids Pte Ltd].

13.4 Be in any way interested in any such business or activity whether as principal, agent, shareholder, or

otherwise; or be associated or engaged in or any way concerned yourself in such activity.

13.5 Finance or guarantee the obligations of any such business or activity.

13.6 Carry on the business or activity of providing foreign domestic workers and related services;

13.7 Run a competing operations or activity or business of providing foreign domestic workers and related services.

...

32 It is, however, not clear in the plaintiffs’ case which specific limbs of those clauses were allegedly breached in relation to Mr Cheong’s involvement in the setting up and operations of Recruitbee Employment. Be that as it may, there is sufficient evidence for me to find that Mr Cheong had at least breached cll 8.3, 8.4 and 13.4 of his employment contract - in failing to “devote substantially [his] time, attention and whole skills to the services and affairs of [Swift Maids Pte Ltd] and use [his] utmost endeavours to promote its interest”, in being “connected or engaged with any other company business or concern without prior approval or consent by [Swift Maids Pte Ltd] in writing”, and by being “interested in” the business or activity of providing FDWs and related services. I now explain my findings.

(1) Clauses 8.3 and 8.4

33 After sowing the first seed for the establishment of Recruitbee Employment by connecting Ms Toh and Ms Aung at around the end of 2018 or the beginning of 2019,⁸¹ Mr Cheong involved himself in a whole series of

⁸¹ Mr Cheong’s AEIC at paras 47–48 (BAEIC at pp 1489–1490); Ms Toh’s AEIC at para 14 (BAEIC at p 1554); Ms Aung’s AEIC at paras 64–65 (BAEIC at pp 1644–1645); NEs dated 7 March 2023 at p 105, lines 24–30; NEs dated 24 March 2023 at p 9, line 26 to p 10, line 11.

matters relating to Recruitbee Employment while he was still employed by Swift Maids. The evidence that follows reveals the role that he had played, from the incorporation of Recruitbee Employment to its operation as a going concern.

34 First, Mr Cheong was registered as one of the directors of Recruitbee Employment when it was incorporated on 23 March 2019.⁸² His name was removed on 1 April 2019,⁸³ but later reinstated from 20 May 2019 to 16 August 2019.⁸⁴ Even if Mr Cheong was merely assisting Ms Aung by “offering to lend his name” to a friend in need, as he claims,⁸⁵ that does not change the fact that he was involved in the setting up of Recruitbee Employment. He was also registered as a shareholder of Recruitbee Employment from 23 March 2019 to 11 November 2019, holding 53 out of 100 shares.⁸⁶

35 Second, Mr Cheong agreed for his name to be included in Recruitbee Employment’s employment agency licence application,⁸⁷ and for his name to be used to open a bank account for Recruitbee Employment.⁸⁸

⁸² Mr Cheong’s AEIC at para 49 and p 52 (BAEIC at pp 1490 and 1546).

⁸³ Mr Cheong’s AEIC at p 52 (BAEIC at p 1546).

⁸⁴ Mr Cheong’s AEIC at p 52 (BAEIC at p 1546).

⁸⁵ 1DCS at p 6, para 5 and p 7, paras 9–11.

⁸⁶ Mr Hu’s AEIC at p 49 (BAEIC at p 318).

⁸⁷ NEs dated 8 March 2023 at p 25, line 2 to p 26, line 1.

⁸⁸ NEs dated 8 March 2023 at p 30, line 24 to p 31, line 23.

36 Third, when Recruitbee Employment required an injection of funds to be set up, Mr Cheong introduced Mr Teo as an investor.⁸⁹ Mr Teo subsequently invested \$30,000 in Recruitbee Employment in March 2019.⁹⁰

37 Fourth, Mr Cheong accompanied Ms Toh and her friend to Myanmar from 31 May to 1 June 2019, where they met Ms Aung. During that trip, there was a meeting with one Mr Augustine from a digital marketing firm, Salween Studio, to discuss website and marketing matters for Recruitbee Employment.⁹¹ It is the evidence of Mr Cheong, Ms Toh and Ms Aung that only Ms Toh and Ms Aung discussed Recruitbee Employment's business with Salween Studio,⁹² and that Mr Cheong was not involved in the discussions relating to Recruitbee Employment.⁹³ Mr Cheong claims that he had instead taken the opportunity to discuss Swift Maids' marketing issues with Mr Augustine,⁹⁴ as Salween Studio was also a service provider for Swift Maids for website-related matters.⁹⁵ Their evidence is, however, contradicted by two e-mails from Mr Augustine. Following that meeting, Mr Augustine sent an e-mail dated 2 June 2019 to Mr Cheong, copied to Ms Aung. The e-mail was addressed to Mr Cheong, Ms Toh and Ms Aung, and included Social Media Management Service proposals for

⁸⁹ Ms Toh's AEIC at para 17 (BAEIC at p 1555); Ms Aung's AEIC at para 71 (BAEIC at p 1647).

⁹⁰ Ms Toh's AEIC at pp 58–59 (BAEIC at pp 1608–1609).

⁹¹ Ms Toh's AEIC at para 23(a) (BAEIC at p 1556); Ms Aung's AEIC at para 70 (BAEIC at p 1646).

⁹² Ms Toh's AEIC at para 23(a) (BAEIC at p 1556); Ms Aung's AEIC at para 81 (BAEIC at p 1650); NEs dated 9 March 2023 at p 11, lines 11–18.

⁹³ Ms Toh's AEIC at para 23(a) (BAEIC at p 1556); NEs dated 9 March 2023 at p 15, lines 16–20; NEs dated 24 March 2023 at p 97, lines 27–30.

⁹⁴ NEs dated 8 March 2023 at p 57, line 4 to p 58, line 23.

⁹⁵ NEs dated 22 February 2023 at p 54, lines 12–25; PCS at para 16.

“Recruit Bee (Myanmar) Co Ltd” and “Recruit Bee (Singapore) Co Ltd”.⁹⁶ Then on 14 June 2019, Mr Augustine sent another e-mail to Mr Cheong with a copy to Ms Aung. This second e-mail was also addressed to Mr Cheong, Ms Toh and Ms Aung. It contained updated service proposals and confirmed the availability of office space for “Recruit Bee Myanmar”.⁹⁷

38 Having considered the circumstances, I do not find the evidence of Mr Cheong, Ms Toh and Ms Aung credible. In my view, even if it were true that Mr Cheong discussed Swift Maids’ business with Mr Augustine during that visit, I do not believe that he was not involved in the discussion of Recruitbee Employment’s business. Mr Cheong’s and Ms Aung’s assertion, that Mr Augustine was careless or confused, and that he had mistakenly sent materials relating to Recruitbee Employment to Mr Cheong,⁹⁸ was not supported by any satisfactory explanation. It is clear from the face of the e-mails that the trio had discussed with Mr Augustine the services to be provided to Recruitbee Employment, and that Mr Augustine was following up on their discussion. There is no reason why the e-mail would be sent and addressed to Mr Cheong if it were true that he was not involved in the discussion of Recruitbee Employment’s business. As such, it is my view that this is another instance of Mr Cheong’s involvement in the business of Recruitbee Employment. That having been said, it is apposite at this juncture to record that Salween Studio was Ms Aung’s contact, and it was Ms Aung who had introduced Salween Studio to Mr Cheong when he joined Swift Maids.⁹⁹ Therefore, although I am

⁹⁶ ABD at pp 889–911.

⁹⁷ ABD at pp 916–938.

⁹⁸ Ms Aung’s AEIC at paras 79–81 (BAEIC at pp 1649–1650); NEs dated 9 March 2023 at p 13, line 31 to p 14, line 31.

⁹⁹ Ms Aung’s AEIC at paras 75–76 (BAEIC at p 1648).

satisfied that in respect of dealings with Salween Studio, Mr Cheong was involved in the business of Recruitbee Employment while he was still employed by Swift Maids, it is not a finding that there was any misuse of Swift Maids' business contacts or information by Mr Cheong or any of the other defendants.

39 Fifth, Mr Cheong had been a part of Recruitbee Employment's staff recruitment efforts. Around October 2019, Mr Cheong was involved in interviewing Ms Nadia when Ms Toh requested his assistance.¹⁰⁰ There is also in evidence an e-mail dated 26 March 2019 sent by one "Emily" to Mr Cheong's Swift Maids e-mail address.¹⁰¹ Mr Cheong's evidence is that he had never met Ms Emily before,¹⁰² and that he could not recall anything about this incident.¹⁰³ I find, on balance, that Mr Cheong was involved in recruiting for Recruitbee Employment, particularly given the lack of a cogent explanation from Mr Cheong when he was confronted with the e-mail from Ms Emily.

40 Sixth, there is evidence that in October 2019, Mr Cheong had booked an air ticket for an FDW placed by Recruitbee Employment, purportedly in response to Ms Toh's request for assistance.¹⁰⁴ After he placed the e-booking, he forwarded it from his Swift Maids e-mail account to his Recruitbee Employment e-mail address at "dan@recruitbee.com.sg".¹⁰⁵

¹⁰⁰ Ms Toh's AEIC at para 28 (BAEIC at p 1558).

¹⁰¹ Mr Lit's AEIC at para 29(a) and p 67 (BAEIC at pp 13 and 70).

¹⁰² NEs dated 9 March 2023 at p 16 lines 29–32.

¹⁰³ NEs dated 9 March 2023 at p 16 lines 26–32.

¹⁰⁴ ABD at pp 1015–1018; NEs dated 9 March 2023 at p 20, line 29 to p 21, line 7; NEs dated 10 March 2023 at p 13, line 18 to p 14, line 18.

¹⁰⁵ Mr Lit's AEIC at para 29(f) and pp 137–140 (BAEIC at pp 15–16 and 140–143); Mr Loh's AEIC at para 63 (BAEIC at pp 831–832).

41 Based on the above evidence showing Mr Cheong’s involvement in the setting up and operations of Recruitbee Employment, it is my judgment that Mr Cheong had breached cll 8.3 and 8.4 of his employment contract.

(2) Clause 13.4

42 Further, I find that Mr Cheong had breached the non-competition provision in cl 13.4 of his employment contract. In this regard, I note that cl 13 is not a model of clarity. Although the parties did not raise any issues or make any submissions in relation to that clause, I will briefly touch on my interpretation of cl 13.4, which is a provision which prohibits Mr Cheong from being “... in any way interested in any such business or activity whether as principal, agent, shareholder, or otherwise; or be associated or engaged in or any way concerned [*sic*] [himself] in such activity”. Specifically, I will consider the meaning of the words “any such business or activity” in cl 13.4, which also appear in cl 13.5.

43 I construe the words “any such business or activity” in cll 13.4 and 13.5 to refer to the “business” or “activity” of “providing foreign domestic workers and related services”, which phrase is referred to in cll 13.6 and 13.7, following the Court of Appeal’s guidance in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (“*Zurich*”) at [131] (citing Gerard McMeel, *The Construction of Contracts: Interpretation, Implication, and Rectification* (Oxford University Press, 2007)) that “the exercise [in interpretation] is one based on the *whole contract* or an *holistic approach*. Courts are not excessively focused upon a particular word, phrase, sentence, or clause. Rather the emphasis is on the document or utterance as a whole” [emphasis in original]. Therefore, contractual terms “must always be interpreted in their internal context, which includes other provisions, and the

document as a whole” (*MCH International Pte Ltd and others v YG Group Pte Ltd and others and other appeals* [2019] 2 SLR 837 at [36], citing *Zurich* at [53]).

44 While the phrase “any such business or activity” in cll 13.4 and 13.5 is not expressly defined, similar expressions appear in cl 13.6 (“business or activity”) and cl 13.7 (“activity or business”). In each of cll 13.6 and 13.7, the reference is to the business or activity of “providing foreign domestic workers and related services”. Since there is nothing in the rest of cl 13 that specifically describes canvassing, soliciting or approaching for orders (see cl 13.2), or interfering with the continuance of goods or services (see cl 13.3), as a “business” or “activity”, the words “any such business or activity” in cll 13.4 and 13.5 should be construed to refer to the business or activity of “providing foreign domestic workers and related services”.

45 Based on this reading, cl 13.4 imposed a duty on Mr Cheong not to be interested or engaged in, or associated or concerned with, the business or activity of providing FDWs and related services. I pause to note at this juncture that, *per* cl 13.1, the obligations in cl 13 were specifically circumscribed temporally and applied only during the term of Mr Cheong’s employment. Given that Mr Cheong was involved in the setting up and operations of a competing business while he was still under the employ of Swift Maids, including significant participation such as his registration as a director and shareholder of Recruitbee Employment, I find him to be in breach of cl 13.4 of his employment contract.

(3) Implied duty of good faith and fidelity

46 In addition to the express terms found in the employment contract, employees are also typically bound by an implied term in the favour of their employer, obliging the employee to serve the employer with good faith and fidelity: *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 at [193].

47 I find that Mr Cheong had also breached the implied duty of good faith and fidelity when he crossed the line into “actual competitive activity (which is *not* permissible)” [emphasis in original] (*Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 (“*Smile Inc*”) at [67]), by involving himself in the operations of Recruitbee Employment. In this regard, the Court of Appeal in *Smile Inc* held at [81] that there would have been a breach of duty if the employee in that case, who was a dentist, had “obtained a licence from the Ministry of Health” and “in his free time, treated patients under the auspices of [the competitor business], in direct competition with [his employer]” or “engaged in active solicitation of his patients when he was under the employ of [his employer]”. The employee in that case was found not to have been in breach, as he appeared to have only engaged in the setting-up process of a competitor firm for about three months at the tail end of his employment with his employer (at [79]–[80]), and the competitor firm of the employee had not obtained a licence to commence servicing clients while the employee was still employed by his employer (at [81]).

48 Contrary to Mr Cheong’s assertion in his further written submissions that *Smile Inc* supports Mr Cheong’s defence because of factual similarities

between *Smile Inc* and the present case,¹⁰⁶ I find that the salient facts in the present case are very different from those in *Smile Inc*. Here, Mr Cheong provided his name for inclusion in Recruitbee Employment's employment agency licence application.¹⁰⁷ After the licence was obtained and Recruitbee Employment was in operation, Mr Cheong was involved in recruitment for Recruitbee Employment and other operational matters. The booking of the air ticket for a Recruitbee Employment FDW is an instance of Mr Cheong servicing a competitor's client and patently acting in competition with Swift Maids' business. He even had a working Recruitbee Employment e-mail address, to which he forwarded the e-booking of the said air ticket from his Swift Maids e-mail account.¹⁰⁸

(4) Evidence of Mr Cheong's involvement in Recruitbee Employment after his resignation from Swift Maids

49 For completeness, I note that the plaintiffs have adduced evidence of Mr Cheong's involvement in Recruitbee Employment's operations *after* his last day of work with Swift Maids. In my judgment, Mr Cheong's involvement in Recruitbee Employment's business after he left the employ of Swift Maids does not constitute a breach of his contractual duties, which do not subsist post-resignation save for his contractual duty of confidentiality under cl 12.2 of his employment contract. I will consider cl 12.2 in the next section, together with his duty of confidence in equity.

¹⁰⁶ 1st Defendant's Further Written Submissions dated 25 September 2023 ("1DFWS") at paras 4–15.

¹⁰⁷ NEs dated 8 March 2023 at p 25, line 2 to p 26, line 1.

¹⁰⁸ Mr Lit's AEIC at para 29(f) and pp 137–140 (BAEIC at pp 15–16 and 140–143); Mr Loh's AEIC at para 63 (BAEIC at pp 831–832).

Mr Cheong's duty of confidence

50 I turn now to examine the plaintiffs' allegations that Mr Cheong had wrongfully taken and misused Swift Maids' confidential information, to which he had access, for the purpose of making unlawful gains for Recruitbee.¹⁰⁹

Plaintiffs' case

51 The plaintiffs argue that Mr Cheong breached the following duties that he owed to the plaintiffs: (a) a contractual duty of confidentiality under his employment contract;¹¹⁰ (b) a duty of confidence in equity;¹¹¹ and (c) a duty not to misuse confidential information as a fiduciary.¹¹² They submit that the confidential information relevant to this suit comprises their customers' contact information, FDWs' contact information, FDWs' biodata and suppliers' contact information (collectively referred to as the "Confidential Information").¹¹³

52 The plaintiffs argue that Mr Cheong came into possession of the Confidential Information in circumstances importing an obligation of confidence.¹¹⁴ The Confidential Information was kept in Swift Maids' Integra system (the "Integra system"),¹¹⁵ which was an online platform that Swift Maids used to store and maintain all contact information and details of customers, FDWs and suppliers. Swift Maids' sales records and profit margins were also

¹⁰⁹ PCS at para 56(c).

¹¹⁰ PCS at para 57(c).

¹¹¹ PCS at para 45.

¹¹² PCS at para 56(c).

¹¹³ PCS at para 51.

¹¹⁴ PCS at paras 53 and 56(c)(i).

¹¹⁵ PCS at para 53.

kept in the Integra system.¹¹⁶ As general manager, Mr Cheong had master access to it and had the ability to extract the entirety of the database. According to the plaintiffs, that left the plaintiffs vulnerable to potential misuse of the Confidential Information.¹¹⁷

53 The plaintiffs also point to Mr Cheong's use of his personal handphone while carrying out his duties.¹¹⁸ Because of that, they allege that Mr Cheong had the contact details of FDWs who dealt with Swift Maids, as well as the contact details of their customers and suppliers.¹¹⁹

54 The plaintiffs allege that Mr Cheong had used the Confidential Information that he had taken to solicit and/or divert Swift Maids' customers, FDWs and suppliers to Recruitbee.¹²⁰ The plaintiffs also allege that Mr Cheong had disclosed, divulged and/or delivered their Confidential Information to Ms Toh, Ms Aung and the employees of Recruitbee to do the same.¹²¹

55 Furthermore, the plaintiffs contend that Mr Cheong, as general manager, had failed to stop some of Swift Maids' staff members from using their personal handphones while conducting Swift Maids' business.¹²² As a consequence of this failure, Ms Peh, Ms Teo and Ms Lim were able to store the Confidential

¹¹⁶ Mr Loh's AEIC at para 9 (BAEIC at p 817).

¹¹⁷ PCS at para 56(c)(i).

¹¹⁸ PCS at paras 56(c)(ii), (vii), (viii), (ix), and (x).

¹¹⁹ PCS at para 56(c)(xi).

¹²⁰ SOC at para 27 (SB at p 57); PCS at para 56(c)(xv).

¹²¹ SOC at para 26 (SB at p 57).

¹²² PCS at paras 56(c)(xii)–(xiii).

Information in their personal handphones and thereby misuse the Confidential Information for the benefit of Recruitbee Employment.¹²³

Mr Cheong's defence

56 Mr Cheong submits that the plaintiffs have failed to adduce any evidence that he took any information from the Integra system. He highlights that the plaintiffs did not even contact Swift Maids' vendor for the Integra system to ascertain whether any data was exported from the system.¹²⁴

57 In his defence, Mr Cheong pleaded that he did not use his "personal mobile phone number" to contact Swift Maids' customers, FDWs and suppliers.¹²⁵ However, under cross-examination, Mr Cheong testified that he had used his personal handphone in carrying out his duties as Swift Maids' general manager, but with Swift Maids' Subscriber Identity Module ("SIM") card as a second SIM card in his personal handphone.¹²⁶ His evidence is that his personal handphone was a "dual SIM" phone that allowed for two SIM cards to be used at the same time.¹²⁷ It is undisputed as between the parties that the plaintiffs' company handphones and SIM cards only arrived at the company on 21 May 2018.¹²⁸ Mr Cheong, who had joined the plaintiffs on 3 March 2018, had used his personal handphone and personal SIM card for Swift Maids' business before then.¹²⁹ According to Mr Cheong, after the company SIM cards

¹²³ PCS at para 56(c)(xiv).

¹²⁴ 1DCS at p 10, first para 17.

¹²⁵ 1D–3D Defence at para 28(a) (SB at p 116).

¹²⁶ NEs dated 7 March 2023 at p 8, lines 16–26.

¹²⁷ NEs dated 7 March 2023 at p 10, lines 15–24.

¹²⁸ NEs dated 21 February 2023 at p 19, lines 22–24.

¹²⁹ NEs dated 21 February 2023 at p 19, lines 19–21 and p 21, lines 1–14.

had arrived, he inserted a company SIM card into his personal handphone and continued using his personal handphone for Swift Maids' business. Mr Cheong also pleaded in his defence that he did not retain any information of customers, FDWs or suppliers in his personal handphone after he left Swift Maids' employ.¹³⁰ As for customers or FDWs who contacted him on his personal handphone after his resignation, he informed them that he had already left and told them to contact the Swift Maids' office number directly. He also did not save their contact numbers.¹³¹

58 As against the claim that Mr Cheong failed to stop Swift Maids' staff members from using their personal handphones while conducting Swift Maids' business, Mr Cheong submits that he had complied with Mr Loh's instructions to change the phone number stated on the stationery used by the staff members to the office phone number, and had further proposed other solutions to deal with the problem of staff members refusing to use only the office phone number for their work.¹³² As for Ms Peh, the one staff member identified by the plaintiffs to have persisted in using her personal handphone number,¹³³ Mr Cheong denied that he should be held responsible. Mr Cheong's case is that he had duly instructed Ms Peh to use the office phone number, but she had stubbornly refused to do so because she complained that she could not close any deal after hours if she was confined to using the shared company handphone.¹³⁴

¹³⁰ 1D–3D Defence at paras 28(f) and 33 (SB at pp 121 and 128).

¹³¹ 1D–3D Defence at para 33 (SB at p 128).

¹³² 1DCS at p 12, para 9 to p 13, para 13.

¹³³ PCS at para 56(c)(xii).

¹³⁴ NEs dated 21 February 2023 at p 31, line 3 to p 32, line 18.

Applicable Law

59 I start by considering the law on the breach of confidence. The leading authorities are the Court of Appeal decisions in *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 (“*I-Admin*”) and *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280 (“*Lim Oon Kuin*”).

60 *I-Admin* was a case involving two companies in the business of supplying, amongst other things, payroll-related services (at [4] and [6(c)]). The first respondent in *I-Admin* was a former employee of the appellant company (at [6(a)]). Whilst still employed by the appellant company, the first respondent had worked with the second respondent, who was a former employee of the appellant company’s subsidiary, to develop a new payroll software (at [6(b)] and [7]). The first and second respondents thereafter incorporated the third respondent company to market the new payroll software, and they resigned to work for the third respondent company (at [8]). Prior to their resignation, the first and second respondents had accessed and downloaded confidential materials belonging to the appellant company, including source codes, databases, business development and client-related materials, and materials related to the appellant company’s operations (at [14]).

61 In analysing the appellant company’s claim in the law of confidence against the respondents, the Court of Appeal, at [61], set out the applicable test in situations where a plaintiff’s interest to avoid wrongful loss is engaged:

61 With these considerations in mind, we set out a modified approach that should be taken in relation to breach of confidence claims. Preserving the first two requirements in [*Coco v AN Clark (Engineers) Ltd* [1969] RPC 41], a court should consider whether the information in question “has the necessary quality of confidence about it” and if it has been

“imparted in circumstances importing an obligation of confidence”. An obligation of confidence will also be found where confidential information has been accessed or acquired without a plaintiff’s knowledge or consent. Upon the satisfaction of these prerequisites, an action for breach of confidence is presumed. This might be displaced where, for instance, the defendant came across the information by accident or was unaware of its confidential nature or believed there to be a strong public interest in disclosing it. Whatever the explanation, the burden will be on *the defendant* to prove that its conscience was unaffected. In our view, this modified approach places greater focus on the wrongful loss interest without undermining the protection of the wrongful profit interest.

[emphasis in original]

62 Applying this framework, the Court of Appeal first found that it was undisputed that the appellant company’s materials were confidential in nature (at [63]). The Court of Appeal then found that the first and second respondents had specifically acquired the appellant company’s confidential materials to be reviewed and potentially used for the third respondent company’s benefit (at [64]). On the facts of that case, the first and second respondents were found to have acquired, circulated, and referenced the appellant company’s materials without permission (at [63]). They knew that they were not allowed to be in possession of the appellant company’s confidential materials (at [64]). As the respondents had done nothing to displace the presumption that their conscience was negatively affected, the Court of Appeal found that the respondents’ possession and referencing of the appellant company’s confidential materials constituted acts in breach of confidence (at [64]). The first respondent alone was found to have committed a further breach by downloading a database file from the appellant company’s systems by retaining and abusing confidential log-in credentials to access the appellant company’s systems on multiple occasions after leaving the appellant company’s employ (at [65]).

63 The Court of Appeal in *Lim Oon Kuin* elaborated upon the situations in which the *I-Admin* approach would be applicable. At [39], the Court of Appeal endorsed the observation made by Professor Ng-Loy Wee Loon (“Prof Ng-Loy”) in *Law of Intellectual Property of Singapore* (Sweet & Maxwell, 3rd Ed, 2021) (“*Law of Intellectual Property*”) at para 41.3.9, emphasising that the *I-Admin* modified approach was to be applied in cases involving alleged harm to the plaintiff’s “wrongful loss interest”, while in cases involving alleged harm to the plaintiff’s “wrongful gain interest”, the traditional approach set out in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 (“*Coco v Clark*”) should be applied. Later in the judgment at [41], the Court of Appeal further endorsed the following proposition advanced by Prof Ng-Loy:

41 Thirdly, we also take this opportunity to endorse the following observation made by Prof Ng-Loy (*Law of Intellectual Property* at paras 41.3.10–41.3.11):

It is also likely that the Court of Appeal intended to further limit the application of the ‘modified approach’ to cases involving unauthorised acquisition of the confidential information, that is, the ‘taker’ cases. This conjecture is based on the fact that the court placed a fair amount of emphasis on the defendants’ acquisition (via *[the former employees]*) of the confidential information without the plaintiff’s knowledge, and more generally, how technology had made it much easier for a person to access and download confidential information without consent.

There is another reason for this conjecture. Three days before the issuance of the judgment in *I-Admin*, the Court of Appeal issued a judgment in *LVM Law Chambers LLC v Wan Hoe Keet*, where breach of confidence was raised as a cause of action. The defendant in this case was *not* a ‘taker’ of confidential information. The defendant was a lawyer who had acted for a party in a dispute against the plaintiffs arising out of a Ponzi scheme. After negotiations conducted by the parties’ solicitors, this dispute was eventually settled. When the defendant was engaged to act for another party ABC in a suit against the plaintiffs in relation to the same Ponzi scheme, the plaintiffs sought an injunction to prevent the defendant from acting for ABC

in this second suit. The plaintiffs claimed that there was confidential information arising out of the circumstances surrounding the settlement of the first dispute, and that the defendant being privy to this confidential information was bound by an equitable obligation of confidence. On the third element (misuse of the confidential information), the Court of Appeal held that this element would be satisfied if there was a ‘serious and reasonable possibility’ of misuse of the confidential information by the defendant. Significantly, the appellate court placed the burden of proving the existence of such possibility of misuse squarely on *the plaintiffs*. In this case, the plaintiffs failed to discharge this burden and, accordingly, the Court of Appeal refused to grant the injunction sought by the plaintiffs.

[emphasis in original]

64 The significance of the Court of Appeal’s endorsement of Prof Ng-Loy’s comments in *Lim Oon Kuin* is that the *I-Admin* modified approach is to apply where the plaintiff’s “wrongful loss interest” is engaged in cases involving unauthorised acquisition of the confidential information (*Lim Oon Kuin* at [41]).

65 More recently, in *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng and others* [2023] SGHC 34 (“*Shanghai Afute Food*”), the learned Judge synthesised the comments of the Court of Appeal in *I-Admin* and *Lim Oon Kuin* at [100], as follows:

100 I summarise the law on breach of confidence. In *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 (“*I-Admin*”) at [64], the Court of Appeal extended the law on breach of confidence. In summary, the following bifurcated approach is applied to establish an action for the breach of the equitable obligation of confidence:

- (a) First, determine which interest the action for breach of confidence seeks to protect:
 - (i) wrongful gain interest, where the defendant has made unauthorised use or disclosure of confidential information and thereby gained a benefit; or

- (ii) wrongful loss interest, where the plaintiff is seeking protection for the confidentiality of the information *per se*, which is loss suffered so long as a defendant's conscience has been impacted in the breach of the obligation of confidentiality.
- (b) If the wrongful gain interest is at stake, the traditional approach in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 ("*Coco*") applies: *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280 ("*Lim Oon Kuin*") at [39] and [41]. The *Coco* test requires the plaintiff to establish the following:
 - (i) That the information in question has the necessary quality of confidence about it.
 - (ii) The information must have been imparted in circumstances importing an obligation of confidence.
 - (iii) There must be an unauthorised use of the information, and in appropriate cases, this use must be to the detriment of the party who originally communicated it.
- (c) If the wrongful loss interest applies, the test is the modified approach promulgated under *I-Admin*.
 - (i) If the plaintiff proves [(b)(i)]–[(b)(ii)] (*ie*, the relevant information had the necessary quality of confidence and it was imparted in circumstances importing an obligation of confidence), it is presumed that the conscience of the defendant has been impinged (*I-Admin* at [61]). The presumption may be rebutted if the defendant adduces proof that his conscience was not affected in the circumstances in which the plaintiff's wrongful loss interest had been harmed or undermined. The burden that shifts to the defendant at the third limb of the modified test is a *legal burden*, not an evidential one: *Lim Oon Kuin* at [40].

[emphasis in original]

66 I note that in a recent decision in *Amber Compounding Pharmacy Pte Ltd and another v Lim Suk Ling Priscilla and others* [2023] SGHC 241 ("*Amber Compounding Pharmacy*"), the learned Judge had occasion to revisit his holding

above, and clarified that a plaintiff is entitled to plead and claim on the basis of *both* the wrongful gain interest and the wrongful loss interest in an action for breach of confidence (*Amber Compounding Pharmacy* at [16] and [30]).

67 While the plaintiffs have also contended that Mr Cheong had owed obligations of confidence in his capacity as a fiduciary, the relevant law on fiduciary obligations will be discussed in a later part of this judgment together with the broader issue of whether Mr Cheong owed any fiduciary duties to the plaintiffs.

68 With these principles in mind, I turn to assess the evidence adduced in the present suit.

Analysis and findings

69 The plaintiffs have made *two* interlinked claims concerning Mr Cheong's breaches of his confidentiality obligations. First, there is an allegation concerning the *manner* of Mr Cheong's breach – the plaintiffs pleaded that Mr Cheong had taken and misused the Confidential Information, and that he had also disclosed, divulged or delivered the Confidential Information to the other defendants.¹³⁵ Second, there is an allegation concerning the *purpose* of Mr Cheong's breach – the plaintiffs argue that the purpose of Mr Cheong's breach was so that the Confidential Information could be used to solicit and/or divert Swift Maids' customers, FDWs and suppliers to Recruitbee.¹³⁶ These interlinked allegations against Mr Cheong personally are inextricably tied to the allegations made by the plaintiffs against the defendants collectively in their action for unlawful means conspiracy, because the plaintiffs have essentially relied on the

¹³⁵ SOC at para 26 (SB at p 57).

¹³⁶ SOC at para 27 (SB at p 57); PCS at para 56(c)(xv).

same factual complaints in advancing their claims. The findings in this section will therefore also be applicable when considering the plaintiffs’ claim against all the defendants for unlawful means conspiracy.

70 The plaintiffs have made little distinction between their action against Mr Cheong for breach of his duty of confidence in equity and their action against Mr Cheong for breach of his contractual duty of confidentiality in their closing submissions, and have leaned mainly on the legal framework relevant for determining the obligations of confidence in equity. As the law is clear that these are distinct causes of action and should not be conflated (*Adinop Co Ltd v Rovithai Ltd and another* [2019] 2 SLR 808 (“*Adinop*”) at [37]), I will proceed to analyse them separately. I turn first to consider whether Mr Cheong had breached his duty of confidence in equity since that is the focus of the plaintiffs’ submissions.

(1) Equitable duty of confidence

(A) THE APPLICABLE TEST AND BURDEN OF PROOF

71 The plaintiffs’ position is that the *I-Admin* modified approach applies in this case, and accordingly, the legal burden of proof is on Mr Cheong to prove that his conscience was unaffected.¹³⁷

72 The question of which approach should apply should be answered with reference to the interest that the plaintiffs are seeking to protect. As I explain below, the plaintiffs have pleaded a case based on the protection of their “wrongful gain interest”, where Mr Cheong is alleged to have made unauthorised use or disclosure of confidential information and thereby gained a

¹³⁷ PCS at para 54.

benefit (see *Shanghai Afute Food* at [100(a)(i)]). This is clear from the plaintiffs' Statement of Claim (Amendment No 3) ("Statement of Claim"), where they pleaded that Mr Cheong had "utilised the [Confidential Information] to canvass, solicit, and/or approach customers and suppliers and/or FDWs of the Plaintiffs, and caused them to conduct business with Recruitbee instead of the Plaintiffs".¹³⁸ The plaintiffs also pleaded that Mr Cheong had "disclosed, divulged, authorized or permitted delivery" of the Confidential Information to "Stephenie Toh and Catherine [Aung] as well as employees of Recruitbee, who are persons not properly entitled to such information, and [utilised] the same for his and Recruitbee's benefit".¹³⁹ At paragraph 39(b)(iv) of the Statement of Claim, the plaintiffs further pleaded that "[t]he Defendants therefore must give an account of profits, in respect of their wrongful gain". This wrongful gain was quantified at paragraph 39(b) as "an unfair benefit amounting to approximately \$744,359.31 to date". Similarly, their closing submissions were in respect of the alleged unauthorised use and disclosure of the Confidential Information by Mr Cheong and the benefit gained by the defendants as a result of such unauthorised use and disclosure. At paragraph 61 of the plaintiffs' closing submissions, the plaintiffs echoed their pleadings in submitting that "the taking and misuse of the Plaintiffs' confidential information for the Defendants' wrongful gain would necessarily cause injury to the Plaintiffs, through the solicitation of business that could have, and has arisen from such misuse". Having alleged that there had been unauthorised use and disclosure of their Confidential Information to cause Recruitbee to reap a wrongful gain, it is for the plaintiffs to prove those allegations.

¹³⁸ SOC at para 27 (SB at p 57). See also PCS at para 56(c)(xv).

¹³⁹ SOC at para 26 (SB at p 57).

73 It is not the plaintiffs’ pleaded case that they are seeking to vindicate their “wrongful loss interest” for the protection of “the confidentiality of the information *per se*” (*Shanghai Afute Food* at [100(a)(ii)]). It was only in the plaintiffs’ supplementary written submissions dated 26 September 2023 that the plaintiffs made mention, for the first time, that they “seek to protect *both* their wrongful gain interest ... *and* their wrongful loss interest” [emphasis added].¹⁴⁰ For context, the plaintiffs’ supplementary written submissions were tendered after closing submissions and replies were exchanged, in response to the court’s invitation to the parties to make submissions, if any, on various authorities, including *Lim Oon Kuin*, *Shanghai Afute Food* and *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami and another* [2022] 5 SLR 805 (“*Asia Petworld*”), which were not analysed in the parties’ earlier submissions.¹⁴¹ In these supplementary written submissions, the plaintiffs argue that their wrongful loss interest has been engaged by Mr Cheong’s alleged “wrongful and/or unauthorised acquisition of the Plaintiffs’ confidential information” through his use of his personal handphone and phone number in conducting Swift Maids’ business.¹⁴² However, Mr Cheong’s use of his personal handphone and phone number in conducting Swift Maids’ business was, in the plaintiffs’ Statement of Claim and closing submissions, all along tied to his alleged misuse and unlawful disclosure of the Confidential Information to give Recruitbee a wrongful profit.¹⁴³

¹⁴⁰ Plaintiffs’ Supplemental Submissions dated 26 September 2023 (“PSS”) at para 7(1).

¹⁴¹ Correspondence from court dated 15 September 2023.

¹⁴² PSS at para 7(1).

¹⁴³ SOC at paras 27(a), 28(a), 29(b) and 30 (SB at pp 57–58 and 62–64); PCS at paras 56(c)(xi) and 56(c)(xv).

74 The learned Judge’s hortatory words in *Writers Studio Pte Ltd v Chin Kwok Yung* [2022] SGHC 205 (“*Writers Studio*”) at [135] bear repeating here: “counsel should take care to plead with specificity, whether they are proceeding on the basis of the ‘wrongful loss’ or ‘wrongful gain’ interest”. In this suit, having pleaded a claim that seeks to protect their “wrongful gain interest”, where Mr Cheong is alleged to have made unauthorised use or disclosure of confidential information and thereby reaped a wrongful gain, the legal burden rests squarely on the plaintiffs to prove their case under the traditional approach in *Coco v Clark* (*Lim Oon Kuin* at [39]). The legal burden is not on Mr Cheong to prove that his conscience was unaffected. Similarly, in *Writers Studio*, the learned Judge observed that the plaintiff in that case had framed its pleadings based on the requirements set forth in *Coco v Clark*, and held that the plaintiff there was not entitled to rely on the *I-Admin* modified approach and must “let the chips lie where they have fallen” (*Writers Studio* at [134]–[135]). For completeness, however, I will also provide an analysis based on the application of the modified approach in *I-Admin* at [97]–[109] below.

75 I turn now to consider the requirements of the traditional approach in *Coco v Clark*. In applying the traditional approach in *Coco v Clark*, I find that the plaintiffs have fallen short in discharging their legal obligation to prove their assertions that there had been unauthorised use and/or disclosure of the Confidential Information and that the defendants had made unlawful gain at the plaintiffs’ expense.

(B) INFORMATION POSSESSED THE NECESSARY QUALITY OF CONFIDENCE, AND IMPARTED IN CIRCUMSTANCES IMPORTING AN OBLIGATION OF CONFIDENCE

76 I first consider if the Confidential Information “has the necessary quality of confidence about it” and if it had been “imparted in circumstances importing an obligation of confidence”. These requirements are common to both the *Coco*

v Clark and the *I-Admin* approaches, and the plaintiffs bear the burden of proving these requirements.

77 Mr Cheong rightly did not contest that the Confidential Information was “imparted in circumstances importing an obligation of confidence”. The relationship of employer and employee, which entails good faith, loyalty and fidelity, establishes the circumstances required by this element (*Asia Petworld* at [38]).

78 As for whether the plaintiffs’ information possesses the necessary quality of confidence, it is, as observed by the court in *Angliss Singapore Pte Ltd v Yee Heng Khay (alias Roger)* [2021] SGHC 168 (“*Angliss*”) at [39], citing *Wee Shuo Woon v HT SRL* [2017] 2 SLR 94 at [31], dependent on whether it would be just in the circumstances to require the party against whom a duty of confidentiality is alleged to treat the information as confidential. A pertinent factor is whether the information has entered the public domain, or whether “it remains relatively secret or relatively inaccessible to the public as compared to information already in the public domain”: *Angliss* at [39], citing *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd and another* [2014] 2 SLR 1045 (“*Invenpro*”) at [130(a)]. In instances where information is in the public domain, the number of times the information has been made available and the extent to which the information is readily accessible to interested members of the public are relevant considerations (*Angliss* at [39], citing *Invenpro* at [130(a)]). Although the parties did not put in issue whether the Confidential Information “has the necessary quality of confidence about it”, I will make some brief observations.

79 I accept, as the plaintiffs argue,¹⁴⁴ that the database of contact information of customers, FDWs and suppliers, as well as biodata of FDWs who had dealings with the plaintiffs, as stored in the plaintiffs’ Integra system, taken as a whole, is protectable confidential information. The value of a database like this lies in the possession of the totality of the information that is developed and curated from years of business dealings (*Angliss* at [41], citing *Invenpro* at [130(e)]).

80 In my view, however, not every individual component “has the necessary quality of confidence about it”. In so far as the biodata of FDWs are concerned, these will lose their quality of confidence, if, for example, they are posted on online portals through which employment agencies advertise for placements of FDWs with employers. Ms Nadia alluded to online portals, like “Net Maid” or “Best Maid”, when she was on the stand.¹⁴⁵ It is evident from Ms Vivian’s testimony that Swift Maids used the “Net Maid” portal for its business when she made reference to the “Net Maid” portal in relation to a post containing the biodata of an FDW allegedly solicited from Swift Maids to Recruitbee Employment.¹⁴⁶

81 As for the other categories of information, the analysis may differ depending on the time frame. So while Mr Cheong was still employed by Swift Maids, the information he possessed as an employee could be classified as “confidential”, firstly, if this information was explicitly protected by his employment contract, and, secondly, if it would have been a breach of the duty of good faith and fidelity that he owed as an employee, while the employment

¹⁴⁴ PSS at para 7(5).

¹⁴⁵ NEs dated 28 February 2023 at p 16, line 26.

¹⁴⁶ NEs dated 2 March 2023 at p 67, line 2 to p 68, line 21.

subsisted, to have used it for his own purposes or to have disclosed it to a competitor (*Asia Petworld* at [42], citing *Tang Siew Choy and others v Certact Pte Ltd* [1993] 1 SLR(R) 835 (“*Tang Siew Choy*”) at [16], which in turn cited *Faccenda Chicken Ltd v Fowler* [1986] 1 All ER 617 (“*Faccenda Chicken*”) at 625–627).

82 Of relevance here is the contact information of Swift Maids’ suppliers. In *Asia Petworld*, the plaintiff company was involved in the drop shipping of pet products, while the first defendant was its employee for around six years. The first defendant had resigned and thereafter ran a rival pet products drop shipping business. The plaintiff company alleged that the first defendant, in running the competitor business, had misused confidential information belonging to the plaintiff company, including customer information, its management dashboard, pricing lists containing vendor’s costs information and an inventory showing its bestselling products (at [21]). The learned Judge in *Asia Petworld* observed that “not all information that an employee is obliged to keep confidential during his employment is information that is protectable as confidential information after he ceases to be employed” (at [42], citing *Tang Siew Choy* at [16], which in turn cited *Faccenda Chicken* at 625–627). In particular, “the knowledge and experience that an employee acquires during his employment is not protectable confidential information” (*Asia Petworld* at [43], citing *Asia Business Forum Pte Ltd v Long Ai Sin and another* [2003] 4 SLR(R) 658 at [15] and [17], which in turn cited *Sir W C Leng & Co Limited v Andrews* [1909] 1 Ch 763 at 773). The learned Judge also referred to the case of *E Worsley & Co Ltd v Cooper* [1939] 1 All ER 290 (“*E Worsley*”), which concerned an ex-employee’s use of his knowledge of suppliers obtained in his previous employ. In *E Worsley*, the court held that an ex-employee of a paper merchant was entitled to use, in his future business endeavours, his knowledge

of the identity of paper mills from which the former employer sourced paper (see *Asia Petworld* at [47]). The learned Judge found that information on where one can source for a particular product at the lowest price was “information in the first defendant’s head which he acquired through the course of his employment” and that this was “not information that possesses the quality of confidence” (*Asia Petworld* at [46]). Similarly, here, Mr Cheong got to know Swift Maids’ suppliers and had contact with them during his two years working for Swift Maids. The information relating to Swift Maids’ suppliers constitutes the knowledge and experience that Mr Cheong, as an employee, acquired during his employment, and no longer retains the necessary quality of confidence after Mr Cheong’s resignation from Swift Maids to remain as protectable confidential information.

83 In any event, even assuming that all the components of the Confidential Information are protectable, the plaintiffs will still not succeed because they have not been able to satisfy the final limb of the *Coco v Clark* test, which requires proof of “unauthorised use” of confidential information.

(C) UNAUTHORISED USE OF THE INFORMATION AND DETRIMENT TO THE PLAINTIFFS

84 I begin with an observation about the anaemic state of the plaintiffs’ evidence concerning Mr Cheong’s breaches of his confidentiality obligations. The plaintiffs have not been able to identify a single customer or a single FDW whom Mr Cheong or the other defendants had re-directed to Recruitbee using the Confidential Information. As for suppliers, they did not do more than point to the fact that three suppliers of FDW biodata, one of whom is Ms Aung, had stopped supplying biodata to Swift Maids. There is nothing else to substantiate their claim that Mr Cheong had used the Confidential Information to divert their suppliers to Recruitbee. Indeed, they could do no better than refer to the

placement numbers of Recruitbee.¹⁴⁷ All that is before the court is therefore the plaintiffs' conjecture that Mr Cheong *could have and must have* used the Confidential Information for Recruitbee's purposes, or that Mr Cheong *could have and must have* disclosed, divulged or communicated the Confidential Information to the other defendants, who *must have* used such information for Recruitbee's purposes, stacked on top of the plaintiffs' belief that Recruitbee *could not have* succeeded on its own steam.

(I) *RE-DIRECTION OF EMPLOYERS AND FDWs*

85 The plaintiffs pleaded that Mr Cheong had used the Confidential Information to “canvass, solicit, and/or approach customers and suppliers and/or FDWs of the Plaintiffs, and caused them to conduct business with Recruitbee instead of the Plaintiffs,”¹⁴⁸ and to contact the plaintiffs' customers and FDWs to facilitate the placement of FDWs through Recruitbee.¹⁴⁹ They also pleaded that due to the unauthorised use of the Confidential Information, there were “many instances of poaching of the Plaintiffs' customers” and that “a number of customers who had previously employed FDWs through the Plaintiffs, have since employed FDWs through Recruitbee”.¹⁵⁰ Despite those allegations and their claim that an estimate of more than 470 FDWs placed by Recruitbee ought to have been placed by them,¹⁵¹ they did not identify *any* of them or their employers as having been re-directed to Recruitbee. Furthermore, despite having the contact information of customers and FDWs in the Integra system at their disposal, they either did not attempt to find or could not find

¹⁴⁷ SOC at para 30(b) (SB at p 64).

¹⁴⁸ SOC at para 27 (SB at p 57).

¹⁴⁹ SOC at para 27(d) (SB at p 60).

¹⁵⁰ SOC at paras 27(e) and (f) (SB at p 61).

¹⁵¹ SOC at paras 25 and 39(b) (SB at pp 56–57 and 73–74).

even a single identifiable FDW or employer whom they could name as having been approached and persuaded by Mr Cheong or the other defendants to take their business to Recruitbee.

86 In this regard, Ms Vivian gave evidence that one Ms Dince Adriana Feonale (“Ms Feonale”) was hired through Recruitbee Employment instead of Swift Maids, just when Ms Vivian was about to close the deal for Swift Maids.¹⁵² Ms Vivian’s view that Recruitbee Employment had placed Ms Feonale was formed solely on the basis of a posting of Ms Feonale’s biodata by Recruitbee Employment on the “Net Maid” web portal.¹⁵³ It is the plaintiffs’ case that this was “concrete evidence” that the Confidential Information had been misused by the defendants, given that, *inter alia*, the only other agency who had Ms Feonale’s biodata on the “Net Maid” portal was Recruitbee Employment, which was barely five days into its operation then.¹⁵⁴ The plaintiffs claim that Mr Cheong “must have ... misused the Plaintiffs’ confidential information to call up the customer and persuade them [*sic*] that hiring through Recruitbee Employment would be a better deal for them instead”.¹⁵⁵

87 In my view, this incident is insufficient to prove unauthorised use of any Confidential Information by Mr Cheong or the other defendants. Based on the evidence of the plaintiffs’ witnesses, Ms Suliyani, who supplied Ms Feonale’s biodata to Swift Maids,¹⁵⁶ was “also supplying biodata to four to five agencies

¹⁵² Ms Vivian’s AEIC at paras 12–13 (BAEIC at pp 242–243).

¹⁵³ NEs dated 2 March 2023 at p 69, lines 5–25 and ABD at p 977.

¹⁵⁴ PRS at para 42(a)(iv).

¹⁵⁵ PRS at para 42(a)(iv)(vi).

¹⁵⁶ Ms Vivian’s AEIC at para 13 (BAEIC at pp 242–243).

in Singapore”.¹⁵⁷ Ms Toh similarly testified that suppliers of biodata of FDWs supply “to many agencies in Singapore”, that she could name one that Ms Suliyani supplied to in Bedok, and that at any one point in time, more than one employment agency may have marketed an FDW’s biodata.¹⁵⁸ It is also Ms Aung’s evidence that Ms Suliyani supplied to more than one employment agency, and that biodata belonging to an FDW may have been posted by multiple employment agencies on web portals like “Net Maid”.¹⁵⁹ Further, it is not in dispute that Ms Suliyani was supplying biodata of FDWs to Recruitbee. According to Ms Toh, Ms Suliyani started supplying to Recruitbee Employment when it started operation in July 2019.¹⁶⁰ Given that Ms Suliyani supplied to multiple FDW employment agencies, Ms Feonale’s biodata could have been made available by Ms Suliyani, and not by Mr Cheong, to Recruitbee. The plaintiffs did not call Ms Suliyani to give evidence that she had not provided Ms Feonale’s biodata to Recruitbee Employment. If there is such evidence from Ms Suliyani, there would be some basis for the plaintiffs’ allegation that Mr Cheong had provided the biodata to Recruitbee Employment. I mention for completeness that there is even no evidence that Ms Feonale was hired through Recruitbee Employment as the plaintiffs have alleged, much less that Mr Cheong had called the customer to persuade the customer to hire Ms Feonale through Recruitbee Employment. Ms Vivian did not ascertain from Ms Feonale’s employer or Ms Feonale herself which employment agency eventually placed her.¹⁶¹ It came out during Ms Toh’s cross-examination that Ms Feonale was apparently not hired through Recruitbee Employment and that

¹⁵⁷ NEs dated 22 February 2023 at p 75, lines 27–29.

¹⁵⁸ NEs dated 10 March 2023 at p 28, lines 10–12.

¹⁵⁹ NEs dated 24 March 2023 at p 115, lines 15–20.

¹⁶⁰ NEs dated 9 March 2023 at p 116, lines 14–25.

¹⁶¹ NEs dated 2 March 2023 at p 58, lines 14–20 and p 69, lines 5–17.

there was no record of her placement.¹⁶² That was also Ms Aung's evidence when she was cross-examined.¹⁶³

88 Another of the plaintiffs' witnesses, Ms May, gave evidence of an incident where a customer had called and mentioned "Swift Maids Toa Payoh branch".¹⁶⁴ Swift Maids did not have a branch in Toa Payoh, but Recruitbee Employment had a branch in Toa Payoh. Ms May's evidence is relevant to the plaintiffs' submission that customers or FDWs would not trust Recruitbee Employment enough to do business with them since Recruitbee Employment was a newcomer. That trust barrier was allegedly overcome by Mr Cheong taking and misusing Swift Maids' Confidential Information for the defendants to reach out to the customers and the FDWs who had dealings with Swift Maids, and to divert them to Recruitbee Employment "by deceiving them into thinking that Recruitbee Employment is an extension of the Plaintiffs".¹⁶⁵ According to the plaintiffs, that could have been done by informing the customers and FDWs that Swift Maids had a new branch in Toa Payoh. Specifically, for FDWs, the defendants or the staff members of Recruitbee Employment "could have called" and solicited their business.¹⁶⁶

89 I am similarly unable to conclude based on this incident that Mr Cheong had made unauthorised use of the Confidential Information to approach and mislead Swift Maids' customers for the purpose of diverting them to Recruitbee, as the account given by Ms May is bereft of details. Ms May did not know the

¹⁶² NEs dated 9 March 2023 at p 127, lines 9–17; NEs dated 10 March 2023 at p 27, lines 1–14.

¹⁶³ NEs dated 24 March 2023 at p 115, lines 5–6 and 15–20.

¹⁶⁴ NEs dated 2 March 2023 at p 20, lines 1–8.

¹⁶⁵ PRS at para 9(b).

¹⁶⁶ PRS at para 9.

name of the customer who called.¹⁶⁷ There is also no information on how that customer came to call Swift Maids' number and mentioned "Swift Maids Toa Payoh Branch". Other than the plaintiffs' version, there could be other explanations. In fact, Ms May testified that while there were other calls from customers trying to look for Ms Teo and Ms Lim after they resigned from Swift Maids, there was only *one* call where an employer had asked for "Swift Maids Toa Payoh branch".¹⁶⁸ When questioned during cross-examination, Ms May also clarified that she had never received any calls from customers, FDWs or suppliers where she was told that they had been contacted by any of the defendants or the employees of Recruitbee and had been asked to deal with Recruitbee instead.¹⁶⁹ Ms May's evidence is inadequate to prove that Mr Cheong or the other defendants had made unauthorised use of the Confidential Information, or that they were involved in an insidious ploy to masquerade Recruitbee as an extension of Swift Maids and re-direct Swift Maids' business to Recruitbee.

(II) *RE-DIRECTION OF SUPPLIERS*

90 As for the suppliers of biodata of FDWs, the plaintiffs have identified *three* suppliers who were allegedly re-directed to Recruitbee with the use of the Confidential Information. They are Ms Sulyani, Ms Shima and Ms Aung.¹⁷⁰

91 The plaintiffs rely only on the fact that supply ceased after Mr Cheong left Swift Maids' employ. As the supply could have stopped for other reasons, it is for the plaintiffs to prove that Mr Cheong had in fact caused the cessation

¹⁶⁷ NEs dated 2 March 2023 at p 20, lines 9–11.

¹⁶⁸ NEs dated 2 March 2023 at p 39, line 24 to p 40, line 8.

¹⁶⁹ NEs dated 2 March 2023 at p 40, lines 17–28.

¹⁷⁰ SOC at para 27(c) (SB at pp 59–60).

of supply and that he had used the Confidential Information to divert the supply to Recruitbee. There is, however, insufficient evidence to show that.

92 The plaintiffs complain that Ms Suliyani had “abruptly stopped supplying to the Plaintiffs and became uncontactable” after Mr Lit’s conversation with her regarding a \$8,190 pre-payment that Swift Maids had disbursed through Mr Cheong.¹⁷¹ This formed the basis of the plaintiffs’ suspicion that Mr Cheong had misused the portion of the Confidential Information concerning Ms Suliyani to cause her supply to be re-directed from Swift Maids to Recruitbee. But as I have noted, there could be other reasons why she did not continue to supply to Swift Maids. In fact, it is Mr Lit’s evidence that after his second conversation with Ms Suliyani, Swift Maids did not continue to take biodata of FDWs from Ms Suliyani because “[a]t that point of time, it was during the COVID period. [Stay-Home Notice] is still in place. So, we have not take [*sic*] any.”¹⁷² As for Ms Suliyani supplying to Recruitbee, it is Ms Aung’s evidence, which is corroborated by Ms Toh,¹⁷³ that she was the one who gave Ms Suliyani’s contact information to Ms Chua.¹⁷⁴ As may be seen from [10] above, Ms Aung was involved in many aspects of Swift Maids’ business operations. She appears to have been a competent employee who was able to multi-task, and was even put in charge by Swift Maids to set up a new branch in Peninsula Plaza.¹⁷⁵ Swift Maids’ set-up is not a big one, and their employees were required to take on different tasks and work closely with each

¹⁷¹ PCS at para 57(d)(v).

¹⁷² NEs dated 1 March 2023 at p 30, lines 21–31.

¹⁷³ NEs dated 9 March 2023 at p 115, line 27 to p 116, line 1.

¹⁷⁴ NEs dated 24 March 2023 at p 90, lines 1–21.

¹⁷⁵ Ms Aung’s AEIC at para 23 (BAEIC at p 1632); NEs dated 23 February 2023 at p 39, lines 6–10.

other to meet the demands of daily operations. It is therefore not unreasonable for Ms Aung to have been acquainted with Ms Suliyani and to be able to connect Recruitbee with Ms Suliyani.

93 As for Ms Shima, Mr Hu testified that he was “friends” with Ms Shima. Ms Shima ran her own employment agency and Mr Hu had “often” dropped by her outlet for coffee.¹⁷⁶ It is Mr Hu’s evidence that Ms Shima shared with him that she had supplied FDW biodata to Recruitbee “after the 1st defendant left”.¹⁷⁷ But no evidence was given as to why Ms Shima stopped supplying biodata to Swift Maids. It is quite telling that despite Mr Hu being “friends” with Ms Shima, he did not get any indication from Ms Shima that Mr Cheong had approached her to re-direct her supply of FDW biodata from Swift Maids to Recruitbee. Ms Toh’s evidence is that Recruitbee started receiving FDW biodata from Ms Shima in July or August 2020.¹⁷⁸ According to Ms Toh, Ms Aung had provided Ms Shima’s contact information to Ms Chua earlier to approach Ms Shima but Ms Shima did not want to supply to Recruitbee as she found Recruitbee to be too small. She only started supplying to Recruitbee after Ms Peh, Ms Teo and Ms Lim joined Recruitbee, and after Ms Peh had spoken with Ms Shima.¹⁷⁹ I find Ms Toh’s evidence in this regard to be reasonable, given that Ms Shima had a working relationship with Ms Peh, Ms Teo and Ms Lim, and would therefore be open to working with Recruitbee.

94 I turn finally to the supply of FDW biodata by Ms Aung, which may be swiftly disposed of. Ms Aung tendered her resignation from Swift Maids on 3

¹⁷⁶ NEs dated 28 February 2023 at p 90, lines 12–14.

¹⁷⁷ NEs dated 28 February 2023 at p 90, lines 8–19.

¹⁷⁸ NEs dated 9 March 2023 at p 115, lines 7–14.

¹⁷⁹ NEs dated 9 March 2023 at p 115, lines 27–31.

July 2018.¹⁸⁰ The date of the last invoice in evidence rendered by Ms Aung to Swift Maids in relation to Ms Aung's supply of biodata for Burmese FDWs was 20 April 2020¹⁸¹ although there is evidence of her dealings with Swift Maids even in September 2020.¹⁸² According to Ms Aung, she had supplied biodata to Swift Maids until October 2020 but decided to stop because she was allegedly unhappy with Swift Maids' manner of dealing with her and their treatment of FDWs.¹⁸³ Any argument that she stopped supplying because Mr Cheong had used the Confidential Information to re-direct her supply of biodata to Recruitbee does not make much sense. Plainly, it is Ms Aung's prerogative to supply to her own employment agency.

95 I consider it significant that Ms Suliyani supplied biodata of FDWs to employment agencies aside from Swift Maids, and that Ms Shima ran her own employment agency.¹⁸⁴ In other words, neither Ms Suliyani nor Ms Shima worked exclusively with Swift Maids. As for Ms Aung, she had a vested interest in Recruitbee. On the facts, I am only able to conclude that Ms Suliyani, Ms Shima and Ms Aung had stopped supplying biodata of FDWs to Swift Maids after Mr Cheong left Swift Maids' employ. I am, however, unable to come to the conclusion that Mr Cheong had, whether before or after he resigned from Swift Maids, somehow used the Confidential Information to divert the supply to Recruitbee and caused the cessation of supply to Swift Maids. Further, as I have found above at [82], the contact information relating to Swift Maids'

¹⁸⁰ Ms Aung's AEIC at para 44 (BAEIC at p 1639); Mr Loh's AEIC at para 37 (BAEIC at pp 824–825).

¹⁸¹ Ms Aung's AEIC at p 124 (BAEIC at p 1749).

¹⁸² Ms Aung's AEIC at paras 54–55 and p 136 (BAEIC at pp 1642 and 1761).

¹⁸³ Ms Aung's AEIC at paras 54–55 (BAEIC at p 1642).

¹⁸⁴ NEs dated 22 February 2023 at p 75, lines 27–29 and p 79, lines 5–13.

suppliers would form part of Mr Cheong's working knowledge and experience, and would in any case not be protectable confidential information after Mr Cheong's resignation from Swift Maids.

96 In summary, there is insufficient evidence to show that Mr Cheong had misused the Confidential Information or that he had disclosed, divulged or communicated the Confidential Information to the other defendants, or that Mr Cheong or the other defendants had re-directed Swift Maids' business or suppliers to Recruitbee using the Confidential Information. I find that the plaintiffs have failed to prove on the balance of probabilities that there had been unauthorised use of the Confidential Information, and they have therefore not met the requirement under the third limb of the test in *Coco v Clark*.

(D) APPLICATION OF THE MODIFIED TEST AND REBUTTING THE PRESUMPTION

97 I turn now to explain why the plaintiffs will still fail even if the modified approach in *I-Admin* is applied and an action for breach of confidence is presumed.

(I) CONFIDENTIAL INFORMATION IN MR CHEONG'S POSSESSION

98 As set out at [63] above, the Court of Appeal in *Lim Oon Kuin* endorsed at [41] of the judgment the proposition advanced by Prof Ng-Loy, that the modified approach in *I-Admin* is limited to cases involving unauthorised acquisition of confidential information. The plaintiffs did not demonstrate with any particularity what information Mr Cheong is alleged to have taken. Instead, they have simply alluded to general categories of information from their Integra system and contact information stored on Mr Cheong's personal handphone.¹⁸⁵

¹⁸⁵ PCS at para 56(c)(i), (x) and (xi).

Although the plaintiffs place heavy reliance on Mr Cheong's master access to the Integra system,¹⁸⁶ they did not adduce any evidence to show how that access translated to unauthorised acquisition of the information in the Integra system. Mere *access* is insufficient to prove unauthorised *acquisition*. If it is the plaintiffs' case that Mr Cheong had acquired information from the Integra system, then it is for them to prove that.

99 In this case, Mr Lit had candidly admitted that the plaintiffs did not run any forensic tests to determine if Mr Cheong had indeed exported information from the Integra system,¹⁸⁷ and that the plaintiffs do not have any evidence such as a forensic test result, a picture or a document to prove that Mr Cheong took information from the Integra system. There is similarly no evidence that Mr Cheong had disclosed, divulged or delivered to the other defendants such information,¹⁸⁸ or that any of the defendants had in their possession information from the Integra system or referred to such information for Recruitbee's purposes. This is very much unlike *I-Admin*, where there was proof that the respondents in that case had *downloaded, circulated* and *referred* to confidential materials belonging to the appellant company (*I-Admin* at [63]–[64]). Indeed, in *I-Admin*, the first respondent had even abused his confidential log-in credentials after he had left the appellant company's employ to access the appellant company's systems to acquire even more confidential information (*I-Admin* at [65]). There is no evidence of any such conduct on the part of Mr Cheong in the present case. Plainly, there is no evidence that Mr Cheong had generated, extracted, exported or otherwise acquired information from the

¹⁸⁶ PCS at para 56(c)(i).

¹⁸⁷ NEs dated 1 March 2023 at p 72, lines 13–30.

¹⁸⁸ NEs dated 1 March 2023 at p 73, lines 2–30.

Integra system, much less referred to or used such information for the purposes of Recruitbee.

100 As for the plaintiffs’ case that Mr Cheong had “stored and misused the Plaintiffs’ confidential information ... in particular, by storing the contact details of FDWs, suppliers, and employers in his personal phone, allowing him to misuse the same for Recruitbee Employment’s benefit”,¹⁸⁹ the plaintiffs have also not adduced evidence of what they say Mr Cheong had stored on his personal handphone nor evidence that he had duplicated that information elsewhere. Other than showing that Mr Cheong had used his personal handphone to conduct Swift Maids’ business in the course of his employment, they have done no more than repeat what they pleaded in their statement of claim. In this regard, Mr Cheong’s evidence is that, save for contact details of suppliers, he did not retain the contact details of customers and FDWs after he left Swift Maids.¹⁹⁰

101 Putting aside the lack of evidence on what Confidential Information was stored in Mr Cheong’s personal handphone, and taking the plaintiffs’ case at its highest, even if a presumption of an action for breach of confidence has arisen with respect to whatever Confidential Information was stored in Mr Cheong’s personal handphone, it has been displaced by the evidence adduced by the defendants collectively.

(II) *MR CHEONG’S CONSCIENCE*

102 I consider that there is a material difference between the present case and precedents such as *I-Admin*. The evidence indicates that Mr Cheong had

¹⁸⁹ PCS at para 56(c)(xi).

¹⁹⁰ NEs dated 8 March 2023 at p 92, lines 22–31 and p 93, lines 12–15.

used the Confidential Information that was given to him for its intended purpose of communicating with Swift Maids’ customers, FDWs and suppliers for Swift Maids’ business. Pertinently, there is a lack of evidence that Mr Cheong had used his personal handphone for the plaintiffs’ business with the motive of acquiring any Confidential Information so that he could review or potentially use it for Recruitbee’s purposes. It would appear from the evidence that he had been using his personal handphone to conduct the plaintiffs’ business from the first day he joined them in March 2018, before the company-issued handphones arrived and before there was any talk of setting up Recruitbee.¹⁹¹ The circumstances under which whatever Confidential Information came to be stored in Mr Cheong’s personal handphone are therefore distinguishable from cases like *I-Admin*, where the Court of Appeal specifically noted at [64] that “[t]he appellant’s materials were *specifically acquired* to be reviewed and potentially used for the third respondent’s benefit” [emphasis added], and in *Angliss* at [48], where the court found that the employee had “intended shrewd use of the information to [the employer’s] commercial detriment”.

103 In *Angliss* at [50], the learned Judge held that a defendant may demonstrate that his conscience was unaffected by producing “evidence which supports a *positive* case that there was no misuse or abuse of the confidential information” [emphasis in original]. There is such evidence here.

104 First, as Ms Toh explained, quite emphatically, telemarketing targeted at Swift Maids’ customers would not have been effective as those customers would not wish to change the FDW they employ if they did not have problems with the FDW, and such targeted telemarketing attempts would only result in

¹⁹¹ NEs dated 21 February 2023 at p 21, lines 4–14; NEs dated 2 March 2023 at p 48, lines 1–22; NEs dated 1 March 2023 at p 23, lines 7–19.

rebukes from them.¹⁹² As for the contact details of FDWs, Ms Toh's evidence is that such contact details were similarly not useful because Recruitbee could not call up the FDWs employed by Swift Maids one-by-one to enquire if they wish to change employers without risking severe backlash from the FDWs' current employers.¹⁹³ In this regard, I note that Ms Toh's evidence is corroborated by the plaintiffs' own witness, Ms Nadia, whose evidence is set out in greater detail at [107] below, in that Recruitbee Employment promoted their services through general marketing, such as distributing flyers, organising lunches for FDWs and posting on online platforms.¹⁹⁴ In particular, Ms Nadia did not list targeted telemarketing as a means of outreach used by Recruitbee Employment.

105 Second, any Confidential Information that could have been stored in Mr Cheong's phone would be limited, not only in terms of utility but also quantity. It is Mr Cheong's case that as general manager, he would communicate with customers and FDWs only for issues that the salespersons were unable to handle.¹⁹⁵ In this regard, his evidence is that only "a handful of issues" would require his involvement in such communication.¹⁹⁶ He would only save the phone number of FDWs in his handphone's phonebook if they contacted him for issues that were serious.¹⁹⁷ Mr Cheong further gave evidence that he mainly spoke to customers through Swift Maids' office main line.¹⁹⁸ Mr Cheong's account is thus that he had limited contact with customers and FDWs, and in

¹⁹² NEs dated 10 March 2023 at p 35, lines 1–4.

¹⁹³ NEs dated 10 March 2023 at p 35, lines 9–17.

¹⁹⁴ NEs dated 28 February 2023 at p 45, lines 9–26.

¹⁹⁵ 1D–3D Defence at para 20(a)(iii) (SB at p 112).

¹⁹⁶ NEs dated 8 March 2023 at p 106, line 28 to p 107, line 16.

¹⁹⁷ NEs dated 8 March 2023 at p 93, lines 12–22.

¹⁹⁸ NEs dated 8 March 2023 at p 95, line 23 to p 96, line 3.

turn, limited occasions to deal with them on his personal handphone. The general tenor of Mr Cheong's evidence – that his job scope was such that he had limited direct contact with customers and FDWs – is corroborated by Mr Lit's testimony that part of the job of a general manager at Swift Maids was to deal with problems raised by customers when the salespersons were unable to adequately address those problems.¹⁹⁹ In sum, therefore, the information in Mr Cheong's personal handphone's memory is likely limited only to dealings with the customers and FDWs which the salespersons had surfaced for Mr Cheong's action, and which was not conducted through the office main line. Indeed, the information that could have been captured in Mr Cheong's handphone would, on the face of things, be patently less useful than the comprehensive compilations and aggregations of information that were acquired in the precedent cases. For example, in *I-Admin*, the materials comprised, *inter alia*, specific source codes for key business systems, databases, business development materials, and documents setting out internal guidelines and policies (*I-Admin* at [14]). In *Angliss*, spreadsheets and reports containing sensitive information consisting of, *inter alia*, information on customers, pricing, sales revenues and targets were involved (*Angliss* at [40]–[42]).

106 Third, I find that there is, in any event, evidence that Recruitbee had engaged in extensive independent efforts to recruit FDWs and to reach out to customers, which accounted for its business performance and placement numbers. The role and reach of online platforms, which Recruitbee relied on, also support the view that Mr Cheong and the defendants did not make unauthorised use of the Confidential Information. The effect of such evidence is that the inference which the plaintiffs invite me to draw, *ie*, that Mr Cheong

¹⁹⁹ NEs dated 1 March 2023 at p 17, lines 17–29.

and the defendants *must have* misused the Confidential Information, is an untenable one. The case would have been different, had Swift Maids undertaken forensic analysis which might have enabled them to identify FDWs which they say Recruitbee only managed to place because of the Confidential Information. But as this was not done, a broad finding that Mr Cheong and the defendants made unauthorised use of the Confidential Information cannot be made on the balance of probabilities.

107 In this regard, Ms Toh gave evidence that Recruitbee Employment engaged in extensive efforts to source for FDWs looking to transfer their employment (“transfer FDWs”). Ms Toh testified that unlike other employment agencies, Recruitbee Employment’s staff members had, on every Sunday, stationed themselves in areas where FDWs frequent to engage FDWs, and arranged for meals to be provided to them with goodie bags.²⁰⁰ This is corroborated by the evidence of the plaintiffs’ own witness, Ms Nadia. For context, Ms Nadia worked for Recruitbee Employment from November 2019 to April or May 2022.²⁰¹ Her evidence is therefore important in explaining Recruitbee Employment’s business practices over an extended period of time. Ms Nadia confirmed that outreach activities, such as lunches for FDWs, were conducted, and that Recruitbee Employment obtained most of its transfer FDWs from “walk-ins”.²⁰² She explained that these walk-ins originated from flyers that Recruitbee Employment had given out, lunches provided by Recruitbee Employment to FDWs and referrals from these FDWs.²⁰³ Her evidence is that the lunches provided by Recruitbee Employment to FDWs were the most

²⁰⁰ NEs dated 10 March 2023 at p 44, line 10 to p 45, line 1.

²⁰¹ NEs dated 28 February 2023 at p 40, lines 3–21 and p 7, line 31 to p 8, line 6.

²⁰² NEs dated 28 February 2023 at p 45, lines 9–11.

²⁰³ NEs dated 28 February 2023 at p 45, lines 9–21.

significant source of Recruitbee Employment's transfer FDWs.²⁰⁴ As for customers, Ms Nadia's evidence is that Recruitbee Employment mainly received enquiries from potential customers based on marketing posts placed on web portals such as "Best Maid" and "Net Maid", and also from referrals.²⁰⁵ The "Best Maid" portal was Recruitbee Employment's most significant source of enquiries from potential customers.²⁰⁶

108 In summary, from an analysis of the evidence adduced by the defendants collectively, there is sufficient material before me to show that the quality of confidence of whatever Confidential Information which could have been stored in Mr Cheong's personal handphone was not impaired or compromised. To begin with, it is unclear what Confidential Information was retained in Mr Cheong's personal handphone after he left the employ of Swift Maids. There is also a lack of evidence that such information went beyond Mr Cheong or that it was not used as intended by the plaintiffs. Specifically, there is a lack of evidence to suggest that Mr Cheong had referred to or used whatever Confidential Information which could have been stored in his personal handphone, or that he had provided Recruitbee with such information to reach out to specific FDWs or customers. More importantly, there is evidence that Recruitbee's business was generated based on its own marketing strategies and efforts. As for the contact information of suppliers, Mr Cheong's residual ties to suppliers whom he had worked with in his two years working for Swift Maids had been analysed above at [82]. I am therefore of the view that Recruitbee's placement numbers cannot reasonably be attributed to the use of whatever Confidential Information that could have been stored on Mr Cheong's personal

²⁰⁴ NEs dated 28 February 2023 at p 45, lines 18–21.

²⁰⁵ NEs dated 28 February 2023 at p 45, lines 22–26.

²⁰⁶ NEs dated 28 February 2023 at p 45, lines 25–26.

handphone. There is no question that Mr Cheong should not have used his personal handphone against company regulations. But the evidence before the court is sufficient to prove that Mr Cheong's conscience was unaffected for the purposes of the third stage of the modified approach in *I-Admin*.

109 Taken in the round, it is my judgment that the plaintiffs' claim against Mr Cheong for breach of the equitable duty of confidence fails, even if the modified approach in *I-Admin* is applied. Accordingly, I dismiss the plaintiffs' action against Mr Cheong for breach of his duty of confidence in equity.

(2) Confidential information allegedly in Ms Peh's, Ms Teo's and Ms Lim's phones

110 I now deal with the related allegation made by the plaintiffs that Mr Cheong was "in breach of his duty to protect the Plaintiffs' confidential information and not misuse it" as he had failed to stop Swift Maids' staff from using their personal handphones when doing office work, thus allowing Ms Peh, Ms Teo and Ms Lim to store the Confidential Information in their personal handphones and thereafter misuse such information when they left to join Recruitbee Employment.²⁰⁷ This claim similarly fails.

111 First, the plaintiffs rooted the source of Mr Cheong's duty to protect the Confidential Information and to not misuse it, *vis-à-vis* Ms Peh, Ms Teo and Ms Lim, in the fiduciary duties allegedly owed by Mr Cheong to Swift Maids Pte Ltd.²⁰⁸ As I have found, for reasons explained at [217] below, that Mr Cheong did not owe any fiduciary duties to Swift Maids, this claim also falls away.

²⁰⁷ PCS at para 56(c)(xiv).

²⁰⁸ PCS at para 56(c)(xiv).

112 Second, the plaintiffs have not provided sufficient evidence to support their allegation that Mr Cheong had directly or indirectly contributed to some ill-defined scheme where Ms Peh, Ms Lim and Ms Teo stored the Confidential Information and later misused the same for Recruitbee's purposes.²⁰⁹

113 The parties did not dispute that the plaintiffs' company handphones and SIM cards only arrived at the company on 21 May 2018.²¹⁰ There is no evidence that any of Swift Maids' staff members were prohibited from using their personal handphones for company business before then. According to Mr Cheong, after the company handphones and the SIM cards arrived, there was some resistance because there were insufficient company handphones to go around and for all sales staff to bring a company handphone home to close sales after office hours.²¹¹ While Mr Loh did not fully agree with Mr Cheong's assertion that there were insufficient company handphones for all sales staff, I find it pertinent that Mr Loh had admitted that Mr Cheong did carry out the instructions given by Mr Loh to change the phone number printed on the name cards of Swift Maids' sales staff to the office number.²¹² This is further supported by WhatsApp message records between Mr Cheong and Ms Toh, showing that Mr Cheong gave instructions to Ms Toh, who had supplied name cards to Swift Maids, to print new name cards for Ms Peh and other staff members with the Swift Maids office number.²¹³ Mr Loh's chief complaint appears to be that Ms Peh, thereafter, despite being issued with the new name cards with the Swift Maids office number printed, *wrote* her personal

²⁰⁹ PCS at para 56(c)(xiv).

²¹⁰ NEs dated 21 February 2023 at p 19, lines 22–24.

²¹¹ NEs dated 21 February 2023 at p 31, line 3 to p 32, line 18.

²¹² NEs dated 21 February 2023 at p 28, lines 21–24.

²¹³ Mr Loh's AEIC at p 475 (BAEIC at p 1289).

handphone number in pen on the name cards.²¹⁴ Relatedly, Mr Loh did not dispute that other staff members, namely Ms Flora and Ms Shariffah, had complied with the instruction to only use the office phone number for work purposes. When cross-examined on this point, his response was that he had “no comment”.²¹⁵ Crucially, it is Mr Loh’s evidence that he had personally, together with Mr Cheong, confronted Ms Peh about her practice of writing her own personal number on her new name cards.²¹⁶ It is also Mr Loh’s evidence that in response to this confrontation, Ms Peh simply gave Mr Loh a smile.²¹⁷

114 In the light of the evidence, I consider that Mr Cheong had, on balance, discharged any duty he might have had as general manager by attempting to enforce Swift Maids’ policy of having staff members use only the office phone numbers for their work. The fact that enforcement of this policy was imperfect, despite the intervention of both the general manager and the director of Swift Maids, does not give rise to an inference that Mr Cheong had caused any staff members to store the Confidential Information in their personal handphones and thereafter misuse such information after they left Swift Maids.

115 In relation to Ms Teo and Ms Lim’s alleged possession and misuse of the Confidential Information, the plaintiffs’ argument is that because Mr Cheong had failed to stop Ms Peh from using her personal handphone number, “there is a high likelihood that other staff, including [Ms Lim] and [Ms Teo], were similarly allowed to, and were, using their personal phones and phone

²¹⁴ NEs dated 21 February 2023 at p 28, lines 26–31.

²¹⁵ NEs dated 21 February 2023 at p 29, lines 4–7.

²¹⁶ NEs dated 21 February 2023 at p 30, lines 22–32.

²¹⁷ NEs dated 21 February 2023 at p 30, line 22 to p 31, line 2.

numbers”.²¹⁸ The plaintiffs then invite the court to conclude that Ms Peh, Ms Lim and Ms Teo had all misused the Confidential Information that they allegedly had on their personal handphones when they left to join Recruitbee Employment. I am unable to agree with the plaintiffs. There is no evidence that Ms Lim and Ms Teo continued to use their personal handphones for Swift Maids’ business after the company handphones were issued. It does not follow that just because Ms Peh had continued to use her personal handphone number for Swift Maids’ business, Ms Lim and Ms Teo would necessarily have adopted a similar practice. I am unable to infer from Ms Peh’s refusal to abide by company policy that Ms Teo and Ms Lim also engaged in similar conduct.

116 Moreover, the plaintiffs have led no evidence to show that Ms Peh, Ms Teo or Ms Lim had *used* the Confidential Information in their new employment in Recruitbee Employment. As I have already found above, there is a lack of evidence to prove that the Confidential Information was misused to advance Recruitbee’s business interests.

117 I therefore hold that the plaintiffs do not have a viable claim against Mr Cheong in relation to the alleged misuse of the Confidential Information by Ms Peh, Ms Teo and Ms Lim.

(3) Contractual duty of confidentiality

118 Clauses 12.1 and 12.2 of Mr Cheong’s employment contract were reproduced in the plaintiffs’ Statement of Claim together with cll 8, 11 and 13, presumably in relation to the plaintiffs’ action against Mr Cheong for breach of the contractual duty of confidentiality.²¹⁹

²¹⁸ PCS at para 56(c)(xiii).

²¹⁹ SOC at para 16 (SB at pp 51–52).

119 Mr Cheong’s employment contract did not set out an exhaustive or clearly defined list of what information counts as “confidential and proprietary information pertaining to secrets, transactions or information relating to The Company and her customers” specified at cl 12.1.²²⁰ But cl 12.2 is drafted to have a sweeping scope. It proscribed Mr Cheong from disclosing, divulging, authorising or permitting delivery of information on matters relating to Swift Maids Pte Ltd and her customers to anyone not entitled thereto. Swift Maids’ customers’ contact information, FDWs’ contact information, FDWs’ biodata and suppliers’ contact information may potentially come within the ambit of cl 12.2. In this suit, the parties did not put the confidentiality of any aspect of the Confidential Information in issue, and the only dispute is whether there has been a breach of Mr Cheong’s contractual confidentiality duty. In this regard, the burden is on the plaintiffs to prove on the balance of probabilities that the contractual confidentiality obligations have been breached under this head of claim.

120 As I have detailed above, there is insufficient evidence for the court to find that the Confidential Information was misused by Mr Cheong, or given by Mr Cheong to the defendants to use for Recruitbee’s purposes. Given the lack of evidence that Mr Cheong had directly or indirectly disclosed, divulged, or authorised or permitted delivery of any information on matters relating to Swift Maids Pte Ltd and her customers to the other defendants, I similarly find that Mr Cheong was not in breach of his contractual duty of confidentiality.

Payments to Pixelate

121 I turn to examine the issue of the Pixelate transactions.

²²⁰ ABD at p 134.

122 The Pixelate invoices comprise five invoices rendered by Pixelate to Swift Maids, dated 26 September 2018, 27 April 2019, 13 May 2019, 1 June 2019 and 22 June 2019 respectively,²²¹ which add up to a total sum of \$21,245.²²² The invoices were issued for services rendered to Swift Maids, including the implementation of a search engine optimisation service,²²³ the provision of signages,²²⁴ and the provision of corporate folders.²²⁵ Pixelate was a sole-proprietorship owned by Mr Cheong, but had its registration cancelled in 2017.²²⁶ At the time the payments were made pursuant to the invoices, Swift Maids did not know that Pixelate was previously owned by Mr Cheong,²²⁷ but the finance team in Swift Maids and Mr Loh later confronted Mr Cheong about the invoices, and Mr Cheong admitted that he had owned Pixelate in the past.²²⁸

123 Four of the five invoices contained a footer that stated “MADCREATIONINN | PIXELATE”, along with the registration number of a company, Madcreationinn.²²⁹ Mr Cheong admits that he had used the name of

²²¹ Mr Lit’s AEIC at pp 143, 147, 150, 152 and 154 (BAEIC at pp 146, 150, 153, 155 and 157).

²²² Mr Loh’s AEIC at para 38 and p 152 (BAEIC at pp 825 and 966); Mr Lit’s AEIC at p 156 (BAEIC at p 159).

²²³ Mr Lit’s AEIC at p 143 (BAEIC at p 146); NEs dated 9 March 2023 at p 46, lines 2–6.

²²⁴ Mr Lit’s AEIC at p 150 (BAEIC at p 153).

²²⁵ Mr Lit’s AEIC at p 152 (BAEIC at p 155).

²²⁶ Mr Lit’s AEIC at pp 53–54 (BAEIC at pp 56–57).

²²⁷ Mr Loh’s AEIC at para 38 (BAEIC at p 825).

²²⁸ NEs dated 9 March 2023 at p 42, line 32 to p 43, line 5 and p 47, line 32 to p 48, line 18.

²²⁹ Mr Lit’s AEIC at pp 147, 150, 152 and 154 (BAEIC at pp 150, 153, 155 and 157).

Madcreationinn and its company registration number without seeking the permission of Madcreationinn’s owner, Mr Lim Chee Kang.²³⁰

Parties’ cases

124 The plaintiffs have pleaded that the Pixelate transactions were orchestrated by Mr Cheong in breach of, amongst other duties, the duties found in Mr Cheong’s employment contract and the duties he owed to Swift Maids as an employee and a fiduciary. It is the plaintiffs’ case that Mr Cheong had caused the first plaintiff to enter into these transactions, ostensibly for the purposes of Swift Maids’ business, but in reality for the purpose of allowing Mr Cheong to wrongfully benefit from them.²³¹ The plaintiffs submit that it is their “belief that [Mr] Cheong has wrongfully benefitted from these transactions, perhaps by overquoting the Plaintiffs on the invoices, since he was the one who made them”.²³²

125 It is Mr Cheong’s evidence that he had engaged freelance/independent contractors to provide services to Swift Maids. However, the freelance/independent contractors could not provide formal invoices for the work done. According to Mr Cheong, he had created the Pixelate invoices, and included the name and company registration number of Madcreationinn in the invoices, because the finance team at Swift Maids had informed him that payment could be issued only when formal invoices were presented.²³³ Mr Cheong contends that no wrongful payments were made by Swift Maids as

²³⁰ NEs dated 9 March 2023 at p 42, lines 27–31.

²³¹ SOC at paras 37–38 (SB at pp 71–73).

²³² PCS para 56(b)(xxi).

²³³ 1D–3D Defence at para 39 (SB at pp 132–133); NEs dated 9 March 2023 at p 42, lines 18–20.

Swift Maids had received the services for which it was billed.²³⁴ Mr Cheong also claims that all moneys paid by Swift Maids went to the freelance/independent contractors, and that he did not receive any of the moneys paid by Swift Maids for these services.²³⁵

Analysis and findings

126 Having heard Mr Cheong’s testimony on the stand and considered the evidence before this court, I do not believe Mr Cheong’s explanation. I find his evidence on how the moneys were disbursed by Swift Maids to be wholly unsatisfactory and dubious. The Pixelate invoices show that moneys were paid by Swift Maids into two bank accounts, one with an account number ending in 1921 (the “1921 account”), and another with an account number ending in 7226 (the “7226 account”). According to Mr Cheong, the 1921 account belonged to a search engine optimisation service provider and the sum paid into that account was for services provided by this provider.²³⁶ The payment for the rest of the invoices was made to the 7226 account.²³⁷ Mr Cheong testified that the 7226 account details were given to him by an independent contractor by the name of “Joseph”.²³⁸ It is Mr Cheong’s evidence that he had an arrangement with Joseph for Joseph to collect payments due to various freelance/independent contractors, and thereafter disburse the sums from the 7226 account.²³⁹ The freelance/independent contractors for whom payments were paid into the 7226

²³⁴ 1DCS at p 19, paras 27(a)(vii) and (viii).

²³⁵ 1D–3D Defence at para 39(d) (SB at p 133).

²³⁶ Mr Cheong’s AEIC at pp 38–39 (BAEIC at pp 1532–1533); NEs dated 9 March 2023 at p 50, lines 15–21.

²³⁷ Mr Lit’s AEIC at pp 146–147, 152 and 154–155 (BAEIC at pp 149–150, 155 and 157–158).

²³⁸ NEs dated 9 March 2023 at p 72, lines 14–18.

²³⁹ NEs dated 9 March 2023 at p 74, line 30 to p 75, line 10.

account were different persons, including fabrication works contractors,²⁴⁰ a printing supplier,²⁴¹ a uniform supplier²⁴² and Joseph himself.²⁴³

127 I find Mr Cheong's evidence not to be credible for several reasons. Mr Cheong is unable to provide any cogent reason why the various freelance/independent contractors could not provide formal invoices. In particular, I find it hard to believe that the service provider for search engine optimisation would be unable to provide a formal invoice for a not insubstantial amount of \$9,600 for work done. As for the payment for the remaining four invoices totalling \$11,645 that was, according to Mr Cheong, paid into the 7226 account provided by Joseph, Mr Cheong admitted that he did not know Joseph very well.²⁴⁴ In fact, he did not even have Joseph's full name.²⁴⁵ The other independent/freelance contractors whose moneys were paid into the 7226 account also did not have dealings related to Joseph.²⁴⁶ I find it hard to believe that Mr Cheong would have entrusted the money to Joseph whom he did not know well. I also find it hard to believe that Joseph would consent to an arrangement for him to take on the responsibility to coordinate payments for transactions unrelated to him, and be potentially accountable to various other parties for moneys due to them.

²⁴⁰ NEs dated 9 March 2023 at p 72, lines 4–13.

²⁴¹ NEs dated 9 March 2023 at p 73, lines 4–12.

²⁴² NEs dated 9 March 2023 at p 73, lines 19–28.

²⁴³ NEs dated 9 March 2023 at p 72, lines 28–31.

²⁴⁴ NEs dated 9 March 2023 at p 76, lines 1–3.

²⁴⁵ NEs dated 9 March 2023 at p 45, line 6.

²⁴⁶ NEs dated 9 March 2023 at p 74, lines 23–29.

128 On balance, I find that Mr Cheong, through Pixelate, was involved in providing the services billed under the Pixelate invoices. He had used Pixelate as a front to subcontract the work to be carried out on terms that he negotiated with the independent contractors, and thereafter billed Swift Maids for the work done. I therefore find Mr Cheong to be in breach of cl 8.4 of his employment contract to “not in any way be connected or engaged with any other company business or concern without prior approval or consent by [Swift Maids Pte Ltd] in writing”. On the facts, Mr Cheong probably knew that approval or consent would not be forthcoming, which was why he had not disclosed that Pixelate was set up by him, and had even used Madcreationinn’s name and company registration number on the invoices without permission in order to be paid.

129 Despite this finding, the plaintiffs’ claim is problematic because the plaintiffs have not been able to prove any losses arising from the Pixelate transactions. It is not disputed that Swift Maids had received the goods and services billed for in the Pixelate invoices.²⁴⁷ The plaintiffs could not identify or particularise which of the transactions in the Pixelate invoices had caused the plaintiffs to suffer loss. The plaintiffs did not make any claim that the goods and services received under the Pixelate transactions were deficient or substandard. Although the plaintiffs have pleaded that they had suffered loss “[i]nsofar as [Mr Cheong] had caused [Swift Maids Pte Ltd] to pay above market rates for any services/products that were actually provided”,²⁴⁸ they have not adduced evidence of the market price for those goods and services.

²⁴⁷ NEs dated 21 February 2023 at p 102, line 11 to p 103, line 30; p 104, lines 5–9; p 116, lines 3–12; NEs dated 22 February 2023 at p 28, line 29 to p 29, line 27.

²⁴⁸ SOC at para 40 (SB at p 74).

130 As for Mr Cheong’s alleged gain from the Pixelate transactions,²⁴⁹ the plaintiffs have been tentative in their closing submissions, stating that it is their “belief that [Mr] Cheong has wrongfully benefitted from these transactions, *perhaps* by overquoting the Plaintiffs on the invoices, since he was the one who made them” [emphasis added].²⁵⁰ There is, however, no evidence to show that the plaintiffs were overcharged. I will consider the issue of remedies later in this judgment, together with the other instances of Mr Cheong’s breach of his employment contract.

\$8,190 payment to Ms Sulyani

131 I turn next to the \$8,190 payment meant for Ms Sulyani.

Parties’ cases

132 The plaintiffs submit that a payment to Ms Sulyani in the amount of \$8,190, which Mr Cheong received in cash to pass to Ms Sulyani, was misappropriated by Mr Cheong.²⁵¹ That was an advance payment for her to purchase air tickets and apply for passports for seven FDWs.²⁵² Mr Loh’s evidence is that this sum of \$8,190 had been paid out to Mr Cheong, with the petty cash voucher for this payment approved by Mr Cheong himself.²⁵³ However, Swift Maids did not receive the list of FDWs whose biodata Ms

²⁴⁹ NEs dated 21 February 2023 at p 110, line 5 to p 111, line 19 and p 116, lines 13–15.

²⁵⁰ PCS para 56(b)(xxi).

²⁵¹ PCS at paras 56(b)(i)–(iii).

²⁵² Mr Loh’s AEIC at para 60 and p 540 (BAEIC at pp 831 and 1354).

²⁵³ Mr Loh’s AEIC at para 61 and p 544 (BAEIC at pp 831 and 1358).

Suliyani was supposed to supply nor any official receipt from Ms Suliyani for the payment.²⁵⁴

133 Mr Cheong’s defence is that he did not misappropriate the sum. He asserts that this is evidenced by the fact that Swift Maids had received services from Ms Suliyani that accounted for virtually the entire advance payment of \$8,190,²⁵⁵ and that this was reflected in Swift Maids’ accounts.²⁵⁶

Analysis and findings

134 On an analysis of the evidence before me, I find on the balance of probabilities that the sum of \$8,190 had been paid to Ms Suliyani, and that it was not misappropriated by Mr Cheong.

135 There is in evidence a table prepared by Swift Maids’ finance department with records of debits (moneys paid out to Ms Suliyani) and credits (a cash quantification of value received from Ms Suliyani through services provided by her).²⁵⁷ This table shows that on 12 June 2019, a debit entry was created in view of a payment of \$8,190 in cash to Ms Suliyani. Thereafter, there are eight rows in the table, with eight different names and corresponding credit figures from 5 July 2019 to 3 March 2020. Under cross-examination, Mr Loh acknowledged that this record shows that after a debit was made from Swift Maids’ account on 12 June 2019 for the \$8,190 payment to Ms Suliyani, Swift Maids’ account was gradually credited as deployments were carried out for

²⁵⁴ Mr Loh’s AEIC at para 62 (BAEIC at p 831).

²⁵⁵ 1DCS at p 19, para 27(a)(ix) to p 20, para 27(a)(xii).

²⁵⁶ Mr Cheong’s AEIC at paras 31–33 and p 35 (BAEIC at pp 1486 and 1529).

²⁵⁷ Mr Lit’s AEIC at p 93 (BAEIC at p 96); NEs dated 1 March 2023 at p 28, line 18 to p 29, line 9.

FDWs sourced by Ms Suliyani.²⁵⁸ The table also shows that after a transaction on 3 March 2020, there was a balance value of \$2,520 (the “Outstanding Balance”) left to be recovered from Ms Suliyani. In this regard, Mr Loh agreed that Mr Cheong’s successor, as the next general manager, should have followed up with Ms Suliyani to ensure that she continued to supply FDW biodata to account for the value of the Outstanding Balance.²⁵⁹ I find it significant that based on Swift Maids’ own records, Ms Suliyani had indeed rendered services in respect of the FDWs named in the table to Swift Maids, and that Swift Maids recorded value received from her to account for the cash advance of \$8,190.

136 Furthermore, the payment vouchers, invoices and e-mails relating to Ms Suliyani’s supplier fees²⁶⁰ show that Swift Maids had deducted the cash advance for air tickets (if they were purchased by Ms Suliyani) and passport application fees from the total supplier fees due to Ms Suliyani when they settled their accounts with her each time an FDW was hired through Swift Maids. From such a payment pattern, the logical inference would be that if Ms Suliyani did not receive the \$8,190 from Mr Cheong, she would, as Mr Cheong asserted, have asked Swift Maids for the shortfall in the amount of the deductions for the cash advance.²⁶¹

137 Moreover, Mr Lit gave evidence that he had spoken to Ms Suliyani twice to ask about the \$8,190. While Ms Suliyani initially denied receiving the \$8,190 and the existence of any Outstanding Balance, Mr Lit asked Ms Suliyani to

²⁵⁸ NEs dated 21 February 2023 at p 99, lines 2–25.

²⁵⁹ NEs dated 21 February 2023 at p 99, lines 13–15.

²⁶⁰ ABD at pp 224–226, 227–229, 230–231, 236–238, 239–241, 242–243 and 245.

²⁶¹ NEs dated 22 February 2023 at p 9, lines 2–10.

check again and to check with Mr Cheong concerning the payment.²⁶² Ms Suliyani thereafter said, in her second conversation with Mr Lit, that “Oh, yah, I check with Mr Cheong. Everything is okay already. There is still a [*sic*] outstanding balance.”²⁶³ Based on the plaintiffs’ own evidence, Ms Suliyani appears to have acknowledged receiving the \$8,190. This is consistent with Mr Lit’s account in his AEIC that “the next time I spoke with [Ms Suliyani], she suddenly stated that she had in fact received the payment”.²⁶⁴

138 The crux of the plaintiffs’ complaint seems to be that there was no payment receipt from Ms Suliyani to record that she had received the \$8,190.²⁶⁵ However, this deficiency in *documentary* acknowledgement from Ms Suliyani that she had received that sum must be seen alongside her last conversation with Mr Lit. The plaintiffs’ evidence on the outcome of their own enquiries has cast doubt on their theory of events. I therefore do not find the lack of a payment receipt from Ms Suliyani to be sufficient, evidentially, to prove that Mr Cheong had misappropriated the \$8,190 disbursed by Swift Maids as advance payment to Ms Suliyani in the light of the other evidence before the court.

Wrongful transport claims

139 I turn to the plaintiffs’ allegations that Mr Cheong submitted wrongful transport claims. These allegedly wrongful transport claims were made by Mr

²⁶² NEs dated 1 March 2023 at p 30, lines 6–20.

²⁶³ NEs dated 1 March 2023 at p 30, lines 21–24.

²⁶⁴ Mr Lit’s AEIC at para 29(c)(ii) (BAEIC at p 14).

²⁶⁵ NEs dated 22 February 2023 at p 4, lines 22–26; p 5, lines 8–14; p 18, lines 20–22 and p 24, lines 27–30; NEs dated 1 March 2023 at p 28, lines 6–12.

Cheong for trips to and from HarbourFront Cruise and Ferry Terminal and Changi Airport.²⁶⁶

Parties' cases

140 The plaintiffs allege that Mr Cheong had made multiple transport claims for trips which should not have been taken, and approved these claims himself.²⁶⁷ The plaintiffs do *not* claim that any of these trips were unsupported by receipts.²⁶⁸ Instead, the plaintiffs raise doubts about the *purpose* of the trips.²⁶⁹ It is the plaintiffs' pleaded case that in making these wrongful trips, Mr Cheong would pick up FDWs from HarbourFront Cruise and Ferry Terminal and/or Changi Airport instead of having Swift Maids' company driver, Mr Ismadi, do so, ostensibly because Mr Cheong was picking up FDWs for Recruitbee.²⁷⁰ The plaintiffs assert that Swift Maids had always been willing to pay the company driver, Mr Ismadi, extra to work beyond his usual work schedule, and thus there was no legitimate reason for Mr Cheong to have had to make these trips himself.²⁷¹

141 Mr Cheong's defence is that these trips were all made for legitimate purposes and that the plaintiffs have not adduced concrete evidence to show that the claims were wrongful.²⁷² It is Mr Cheong's evidence that Swift Maids was

²⁶⁶ Mr Loh's AEIC at paras 52–55 (BAEIC at pp 829–830).

²⁶⁷ PCS at para 56(b)(ix).

²⁶⁸ NEs dated 21 February 2023 at p 92, lines 5–22.

²⁶⁹ NEs dated 21 February 2023 at p 92, line 23 to p 93, line 22.

²⁷⁰ SOC at para 28(b) (SB at p 62).

²⁷¹ Mr Loh's AEIC at para 54(b) (BAEIC at p 829); Mr Ismadi's AEIC at para 8 (BAEIC at p 262).

²⁷² 1DCS at p 24, paras 27(a)(xx) and (xxi).

reluctant to pay Mr Ismadi overtime payment for the pickups carried out on Sundays.²⁷³ Therefore, Mr Cheong himself did the pickups and thereafter claimed reimbursement.

Analysis and findings

142 The 28 allegedly wrongful transport claims spanned between 4 April 2019 and 20 February 2020, for claims ranging between \$7.40 and \$48.00. The total amount claimed for the 28 trips was \$522.66. From the records tendered by Mr Loh,²⁷⁴ the 28 trips can be broken down as follows:

- (a) There were nine trips that commenced at HarbourFront Cruise and Ferry Terminal and Changi Airport, and ended at a “training centre” used by Swift Maids.²⁷⁵
- (b) There were nine trips that commenced at HarbourFront Cruise and Ferry Terminal, and ended at Far East²⁷⁶ and Chong Pang, both locations of Swift Maids’ offices.²⁷⁷

²⁷³ Mr Cheong’s AEIC at paras 36–38 (BAEIC at p 1487).

²⁷⁴ Mr Loh’s AEIC at pp 532–533 (BAEIC at pp 1346–1347).

²⁷⁵ The record in Mr Loh’s AEIC at pp 532–533 (BAEIC at pp 1346–1347) uses the abbreviation “TC”. During cross-examination, Mr Cheong and Mr Ismadi referred to “Training centre” as the destination for a trip with “TC” as destination: NEs dated 3 March 2023 at p 34, lines 29–31.

²⁷⁶ The record in Mr Loh’s AEIC at pp 532–533 (BAEIC at pp 1346–1347) uses the abbreviation “FE”. During cross-examination, Mr Cheong and Mr Ismadi referred to “Far East” as the destination for a trip with “FE” as destination: NEs dated 3 March 2023 at p 34, lines 15–23.

²⁷⁷ The record in Mr Loh’s AEIC at pp 532–533 (BAEIC at pp 1346–1347) uses the abbreviation “CP”. During cross-examination, Mr Cheong and Mr Loh referred to “Chong Pang Branch at Yishun” as the destination for a trip with “CP” as destination: NEs dated 22 February 2023 at p 38, lines 23–24, referring to ABD at p 973.

(c) There were four trips that commenced at Far East and ended at HarbourFront Cruise and Ferry Terminal.

(d) There were three trips that commenced at Ang Mo Kio,²⁷⁸ Chong Pang and Far East, and ended at Changi Airport. One of the branches of Swift Maids is located in Ang Mo Kio.

(e) There was one trip that commenced at HarbourFront Cruise and Ferry Terminal, and ended at 21 Upper Weld Road, which, according to Mr Ismadi, was a medical clinic for FDWs.²⁷⁹

(f) There were two trips whose starting location was not indicated, and which ended at Changi Airport.

143 Mr Cheong's explanation on the stand that he would himself attend at HarbourFront Cruise and Ferry Terminal or Changi Airport on occasions when Mr Ismadi was unable to carry out the task, for instance, because Mr Ismadi was occupied by other tasks such as bringing FDWs for thumbprinting at the MOM,²⁸⁰ was not in his defence nor AEIC. In both Mr Cheong's defence²⁸¹ and AEIC,²⁸² his explanation was that he would carry out pickups of FDWs on Sundays so as to avoid overtime payment to Mr Ismadi. However, it transpired, when further

²⁷⁸ The record in Mr Loh's AEIC at pp 532–533 (BAEIC at pp 1346–1347) uses the abbreviation "AMK". During cross-examination, Mr Cheong and Mr Loh referred to "Ang Mo Kio branch" as the destination for a trip with "AMK" as destination: NEs dated 22 February 2023 at p 39, line 29 to p 40, line 6, referring to ABD at p 980.

²⁷⁹ NEs dated 3 March 2023 at p 8, lines 18–25.

²⁸⁰ NEs dated 9 March 2023 at p 79, lines 4–12.

²⁸¹ 1D–3D Defence at para 29(b) (SB at p 123).

²⁸² Mr Cheong's AEIC at paras 36–38 (BAEIC at p 1487).

details were provided of the trips in Mr Loh's AEIC,²⁸³ that only two out of the 28 allegedly wrongful trips occurred on Sundays. Mr Cheong's explanation on the stand therefore appears to be belated.

144 That having been said, the fact that Mr Cheong did not use Mr Ismadi's services is only a fact that arouses suspicion. It should have led to a train of inquiry to confirm the plaintiffs' suspicions that all of the 28 transport claims were not incurred for Swift Maids' business. Instead of investigating and proving that the claim particulars were false, or that Mr Cheong was not performing the plaintiffs' business at the locations recorded in the 28 allegedly wrongful claims, for example, by adducing evidence that Swift Maids had no FDW arrivals or departures on those days, the plaintiffs simply relied on the fact that Mr Ismadi's services were not used as constitutive of their case. This is inadequate. The plaintiffs bear the legal burden of proving that the 28 claims were made for expenses unrelated to the plaintiffs' business, or that Mr Cheong was not performing the plaintiffs' business at the locations recorded in the 28 allegedly wrongful claims.

145 It is not disputed that Swift Maids had branches in Far East, Chong Pang and Ang Mo Kio at the material time.²⁸⁴ Recruitbee was located in Kovan, and a second branch was subsequently set up in Toa Payoh.²⁸⁵ The allegedly wrongful trips were mostly made between HarbourFront Cruise and Ferry Terminal or Changi Airport and locations connected with Swift Maids' business activities, as well as the "training centre" used by Swift Maids, instead of locations connected

²⁸³ Mr Loh's AEIC at pp 532–533 (BAEIC at pp 1346–1347).

²⁸⁴ NEs dated 22 February 2023 at p 38, lines 20–24; p 39, line 31 to p 40, line 3; and p 66, lines 1–6.

²⁸⁵ Ms Toh's AEIC at paras 21 and 31–33 (BAEIC at pp 1556 and 1558–1559).

with Recruitbee's business activities. The plaintiffs did not explain why the trips would start from, or end at, premises linked to Swift Maids' business locations if they were made for Recruitbee's purposes. Neither did the plaintiffs explain and adduce evidence to show why Mr Cheong had no business to be at those locations on those dates for Swift Maids' work. Indeed, if, as the plaintiffs assert, Mr Cheong was picking up FDWs from HarbourFront Cruise and Ferry Terminal or Changi Airport for Recruitbee's purposes, it would be illogical for the trips to end at premises belonging to Swift Maids. Similarly, for those trips that commenced from Swift Maids' premises, it would again be illogical for the trips to end at HarbourFront Cruise and Ferry Terminal or Changi Airport if those trips were really carried out for Recruitbee's purposes. It should be borne in mind that the plaintiffs' pleaded case was that Mr Cheong, in undertaking these 28 allegedly wrongful trips, was "picking ... FDWs not for the purposes of the Plaintiffs' business, but for Recruitbee's business".²⁸⁶ It beggars belief that Mr Cheong would send Recruitbee's FDWs to Swift Maids' premises or pick them up from Swift Maids' premises. If it is the plaintiffs' case that Mr Cheong had made use of any other arrangements to exploit the reimbursement system, the plaintiffs did not make clear what those arrangements were. There are countless possible scenarios as to what Mr Cheong could have done but ultimately the plaintiffs failed to adduce evidence that those trips as reflected in the claims were not made for Swift Maids' purposes.

146 I note from the records that there is only *one* trip, dated 13 June 2019, where there was a stop (at Depot Road) in the middle of the trip. In other words, on the face of the records, there is no evidence to suggest that there were mid-way stops involved for any of the other 27 allegedly wrongful trips. There is no

²⁸⁶ SOC at para 28(b) (SB at p 62).

evidence that Mr Cheong dropped off FDWs at Recruitbee premises mid-way through the trips, before ending the trip at Swift Maids' premises, and, indeed, this was not the account submitted by the plaintiffs.

147 On balance, therefore, I find that the plaintiffs have not proven that these 28 allegedly wrongful trips made by Mr Cheong were made for Recruitbee's purposes.

The claims against the defendants

148 The plaintiffs bring two broad claims against the defendants: (a) as against all the defendants, a claim in conspiracy to injure by unlawful means;²⁸⁷ and (b) as against the second to fifth defendants, a claim for dishonest assistance.²⁸⁸

Conspiracy to injure by unlawful means

Parties' cases

(1) Plaintiffs' case

149 It is the plaintiffs' case that in furtherance of the defendants' conspiracy to injure Swift Maids, the defendants did the following acts: (i) Mr Cheong and Ms Toh incorporated Recruitbee Employment and took various steps to set up its business;²⁸⁹ (ii) Mr Cheong, Ms Toh and Ms Aung set up a branch of Recruitbee in Myanmar in support of and in furtherance of Recruitbee's business in Singapore;²⁹⁰ (iii) Mr Cheong, Ms Toh and Ms Aung met with each

²⁸⁷ SOC at para 31 (SB at pp 64–65); PCS at Section C.

²⁸⁸ SOC at paras 35D–35E (SB at pp 69–70); PCS at Section D.

²⁸⁹ SOC at paras 31A(c) and 33 (SB at pp 65 and 67).

²⁹⁰ SOC at paras 31A(d) and 31A(e) (SB at pp 65–66).

other to discuss the business of Recruitbee, and also travelled to Myanmar for the purposes of the business of Recruitbee;²⁹¹ (iv) Mr Cheong, Ms Toh, and possibly Ms Aung later incorporated and set up Recruitbee Helpers;²⁹² and (v) Mr Cheong, Ms Toh and Ms Aung diverted and/or solicited business and employees away from Swift Maids to Recruitbee by using the Confidential Information obtained by Mr Cheong.²⁹³ According to the plaintiffs, the defendants did the above acts through unlawful means, as Mr Cheong breached various duties he owed to the plaintiffs.²⁹⁴

150 With regard to the defendants' intention to cause injury to Swift Maids, the plaintiffs' position is that the defendants must have known that Mr Cheong would have been in breach of his duties to Swift Maids by setting up and operating a competing business while employed by Swift Maids. As for the taking and misusing of the Confidential Information for the defendants' wrongful gain, that would also necessarily cause injury to Swift Maids, as the misuse of such information could, and did in fact, lead to the solicitation of business by Recruitbee.

151 Mr Loh gave evidence that the loss of business was particularly damaging as it occurred during the Covid-19 period, during which it was expected that Swift Maids would have a market advantage given their accumulated contacts of customers and FDWs.²⁹⁵ However, that did not materialise because Swift Maids' rightful business was diverted to

²⁹¹ SOC at para 31A(e) (SB at p 66).

²⁹² SOC at para 33D (SB at pp 67–68).

²⁹³ SOC at para 35 (SB at p 68).

²⁹⁴ PCS at para 60.

²⁹⁵ NEs dated 22 February 2023 at p 79, lines 17–30.

Recruitbee.²⁹⁶ Moreover, Swift Maids suffered loss of business when they had to abruptly shut down their Yishun branch due to the resignation of Ms Peh, Ms Teo and Ms Lim.²⁹⁷ For clarity, it appears from the evidence that this “Yishun branch” was the same branch as that located at “Chong Pang”,²⁹⁸ as discussed above at [142] and [145] in relation to the allegedly wrongful transport claims.

152 The plaintiffs’ case is that Recruitbee “could not have placed such a high number of FDWs on its own accord, without improperly using the [Confidential Information] and/or, customers, suppliers, and/or FDWs solicited from the Plaintiffs”.²⁹⁹ Other than the fact that Recruitbee Employment was new to the market, Ms Toh purportedly lacked experience in the employment agency industry, while Ms Aung’s industry experience was largely confined to the supply of biodata of FDWs from Myanmar. Taking into account all these factors, the defendants’ case of how Recruitbee had attained what the plaintiffs describe as “above average performance” is “inherently incredible”.³⁰⁰

153 In relation to the defendants’ wrongful gain, the plaintiffs pleaded an estimated figure of \$744,359.31.³⁰¹ The plaintiffs asserted at paragraph 25 of the Statement of Claim that based on figures published on the MOM’s website, Recruitbee had placed “an estimated 475 FDWs to-date”, *ie*, from the incorporation of Recruitbee Employment until the date of the Statement of

²⁹⁶ Mr Loh’s AEIC at para 90 (BAEIC at p 839); NEs dated 24 February 2023 at p 38, lines 1–32.

²⁹⁷ Mr Loh’s AEIC at paras 73, 74 and 78 (BAEIC at pp 834–835).

²⁹⁸ SOC at para 4 (SB at p 49); ABD at p 912; NEs dated 22 February 2023 at p 38, lines 23–24, referring to ABD at p 973.

²⁹⁹ SOC at para 30(b) (SB at p 64).

³⁰⁰ PCS at paras 110 and 111.

³⁰¹ SOC at para 39(b) (SB at p 73).

Claim. I note, however, that the last row of a table in the same paragraph which shows the calculations to arrive at that estimate stated a different number. The workings show instead that the “[e]stimated total number of FDWs placed by Recruitbee” was 496.997293, based on the number of average placements per day.³⁰² It is the plaintiffs’ claim that since “all of Recruitbee [Employment’s] and Recruitbee Helpers’s business has been built on business diverted and/or solicited from the Plaintiffs” and Mr Cheong was permitted only to conduct business on Swift Maids Pte Ltd’s behalf, all of Recruitbee’s business ought to have been conducted by Swift Maids.³⁰³ Multiplying the estimated number of FDWs they say were placed by Recruitbee with the “typical profit” earned for each FDW, which according to the plaintiffs was \$1,400 for each FDW prior to the closure of Singapore’s borders on 23 March 2020 due to the Covid-19 pandemic and \$1,600 per FDW after that,³⁰⁴ the plaintiffs arrived at the figure of \$744,359.31. The plaintiffs later acknowledged in submissions that they are entitled only to the defendants’ wrongful gain from the taking and misuse of the Confidential Information but did not submit on any revised estimate of the defendants’ wrongful gain.³⁰⁵

154 In their reply submissions, the plaintiffs disagreed with the defendants that the plaintiffs had not provided sufficient evidence relating to the loss suffered by them. In this regard, the plaintiffs rely on the case of *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 1256 (“*JTrust Asia*”) at [209], and argue that for the purposes of establishing loss in an

³⁰² SOC at para 25 (SB at pp 56–57).

³⁰³ SOC at para 39(b)(iii) (SB at pp 73–74).

³⁰⁴ SOC at para 39(b)(i) (SB at p 73).

³⁰⁵ PRS at para 71.

unlawful means conspiracy claim, the mere *risk* of loss suffices.³⁰⁶ They further argue that they have provided evidence to show the risk of loss to the plaintiffs' business,³⁰⁷ and therefore their claim for unlawful means conspiracy is made out. The plaintiffs submit, in any event, that they have provided evidence of *actual* loss suffered, that being the closure of their Yishun branch.³⁰⁸

(2) Mr Cheong's defence

155 Mr Cheong submits that the plaintiffs have failed to provide evidence to support their conspiracy claim.³⁰⁹ He highlights that Mr Loh admitted during cross-examination that the plaintiffs did not have any evidence to support their claim in unlawful means conspiracy.³¹⁰ In particular, with respect to the plaintiffs' allegation that the defendants diverted and/or solicited business from the plaintiffs to Recruitbee Employment, Mr Loh admitted that he merely assumed that Recruitbee Employment achieved its high sales volume by diverting sales from Swift Maids, that not all of Recruitbee Employment's sales were in fact obtained by diverting sales from Swift Maids, and that he was merely speculating without proof that Mr Cheong solicited customers from Swift Maids to Recruitbee Employment.³¹¹ Mr Cheong further submits that the plaintiffs had failed to provide sufficient evidence to show that Mr Cheong conspired with Ms Toh and Ms Aung to disguise Recruitbee Employment as Swift Maids Pte Ltd or to mislead customers and FDWs into believing that

³⁰⁶ PRS at para 65.

³⁰⁷ PRS at para 67.

³⁰⁸ PRS at para 66.

³⁰⁹ 1DCS at p 33, paras 22–23.

³¹⁰ 1DCS at p 32, para 20; NEs dated 23 February 2023 at p 92, lines 26–31.

³¹¹ 1DCS at p 29, paras 6–10; NEs dated 22 February 2023 at p 93, lines 19–21 and p 96, lines 7–25.

Recruitbee Employment was an extension of Swift Maids, and to deal with Recruitbee Employment on that basis.³¹² In addition, Mr Cheong points to Mr Loh's admission that he did not have any evidence to support his claim that Ms Peh, Ms Teo and Ms Lim poached FDWs from Swift Maids to benefit Recruitbee Employment.³¹³ Moreover, Mr Loh admitted that he did not have any evidence to show that the plaintiffs suffered a loss as a result of the alleged conspiracy.³¹⁴

156 Mr Cheong submits, in addition, that the plaintiffs have not provided concrete evidence to show that he had misused or otherwise disclosed, divulged or permitted delivery of any of the Confidential Information to unauthorised parties.³¹⁵ There is no evidence to show that such information was given to Ms Toh or Ms Aung.³¹⁶ Mr Cheong also submits that Recruitbee Employment's sales volume was achieved through diligent effort put in by the team at Recruitbee Employment.³¹⁷

(3) Ms Toh's defence

157 Ms Toh points out that Mr Loh himself admitted during cross-examination that he did not have any evidence that Mr Cheong had re-directed customers, suppliers and FDWs from Swift Maids to Recruitbee Employment.³¹⁸

³¹² 1DCS at p 30 para 13; NEs dated 22 February 2023 at p 98, lines 5–19.

³¹³ 1DCS at p 31, para 15; NEs dated 22 February 2023 at p 99, lines 5–15.

³¹⁴ 1DCS at p 32, para 21; NEs dated 24 February 2023 at p 38, line 30 to p 39, line 12 and p 39, lines 28–32.

³¹⁵ 1DCS at p 7, para 1 to p 10, para 15.

³¹⁶ 1DCS at p 16, para 22, p 26, paras 11–13 and p 29, para 6 to p 30, para 13.

³¹⁷ 1DCS at p 32, para 19.

³¹⁸ 3rd Defendant's Closing Written Submissions dated 17 May 2023 ("3DCS") at p 25, para 7(iv); NEs dated 22 February 2023 at p 104, line 31 to p 105, line 6.

Instead, the evidence given by their own witness, Ms Nadia, is that Recruitbee Employment had obtained business through other means.³¹⁹ Recruitbee's success was therefore not due to any wrongful solicitation of Swift Maids' customers, suppliers and FDWs.³²⁰

158 Ms Toh argues that the plaintiffs did not have evidence to support their claim that 497 FDWs had been diverted and solicited from Swift Maids to Recruitbee Employment.³²¹ With regards to Ms Feonale, the defendants have no records of placing her.³²² Ms Toh also highlights that Mr Loh had conceded when cross-examined that he was merely speculating that Ms Peh, Ms Teo and Ms Lim had poached FDWs from Swift Maids to benefit Recruitbee Employment.³²³ As for suppliers, Ms Toh argues that suppliers were free to supply FDW biodata to any agency, and that the plaintiffs did not adduce any evidence to show that Mr Cheong had used the Confidential Information to re-direct any of Swift Maids' suppliers to Recruitbee Employment.³²⁴ In relation to the plaintiffs' allegations that the defendants had solicited employees from Swift Maids, Ms Toh submits that she had contacted Ms Peh to offer her a job. That was after Ms Toh found out that Ms Peh was looking for a new job and had gone to Nations Maid Agency for an employment interview.³²⁵ As for Ms Teo and Ms Lim, they had contacted Ms Toh directly for job opportunities.³²⁶

³¹⁹ 3DCS at p 25, paras 7(i)–7(iii); NEs dated 28 February 2023 at p 16, line 18 to p 17 line 13, p 21 line 31 to p 22 line 16 and p 44 line 29 to p 45, line 26.

³²⁰ 3DCS at p 25, paras 7(i)–7(iv).

³²¹ 3DCS at p 27, para 7(vii); NEs dated 23 February 2023 at p 21, lines 13–20.

³²² 3DCS at p 28, paras 7(x)–7(xi).

³²³ 3DCS at p 26, para 7(v).

³²⁴ 3DCS at p 23, paras 6(ix)–6(xi) and p 24, para 6(xiii).

³²⁵ 3DCS at p 22, para 6(v).

³²⁶ 3DCS at p 22, para 6(v).

159 Finally, Ms Toh submits that the plaintiffs have failed to prove that they suffered loss. Mr Loh conceded during cross-examination that he did not adduce any evidence that Mr Cheong had caused damage or loss to Swift Maids' business.³²⁷ Further, although the plaintiffs have pleaded that the defendants have wrongfully gained approximately \$744,359.31, Mr Loh admitted during cross-examination that he did not have any concrete evidence to support this figure.³²⁸ In fact, Mr Loh had provided an inflated figure for the estimated profit for the placement of each FDW (*ie*, \$1,400 or \$1,600), as he failed to take into account overhead costs.³²⁹

(4) Ms Aung's defence

160 In response to the plaintiffs' claim that the defendants travelled to Myanmar on multiple occasions with the intent of setting up and later expanding Recruitbee Employment, Ms Aung submits that the three trips to Myanmar with the other defendants cannot form the basis of the plaintiffs' claim in unlawful means conspiracy.³³⁰

161 Ms Aung denies that the Confidential Information was ever misused for Recruitbee's purposes. First, Ms Aung submits that the plaintiffs have not managed to prove that Mr Cheong had stolen any of the Confidential Information from the plaintiffs.³³¹ She asserts that Mr Cheong did not have any

³²⁷ 3DCS at p 27, para 7(viii); NEs dated 22 February 2023 at p 69, lines 2–4.

³²⁸ 3DCS at p 26, para 7(vi); NEs dated 23 February 2023 at p 19, lines 27–29.

³²⁹ 3DCS at pp 30–31, paras 7(xviii)–7(xix).

³³⁰ 4th Defendant's Closing Written Submissions dated 17 May 2023 ("4DCS") at para 37.

³³¹ 4DCS at paras 110–118.

contact details of Swift Maids' customers.³³² Furthermore, even if Mr Cheong had the Confidential Information, the information would not have been useful for Recruitbee Employment for the same reasons stated by Ms Toh (see [104] above).³³³

162 In relation to the alleged diversion of business whereby the establishment of Recruitbee Employment misled customers, suppliers and FDWs into believing that it was an extension and/or alternative branch under Swift Maids, Ms Aung submits that the plaintiffs have failed to provide any specific details about these customers, suppliers and FDWs who were allegedly misled.³³⁴ Although the plaintiffs rely on purported conversations between Mr Ismadi and various FDWs, as well as suppliers, in support of this allegation, Mr Ismadi was unable to identify them.³³⁵ In any event, Ms Aung argues that there is a clear distinction between Recruitbee Employment and Swift Maids – the former tapped on online marketing to differentiate their services, in order to establish their unique place in the industry.³³⁶ There should thus not be any confusion amongst the customers, suppliers and FDWs as to the relationship between Recruitbee Employment and Swift Maids.³³⁷

163 Ms Aung argues that the plaintiffs have failed to prove that Mr Cheong had redirected Swift Maids' employees to Recruitbee Employment. In fact, Mr Loh conceded during cross-examination that there was no evidence to support

³³² 4DCS at para 124.

³³³ 4DCS at para 125.

³³⁴ 4DCS at para 71.

³³⁵ 4DCS at para 74; NEs dated 3 March 2023 at p 22, lines 26 to p 23, line 1.

³³⁶ 4DCS at para 78; NEs dated 24 March 2023 at p 152, lines 4–24.

³³⁷ 4DCS at para 78.

this allegation,³³⁸ while Mr Hu also admitted that he had no evidence to show that Mr Cheong was involved in the employment of Ms Lim.³³⁹ Ms Aung submits that those employees joined Recruitbee Employment because she had maintained contact with them even after she left Swift Maids.³⁴⁰

164 Regarding the suppliers, Ms Suliyani and Ms Shima, Ms Aung contends that she had passed their contact information to her employee, Ms Chua,³⁴¹ and that Recruitbee Employment's relationship with those suppliers was forged by Ms Chua.³⁴²

165 Finally, and more broadly, Ms Aung downplays the role of Mr Cheong in the setting up and operation of Recruitbee Employment.³⁴³ Ms Aung argues that she ran Recruitbee Employment together with Ms Toh, while Mr Cheong was merely a partner on paper.³⁴⁴ She submits that she had gained extensive experience in running various aspects of an FDW employment agency while under Swift Maids' employ, and that placed her in good stead to run Recruitbee Employment as its *de facto* director.³⁴⁵

³³⁸ 4DCS at para 82; NEs dated 23 February 2023 at p 78, lines 6–10.

³³⁹ 4DCS at para 83; NEs dated 28 February 2023 at p 56, line 30 to p 57, line 12.

³⁴⁰ 4DCS at para 81.

³⁴¹ 4DCS at para 89; NEs dated 24 March 2023 at p 9, lines 2–20.

³⁴² 4DCS at paras 88–89.

³⁴³ 4DCS at paras 36–67.

³⁴⁴ 4DCS at para 11.

³⁴⁵ 4DCS at paras 21–29.

Applicable Law

166 The elements of the tort of unlawful means conspiracy were authoritatively laid down by the Court of Appeal in *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 (“*EFT Holdings*”) at [112], as follows:

112 ... To succeed in a claim for conspiracy by unlawful means of conspiracy, the appellants must show that:

- (a) there was a combination of two or more persons to do certain acts;
- (b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;
- (c) the acts were unlawful;
- (d) the acts were performed in furtherance of the agreement; and
- (e) the plaintiff suffered loss as a result of the conspiracy (*Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR(R) 80 at [23]; *Tjong Very Sumito v Chan Sing En* [2012] SGHC 125 at [186]).

...

167 The Court of Appeal in that case considered the limits of the tort of conspiracy by unlawful means and held at [96] that it is “*the combination, accompanied by the intention to injure by unlawful means that makes such conduct unlawful*” [emphasis in original]. In addition, referring to Fox LJ’s decision in *Lonrho Ltd v Shell Petroleum Co Ltd*, The Times 7 March 1981 Transcript No 51 of 1981, the Court of Appeal noted that “a focus on the combination to commit a wrong would be erroneous without also looking at the injury being the *purpose* rather than the *consequence* of the combination” [emphasis in original]. At [101], the Court of Appeal further held that:

101 A claimant in an action for unlawful means conspiracy would have to show that the unlawful means and the conspiracy were targeted or directed at the claimant. It is not sufficient that harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant's conduct. Injury to the claimant must have been intended as a means to an end or as an end in itself ...

Lesser states of mind, such as an appreciation that a course of conduct would inevitably harm the claimant, would not amount to an intention to injure, although it may be a factor supporting an inference of intention on the factual circumstances of the case ... It is simply insufficient in seeking to meet the element of *intention* to show merely that there was knowledge to found an awareness of the likelihood of particular consequences.

[emphasis in original]

168 As a helpful illustration, the Court of Appeal at [92]–[93] gave the example of competing pizza delivery companies. The Court of Appeal opined that a distinction needed to be drawn between two scenarios. In scenario (a), two pizza delivery companies agree to purposefully violate parking regulations and instruct their drivers to park their vehicles across the car park entrance of a third competitor in order to injure the third competitor's business. In scenario (b), a pizza delivery company instructs its drivers to drive at excessive speeds in order to reduce delivery times to obtain more customers, to the detriment of its competitors. The Court of Appeal opined that scenario (a) would likely amount to an unlawful means conspiracy, while scenario (b) would not. The Court of Appeal held that the focus should be on the *intention* pursuant to which the unlawful act was done – in this regard, the Court of Appeal agreed (at [93]) with Lord Nicholls' observations in *OBG Ltd v Allan* [2008] 1 AC 1 at [160] that “the pizza delivery companies’ criminal conduct in the latter case is ‘not an offence committed against the rival company in any realistic sense of that expression’”.

169 Commentators have further explained this example of the pizza delivery companies as illustrating a controlling factor in moderating the scope of the unlawful means conspiracy tort. In Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016), the learned authors stated at page 695 at para 15.074:

In other words, what seems critical is that the illegality must ultimately be shown to be the effective *means* by which the plaintiff was injured. Absent this critical causal link, there is no basis for imposing liability. Accepting a broad notion of “unlawful means” need not, therefore, inevitably cause the floodgates to be flung wide open, for it is important to bear in mind that relevant control mechanisms may be found *apart* from the concept of actionability.

[footnotes omitted; emphasis in original]

170 In a nutshell, it is insufficient for the defendants to have come together to carry out unlawful acts; the unlawful means and the conspiracy must have been targeted or directed at the plaintiffs and the illegality must ultimately be shown to be the effective *means* by which the plaintiff was injured. In *Sumifru Singapore Pte Ltd v Felix Santos Ishizuka and others* [2022] SGHC 14 (“*Sumifru*”), a suit was brought by the plaintiff fruit company against Felix, its former employee holding the title of “shipping director”, and two companies owned and controlled by Felix (see *Sumifru* at [1] and [3]–[4]). One of the incidents complained of by the plaintiff company was a series of unauthorised time charters. Felix had procured one of the defendant companies to enter into contracts with various shipowners to time charter vessels, and the defendant company thereafter chartered out space on board these ships to the plaintiff company, profiting from the difference between the time charter costs and the costs charged to the plaintiff company (*Sumifru* at [10]). Moreover, some of the time charters were secured with Felix having falsely represented to the shipowners that the plaintiff company was guaranteeing the performance of the

contracts, or that the plaintiff company was the charterer (*Sumifru* at [11]). The court found that these unauthorised time charters constituted a breach of Felix's fiduciary duties owed to the plaintiff company, and that the defendant companies had dishonestly assisted Felix's breaches (see *Sumifru* at [56] and [67]). However, the court held at [72]–[73] that these findings could not ground a successful claim in unlawful means conspiracy. This was because, on the facts, the plaintiff company could not show that Felix and the defendant companies “had combined with the intention of causing damage or injury to the [plaintiff company]”.

171 There is a final point to make before turning to the facts. The plaintiffs' submission, based on [209] of *JTrust Asia*, that “the mere risk of loss suffices, in establishing a claim for unlawful conspiracy”³⁴⁶, is misguided. The Court of Appeal in *JTrust Asia* was not considering at [209] the element of loss in an unlawful means conspiracy claim. Instead, as is clearly evident in the header to that section of the judgment (above [205] in *JTrust Asia*), the Court of Appeal was considering the alleged conspirators' intention to cause damage or injury to the plaintiff in that case. At [209], the Court of Appeal had considered and *rejected* the argument that “since a fraudster did not expect to be discovered, he did not *intend to cause loss* to his victims” [emphasis added]. The Court of Appeal found that the appellant company was exposed to risks which in fact materialised and caused losses to the appellant company, and in particular, stated that the injury caused to the appellant company “would have been intended as a means to an end for [the respondents'] benefit” (at [209]). This is an entirely different proposition from that which the plaintiffs contend. The Court of Appeal in *EFT Holdings* at [112(e)] was crystal clear that a plaintiff

³⁴⁶ PRS at para 65.

in an unlawful means conspiracy claim must show that “the plaintiff suffered loss as a result of the conspiracy”.

172 I turn now to examine the facts.

Analysis and findings

(1) Scope of the alleged conspiracy

173 I first consider the plaintiffs’ pleadings to identify the scope of the conspiracy as pleaded, including the relevant acts and mental states involved. The plaintiffs allege that the defendants had, with the intention to cause damage or injury to the plaintiffs, conspired to set up Recruitbee to divert and/or solicit business and employees away from the plaintiffs, through the breaches of Mr Cheong’s duties to Swift Maids and the unauthorised use of the Confidential Information. The clearest statement on this issue is found at paragraph 31 of the Statement of Claim, which states the following:

31. Prior to the incorporation of Recruitbee, [Mr] Cheong, [Ms] Toh, and [Ms Aung] had conspired, agreeing to set up Recruitbee as a vehicle to divert and/or solicit business and employee(s) away from the Plaintiffs with the intention of injuring the Plaintiffs’ business, in order to enrich themselves at the Plaintiffs’ expense. Given that it was widely known amongst the Plaintiffs’ employees and the Plaintiffs’ suppliers that [Mr] Cheong had full authority and unfettered access to the Plaintiffs’ confidential information, [Ms Toh] and [Ms Aung] were both well aware of the same. The Defendants nonetheless conspired and agreed to operate Recruitbee, in a manner which directly injured the Plaintiffs’ business, through the unlawful breaches of [Mr] Cheong’s duties owed to the Plaintiffs and the use of the Plaintiffs’ confidential information.

(2) Combination, accompanied by the intention to injure by unlawful means

174 Having examined the circumstances and the acts of the alleged conspirators, I find that, as amongst the defendants, there was no “combination,

accompanied by the intention to injure by unlawful means” (*EFT Holdings* at [96]). The tort of unlawful means conspiracy is not committed if the defendants had simply combined and acted together to set up Recruitbee in direct competition with Swift Maids, while Mr Cheong was still under the employ of Swift Maids. This is so even though the competition would likely be detrimental to Swift Maids. As the Court of Appeal in *EFT Holdings* held at [101], it is insufficient that “harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant’s conduct”, or that “there was knowledge to found an awareness of the likelihood of particular consequences”.

175 In this case, the evidence shows only that Recruitbee entered the employment agency industry as a competitor to the existing businesses in that industry, including as a competitor to Swift Maids, and was not set up for the purpose of re-directing Swift Maids’ business and employees to Recruitbee through unlawful means. I have already found at [96] above that there is insufficient evidence to prove that Mr Cheong had abused his access to the Confidential Information, or disclosed, divulged or communicated any of the Confidential Information to the rest of the defendants, or that Mr Cheong or the other defendants had used the Confidential Information for Recruitbee’s purposes. I have also found above at [96] that the plaintiffs have not proven that Mr Cheong, either working alone or with the other defendants, had unlawfully diverted and/or solicited business away from Swift Maids to Recruitbee through the use of the Confidential Information. The situation would have been different, however, if the defendants had acted together to target the plaintiffs’ interest through making unauthorised use of the plaintiffs’ Confidential Information to divert and/or solicit Swift Maids’ business and employees away from Swift Maids. But there is no evidence of this. The analysis here ties in with the test of “instrumentality” discussed by the Court of Appeal in *EFT Holdings*

at [93]. It is insufficient, for the purposes of making out the tort, for the defendants to have been complicit in the carrying out of unlawful acts. The unlawful acts have to be ones that are committed *against* the rival company. This is sufficient to dispose of the plaintiffs' claim in unlawful means conspiracy, but I will address the arguments raised by the plaintiffs for completeness.

(3) The plaintiffs' allegations of the defendants' actions in furtherance of the alleged unlawful means conspiracy

176 In so far as the three trips that Mr Cheong made to Myanmar are concerned, I find that the first two trips were made for the purposes of Swift Maids' business. There is evidence that both trips were taken under the instructions of Mr Loh.³⁴⁷ The first trip was taken shortly after Mr Cheong joined Swift Maids, and merely some three months after he was acquainted with Ms Aung. As for the second trip, Mr Loh admitted during cross-examination that he had instructed Mr Cheong to go to Myanmar with Ms May for the purposes of Swift Maids' business development.³⁴⁸ In relation to the third trip, I have already found at [38] above that it showed that Mr Cheong was involved in the business of Recruitbee Employment in breach of his employment contract. However, there is nothing to suggest that the third trip and the meeting of Mr Cheong, Ms Toh, Ms Aung and Mr Augustine during that trip were targeted or directed at causing injury to Swift Maids.

177 At this juncture, I touch on the testimony provided by Mr Ismadi. Mr Ismadi's evidence suggests that a conspiracy to divert business away from Swift

³⁴⁷ NEs dated 22 February 2023 at p 51, lines 6–19, p 52, lines 4–8, p 53, lines 9–12, p 54, lines 26–32 and p 60 lines 9–22.

³⁴⁸ NEs dated 22 February 2023 at p 60, lines 9–22.

Maids was afoot as early as 2019, with attempts by Mr Cheong to undermine the relationship between Swift Maids and its suppliers, FDWs and employees.

178 Mr Ismadi gave evidence of a host of suspicious circumstances:

(a) Ms Suliyani had informed him sometime in 2019 that “she was working with [Mr Cheong]”.³⁴⁹

(b) 10 to 20 FDWs had told him that Ms Suliyani had told them not to speak to him.³⁵⁰ However, he could only name one of them – one “Dewi”. This “Dewi” was not a witness at trial, and there is no other information about the said “Dewi”.

(c) An FDW named “Yuli” had contacted him to ask him if he was still working for Swift Maids. Yuli allegedly told him that she was at another office with Ms Peh, Ms Teo and Ms Lim.³⁵¹ There is, again, no other information about “Yuli”.

(d) A supplier, also by the name of “Yuli”, told him that FDWs had told this second “Yuli” that Mr Ismadi had resigned from Swift Maids and that the FDWs should look for Mr Cheong, Ms Lim or Ms Teo instead if they needed help.³⁵² Again, there is no information about this second “Yuli”.

³⁴⁹ NEs dated 3 March 2023 at p 13, lines 21–23 and p 33, lines 10–18.

³⁵⁰ NEs dated 3 March 2023 at p 19, line 22 to p 20, line 12.

³⁵¹ NEs dated 3 March 2023 at p 16, lines 19–32.

³⁵² Mr Ismadi’s AEIC at para 21 (BAEIC at p 265); NEs dated 3 March 2023 at p 11, line 28 to p 12, line 10.

179 The out-of-court statements made to Mr Ismadi are all hearsay and cannot be relied on. Putting that aside, Mr Ismadi’s testimony is ambiguous as to what Ms Suliyani meant when she said that she was “working with Mr Cheong”. As Mr Cheong was still Swift Maids’ general manager in 2019, for Ms Suliyani to say that she was “working with Mr Cheong” does not lead to any necessary inference that she was working with Mr Cheong for Recruitbee’s business.

180 Next, I note that Mr Ismadi had reported these suspicious conversations to Mr Lit.³⁵³ Yet, the plaintiffs could not identify who the FDWs involved in these suspicious conversations were, save for one “Dewi”, whose particulars are unknown.³⁵⁴ It is baffling that the plaintiffs could not, once again, provide specific details of the FDWs when there were 10 to 20 of them, and of the supplier, the second “Yuli”, who allegedly spoke with Mr Ismadi. This is much like the situation involving the FDWs whom they allege were solicited by Mr Cheong and the other defendants through the unauthorised use of the Confidential Information.

181 For these reasons, I find that Mr Ismadi’s evidence does not assist the plaintiffs in showing that there had been diversion and/or solicitation of business and suppliers away from Swift Maids to Recruitbee.

(4) Diversion and/or solicitation of employees

182 I deal next with the issue of the diversion and/or solicitation of employees away from Swift Maids to Recruitbee. The plaintiffs’ case hinges mainly on the timing of the departure of Ms Peh, Ms Teo and Ms Lim from

³⁵³ NEs dated 3 March 2023 at p 20, line 25 to p 23, line 20.

³⁵⁴ NEs dated 1 March 2023 at p 71, lines 22–32.

Swift Maids.³⁵⁵ The plaintiffs argue that it was an “engineered move” for these employees to resign and leave for Recruitbee Employment only after Mr Cheong had resigned to avoid creating any suspicions,³⁵⁶ and that it was too much of a coincidence for them to leave Swift Maids to join Recruitbee Employment at around the same time, in the midst of the Covid-19 pandemic, when Ms Toh who was helming Recruitbee Employment had limited industry experience and Ms Aung was absent from Singapore.³⁵⁷ The plaintiffs also argue that Mr Cheong had allegedly “tested the waters” in a conversation with Mr Ismadi to determine if he might be willing to join Recruitbee Employment, and this “testing of the waters” must necessarily have been done with Ms Peh, Ms Teo and Ms Lim as well.³⁵⁸

183 Mr Cheong gave evidence that he enjoyed a good relationship with Swift Maids’ employees, and that they still kept in touch after Mr Cheong’s resignation in March 2020.³⁵⁹ His evidence is that around May 2020, Ms Peh contacted him and indicated that she wanted to resign from Swift Maids and that she had interviewed at other employment agencies.³⁶⁰ Mr Cheong therefore recommended that Ms Peh contact Ms Toh and Ms Aung to explore working with them.³⁶¹ On Mr Cheong’s account, around July 2020, Ms Teo and Ms Lim contacted him and told him about an incident where Mr Loh had used vulgarities

³⁵⁵ Mr Loh’s AEIC at paras 73–75 (BAEIC at p 834); PCS at para 22.

³⁵⁶ PCS at para 22(c).

³⁵⁷ PCS at para 22(d).

³⁵⁸ PCS at para 22.

³⁵⁹ Mr Cheong’s AEIC at para 55 (BAEIC at p 1491).

³⁶⁰ Mr Cheong’s AEIC at para 56 (BAEIC at p 1491).

³⁶¹ Mr Cheong’s AEIC at para 57 (BAEIC at p 1492).

during an argument, and expressed their desire to leave Swift Maids.³⁶² Mr Cheong then provided their contact numbers to Ms Toh and told Ms Toh about Ms Teo's and Ms Lim's intention to resign from Swift Maids.³⁶³

184 Ms Toh's account is similar.³⁶⁴ She testified that she had always had Ms Peh's contact number in her records as she was engaged by Swift Maids to make name cards for Ms Peh. Also, Ms Toh had often visited the branch where Ms Peh was based to work on the signages.³⁶⁵ Ms Toh's evidence is that even though she had the means to recruit Ms Peh long before July 2020, she did not do so.³⁶⁶ Instead, she had employed Ms Chua,³⁶⁷ and contacted Ms Peh only after she found out that Ms Peh was looking for a job.³⁶⁸ Ms Toh's account is that she reached out to Ms Peh after she heard sometime in May 2020 that Ms Peh had an intention to change her working environment because there were multiple occasions when she got into heated arguments with Mr Loh.³⁶⁹ As for Ms Teo and Ms Lim, Ms Toh's evidence is that they had informed her that they sought a salary increment from Mr Loh, which was rejected. Also, Mr Loh had heated arguments with them and used vulgarities.³⁷⁰ Moreover, Ms Teo had family issues and needed adjustments to her working hours – Recruitbee Employment

³⁶² Mr Cheong's AEIC at para 58 (BAEIC at p 1492).

³⁶³ Mr Cheong's AEIC at para 59 (BAEIC at p 1492).

³⁶⁴ Ms Toh's AEIC at paras 31–34 (BAEIC at pp 1558–1559).

³⁶⁵ NEs dated 10 March 2023 at p 46, line 18 to p 47, line 4.

³⁶⁶ NEs dated 10 March 2023 at p 46, line 29 to p 47, line 4.

³⁶⁷ NEs dated 10 March 2023 at p 47, lines 1–4.

³⁶⁸ NEs dated 10 March 2023 at p 46, lines 18–21.

³⁶⁹ Ms Toh's AEIC at para 31 (BAEIC at p 1558).

³⁷⁰ NEs dated 10 March 2023 at p 47, lines 16–25.

was able to offer Ms Teo flexible hours while Swift Maids did not do that, which resulted in Ms Teo joining Recruitbee Employment.³⁷¹

185 I find that the plaintiffs have not provided sufficient evidence to prove that Mr Cheong had solicited Ms Peh, Ms Lim and Ms Teo, and caused them to resign from Swift Maids to join Recruitbee Employment.³⁷² While the precise dates given by the parties differ slightly, parties are generally in agreement that Ms Peh, Ms Teo and Ms Lim only left Swift Maids between June and August 2020.³⁷³ This was after Mr Cheong's last day as general manager on 6 March 2020.³⁷⁴ This was also quite some time after the first branch of Recruitbee Employment was opened in Kovan on 15 July 2019.³⁷⁵ Although the plaintiffs' case is that the timing was engineered to avoid any suspicions,³⁷⁶ this is at best speculative in the absence of other evidence.

186 I find that various aspects of the defendants' testimony that throw light on the circumstances surrounding the resignation of Ms Peh, Ms Lim and Ms Teo are supported to a certain extent by the evidence given by the plaintiffs' witnesses. In relation to Ms Peh, the evidence suggests that she was already looking for a new job a few months before she left Swift Maids. Based on Mr Loh's testimony, Ms Peh had formed the intention to leave Swift Maids in early 2020.³⁷⁷ Ms Toh's evidence is that she found out some time in May 2020 that

³⁷¹ NEs dated 10 March 2023 at p 47, line 27 to p 48, line 21.

³⁷² SOC at para 27(b) (SB at p 58).

³⁷³ Mr Loh's AEIC at para 73 (BAEIC at p 834); Mr Cheong's AEIC at paras 57–59 (BAEIC at p 1492); Ms Toh's AEIC at paras 33–34 (BAEIC at p 1559).

³⁷⁴ Mr Cheong's AEIC at p 34 (BAEIC at p 1528).

³⁷⁵ Ms Toh's AEIC at para 21 (BAEIC at p 1556).

³⁷⁶ PCS at para 22(c).

³⁷⁷ NEs dated 22 February 2023 at p 83, lines 1–2.

Ms Peh was unhappy at Swift Maids and had gone to Nations Maid Agency for an employment interview before she reached out to offer Ms Peh a position at Recruitbee Employment.³⁷⁸ As for Ms Teo, Ms Toh's testimony about how she was able to attract Ms Teo with flexible working hours³⁷⁹ is credible, given Mr Hu's evidence that Ms Teo had spoken to him about her intention to leave Swift Maids because she needed to spend more time with her daughter.³⁸⁰ It is also Mr Hu's evidence that he did not persuade Ms Teo to stay with Swift Maids.³⁸¹ As Swift Maids had long daily operating hours, he understood Ms Teo's decision to leave as he strongly believed in the importance of family commitments.³⁸² Ms Toh's evidence is also that Ms Lim and Ms Teo were aware that Ms Peh had joined Recruitbee Employment, and that Ms Aung was Ms Toh's business partner.³⁸³ The fact that Ms Peh was working at Recruitbee Employment would likely make Recruitbee Employment a more attractive option to Ms Lim and Ms Teo since they had all worked together before. Related to this, the fact that Ms Peh, Ms Lim and Ms Teo knew Ms Aung, and to a certain extent, Ms Toh, would also likely add to that attraction. In making these findings, I give no weight to the evidence of Mr Cheong and Ms Toh concerning the conversations that they said they had with Ms Peh, Ms Lim and Ms Teo about their employment at Swift Maids, including the arguments that they purportedly had with Mr Loh. What was allegedly said by Ms Peh, Ms Lim and Ms Teo to Mr

³⁷⁸ Ms Toh's AEIC at paras 31–33 (BAEIC at pp 1558–1559); NEs dated 10 March 2023 at p 46, lines 18–25.

³⁷⁹ NEs dated 10 March 2023 at p 48, lines 16–21.

³⁸⁰ Mr Hu's AEIC at para 13 (BAEIC at p 273).

³⁸¹ Mr Hu's AEIC at para 13 (BAEIC at p 273).

³⁸² Mr Hu's AEIC at para 13 (BAEIC at p 273).

³⁸³ Ms Toh's AEIC at para 34 (BAEIC at 1559).

Cheong and Ms Toh are assertions made by them out of court, and are inadmissible as proof of the contents of these assertions.

187 The plaintiffs also rely on an alleged conversation between Mr Cheong and Mr Ismadi as evidence of Mr Cheong’s attempt to re-direct Swift Maids’ employees to Recruitbee Employment while he was still under the employ of Swift Maids.³⁸⁴ In this regard, Mr Ismadi gave evidence that in February 2020, there was one occasion where Mr Cheong had asked Mr Ismadi “why [Mr Ismadi] was still working for the Plaintiffs” and said that Mr Ismadi was “wasting [his] time with the Plaintiffs and being paid a small salary while having to work very hard”.³⁸⁵ Mr Ismadi’s belief is that Mr Cheong was trying to “test the waters” to see if Mr Ismadi would be willing to leave Swift Maids and work for Recruitbee Employment instead.³⁸⁶ I am unable to conclude, from this single conversation between Mr Cheong and Mr Ismadi, that Mr Cheong was carrying out a plan to “test” Mr Ismadi with a view to eventually poach him. The content of this conversation appears to be commonplace gripes about workplace issues. It would be a stretch to infer from such gripes that Mr Cheong was trying to solicit Mr Ismadi to join Recruitbee Employment. I am all the more unable to conclude, from this single conversation between Mr Cheong and Mr Ismadi, that Mr Cheong had similarly “tested the waters” with Ms Peh, Ms Lim and Ms Teo,³⁸⁷ and eventually re-directed them to work for Recruitbee Employment.

188 On balance, I accept that Mr Cheong was contacted by Ms Peh in May 2020, and by Ms Teo and Ms Lim in July 2020, about job opportunities outside

³⁸⁴ PCS at para 22.

³⁸⁵ Mr Ismadi’s AEIC at para 18 (BAEIC at p 264).

³⁸⁶ Mr Ismadi’s AEIC at para 19 (BAEIC at p 264).

³⁸⁷ PCS at para 22.

the plaintiffs. By this time, Mr Cheong was no longer employed by Swift Maids. It is more likely than not that Mr Cheong had positive things to say about Recruitbee Employment or even encouraged them to join Recruitbee Employment. But that is not unlawful. There is no evidence here that Mr Cheong had solicited them to join Recruitbee during his employment with Swift Maids.

189 I note that when Ms Peh, Ms Teo and Ms Lim joined Recruitbee Employment, they may well have brought with them some of their professional relationships with customers, FDWs or suppliers. While this may be a boon to Recruitbee Employment, and a detriment to Swift Maids, the plaintiffs did not say how this is illegal. In fact, Mr Loh, under cross-examination, conceded that sales staff need not refer their old customers back to their former employer, should these customers contact the sales staff again after the sales staff have joined a new company.³⁸⁸ This is the correct position at law. This is why companies, should they wish to prohibit ex-employees from dealing with their customers, can opt to protect the “legitimate proprietary interest in the goodwill generated ... by reasonably worded restrictive covenants”: *Smile Inc* at [24]. Moreover, on the particular facts before me, I observe that Swift Maids had taken measures to diminish the ability of Ms Peh, Ms Lim and Ms Teo to bring their customers over to their new employer. It is Mr Loh’s evidence that after Ms Peh and Ms Lim left Swift Maids, the management of Swift Maids sent out text messages to Swift Maids’ customers informing them about the departures of Ms Peh and Ms Lim. Mr Loh, however, could not recall whether the same was done after Ms Teo’s departure.³⁸⁹ Ms May’s evidence is that she could

³⁸⁸ NEs dated 22 February 2023 at p 88, line 29 to p 89, line 4.

³⁸⁹ NEs dated 22 February 2023 at p 82, lines 24–32.

remember that similar text messages were also sent after Ms Teo's departure,³⁹⁰ although Ms May caveated her evidence by saying that the text messages informing of Ms Peh, Ms Lim and Ms Teo's departures were sent to customers whose contact details were stored in the office phones, and there may be other customers whose contact details were not on the contact lists.³⁹¹ I pause here to make a separate point that such messages to Swift Maids' customers would, to a significant extent, also address the plaintiffs' other concern that their customers might confuse Recruitbee Employment for an extension of Swift Maids due to the presence of Ms Peh, Ms Teo and Ms Lim at Recruitbee Employment's premises.

190 Based on the available evidence, it is my judgment that the plaintiffs have not proven their allegation that the defendants were in a conspiracy to unlawfully solicit Swift Maids' employees and/or divert them to Recruitbee.

(5) No evidence of loss

191 Finally, I note that the plaintiffs have not proven that they have suffered loss because of the alleged unlawful means conspiracy. This is also fatal to their conspiracy claim (*EFT Holdings* at [112(e)]).

192 First of all, the plaintiffs have not provided any evidence to show that their business was affected by the alleged conspiracy, despite their assertion that they "lost out on business which ought to have been transacted through the Plaintiffs but which went through Recruitbee Employment, and later Recruitbee Helpers instead".³⁹² There is no semblance of evidence suggesting that their

³⁹⁰ NEs dated 2 March 2023 at p 19, lines 5–7 and p 20, lines 12–15.

³⁹¹ NEs dated 2 March 2023 at p 19, lines 5–7.

³⁹² PCS at para 63.

sales volumes had decreased. In this regard, Mr Lit explained that Swift Maids had only started keeping records of changes in Swift Maids' placement numbers across time from mid-2022.³⁹³ There is, however, a curious lack of explanation for why such information was not or could not be generated from the Integra system or any other records. As far as the Integra system is concerned, it is after all a system that contained particulars of "every deal closed with employers, ... including the name and details of the employer, the name, and details of the FDW, the supplier of that FDW, and relevant costs e.g., commission fee for suppliers and the total profit made for that transaction".³⁹⁴ There is also no evidence to show that there was a disparity between Swift Maids' actual business volumes and their expected business boom during the Covid-19 period.

193 Second, the plaintiffs did not adduce evidence to show that Recruitbee's business volume was causally linked to Swift Maids' business volume. As I have found earlier at [85]–[89], the plaintiffs were unable to support their assertion that customers and FDWs had been re-directed from Swift Maids to Recruitbee. Mr Loh himself conceded that he had no evidence to show that the FDWs employed by Recruitbee should instead have been employed by Swift Maids.³⁹⁵ He had assumed Recruitbee Employment achieved its business volume by diverting business from Swift Maids and conceded that not all of Recruitbee Employment's business was obtained by diverting business from Swift Maids.³⁹⁶

³⁹³ NEs dated 1 March 2023 at p 83, line 21 to p 84, line 4.

³⁹⁴ Mr Loh's AEIC at para 10 (BAEIC at pp 817–818).

³⁹⁵ NEs dated 24 February 2023 at p 46, lines 24–27.

³⁹⁶ NEs dated 22 February 2023 at p 93, lines 19–21 and p 96, lines 7–25.

194 Third, and following from the previous point, although the plaintiffs pleaded that the defendants have wrongfully gained at Swift Maids' expense approximately \$744,359.31, the plaintiffs do not have any evidence to support this figure.³⁹⁷ There is no basis for me to accept the number of FDWs that the plaintiffs claim had been re-directed from Swift Maids to Recruitbee. Neither can I rely on the figures for the estimated profit per FDW (*ie*, \$1,400 or \$1,600), as Mr Loh admitted that he did not deduct overhead costs when deriving the estimated profit.³⁹⁸ Mr Loh conceded that he had no specific examples that he could raise of losses suffered by Swift Maids.³⁹⁹ The other witnesses of the plaintiffs did not assist in this regard either. The plaintiffs have therefore failed to show that they have suffered any loss because of the alleged conspiracy.

195 In relation to the plaintiffs' contention that the closure of the Yishun branch was concrete evidence of actual loss suffered by Swift Maids,⁴⁰⁰ I am of the view that a closure of the branch of a company cannot, without more, be sufficient proof of loss. This is because the notion of loss *presupposes* that the branch was profitable for Swift Maids before it was closed. This is something that cannot be assumed by the court. The plaintiffs, as the party advancing their claim, would still have to adduce proof of loss, such as a decline in their revenue due to the closure of the branch. This submission by the plaintiffs is also problematic at a deeper level. Firstly, there is insufficient evidence to attribute the departure of Ms Peh, Ms Lim and Ms Teo to any breach of Mr Cheong's duties or any combination of the defendants, for the court to hold the defendants liable for loss, if any, arising from the closure of the Yishun branch. Secondly,

³⁹⁷ NEs dated 23 February 2023 at p 19, lines 27–29.

³⁹⁸ NEs dated 23 February 2023 at p 16, line 24 to p 18, line 15.

³⁹⁹ NEs dated 24 February 2023 at p 47, lines 5–6.

⁴⁰⁰ PRS at para 66.

while I accept that the departure of Ms Peh, Ms Lim and Ms Teo was disruptive to the plaintiffs' operations, I have doubts that it was so debilitating that it caused the closure of the branch. Mr Loh admitted that "shortly after" the Yishun branch was shut down, Swift Maids opened another branch in Junction Nine (also in Yishun) as part of its "business strategy".⁴⁰¹ In the Statement of Claim, the plaintiffs stated that the Yishun branch "moved" to Junction Nine on 15 October 2020.⁴⁰² That was about three months after the departure of Ms Peh, Ms Lim and Ms Teo between June and July 2020 (see [16] above).

196 In summary, the plaintiffs' unlawful means conspiracy claim is not supported by evidence. The plaintiffs have provided no e-mails, text messages or other forms of communication showing that Mr Cheong or any of the defendants communicated with Swift Maids' customers, FDWs or suppliers, by way of notification, insinuation or otherwise, that Recruitbee was related to or associated with Swift Maids, thereby misleading them to deal with Recruitbee. There is also no evidence from witnesses that Swift Maids' name was used to get business for Recruitbee, or that they were misled or had misunderstood that Swift Maids and Recruitbee were sister companies or companies in the same group. Further, there are no e-mails, text messages or other forms of communication showing Mr Cheong or any of the defendants re-directing Swift Maids' customers, FDWs or suppliers to Recruitbee, nor evidence from witnesses that they were re-directed to Recruitbee or that they encountered attempts at such re-direction.

197 Having found that the plaintiffs have failed in proving that the defendants combined with the intention to injure the plaintiffs by diverting

⁴⁰¹ NEs dated 22 February 2023 at p 85, lines 22–28.

⁴⁰² SOC at para 4 (SB at p 49).

and/or soliciting business and employees away from Swift Maids through the breaches of Mr Cheong’s duties owed to Swift Maids and the unauthorised use of the Confidential Information, and in proving that Swift Maids had suffered loss as a result of the alleged conspiracy, I dismiss the plaintiffs’ claim in unlawful means conspiracy.

Dishonest assistance of breach of fiduciary duties

Parties’ cases

198 The plaintiffs argue that Recruitbee Employment, Ms Toh, Ms Aung and Recruitbee Helpers dishonestly assisted Mr Cheong’s breaches of his fiduciary duties owed to Swift Maids.⁴⁰³

199 The plaintiffs first assert that Mr Cheong owed fiduciary duties to Swift Maids as Mr Cheong exercised discretion or power over Swift Maids’ business and had the ability to unilaterally affect Swift Maids’ profits and assets, which, as a result, placed Swift Maids in a position of particular vulnerability.⁴⁰⁴ Further, Mr Cheong had voluntarily undertaken to act for Swift Maids and advance its interests by taking up the post of a general manager, knowing that he would be given “wide discretion and authority”.⁴⁰⁵ In this regard, the plaintiffs refer in their closing submissions to Mr Cheong’s agreement that “he was authorised to make operational decisions, represent and bind Plaintiffs [*sic*] in contractual dealings, and had full discretion in relation to decisions relating to profits”.⁴⁰⁶ The plaintiffs also claim that Mr Cheong was “ultimately the one

⁴⁰³ PCS at paras 65–68.

⁴⁰⁴ PCS at paras 35–41; PSS at para 16.

⁴⁰⁵ PCS at para 41; PSS at para 15.

⁴⁰⁶ PCS at para 39.

who would give finance the approval” for his own claims for payments, and that his ability to make decisions on payments was a particularly important aspect of his role as a general manager because Mr Loh was often overseas and not in the office to make such decisions.⁴⁰⁷ Consequently, Mr Cheong owed fiduciary duties to Swift Maids, which he had breached.⁴⁰⁸

200 The plaintiffs argue that the other defendants had lent assistance to Mr Cheong’s breaches of his fiduciary duties by coming together to incorporate and run Recruitbee.⁴⁰⁹ The plaintiffs argue that all the defendants were dishonest – Ms Toh and Ms Aung had worked together with Mr Cheong to incorporate and operate Recruitbee despite knowing that he was the general manager of Swift Maids, and their dishonesty can be attributed to Recruitbee.⁴¹⁰

201 Mr Cheong, in his closing submissions, made no submissions on the law on fiduciary duties and dishonest assistance.

202 Ms Toh argues that she was not aware of Mr Cheong’s duties in relation to his employment with Swift Maids, nor was she aware of the extent of the power or authority wielded by Mr Cheong.⁴¹¹ She argues, however, that the evidence shows that Mr Cheong did not enjoy extensive power and authority within Swift Maids, and was instead accountable to his bosses.⁴¹² Ms Toh

⁴⁰⁷ PCS at para 40.

⁴⁰⁸ PCS at para 56.

⁴⁰⁹ PCS at para 66.

⁴¹⁰ PCS at paras 67–68.

⁴¹¹ 3DCS at p 16, para 4(i).

⁴¹² 3DCS at p 19, paras 4(viii)–4(ix).

contends, in any case, that she did not assist Mr Cheong in any of his alleged breaches of fiduciary duties.⁴¹³

203 Ms Aung argues that she did not assist Mr Cheong in breaching any of his fiduciary duties owed to Swift Maids, nor was there a clear and direct link between the actions of Ms Aung and Mr Cheong’s alleged breaches of his fiduciary duties.⁴¹⁴

Applicable Law

(1) Elements of a claim in dishonest assistance

204 The elements of the wrong of dishonest assistance are well-established. In Christopher Hare and Vincent Ooi, *Singapore Trusts Law* (LexisNexis, 1st Ed, 2021) (“*Singapore Trusts Law*”) at para 17-10, the learned authors stated:

Equity will hold a third party liable for breach of trust if it dishonestly assists the trustee in the breach of trust or fiduciary duties. The elements for dishonest assistance are as follows: there must exist a trust or other fiduciary relationship; there must be a breach of that trust/fiduciary duties; the third party must render assistance that is causally related to the breach; and the assistance must be provided dishonestly ...

[footnote omitted]

205 The synthesis of the law on dishonest assistance in *Singapore Trusts Law* summarised the law as set out by the Court of Appeal in *George Raymond Zage III and another v Ho Chi Kwong and another* [2010] 2 SLR 589 (“*Zage*”) and later cases. In *Zage*, at [20], the Court of Appeal, citing *Bansal Hemant Govindprasad v Central Bank of India* [2003] 2 SLR(R) 33 and *Caltong (Australia) Pty Ltd v Tong Tien See Construction Pte Ltd* [2002] 2 SLR(R) 94,

⁴¹³ 3DCS at p 16, para 4(i).

⁴¹⁴ 4DCS at paras 155–156.

set out the elements of a claim in dishonest assistance as: “(a) the existence of a trust; (b) a breach of that trust; (c) assistance rendered by the third party towards the breach; and (d) a finding that the assistance rendered by the third party was dishonest”. In *Aljunied-Hougang Town Council and another v Lim Swee Lian Sylvia and others and another suit* [2019] SGHC 241, the learned Judge, in explaining the holding in *Zage*, held that the reference to “the existence of a trust” in *Zage* “was merely a shorthand used by the court for the existence of a fiduciary relationship” and that it “suffices for liability that there was a breach of fiduciary duty” (at [451]). When this case went up on appeal to the Court of Appeal in *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 1 SLR 707, the Court of Appeal held at [410] that the finding that no fiduciary duties are owed disposes of the claims of dishonest assistance and knowing receipt. I therefore turn to the law on when fiduciary duties arise.

(2) Fiduciary duties

206 The learned authors of *Singapore Trusts Law* divided fiduciaries into “status-based” and “fact-based” fiduciaries (*Singapore Trusts Law* at paras 15-12–15-13). Status-based fiduciaries owe fiduciary duties because of their status, such as that of a trustee, director or solicitor, and such status confers a strong but rebuttable presumption that fiduciary duties are owed. Fact-based fiduciaries are fiduciaries who owe fiduciary duties because the circumstances and relationship between the parties justify the imposition of such duties. Similarly, the learned contributors to *Halsbury’s Laws of Singapore* vol 9(3) and 9(4) (LexisNexis, 2021) (“*Halsbury’s Laws of Singapore*”) set out at paras 110.196–110.209 various relationships recognised in case law as fiduciary relationships, as well as relationships presumed not to be fiduciary relationships. The learned contributors to *Halsbury’s Laws of Singapore* also set out at para 110.190 factors that contribute to a finding of a fiduciary relationship despite

the absence of a recognised fiduciary relationship (such as a trustee-beneficiary relationship), while recognising that the “notion of a fiduciary relationship is very fluid” and that the “law has not developed a single touchstone by which to judge when and whether a fiduciary relationship is constituted but employs a number of criteria”.

207 This approach adopted by commentators reflects the Court of Appeal’s holding in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655. The Court of Appeal stated at [43] that:

43 While there are settled categories of fiduciary relationships – such as the relationship of a trustee-beneficiary, director-company, solicitor-client, between partners – it does not mean that all such relationships *are* invariably fiduciary relationships. In these relationships, there is a strong, but rebuttable, presumption that fiduciary duties are owed. Equally, the categories of fiduciary relationships are not closed or limited only to the settled categories. Fiduciary duties may be owed even if the relationship between the parties is not one of the settled categories, provided that the circumstances justify the imposition of such duties (see *Snell’s Equity* at paras 7-004–7-005). For instance, parties in a joint venture may or may not share a fiduciary relationship, depending on the circumstances of their relationship (see John Glower, *Commercial Equity – Fiduciary Relationships* (Butterworths, 1995) at paras 3.90–3.96 and *Snell’s Equity* at para 7-006). Therefore, contrary to the approaches adopted by the parties (in particular the Respondents), whether the parties are in a fiduciary relationship depends, ultimately, on the nature of their relationship and is not simply a question of whether their relationship can be shoe-horned into one of the settled categories (*eg*, a partnership) or into a non-settled category (*eg*, a joint venture or quasi-partnership).

[emphasis in original]

208 In other words, there are certain categories of relationships, such as director-company and solicitor-client, in which fiduciary duties would be strongly presumed to arise. However, even outside these categories of

relationships, fiduciary duties may be owed, if the circumstances justify the imposition of such duties.

209 The learned contributors to *Halsbury's Laws of Singapore*, at para 110.208, noted that an employer-employee relationship is not presumed to be fiduciary in nature. In this regard, the High Court in *Angliss* noted that fiduciary duties may nonetheless arise between an employee and his employer in certain circumstances. The learned Judge summarised the law at [29] as follows:

29 ... An employee may owe fiduciary duties to his employer when he is placed in a position where he must act solely in the interests of his employer to the exclusion of other interests, including his own: *Clearlab SG Pte Ltd v Ting Chong Chai and others* [2015] 1 SLR 163 (“*Clearlab*”) at [272]. In that case, at [275], the High Court endorsed, as “[a] rough and ready guide”, three factors first identified by Wilson J (dissenting) in *Frame v Smith* [1987] 2 SCR 99 (“*Frame v Smith*”) at [60], and cited by the Court of Appeal in *Susilawati v American Express Bank Ltd* [2009] 2 SLR(R) 737 (“*Susilawati*”) at [41]:

- (a) the fiduciary has scope for the exercise of some discretion or power;
- (b) the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary’s legal or practical interests;
- (c) the beneficiary is peculiarly vulnerable to, or at the mercy of, the fiduciary holding the discretion or power.

210 At [33]–[35], the court in *Angliss* elaborated on the concept of vulnerability as found in factor (c) above. The court took pains to emphasise that this concept of vulnerability is targeted not at *any* kind of vulnerability, but at a particular type of vulnerability which “arises from the inability of the beneficiary (despite his or her best efforts) to prevent the injurious exercise of the power or discretion combined with the grave inadequacy or absence of other legal or practical remedies to redress the wrongful exercise of the discretion or power” (*Angliss* at [33], citing *Frame v Smith* [1987] 2 SCR 99 at [63]).

Furthermore, a critical feature of fiduciary relationships is that “the fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense”, such that the relationship “gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person who is accordingly vulnerable to abuse by the fiduciary of his position” (*Angliss* at [35], citing *Susilawati v American Express Bank Ltd* [2009] 2 SLR(R) 737 at [41], which in turn cited *Hospital Products Ltd v United States Surgical Corp* (1984) 55 ALR 417 at 454).

Analysis and findings

211 I am unable to agree with the plaintiffs that Mr Cheong owed fiduciary duties to Swift Maids for the reasons that follow.

212 First, as a preliminary point, I note that Mr Cheong is the general manager of Swift Maids Pte Ltd. He is not a director. There is therefore no presumption that Mr Cheong was in a fiduciary relationship *vis-à-vis* Swift Maids Pte Ltd.

213 Second, Mr Cheong only had managerial responsibilities with regard to Swift Maids’ operations, and hence only the authority to make decisions in respect of those operations. This is clear from his employment contract at cl 8.2, which required Mr Cheong to “observe the rules and regulations of [Swift Maids Pte Ltd] and comply with the orders and instructions given by [his] superior or any other duly authorized persons”. This contractual position is borne out by the evidence, where it is obvious that Mr Cheong’s authority to make decisions was limited to transactions with employers, FDWs and suppliers dealing with Swift

Maids, on matters such as fees payable to or payable by Swift Maids.⁴¹⁵ Mr Cheong was, for all intents and purposes, accountable to the directors of Swift Maids. In this regard, it is not disputed that the directors were not involved in making daily operational decisions, and that Mr Cheong would provide a report on Swift Maids' business to the directors when he met them.⁴¹⁶ I note that Mr Cheong appears to be a high functioning employee, whose abilities were recognised by his superiors, as is evident from the offer to Mr Cheong to share in the profits of Swift Maids for the financial year 2019,⁴¹⁷ such that his requests for funds and other recommendations were generally approved by the directors.⁴¹⁸ But all that does not detract from the fact that Mr Cheong's authority was restricted and that he did not have the ability to unilaterally exercise power or discretion to affect Swift Maids' legal or practical interests as alleged by the plaintiffs.⁴¹⁹ Swift Maids was, on the facts, in a position to prevent the injurious exercise of Mr Cheong's power or discretion. In this regard, I note the case of *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2007] 3 SLR(R) 265 ("*Nagase*"), where the court observed at [29] that "mere authority to negotiate contracts on behalf of the company or to authorise the payment of invoices would not itself give rise to fiduciary obligations on the part of the officers of the company entrusted with such authority".

214 Third, Mr Cheong's power to authorise payments was consistently circumscribed by the finance department at Swift Maids, which reported to Mr

⁴¹⁵ Mr Lit's AEIC at para 15 (BAEIC at pp 8–9).

⁴¹⁶ NEs dated 23 February 2023 at p 26, line 22 to p 27, line 11; NEs dated 24 February 2023 at p 50, lines 4–9; NEs dated 28 February 2023 at p 78, lines 27–32 and p 87, lines 26–30; NEs dated 7 March 2023 at p 76, lines 8–24.

⁴¹⁷ NEs dated 7 March 2023 at p 76, lines 25–32.

⁴¹⁸ NEs dated 24 February 2023 at p 74, lines 3–23.

⁴¹⁹ SOC at para 20 (SB at p 53).

Loh as director of Swift Maids. Importantly, Mr Loh, as director, exercised supervisory powers over Mr Cheong, and could, and in fact did, bring Mr Cheong to task for any abuses by Mr Cheong. An example is the Pixelate invoices. Swift Maids' finance department had suspicions about the Pixelate invoices and brought them to Mr Loh's attention.⁴²⁰ This resulted in Mr Loh and the finance team confronting Mr Cheong about the invoices, which led to Mr Cheong coming clean about the origins of Pixelate.⁴²¹ Moreover, while Mr Loh took the position that Mr Cheong as general manager had "the authority to tell the finance department, 'I'm going to withdraw 10,000 for petty cash'", if Mr Cheong had requested a larger amount, such as \$30,000, then this would be a red flag that Mr Loh would question.⁴²² The significance of this is that there was a level of oversight over Mr Cheong's fund withdrawals. Crucially, it is Mr Loh's evidence that the directors of Swift Maids control the banking portal, their authorisation was needed for payments to be released and all cheques had to be signed by the directors.⁴²³

215 Fourth, the evidence shows that Mr Cheong's autonomy and discretion were circumscribed by the requirement to report to the directors of Swift Maids. Mr Loh agreed that Mr Cheong had regularly approached Mr Loh with updates on services that Mr Cheong was implementing for Swift Maids.⁴²⁴ As director, Mr Loh exercised a right of veto over Mr Cheong's actions.⁴²⁵ Mr Loh further

⁴²⁰ NEs dated 21 February 2023 at p 114, line 23 to p 115, line 4.

⁴²¹ NEs dated 21 February 2023 at p 115, lines 1–4.

⁴²² NEs dated 21 February 2023 at p 87, line 10 to p 88, line 9.

⁴²³ NEs dated 21 February 2023 at p 82, line 30 to p 84, line 6.

⁴²⁴ NEs dated 21 February 2023 at p 102, lines 19–21.

⁴²⁵ Mr Loh's AEIC at para 37 (BAEIC at pp 824–825).

agreed that Mr Cheong, as general manager, had to apply to the directors for leave to be absent from work.⁴²⁶

216 In relation to the plaintiffs’ reliance on Mr Cheong’s ability to access the Integra system and other confidential information in support of their assertion that this puts them in a particular position of vulnerability,⁴²⁷ I note that the court in *Angliss* had considered a similar argument that an employee’s access to confidential information placed the employer in a particular position of vulnerability, which purportedly justified the imposition of fiduciary duties on the employee (*Angliss* at [33]). The court there did not agree. It held at [36] that the vulnerability that stems from the access of an employee to confidential information does not arise from the abuse of a fiduciary’s power that has been entrusted to the employee, but instead from the abuse of confidential information. Such vulnerability may be protected by the duty of confidence in equity, and by a confidentiality clause in contract. The admonition of the court at [36] in *Angliss*, citing *Nagase* at [26], which in turn cited *Nottingham University v Fishel* [2000] IRLR 471 at [85]–[97], bears repeating here: “care must be taken not automatically to equate the duties of good faith and loyalty, or trust and confidence, with fiduciary obligations”. As observed by the Canadian Supreme Court in *Canadian Aero Service Ltd v O’Malley* (1973) 40 DLR (3d) 371 at 381, which was cited by the Court of Appeal in *Smile Inc* at [54], the duty owed by employees “to their employer, unless enlarged by contract, consisted only of respect for trade secrets and for confidentiality of customer lists”, which is unlike the “larger, more exacting duty” of a fiduciary.

⁴²⁶ NEs dated 22 February 2023 at p 63, lines 2–20.

⁴²⁷ SOC at para 20(e) (SB at p 54); PCS at para 56(c)(i).

217 Having considered the evidence, it is my judgment that Mr Cheong did not stand in the position of a fiduciary *vis-à-vis* Swift Maids. Mr Cheong did not have the ability to *unilaterally* exercise power or discretion to affect Swift Maids’ legal or practical interests. Swift Maids had the power and ability – through the checks exercised by the directors and the finance department – to prevent the injurious abuse of Mr Cheong’s power or discretion. In this case, the plaintiffs’ remedies for any allegedly wrongful exercise of discretion or power by Mr Cheong may be found in other non-fiduciary duties owed by Mr Cheong to Swift Maids and should lie there.

218 Accordingly, I find the plaintiffs’ claim that Recruitbee Employment, Ms Toh, Ms Aung and Recruitbee Helpers dishonestly assisted Mr Cheong’s breaches of fiduciary duties owed to Swift Maids⁴²⁸ to be a non-starter as Mr Cheong did not owe fiduciary duties to Swift Maids. I also dismiss the plaintiffs’ claim against Mr Cheong for breach of fiduciary duties.

Adverse inferences

219 At this juncture, it is appropriate for me to say a few words about the drawing of adverse inferences. The plaintiffs invite me to draw adverse inferences against the defendants for their alleged failure to disclose text messages, and for their failure to call key witnesses, namely Ms Peh, Ms Teo, Ms Lim, Ms Chua and Mr Teo, to testify.⁴²⁹

220 The law on adverse inferences was authoritatively set out by the Court of Appeal in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 (“*Tribune Investment*”) and *Sudha Natrajan v The Bank of East*

⁴²⁸ PCS at Section D.

⁴²⁹ PCS at paras 83–98.

Asia Ltd [2017] 1 SLR 141 (“*Sudha Natrajan*”). The Court of Appeal in *Tribune Investment* stated at [50]:

50 ... The regime for drawing adverse inferences is derived from s 116(g) of the Evidence Act (Cap 97). Whether or not in each case an adverse inference should be drawn depends on all the evidence adduced and the circumstances of the case. There is no fixed and immutable rule of law for drawing such inference. Where, as was the case here, the trial judge is of the view that the plaintiffs themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the defendants is necessary. The drawing of an adverse inference, at least in civil cases, should not be used as a mechanism to shore up glaring deficiencies in the opposite party’s case, which on its own is unable to meet up to the requisite burden of proof. Rather, the procedure exists in order to render the case of the party against whom the inference is drawn weaker and thus less credible of belief.

221 The Court of Appeal in *Sudha Natrajan* stated at [20]:

20 The drawing of an adverse inference must therefore in the final analysis depend on the circumstances of each case, and it is not the position that in every situation in which a party fails to call a witness or give evidence, an adverse inference must be drawn against that party: see Ratanlal Ranchhoddas & Dhirajlal Keshavlal Thakore, *Ratanlal & Dhirajlal’s The Law of Evidence* (Wadhwa and Company Nagpur, 22nd Ed, 2006) at 1238. With specific regard to absent witnesses, broad principles governing the drawing of an adverse inference were set out in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 (“*Wisniewski*”) and these principles were later endorsed by this court in *Thio Keng Poon v Thio Syn Pyn* [2010] 3 SLR 143 at [43]. They may be summarised as follows:

- (a) In certain circumstances the court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in the matter before it.
- (b) If the court is willing to draw such inferences, these may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
- (c) There must, however, have been some evidence, even if weak, which was adduced by the party seeking

to draw the inference, on the issue in question, before the court would be entitled to draw the desired inference: in other words, there must be a case to answer on that issue which is then strengthened by the drawing of the inference.

(d) If the reason for the witness's absence or silence can be explained to the satisfaction of the court, then no adverse inference may be drawn. If, on the other hand, a reasonable and credible explanation is given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or annulled.

222 The plaintiffs' argument appears to be that adverse inferences should be drawn due to the defendants' failure to disclose their text messages with the other key persons involved in this suit and to call certain witnesses to testify. I am unable to agree with the plaintiffs. As the Court of Appeal stated in *Tribune Investments* at [50], where "the trial judge is of the view that the plaintiffs themselves had not made out their claim to the requisite standard, then no drawing of an adverse inference against the defendants is necessary". Similarly, the Court of Appeal in *Sudha Natrajan* at [20(c)] stated that "there must be a case to answer on that issue which is then strengthened by the drawing of the inference".

223 In the present case, I find that save for their claims against Mr Cheong for breach of contract, the plaintiffs have failed to make out all their other claims to the requisite standard. There is no basis for the court to draw adverse inferences to bridge the gaps in the plaintiffs' case by speculating what the evidence may be. Further, I am not satisfied that the plaintiffs are entirely accurate in their submission that there was "a conspicuous lack of discovered correspondence around the material time when Recruitbee Employment was being set up",⁴³⁰ which necessitates the drawing of adverse inferences. There is

⁴³⁰ PCS at para 84.

in evidence text messages exchanged between the following parties, from the following dates:

(a) As between Ms Aung and Ms Toh: from 30 January 2019 until 13 April 2019;⁴³¹

(b) As between Mr Cheong and Ms Aung: from 27 March 2019 until 19 February 2020;⁴³² and

(c) As between Mr Cheong and Ms Toh: from 1 December 2018 until 26 July 2019.⁴³³

Accordingly, I decline to draw any adverse inferences against the defendants.

224 For completeness, I refer to the case of *Chan Pik Sun v Wan Hoe Keet and others* [2023] SGHC 96 (“*Chan Pik Sun*”), which is a case cited by the plaintiffs in their submissions. One of the claims in *Chan Pik Sun* was, like the present suit, a claim in conspiracy. The plaintiff in *Chan Pik Sun* was a victim in a Ponzi scheme (*Chan Pik Sun* at [2]–[3]). She sued, amongst other persons, three earlier participants in the Ponzi scheme – Ken, Sally and Sebastian (*Chan Pik Sun* at [7]). Ken, Sally and Sebastian claimed that they had lost the messages they once had in their mobile phones when they changed their mobile phones (*Chan Pik Sun* at [158]). The learned Judge, at [159], agreed with the plaintiff that it was unusual for all the defendants to have changed their mobile phones without retaining the messages, and that it was too much of a coincidence for this loss of the messages to have occurred in the year after the Ponzi scheme’s

⁴³¹ Mr Lit’s AEIC at pp 23–45 (BAEIC at pp 26–48).

⁴³² Mr Hu’s AEIC at pp 61–241 (BAEIC at pp 330–510).

⁴³³ ABD at pp 503–607.

collapse. The learned Judge found that it was more likely that one or more of the defendants deliberately did not keep the messages from the time they were involved in the Ponzi scheme. The plaintiff contended that the deleted messages would have shown that the defendants were conspirators, and the plaintiff invited the court to draw that inference (see [160]). The learned Judge, however, declined to draw an adverse inference and explained at [167]–[168] as follows:

167 In the present case, if I were to put to one side the issue of the missing messages, I would find that on the rest of the evidence Sandra has failed to prove the conspiracy she alleges. In the words of *Tribune Investment*, she has “not made out [her] claim to the requisite standard”, and her case, “on its own is unable to meet up to the requisite burden of proof”. In the circumstances, no drawing of an adverse inference against Ken, Sally, and Sebastian is necessary.

168 If, however, Sandra’s case on the rest of the evidence does provide a foundation for the drawing of an adverse inference in relation to the missing messages, whether to draw such an inference – and what inference – still depends on the circumstances. As the court put it in *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [23]: “s 116(g) does not afford the court the opportunity to speculate as to what the evidence may be without some basis for the drawing of the inference which the opposing party seeks to persuade the court to draw. That is, the court must put its mind to the manner in which the evidence that is not produced is said to be unfavourable when drawing the adverse inference under s 116(g).”

It is clear from *Chan Pik Sun* that an adverse inference cannot be drawn to assist the plaintiffs if the evidence adduced by them does not provide a foundation for the drawing of the adverse inference. In that case, the learned Judge declined to draw an adverse inference even though the circumstances under which the phone messages were lost were found to be unusual.

Remedies

225 The plaintiffs have succeeded in proving Mr Cheong's breaches of contract. I must therefore consider the appropriate remedies to award.

226 The Court of Appeal in *Grains and Industrial Products Trading Pte Ltd v Bank of India and another* [2016] 3 SLR 1308 at [117] made the following observations on awarding damages:

117 ... It is well established that a plaintiff can only be awarded substantial damages if such damages have been proved; and that a court should award only nominal damages if adequate evidence of damages has not been properly adduced (see [*Lee Chee Wei v Tan Hor Peow Victor* [2007] 3 SLR(R) 537] at [65]). We are of the view that this position is not to be lightly displaced by ordering a further assessment of damages in circumstances where the questions of liability and the quantification of damages have not been bifurcated at the trial because, otherwise, it would give a plaintiff a second bite at the proverbial cherry.

227 In relation to proving damages, the Court of Appeal in *Biofuel Industries Pte Ltd v V8 Environmental Pte Ltd and another appeal* [2018] 2 SLR 199 at [41] held that a plaintiff must prove both the fact of damage and its amount. A plaintiff who fails to prove either the fact of damage or the quantum of its loss may be awarded nominal damages (at [44]). I have found at [45] above that Mr Cheong, through his involvement in the setting up and operations of Recruitbee Employment whilst employed by Swift Maids Pte Ltd, had breached his contractual duties owed to Swift Maids Pte Ltd. I have also found at [128] above that Mr Cheong was in breach of his contractual duties by virtue of his involvement in the Pixelate transactions. The plaintiffs have, however, not proved the loss or damages that they allegedly suffered as a result of Mr Cheong's breaches of his employment contract and the quantum of damages, if any. In particular, aside from failing in the other causes of action against the defendants, it cannot be inferred from the evidence that Swift Maids would

necessarily have secured the placements of the FDWs which were secured by Recruitbee. There is no evidence to show that Recruitbee's business volume was causally linked to Swift Maids. Significantly, there is no evidence that Swift Maids' business was re-directed or diverted to Recruitbee, or that Swift Maids suffered any loss due to any such re-direction or diversion. Further, no evidence has been adduced of the loss, if any at all, arising from the Pixelate transactions (see [129]–[130] above). Given that the plaintiffs have established neither the fact of damage nor the amount of damage, only nominal damages may be awarded to the plaintiffs.

228 I mention for completeness that the plaintiffs have prayed for the remedies of an account of profits⁴³⁴ and equitable compensation⁴³⁵ in their claims against Mr Cheong. The traditional remedy for a breach of contractual duties is that of contractual damages, which compensates the plaintiff for his or her loss: see *The Law of Contract in Singapore* at para 23.054. As noted by the learned contributors, while an account of profits for breach of contract is available in principle, it “remains to be seen ... what facts *will* be sufficient” [emphasis in original] to warrant such a remedy: *The Law of Contract in Singapore* at para 23.064. Given that I have not been addressed on this issue nor referred to any authority, I find no basis to order an account of profits for Mr Cheong's breaches of his employment contract. With respect to equitable compensation, there are also no submissions on why it is an appropriate remedy. As I have found that Mr Cheong did not owe fiduciary duties to Swift Maids, I similarly find no basis to order equitable compensation for Mr Cheong's breaches of his employment contract.

⁴³⁴ SOC at paras 41(a)(ii) and 41(b)(ii)(3) (SB at p 75).

⁴³⁵ SOC at paras 41(b)(i) and 41(b)(ii)(2) (SB at p 75).

229 In the present suit, I award to the plaintiffs nominal damages of \$1,000 for Mr Cheong's involvement in the setting up and operations of Recruitbee Employment, and a further \$1,000 for his involvement in the Pixelate transactions, in breach of his employment contract.

Conclusion

230 This judgment is rendered based on the case as pleaded by the plaintiffs and what they can prove. It was apparent at trial that this suit was fuelled by a sense of betrayal and indignation, and the hard feelings were made more acute because the principal characters in this dispute had shared relationships outside of business and work. Mr Cheong had acted behind the back of his employer and breached his employment contract when he involved himself in the setting up and business of Recruitbee Employment while he was still under the employ of Swift Maids. The evidence, however, does not support a finding that he misused or disclosed the Confidential Information. The evidence also does not support a finding that Mr Cheong, either on his own or with the other defendants, acted to target and injure the plaintiffs' business interests through unlawful means. Further, there is a lack of evidence to show what losses the plaintiffs suffered as a result of Mr Cheong's breaches of contract. The court must decide based on the evidence placed before it, and it is at this fundamental hurdle that the plaintiffs have fallen short.

231 In conclusion, I order Mr Cheong to pay to the first plaintiff the sum of \$1,000 in nominal damages for his involvement in the setting up and operations of Recruitbee Employment, in breach of his employment contract with the first plaintiff.

232 I order Mr Cheong to pay to the first plaintiff the sum of \$1,000 in nominal damages for his involvement in the Pixelate transactions, in breach of his employment contract with the first plaintiff.

233 I dismiss the plaintiffs' claim against Mr Cheong for breach of fiduciary duties.

234 I dismiss the plaintiffs' claim against Mr Cheong for breach of confidence.

235 I dismiss the plaintiffs' claims against Mr Cheong for the wrongful transport claims and misappropriation of the payment of \$8,190 to Ms Suliyani.

236 I dismiss the plaintiffs' claim against the defendants that is based on the tort of unlawful means conspiracy.

237 I dismiss the plaintiffs' claim against the second to fifth defendants for dishonest assistance.

238 I will hear the parties on costs.

Teh Hwee Hwee
Judge of the High Court

Noel John Geno-Oehlers and Chua Su Ann (Characterist LLC) for
the plaintiffs;
The first defendant in person;
The second defendant absent and unrepresented;
The third defendant in person;
Wong Jieh (Circular Law Chambers LLP) for the fourth defendant;
The fifth defendant absent and unrepresented.
