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

[2021] SGHC 168

Suit No 284 of 2018

Between

Angliss Singapore Pte Ltd

… *Plaintiff*

And

Yee Heng Khay (alias Roger)

… *Defendant*

JUDGMENT

[Employment Law] — [Employees' duties]
[Intellectual Property] — [Law of confidence] — [Breach of confidence]
[Contract] — [Confidentiality] — [Breach]
[Equity] — [Confidentiality] — [Breach]
[Equity] — [Fiduciary relationships] — [When arising]

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Angliss Singapore Pte Ltd
v
Yee Heng Khay (alias Roger)

[2021] SGHC 168

General Division of the High Court — Suit No 284 of 2018
Valerie Thean J
2–5, 11, 15–19 February, 10 May 2021

30 July 2021 Judgment reserved.

Valerie Thean J:

Introduction

1 Angliss Singapore Pte Ltd ("Angliss"), a food distributor, brought this suit against a former employee, Mr Yee Heng Khay (alias Roger) ("Mr Yee"), for breach of confidence; breach of contractual duties of confidence, loyalty and fidelity; and breach of fiduciary duties. The loss claimed is that resulting from Angliss's loss of a distributorship agreement with a supplier, Arla Food Ingredients Singapore Pte Ltd ("Arla"), which instead signed a distributorship agreement with another food distributor, Indoguna Singapore Pte Ltd ("Indoguna"), where Mr Yee was employed at the time of the commencement of this suit. While Mr Yee admits that he took confidential information belonging to Angliss, he denies any misuse of this information, and further asserts that it was Angliss's own actions that caused its loss.

Facts

Relevant parties

2 The plaintiff, Angliss, is a food distribution company incorporated in Singapore[1] and owned by Bid Corporation Limited, a company listed on the Johannesburg Stock Exchange.[2]

3 The employees of Angliss who are relevant to the present suit include:

(a) Ms Ding Siew Peng Angel ("Ms Ding"), the managing director;[3]

(b) Mr Teh Teik Wang ("Mr Teh"), currently the general manager of project management, who was the senior sales manager at the material time;[4]

(c) Ms Ong Hui Ting ("Ms Ong"), the customer service executive from 1 December 2014 to 18 May 2018;[5]

(d) Ms Watt Wai Leng ("Ms Watt"), the general manager of procurement and shipping;[6] and

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1 Statement of Claim (Amendment No 2) ("SOC") at para 1.

2 Affidavit of Evidence-in-Chief of Ding Siew Peng Angel dated 16 October 2020 ("Ms Ding's AEIC") at para 3.

3 Ms Ding's AEIC at para 1.

4 Affidavit of Evidence-in-Chief of Teh Teik Wang dated 16 October 2020 ("Mr Teh's AEIC") at paras 1 and 8.

5 Affidavit of Evidence-in-Chief of Ong Hui Ting dated 3 October 2020 ("Ms Ong's AEIC") at para 1.

6 Affidavit of Evidence-in-Chief of Watt Wai Leng dated 16 October 2020 ("Ms Watt's AEIC") at para 1.

(e) Ms Lena Chua Tiong Seng ("Ms Chua"), the senior human resource and administration manager.[7]

4 Arla is a key client of Angliss, having distributed its dairy products through Angliss in Singapore for some 47 years.[8] Arla's employees who are relevant to this dispute include:

(a) Mr Henrik Björkqvist, the sales manager for the Southeast Asia region ("Mr Björkqvist"); and

(b) Mr Kong Vee Hong, a sales manager ("Mr Kong").[9]

5 On 30 December 2017, Arla terminated its exclusive distributorship relationship with Angliss, informing them that they would work instead with Indoguna, one of Angliss's competitors in the food service industry.[10] Indoguna's employees who are relevant to this dispute include:

(a) Ms Helene Raudaschl ("Ms Raudaschl"), the managing director at the material time;[11]

(b) Mr Thomas Ng ("Mr Ng"), who was involved in sales at Indoguna;[12]

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7 Affidavit of Evidence-in-Chief of Lena Chua Tiong Seng dated 16 October 2020 ("Ms Chua's AEIC") at para 1.

8 SOC at para 1; Defence (Amendment No 2) ("Defence") at para 3; Ms Ding's AEIC at para 11.

9 Defendant's Written Submissions ("DWS") at para 116(ii).

10 SOC at paras 11–12; 10 AB 6941.

11 Plaintiff's Written Submissions ("PWS") at p 4 (table titled "Dramatis Personae"); DWS at para 313.

12 PWS at para 25; Transcript, 16 February 2021 at p 38 lines 26–29.

(c) Mr Mo Melwani ("Mr Melwani"), the director of sales as at December 2017;[13] and

(d) Mr Chong Chee Boon Jason ("Mr Chong"), the assistant general manager from 1 February 2017 to 8 July 2018.[14] He was called as a witness for Angliss during the trial.

6 Angliss contends that the change of distributorship was the result of the misuse of its confidential information by the defendant, Mr Yee, its former dairy sector business development manager ("BDM").

Factual background

Mr Yee's employment history and appointment as BDM at Angliss

7 From 2010 to 2012, Mr Yee worked for Indoguna as a senior sales executive in its food service division, where he first met Ms Raudaschl and Mr Ng.[15] He then left Indoguna to work for Angliss from July 2012 as a senior sales executive for pastry products.[16] In September 2013, he was appointed as an assistant sales manager at Angliss, before being promoted in July 2015 to the deputy sales manager of Angliss's food service division.[17] He then moved to a food processing company in late 2016.[18] While at this company, he was persuaded by Ms Ding to join Angliss again as its BDM (Dairy), on a

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13 PWS at p 4 (table titled "Dramatis Personae") and para 41; DWS at para 117(iii).

14 Affidavit of Evidence-in-Chief of Chong Chee Boon Jason dated 2 January 2020 ("Mr Chong's AEIC") at para 1.

15 PWS at para 25; DWS at para 44.

16 Defence at para 5; Reply (Amendment No 1) ("Reply") at para 6.

17 Defence at para 5; Reply at para 6.

18 Defence at para 6; Reply at para 7.

probationary basis from 15 June 2017.[19] His letter of appointment dated 11 May 2017 (the "Employment Contract") contained the following clauses which are relevant to the dispute:

(a) Clause 3.4 requires Mr Yee to "faithfully and conscientiously observe and execute [his] assigned duties and responsibilities and use [his] best endeavour [*sic*] to further the interest of [Angliss]".[20]

(b) Clause 15 restricts Mr Yee's dealings with Angliss's confidential information (the "Confidentiality Clause"). Clause 15.1 defines confidential information broadly as being any information "relating to all or any part of the business, property, assets, technology, activities, services, financial affairs, management and administration of [Angliss] and which is confidential to [Angliss] or treated as confidential, including, without limitation, technical [i]nformation, lists of [Angliss's] customers, suppliers, agents, distributors and any other third parties dealing with [Angliss], trade names, trademarks, service marks or other proprietary business designations used or owned by [Angliss]". Then, amongst other things, it restricts any disclosure or duplication of confidential information. Clause 15.1 also provides that Mr Yee's obligations of confidentiality would continue to be valid and binding notwithstanding the termination of his employment with Angliss.[21]

The Employment Contract also contained a non-competition clause (the "Non-Competition and Non-Solicitation Clause") that Angliss initially sought to

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19 SOC at para 2; Defence at paras 5–7.

20 Agreed Bundle of Documents Vol 7 ("7 AB") at p 4285.

21 7 AB Vol 7 4289.

enforce.[22] At the oral closing submissions, counsel for Angliss informed that it was no longer pursuing remedies for any breach of this clause. I therefore do not deal with the issues pertaining to that clause or cause of action in this judgment.

8 Mr Yee's job scope as a BDM was to oversee the business development of all the dairy brands managed by Angliss. There were about ten dairy brands, including Arla. In this role, he was also in charge of two brands which complemented the dairy brands.[23] He had a team of several sales executives to assist him in carrying out this job scope.[24] It was not disputed that he had a direct reporting line to Ms Ding and Mr Teh, who were, at the material time, the managing director and senior sales manager of Angliss respectively.[25]

9 As Angliss's BDM, Mr Yee had access to the contact details of, and was in frequent contact with, Angliss's customers and suppliers for its food service business, including representatives of Arla.[26] He also had access to data and documents on Angliss's information systems.[27] However, Mr Yee only had viewing rights within these systems, and was not able to copy, edit or print information such as client lists, product lists, price lists, sales revenue and profit margins (the "Restricted Files"). If any employee required access to editable

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22 7 AB Vol 4290; SOC at para 16.

23 Ms Ding's AEIC, paras 20 – 22.

24 PWS at paras 21 and 174; DWS at para 106.

25 PWS at para 20; DWS at para 107.

26 SOC at para 5(b)(ii); Defence at para 11(c).

27 SOC at para 5(b)(i); Defence at para 11(b).

versions of the Restricted Files, he had to ask Ms Ong, who had charge of the systems with the confidential information, for assistance.[28]

10 Mr Yee's performance during his second stint of employment with Angliss was described by Ms Ding as "lacklustre" and "not satisfactory",[29] and Mr Yee himself felt that he had not settled into the role of BDM and was not able to overcome a "very steep learning curve".[30]

The Arla distributorship

11 Angliss had acted as Arla's sole distributor without any written agreement since the 1970s. In mid-2017, Mr Björkqvist proposed the execution of a formal distribution agreement, and initiated a meeting in order to discuss such an agreement. On 11 July 2017, around one month after Mr Yee re-joined Angliss, Ms Ding and Ms Watt from Angliss met with Mr Björkqvist and Mr Kong from Arla (the "11 July Meeting"). At this meeting, they discussed Arla's distribution agreement with Angliss, as well as the aim of increasing sales revenue. Mr Yee was present at this meeting.[31] After this meeting, between 11 and 25 July 2017, there was further correspondence on the matters discussed between Angliss's Ms Ding and Ms Watt, and Arla's Mr Björkqvist and Mr Kong.[32] On 14 July 2017, Mr Kong sent an e-mail addressed to Ms Watt and Ms Ding with a presentation attached that focused on Arla's presence in

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28 SOC at para 10(a); Ms Ding's AEIC at para 144; Transcript, 2 February 2021 at p 109 lines 5–15; DWS at paras 123–126.

29 Ms Ding's AEIC at paras 30–31.

30 Affidavit of Evidence-in-Chief of Yee Heng Khay (Yu Xinggui) dated 3 October 2020 ("Mr Yee's AEIC") at para 42.

31 PWS at para 30; DWS at paras 115–116.

32 PWS at para 217; DWS at paras 220–221, 230–232, 236.

Singapore.[33] Then, on 25 July 2017, by e-mail, Mr Kong sent a draft distribution agreement to Ms Watt and Ms Ding (the "25 July Draft Distribution Agreement").[34] There followed, thereafter, further discussions between Angliss and Arla on the details of the 25 July Draft Distribution Agreement from late July to late August 2017.[35]

12 Around this time, Mr Yee, who was not involved in these further negotiations, did the following:

(a) On 4 August 2017, Mr Yee sent an e-mail titled "RE: Lantmannen Unibake - Product Briefing & Training" (the "Lantmannen Unibake E-mail") to a representative from one of Angliss's suppliers, Lantmännen Unibake UK ("Unibake"), and blind copied his personal e-mail address. The e-mail chain contained a discussion between Angliss's and Unibake's representatives on a product briefing and training session conducted on 2 August 2017.[36]

(b) On 8 August 2017, Mr Yee sent an e-mail to a representative from another of Angliss's suppliers, Sodiaal, and blind copied his personal e-mail address. This e-mail set out Angliss's proposed marketing plan for one of Sodiaal's products, and the e-mail chain included Sodiaal's own objectives and plans.[37]

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33 8 AB Vol 5136–5144.

34 8 AB Vol 8 5154–5176; PWS at para 219; DWS at para 237.

35 DWS at para 244.

36 SOC, p 13 at para 10(c)(ii)(1); Defence at para 21; AB Vol 8 at pp 5184–5188.

37 SOC, p 13 at para 10(c)(i)(2); Defence at para 21; AB Vol 8 at p 5206.

(c) On 13 August 2017, Mr Yee requested for Ms Ong to provide him with two files pertaining to Arla. These were titled "Arla FY sales report - 1.xlsx"[38] and "Copy of Arla FY sales report.xlsx".[39] Mr Yee then analysed these files.[40]

(d) On 17 August 2017, Mr Yee received an e-mail from Angliss's procurement department, which attached a product list pertaining to one of Angliss's suppliers, Beerenberg. He then forwarded this e-mail to his personal e-mail address on 20 August 2017.[41]

13 On 10 September 2017, Mr Yee's wife gave birth to twin boys.[42] Three days later, on 13 September 2017, Mr Yee met with Mr Ng and Mr Melwani at the *kopitiam* below his apartment (the "13 September Meeting").[43]

14 On 1 November 2017, Mr Yee asked Ms Ong for a spreadsheet titled "*butter price - oct.xlsx*",[44] which contained the selling price of butter that Angliss offered to customers. Then on 3 November 2017, he requested from Ms Ong two further files called "*Copy of BUTTER - ROGER 2.xlsx*"[45] and "*Copy of BUTTER - ROGER.xlsx*".[46] He conducted analysis on all three files.[47]

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38 9 AB 5642–5647.

39 1 AB 88–90.

40 PWS at paras 32 and 36; Transcript, 16 February 2021 at p 69 line 8 to p 70 line 3.

41 SOC, p 14 at para 10(c)(i)(3); Defence at para 21; AB Vol 9 at pp 5655–5656b.

42 Mr Yee's AEIC at para 43.4.

43 PWS at para 41; DWS at para 304; Transcript, 16 February 2021 at p 40 lines 2–8.

44 2 AB 702.

45 2 AB Vol 708.

46 2 AB p 709.

47 PWS at paras 50 and 56; Transcript, 16 February 2021 at p 83 line 29 to p 86 line 2.

Angliss loses the Arla distributorship

15 On 4 December 2017, Mr Björkqvist sent a message to Ms Watt, in reply to an order she had sent two days prior. He stated that he "would be happy to increase [their] business together", and the two discussed orders for butter.[48]

16 Around this time, in December 2017, Angliss decided not to confirm Mr Yee after his probation period due to his poor performance as a BDM.[49] Mr Yee recounted on the stand that his subordinates had been confirmed before him.[50] He was instead offered a sales role which came with a further three months' probation.[51] He was disappointed with this additional probation period[52] and felt he needed the security of permanent employment with paid leave, especially after the birth of his twin sons in September 2017.[53]

17 Around 18 December 2017, Mr Melwani texted Mr Yee, asking him to meet.[54] They met on 20 December 2017 (the "20 December Meeting").[55] It is not disputed that during this meeting, Mr Melwani offered Mr Yee a role in Indoguna as a brand manager for a dairy brand.[56] Subsequently, Mr Yee reached out to Mr Melwani through WhatsApp message on 23 December 2017 to discuss the role that he had been offered at the 20 December Meeting. In this

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48 PWS at para 221; DWS at para 259; AB Vol 8 at p 5122.

49 Ms Ding's AEIC at paras 30–31.

50 Transcript, 16 February 2021 at p 122 lines 15–17.

51 SOC at para 7; Defence at paras 13–14; Reply at para 9.

52 DWS at paras 280–282.

53 Mr Yee's AEIC at paras 43–44.

54 PWS at para 61; DWS at para 307.

55 PWS at para 63; DWS at para 309.

56 PWS at para 64; DWS at para 309.

WhatsApp message, he stated that he was "keen to hear out from [Mr Melwani] more on the job scope and exposure". Mr Melwani replied that Ms Raudaschl would get back to him.[57]

18 Then, on 25 December 2017, Ms Raudaschl contacted Mr Yee, requesting a meeting. He replied, and Ms Raudaschl then asked if they could meet the next day, to which he agreed.[58] They then met on 26 December 2017 (the "26 December Meeting").[59] It is not disputed that at this meeting there was discussion of Mr Yee taking on the role of Indoguna's brand manager for Arla (the "Arla brand manager role").[60]

19 After the 26 December Meeting, there was a series of communications involving Mr Melwani, Ms Raudaschl and Mr Yee. They concerned the Arla brand manager role. On 27 December 2017, Mr Melwani sent an e-mail to Ms Raudaschl specifically mentioning Mr Yee. This e-mail referenced a job description for the Arla brand manager role, and Mr Melwani stated that he would be "happy to fill in the gaps on e[-]mail or phone with [Mr Yee] if he ha[d] any questions".[61] On 28 December 2017, between 9.00am and 10.00pm, there was an exchange between Ms Raudaschl and Mr Yee over text message and e-mail. This exchange concerned the job description, as well as the pay

57 PWS at paras 68–69; DWS at paras 312–313.

58 PWS at para 70; DWS at paras 314–317.

59 PWS at para 71; DWS at para 318.

60 PWS at paras 74–75; DWS at paras 319–320.

61 Defendant's Bundle of Documents ("DB") at p 30.

package, for the Arla brand manager role.[62] On 29 December 2017, Mr Yee and Ms Raudaschl exchanged several text messages.[63]

20 From 26 to 29 December 2017, Mr Yee copied three files and four folders containing a total of 125 files (the "Copied Files") onto a Universal Serial Bus device (the "USB device"). Of these files, 35 were Restricted Files, and Mr Yee did not return the USB device upon the termination of his employment with Angliss.[64] These Copied Files included sales reports for Arla, product catalogues, price lists, business reviews and internal documents of Angliss.[65] In particular, files named "arla items sales report.xlsx" (the "Arla Spreadsheet"),[66] "Dairy sales 2017.xlsx",[67] and "Copy of Arla FY sales report.xlsx"[68] were amongst the Copied Files.

21 Further, on 29 December 2017, having learnt that he would potentially continue managing the Arla brand with Indoguna, Mr Yee forwarded an e-mail containing the Arla Spreadsheet from his work e-mail address to his personal e-mail address.[69] Mr Yee also copied a document entitled "NAVIONS 2017.xlsx" which contained screenshots of Angliss's Navision system taken by him on 29 December 2017 (the "Navision Screenshots").[70]

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62 PWS at para 85; DWS at para 324.

63 DWS at para 325; DB at p 11.

64 SOC, pp 11–13 at paras 10(c)(i)–10(c)(iv); Defence at para 21.

65 SOC, Annex A; PWS at para 89.

66 SOC, Annex A at s/n 3; DWS at para 334(i).

67 SOC, Annex A at s/n 2; DWS at para 334(iii).

68 SOC, Annex A at s/n 6; DWS at para 334(iv).

69 PWS at para 93(c); DWS at para 334(i).

70 PWS at para 93(a); DWS at para 334(ii).

22 In the meantime, Angliss and Arla continued price and product negotiations on various orders up to December 2017.[71] On 30 December 2017, Arla sent a notice of termination to Angliss. It informed Angliss that it would not be renewing its distributorship arrangement with Angliss and would be engaging Indoguna as its sole distributor for its food service business in Singapore instead.[72] Ms Ding and Ms Watt testified that this termination came as a surprise to the team at Angliss.[73]

Mr Yee leaves Angliss and the current proceedings

23 On 4 January 2018, Mr Yee gave his notice of resignation to Angliss.[74] On 6 January 2018, Mr Yee signed an employment contract with Indoguna in which he was designated as "Arla Brand Manager".[75] On 8 January 2018, after conducting its security check on Mr Yee's laptop, Angliss discovered that he had forwarded the files pertaining to Arla from his work e-mail address to his personal e-mail address on 29 December 2017.[76] Ms Ding, Ms Watt, Ms Chua and Mr Teh confronted Mr Yee about this.[77] They thereafter gave Mr Yee a letter reminding him of his obligations under the Employment Contract, including the Confidentiality Clause and the Non-Competition and Non-

71 8 AB 5122.

72 SOC at para 11; PWS at para 113; DWS at para 354; 10 AB 6941.

73 Ms Ding's AEIC at para 87; Ms Watt's AEIC at para 30; Transcript, 4 February 2021 at p 48 lines 1–7 (Ms Watt).

74 SOC at para 8; Defence at para 15.

75 Mr Chong's AEIC at paras 16 and 18.

76 SOC at para 10(b); Defence at para 21.

77 PWS at para 147; DWS at para 394.

Solicitation Clause. He refused to acknowledge this letter.[78] He was placed on "garden leave" and his last day of employment was 2 February 2018.[79]

24 Pursuant to the contract he signed with Indoguna on 6 January 2018, Mr Yee commenced employment with Indoguna on 12 February 2018.[80] The writ of summons and statement of claim were filed on 16 March 2018. Angliss sought and obtained on an urgent basis an injunction which included discovery orders. Several months later, on 2 May 2018, pursuant to the injunction dated 19 March 2018, Mr Yee delivered the USB device to Angliss's solicitors.[81] At the time of the trial, Mr Yee was employed at Trade-Pro Food Distribution Pte Ltd, which he described as Arla's distributor for its retail business.[82]

Parties' positions and issues arising

25 Angliss contends that Mr Yee copied Restricted Files from its information systems, with the intention to share the information with Indoguna and Arla. This, it contends, was the reason Arla terminated its distributorship arrangement with Angliss and signed an exclusive distributorship agreement with Indoguna. Angliss relies on the following heads of claim:

(a) a claim in equity for breach of confidence;

(b) claims in contract, for breach of the Confidentiality Clause and another clause relating to good faith and fidelity; and

(c) breach of fiduciary duties.

78 SOC at para 9; Defence at para 16.

79 10 AB pp 6952–6955.

80 Defence at para 24.

81 SOC at para 10(d); Defence at para 22.

82 Transcript, 15 February 2021 at p 60 line 28 to p 61 line 15.

26 For each of these heads of claim, Angliss seeks the same alternative heads of loss:

(a) loss of chance of a distributorship with Arla;

(b) loss of profits from a distributorship agreement with Arla;

(c) damages calculated on the hypothetical scenario that Angliss would have sold the confidential information; or

(d) damages for recreating the information taken by Mr Yee.

27 Mr Yee does not deny that he copied the Restricted Files, but asserts that his motives were innocent and that he did not disclose them to Indoguna. From this, he argues that there was neither breach of the duty of confidence nor breach of any contractual duties. He further denies that he held fiduciary duties as he was a mere employee.

Fiduciary duties

28 The assertion of fiduciary duties owed by Mr Yee does not have any bearing on the quantum of damages sought. It is pertinent to causation, a key factual issue in this suit. Mr Yee does not dispute that he copied the information. Instead, he disputes that his action was wrongful, and that it caused Angliss loss. If Angliss is able to show that Mr Yee was a fiduciary who breached fiduciary duties, the burden would then fall on *Mr Yee* to show that the loss would have been sustained in spite of his breach: *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] 1 SLR 1199 at [254]. In view of its impact on the analysis, I deal with the issue of fiduciary duties first.

29 Mr Yee is an employee. 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.

30 Angliss argues that Mr Yee owed it fiduciary duties on the basis of several facts. First, his recommendations for hiring and firing subordinates would have been taken seriously by Angliss's management in view of his position as its BDM.[83] Second, he held a senior position in Angliss and led a team of sales executives.[84] Third, he was entrusted with Angliss's confidential information, creating an element of vulnerability as Angliss depended on him to only use this information for its benefit.[85]

31 I deal with these factors in turn. Regarding the first factor, Mr Yee's scope for the exercise of discretion, this was not wide. Angliss's own written

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83 PWS at para 175.

84 PWS at para 174.

85 PWS at paras 176–177.

submissions argue that Mr Yee's *recommendations* would have been taken seriously by its management. This implicitly acknowledges that he had no *power* to hire and fire employees. Further, he was, at the time of his employment with Angliss, on probation. Whilst this does not automatically mean that he did not hold fiduciary duties, I find that it is a strong indicator that, as an employee, he would not have been entrusted with fiduciary responsibility.

32 The second factor, Mr Yee's ability to exercise power unilaterally, was circumscribed by Angliss's two-factor security protocol. It was accepted by parties that he could only *view* the confidential information, and that if he wanted more extensive access, he would have had to ask for Ms Ong's assistance. It was not disputed that Ms Ong was not considered a fiduciary by Angliss's management although she had access to the systems within which the confidential information was kept.[86]

33 Angliss relies in particular on the third factor, that Mr Yee's access to confidential information put Angliss in a peculiar position of vulnerability. In my view, this concept of vulnerability, as first used by Wilson J in *Frame v Smith* and endorsed by the Court of Appeal in *Susilawati* and the High Court in *Clearlab*, is targeted at a particular type of vulnerability, not *any* kind of vulnerability. Wilson J explained at [63] of *Frame v Smith*:

> The third characteristic of relationships in which a fiduciary duty has been imposed is the element of vulnerability. This vulnerability 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.

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86 Transcript, 2 February 2021 at p 128 lines 3–9.

34 Employers experience vulnerability from a broad range of employee action; the causes could range from negligence, to matters of competence or dishonesty. What Wilson J specified at [63] was vulnerability that arises from the exercise of power. At [64], Wilson J followed on with the High Court of Australia's decision in *Hospital Products Ltd v United States Surgical Corp* (1984) 55 ALR 417 ("*Hospital Products*"), where Gibbs CJ at 432, in describing the test for a fiduciary, first listed the entrustment of power analogous to a trust, and then described "the special vulnerability of those whose interests are entrusted to the power of another to the abuse of that power".

35 Similarly, in *Susilawati*, when the Court of Appeal referred to Wilson J's test at [41], it highlighted the following comments made by Mason J in *Hospital Products* at 454:

> The accepted fiduciary relationships are sometimes referred to as relationships of trust and confidence or confidential relations … *viz* trustee and beneficiary, agent and principal, solicitor and client, employee and employer, director and company, and partners. The critical feature of these 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. The relationship between the parties is therefore one which 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.*
>
> [Court of Appeal's emphasis in *Susilawati* in italics]

36 It is thus the relationship of trust and confidence that is fundamental to the issue, and the vulnerability of the fiduciary's principal must exist in the context of that relationship. This is consonant with the approach taken by the Court of Appeal in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club Auto Emporium*") at [42]–[43] in emphasising a fiduciary relationship as one of trust

and confidence; and *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 at [192]–[194] in reiterating the need to look to the obligations owed. In the present case, the vulnerability at hand does not arise from the abuse of a fiduciary's power that has been entrusted to him, but from the abuse of confidential information. That vulnerability may be protected, in equity, by the duty of confidence, and in contract, by the Confidentiality Clause. As Judith Prakash J (as she then was) highlighted in *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2007] 3 SLR(R) 265 at [26], citing *Nottingham University v Fishel* [2000] IRLR 471 at [85]–[97], "care must be taken not automatically to equate the duties of good faith and loyalty, or trust and confidence, with fiduciary obligations". These other duties are more relevant in the present case, and I therefore turn to the duty of confidence.

Breach of confidence in equity

37 The general principle underlying the doctrine of breach of confidence, as stated in the Court of Appeal decision of *Wee Shuo Woon v HT SRL* [2017] 2 SLR 94 ("*Wee Shuo Woon*"), is that "equity imposes a duty of confidence whenever a person receives information he knows or ought to know to be fairly and reasonably regarded as confidential": *Wee Shuo Woon* at [28].

38 This general principle still applies in the context of *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 ("*I-Admin*"), where the Court of Appeal set out a modified approach to establishing a breach of confidence at [61]:

> (a) first, a court should consider whether the information has the *necessary quality of confidence* about it; and

(b) second, the court must consider if the information was given to the defendant (here, Mr Yee) in *circumstances importing an obligation of confidence*. For example, this will be found where confidential information has been accessed or acquired without the plaintiff's knowledge or consent.

If both (a) and (b) are fulfilled, an actionable breach of confidence is presumed. The burden of proof then shifts to the defendant to prove that his conscience was unaffected.

Necessary quality of confidence

39 Whether Angliss's information possesses the necessary quality of confidence depends upon whether it would be *just in the circumstances to require the party against whom a duty of confidentiality is alleged (here, Mr Yee) to treat the information as confidential*: see *Wee Shuo Woon* at [31]. One key 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": *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd and another* [2014] 2 SLR 1045 ("*Invenpro*") at [130(a)]. In cases where information is in the public domain, it is important to consider the *number of times* the information has been made available, and *the extent* to which this exposure makes it readily accessible to interested members of the public. This is a question of fact and degree: *Invenpro* at [130(a)].

40 The key pieces of information in the present case are price and customer lists, as well as sales figures and targets for several of Angliss's suppliers, including Arla. Whilst Angliss has pleaded that hundreds of documents were confidential and had been copied by Mr Yee, it need only show such

information as is pertinent to the loss claimed. For this reason, for the purposes of analysis, it is not necessary for me to consider every single one of these documents. For the purpose of analysis, I delineate the following as "the Crucial Information":

(a) the Arla Spreadsheet, which was the focus of the parties' written submissions;

(b) "NAVIONS 2017.xlsx", which had the Navision Screenshots taken by Mr Yee on 29 December 2017;

(c) "Dairy sales 2017.xlsx", which recorded Angliss's sales of dairy products, dry items, "pastabread", vegetables and fruit from 2015 to 2017;[87] and

(d) "*Copy of Arla FY sales report.xlsx*", which recorded Angliss's sales from 2015 to 2017.[88]

These show the comprehensive list of customers, comprehensive pricing, and sales revenues and targets for Arla as well as other dairy brands. I delineate them as the Crucial Information for the reasons that follow.

41 The Arla Spreadsheet contained information from January to October 2017, including the amount of Arla products sold by Angliss, the sales revenue, the gross profit, the selling price, and the customers who purchased these products.[89] The Navision Screenshots contained the details of a large number of Angliss's customers.[90] These were kept on Angliss's internal systems, and

87 1 AB 3–14.

88 1 AB 88–90.

89 1 AB 15–72.

90 5 AB 3435–3592.

Mr Yee was only able to access them by making a request: they were not readily accessible to the public. Mr Yee's argument that customer information should not be considered confidential information because Angliss had shared customers with Indoguna[91] misses the point. Whilst the information here would be made up of information that, individually, could be arguably in the public domain as it would be known by the individual customers and other companies, the list *as a whole* was not. The value of the list is in the possession of the totality of the information: see *Invenpro* at [130(e)]. The list was valuable information culled from a network created over many years. Similarly, in *Adinop Co Ltd v Rovithai Ltd and another* [2019] 2 SLR 808 ("*Adinop*"), where the claim for breach of confidence was brought by a distributor, the Court of Appeal held that customer information did possess the necessary quality of confidence, as the distributor's list of customers had been derived from its own business dealings with these customers, and this list was a core aspect of its business and was valuable to a distributor: *Adinop* at [57]–[61] and [87]. Similarly, in this case, Angliss is a distribution company with a customer base and information derived from its business dealings.

42 As for pricing and sales information, such as (c) and (d), this too was invaluable. The food distribution business was relentlessly competitive. This was seen in various WhatsApp exchanges between Ms Watt and Mr Björkqvist, where Ms Watts commented "[t]oo many brands now fighting price like crazy" in the context of mozzarella, and Mr Björkqvist expressed difficulty in supplying butter at a specific size and price without a subsidy from an order with other products.[92] The importance of pricing and sales information was also

[91] DWS at para 752.

[92] 8 AB 5122.

reflected in the two-person safeguards Angliss used within its information systems.

43 I hold therefore that the Crucial Information possesses the necessary quality of confidence.

Circumstances importing an obligation of confidence

44 Next, I turn to whether the Crucial Information was received by Mr Yee in circumstances importing an obligation of confidence. Angliss's information was protected within its internal systems. Mr Yee had to circumvent these systems to copy this information. Mr Yee had surreptitiously forwarded files to his own personal e-mail address and had also taken screenshots of Angliss's systems as he could only view the files, side-stepping these controls. As noted by the Court of Appeal in *I-Admin*, "[a]n obligation of confidence will also be found where confidential information has been accessed or acquired without a plaintiff's knowledge or consent": *I-Admin* at [61].

45 Mr Yee's access to the documents was for the purposes of his employment as BDM, and it is clear from the circumstances that an obligation of confidence existed.

Defence to presumed breach of confidence

46 Both conditions necessary for the presumption of an actionable breach of confidence to arise are met. The burden is therefore on Mr Yee to show that his conscience was unaffected: *I-Admin* at [61]. His key arguments are that (a) his subjective intentions were innocent; and (b) there is no evidence of misuse of the Crucial Information.

Innocent motivation

47 Mr Yee's first argument is that his only motivation for taking the Crucial Information was to look after the interests of customers who were buying Arla products.[93] This was based on the argument that the test in *I-Admin* on whether the defendant's conscience was affected should be assessed using a subjective as well as objective standard, similar to the standard used in other equitable doctrines such as knowing receipt and dishonest assistance. In particular, the court must look at Mr Yee's subjective knowledge and motivations, and then judge his conduct against the ordinary standards of honest people.[94]

48 Mr Yee's explanation at trial was that he is "customer centric"[95] and had taken the information because he wanted to "ensure continuity of supply" for his customers that he would continue serving while in Indoguna.[96] This is disingenuous. Mr Yee knew that the information belonged to Angliss. He knew that Indoguna was its competitor. He knew Arla was an important supplier, and he knew it would be wrong for him to use the information. In fact, after his resignation there would be no disruption for customers who used Arla products, because his former colleagues or anyone hired to take his place at Angliss would continue to service their needs. Mr Yee implicitly recognised the weakness in his case, attempting to excuse himself during cross-examination by explaining it was "foolish and silly" for him to have copied the information.[97] Quite to the contrary, his intention to continue to service his customers reveals that he intended shrewd use of the information to Angliss's commercial detriment.

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[93] DWS at para 757.

[94] DWS at paras 741–747.

[95] Transcript, 15 February 2021 at p 75 lines 12–17; DWS at para 336.

[96] DWS at para 756(v).

[97] Transcript, 15 February 2021 at p 107 lines 18–23.

Evidence of misuse

49 Mr Yee also argues that the absence of evidence of misuse of the Crucial Information should constitute probative evidence that his conscience has not been affected, and should be enough to displace the presumption of an actionable breach of confidence.[98] He argues that in the present case, there is no evidence that he misused Angliss's confidential information, and thus this should show that his conscience was not affected.

50 This argument attempts to turn the presumption on its head. If a defendant wishes to rely on an absence of misuse, that defence is to be proved by him. He cannot attempt, as Mr Yee has, to say that Angliss has not produced cogent evidence of the alleged misuse. The Court of Appeal in *I-Admin* specifically shifted the burden of proof onto defendants to show that their conscience was not affected to ensure that the law protected against wrongful loss by addressing the "practical difficulties faced by owners of confidential information in bringing a claim in confidence": *I-Admin* at [61]–[62]. This deliberate shift in the burden of proof would be rendered otiose if the bare allegation may be made that the plaintiff has not adduced evidence of misuse. A defendant must produce evidence which supports a *positive case* that there was no misuse or abuse of the confidential information. Mr Yee has not done so. Quite to the contrary, Angliss has proved misuse of the information in satisfaction of its breach of contract claim. I deal with this body of evidence at [60]–[115] below.

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98 DWS at para 740.

Conclusion on breach of confidence in equity

51 Accordingly, I find that Mr Yee has been unable to show that his conscience was unaffected. Angliss has established a breach of confidence in equity.

52 Before I deal with issues of loss and damage arising from the breach of confidence in equity, I consider the remaining claims in contract alleged: (a) a contractual duty of confidence; and (b) a contractual duty of loyalty and fidelity.

Contractual duty of confidence

53 The contractual claim on confidential information rests on the Confidentiality Clause in Mr Yee's Employment Contract, which states as follows:[99]

> **15. Confidential Information**
>
> 15.1 You shall keep confidential and not directly or indirectly disclose any information (whether recorded or not and, if recorded, in whatever form on whatever media and by whomsoever recorded) relating to all or any part of the business, property, assets, technology, activities, services, financial affairs, management and administration of the Company [*ie*, Angliss] and which is confidential to the Company or treated as confidential, including, without limitation, technical Information, lists of the Company's customers, suppliers, agents, distributors and any other third parties dealing with the Company, trade names, trademarks, service marks or other proprietary business designations used or owned by the Company (hereinafter collectively referred to as "Confidential Information") *to any person, firm, enterprise, company, body corporate or incorporate or otherwise and this obligation of you shall continue to be valid* and binding notwithstanding the termination of employment by either party.

99 PWS at para 125; AB Vol 7 at p 4289.

> 15.2 You shall not remove any documents or tangible items which belong to the Employer or which may contain Confidential Information from the Employer's premises or otherwise at any time without proper advance written authorization from the Employer.
>
> 15.3 You shall return to the Employer upon request and, in any event, upon the termination of your employment, all documents and tangible items which belong to or are licensed to the Employer or to any of the clients, customers, trading partners, business partners, manufacturers, suppliers or otherwise of the Employer or which contain or refer to Confidential Information and which are in your possession or under your control.
>
> 15.4 On or before termination of your employment by either party, you shall not copy or duplicate Confidential Information from any records, materials, articles or otherwise against the rights and interest of the Employer or of the clients, customers, trading partners, business partners, manufacturers, suppliers or otherwise of the Employer.
>
> [emphasis added]

Enforceability and scope of the Confidentiality Clause

54 I first deal with Mr Yee's argument that the Confidentiality Clause is not enforceable. He has submitted that courts should assess the enforceability of confidentiality clauses based on the twin tests of reasonableness used in restraint of trade cases set out in *Man Financial (S) Pte Ltd (formerly known as E D & F Man International (S) Pte Ltd) v Wong Bark Chuan David* [2008] 1 SLR(R) 663 ("*Man Financial*") at [121].[100] The argument is premised on *Clearlab*, where the High Court held that parties' freedom to contract would be "subject always to the restraint of trade doctrine": *Clearlab* at [75]. At [78] of *Clearlab* it was stated that:

> … [A] *line needs to be drawn between confidential information protected by contract and skill and knowledge gained in the course of employment.* Where they are coterminous, the courts have been disinclined to enforce the agreement. But if it is

100 DWS at paras 674–678.

> merely a question of the degree of confidentiality of the information, *there is no bar against parties agreeing to protect their confidential information. So long as the information sought to be protected is confidential to one party*, I do not see how any policy reason why the agreement that such information shall remain confidential should not be enforced.
>
> [emphasis added]

Relying on this proposition, Mr Yee argues that the Confidentiality Clause is unenforceable as there is no temporal limit on its application,[101] and the scope of protected information is too broad.[102]

55 I find the suggestion that there is any necessity to tie the enforceability of a confidentiality clause to a pre-determined time limit puzzling. Confidential information does not have a "shelf-life" so to speak. Generally, information is confidential until it is not: for example, when it enters the public domain. Mr Yee's argument appears to stem from a misreading of the High Court's judgment in *Clearlab*, which did not hold that the twin tests of reasonableness would apply to confidentiality clauses. In my view, the proper reading of *Clearlab* is that when one is construing and interpretating a confidentiality clause, the general rationale of the restraint of trade doctrine needs to be kept in mind. What this means is that when one is interpreting a confidentiality clause, *it cannot be read so widely as to include information which amounts to the skill and knowledge of the subject employee*. This avoids the situation where an employer uses a confidentiality clause to restrain an ex-employee from disclosing his skills and knowledge, which in essence, would amount to an indirect restraint of trade.

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[101] DWS at paras 690–694.

[102] DWS at paras 683–689.

56 The information taken was not part of Mr Yee's skills and knowledge. These were lists, which were certainly not retained in his memory. In his cross-examination, he demonstrated poor recall of who the customers were.[103] He listed several customer names, but when pressed further, he conceded that these were not actual customers of Angliss, and rather they were simply potential customers that Indoguna would approach.[104] He conceded finally that his "skill and knowledge" only extended to reading, analysing, interpreting, and utilising the information.[105] In other words, he admitted that the information he had copied did not constitute his skills and knowledge.

Relationship with breach of confidence claim

57 It is pertinent to consider the relationship between the two claims advanced in relation to the misuse of confidential information. As the Court of Appeal in *Adinop* noted at [37], confidentiality obligations arising out of a contract do not necessarily bear the same contours as obligations of confidentiality in equity.

58 In the present case, the contractual Confidentiality Clause is drafted to have a wider scope than documents that would have a "necessary quality of confidence", covering information in whatever form, and "relating to all or any part of the business" of Angliss. To some extent, Angliss has also framed its case to include every document copied by Mr Yee, which included brochures. Ms Ding, for example, sought to include marketing materials that would be distributed to the public within the category of confidential information.[106]

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[103] Transcript, 17 February 2021 at p 85 lines 2–20.

[104] Transcript, 15 February 2021 at p 68 line 5 to p 69 line 3.

[105] Transcript, 17 February 2021 at p 86 lines 1–26.

[106] Transcript, 2 February 2021 at p 117 line 22 to p 118 line 23.

Nevertheless, Angliss's claim for damages is the same under both heads. The loss in respect of which damages are sought to be recovered in both cases is the loss of the Arla distributorship. This extent of damages is the same, whether the claim in contract or equity is pursued. Therefore, only the Crucial Information, as defined above at [40], is important. These are the documents the disclosure of which is alleged to have caused the loss claimed, whether they are protected under the equitable doctrine of confidentiality or the contractual Confidentiality Clause. For this reason, I do not see any need to deal with the precise width of the documents covered in an objective construction of the Confidentiality Clause; or any of the other documents that this clause could include. On any interpretation of the Confidentiality Clause, the Crucial Information would come within its protection.

59 There is a crucial point of difference between the equitable head of claim and that of contract, nonetheless. To pursue its contractual claim, Angliss must prove breach of contract. On the facts of this case, the evidence regarding breach of contract and such breach being the cause of the loss of the Arla distributorship are integrally related, and I therefore deal with both these issues together.

Breach of the Confidentiality Clause and its causal link to the loss of the Arla distributorship

60 Angliss submits that Mr Yee had breached cll 15.1, 15.2 and 15.4 of the Confidentiality Clause. The breaches of cll 15.2 and 15.4 are not disputed. Clause 15.2 prohibits the removal of documents or tangible items containing confidential information from Angliss's premises without authorisation. Mr Yee has admitted to removal of the USB device with confidential information. Clause 15.4 prohibits the copying of confidential information. Mr

Yee has admitted copying information, and I have found this information to be confidential as defined under the Confidentiality Clause. Only cl 15.1 is in issue.

61 Clause 15.1 prohibits the disclosure of confidential information to any third party. Angliss's case is that Mr Yee disclosed the information to Indoguna, causing Angliss to lose the Arla distributorship, and Indoguna to secure it. Angliss contends that this inference may be drawn from the circumstantial evidence. Mr Yee argues that there is no evidence of any disclosure to third parties. Indoguna's securing of the Arla distributorship and Angliss's loss of the same are, on his case, entirely coincidental.

Timeline of Mr Yee's, Angliss's, Arla's and Indoguna's actions

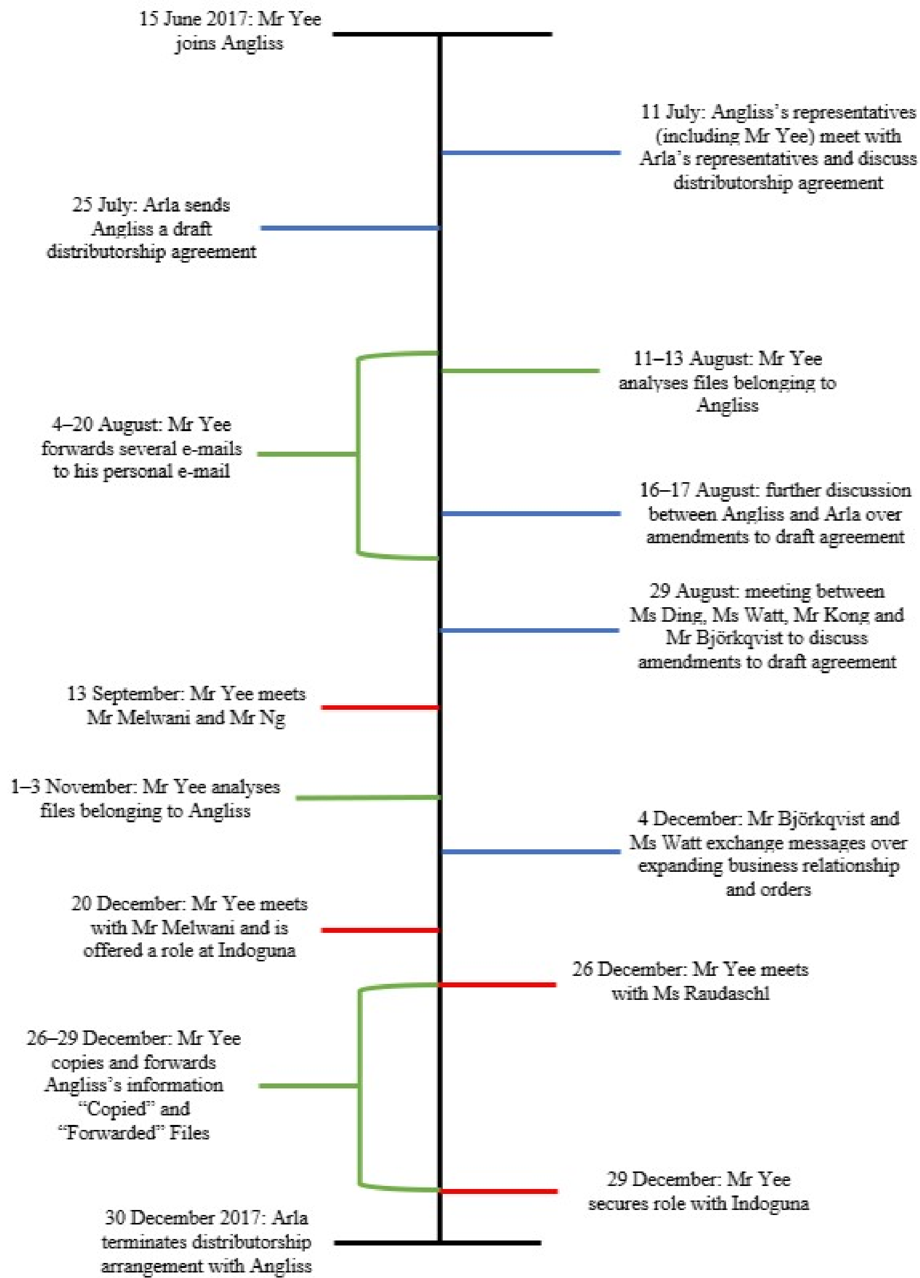
62 Close investigation of the sequence of events supports Angliss's case. Three parallel strands of facts run through this case, as follows:

(a) *Angliss's negotiations with Arla*. Angliss and Arla began negotiating a written exclusive distributorship agreement in July 2017. In December 2017, Angliss and Arla had not signed any agreement, but Angliss was still placing orders with Arla for products. On 30 December 2017, Arla terminated its distributorship arrangement with Angliss.

(b) *Mr Yee's meetings with Indoguna representatives.* Mr Yee met with Mr Melwani on 13 September and in December 2017. He also met Ms Raudaschl on 26 December 2017, after which he was offered the Arla brand manager role, which he accepted.

(c) *Mr Yee's dealings with Angliss's information*. Mr Yee had forwarded files to his personal e-mail address commencing in August 2017 and culminating over 26-29 December 2017.

63 The interplay of these three strands of narrative may be summarised with this timeline, which is explained below.



64 I start my analysis with the status quo at the time of Mr Yee's appointment as BDM.

Status quo in June and July 2017

65 At Mr Yee's time of appointment, Arla had worked with Angliss for some 47 years as its exclusive distributor. Their relationship was so robust that there was no formal contract. Over time, however, Arla started negotiations to conclude a written contract. In that context, Arla and Angliss discussed ambitious sales targets and modes of furthering their joint interest.

Mr Yee's August and November 2017 analysis of Arla products

66 The fact that Mr Yee conducted analysis on Arla products in August and November 2017 is not disputed. Only his *reasons* for doing so are. Angliss asserts there was no reason to conduct such analysis and that it was never shown to Angliss's management. On this basis, Angliss infers that he did not conduct the analysis for Angliss's benefit and instead wanted to share it with a competitor.[107]

67 Mr Yee contends that he had done so because he was inexperienced with dairy products and wanted to understand how to do his job better.[108] He was new to the role and had expressed uncertainty to Ms Ding about whether he could perform in his new role. It would make sense for him to take steps to familiarise himself with the products and take the initiative to conduct such analysis.

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107 PWS at paras 32–40.

108 Mr Yee's AEIC at para 27.

68 Mr Yee's contentions are doubtful for the following reasons. First, it is curious that he *specifically* analysed *information relating to Arla* in August 2017. If job performance improvement had been his objective, he would have analysed other products within his portfolio of about a dozen brands.[109]

69 Secondly, he did not at any time discuss his analysis with, or show his analysis to, his superiors at Angliss. Ms Ding asserts that most of the files that Mr Yee had worked on were not presented to her or Mr Teh.[110] Mr Yee admitted at trial that he had not shown "Arla FY sales report - 1.xlsx",[111] "Copy of Arla FY sales report.xlsx",[112] "butter price - oct.xlsx",[113] "Copy of BUTTER - ROGER 2.xlsx", or "Copy of BUTTER - ROGER.xlsx"[114] to Angliss's management or Ms Ding.

70 When asked for the reasons why, the general explanation he gave was that he was not finished analysing the files and wanted to do further work. However, when asked *what* further work he would need to do, or what the purpose of this further work was, he was not able to give a coherent reply:[115]

> Q: Alright, Mr Yee, this is my question. What else do you need to do to complete this spreadsheet to do the analysis?
>
> A: Based on this spreadsheet, Your Honour, we just have to know that like item by item, month – year-to-year comparison so that we convert them to – to use other brands so that – what is the – what is the other brand

109 Transcript, 17 February 2021 at p 7 line 25.

110 Ms Ding's AEIC at paras 125–126.

111 Transcript, 16 February 2021 at p 70 lines 4–12.

112 Transcript, 16 February 2021 at p 65 lines 26–28.

113 Transcript, 16 February 2021 at p 82 line 29 to p 83 line 10.

114 Transcript, 16 February 2021 at p 91 lines 7–9; p 93 lines 6–8.

115 Transcript, 16 February 2021 at p 74 lines 8–15.

> once we convert, what is the – the variance. And then one – one step at a time and go line by line. And go – then we will have the full total picture. And there on, then you can have the – the – the understanding of the – the numbers, Your Honour.

His explanation for not showing this work to Ms Ding or Angliss's management is unsatisfactory.

71 Mr Yee also gave contradictory answers. When asked why he had not presented the work he had done on "Copy of Arla FY sales report.xlsx", he claimed that he had not come up with an answer, and that before he presented it to management he would have to seek Ms Ding's advice. Yet when asked if he did seek her advice, he said he did not:[116]

> Q: Now, did you share your analysis set out in this AB1 – 1AB89 to 90; did you share this analysis with Angel or anyone in Angliss?
>
> A: No.
>
> Q: Why not; since you did so much work?
>
> A: It is because I have not really come up with a answer what if – I have not finished all this thing and I am still searching for answer.
>
> Q: Right. Why don't just say, "Well, let me try. I have this analysis here. Let me try to convince, you can't just sit back, do nothing. Let me just go and try to get the customers buying Alba to buy Arla"; why not do that? It would be much appreciated by the Angliss management; don't you think so?
>
> A: Before I do that, I think I need to seek Angel advice also. So I did not share this to Angel, how can I act on it?
>
> Q: Did you seek Angel's advice?
>
> A: Because this is not show to Angel, this is I work ahead of things, I try to analyse thing out and had not have the chance to show it to Angel, Your Honour.

[116] Transcript, 16 February 2021 at p 65 line 26 to p 66 line 14.

> Q: Did you speak to anyone, let's say, in your sales team, right, there are two sales members under you, "Let's go and talk to one" – "some of the customers buying, let's say, E Select, buying Alba, let's see whether they will switch to Arla"; did you ever do that?
>
> A: No, not at the moment.

72 Whilst he was able to say at one point that he had told people to follow up on his analysis, when pushed further, he was unable to remember what the outcome of this was:[117]

> Q: Right, okay, now, what did you do next after receiving this table, what concrete steps did you take?
>
> A: Your Honour, in the next step, if I look at this list, may – I may recall that if I can reach – tell the salesperson it's the next step, "You look at the – this list here, this store under your – your customer, you should – can you go and talk to the customer or not?"
>
> Q: No, actually, maybe you misunderstood my question: What actually did you do?
>
> A: To tell the –
>
> Q: You –
>
> A: To tell the salesperson to act on it.
>
> Q: You – okay, so you did tell the salesperson to act on it, is it?
>
> A: Yes.
>
> Q: All right, so what happened next?
>
> A: Then they will listen, and then they will find time – find a way to go and talk to the customer.
>
> Q: All right, what was the outcome after speaking to these customers?
>
> A: I cannot remember.

[117] Transcript, 16 February 2021 at p 83 lines 11–28.

73 As a whole, I found his explanations on why he had analysed the files to be lacking. The fact that he could not recall or explain any legitimate reason for conducting the analysis lends itself to the suggestion that he had done so for reasons other than for Angliss's benefit.

The 13 September Meeting

74 It is not disputed that Mr Yee met Mr Melwani and Mr Ng on 13 September 2017. What is disputed is how this meeting came about, and what was discussed at this meeting. Angliss's position is that Mr Yee had reached out to Mr Ng to arrange a meeting with both Mr Melwani and Mr Ng, where he shared that Arla was looking for a distributor.[118] Mr Yee's position is that Mr Ng had approached him, and they did not discuss Arla at the meeting.[119]

75 On 13 September 2017, Mr Melwani sent the following WhatsApp message to Mr Yee:[120]

> Hey Roger , this is Mo from indoguna. I'm at kopitiam

Mr Yee testified that Mr Ng had arranged for all of them to meet, and Mr Melwani had texted him because Mr Ng was late.[121] Further, he testified that this was the first time that he had met Mr Melwani,[122] and that at the meeting, they had coffee and he was offered a job with Indoguna as the brand manager of a *dim sum* brand named "Masterpiece".[123]

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118 PWS at paras 41–49.

119 DWS at paras 304–306 and 628.

120 Mr Yee's AEIC at p 283; DB at p 15.

121 Transcript, 16 February 2021 at p 40 line 22 to p 41 line 26.

122 Transcript, 16 February 2021 at p 41 lines 10–24.

123 Transcript, 16 February 2021 at p 41 line 31 to p 42 line 12.

76 Angliss argues that Mr Yee's explanation should not be believed as there was no reason for Mr Melwani to join the meeting if it was to simply explore his interest in managing a *dim sum* brand, and that Mr Ng could have carried this out himself. Furthermore, there was no reason for Indoguna to want to offer Mr Yee a job managing a *dim sum* brand when he was handling dairy products at the time.[124] These points are rather equivocal.

77 More importantly, there were variances between Mr Yee's testimony at trial, and what he had stated in his affidavit of evidence-in-chief ("AEIC") regarding this meeting. Mr Yee had originally characterised his first meeting with Mr Melwani as a social meeting over beers in his AEIC,[125] which differed from his testimony at trial. For one, when cross-examined, he stated that they had met for coffee, not beers. More importantly, there was no mention in his AEIC of the job offer to be a brand manager for a *dim sum* brand called "Masterpiece".[126] This suggests that Mr Yee himself realised that his previous framing of the meeting as an innocuous round of beers was not an excuse he could well explain on the stand.

78 While Mr Yee's evidence about the 13 September Meeting is rather weak, these points would be equivocal if not for later events in the timeline that show that Mr Melwani recruited Mr Yee on 20 December 2017 to take on what later turned out to be the Arla brand manager role. In retrospect, it is more likely than not that Mr Yee conducted the analysis on Arla products in August 2017 to prepare for his 13 September Meeting with Indoguna.

124 PWS at para 46.

125 Mr Yee's AEIC at para 48.

126 Transcript, 16 February 2021 at p 41 line 31 to p 42 line 10.

Files copied and forwarded in December 2017

79 Mr Yee readily admits that he had forwarded and copied files from Angliss from 26 to 29 December 2017. For the following reasons, it is more likely than not that the Crucial Information was subsequently disclosed to Indoguna.

80 First, it is clear from his own testimony that Mr Yee's motivation for taking Angliss's confidential information was to help Indoguna secure more customers. His testimony was:[127]

> A: As I said, it's very foolish of me for doing this. And the – the whole purpose is I was thinking that I'm serving Arla, and all this customer that I want to reach out for is still Arla customers. That again, for – for my experience as a salesperson, I just want to reach out to customer which is still using Arla products and continue to have Arla and where to get Arla products. Because it's our priority to make sure that customer continuity is still remains.
>
> Q: Alright. So your answer is that you decided to take this list to – in order to reach out to these customers using Arla products, correct?
>
> A: It's for a –
>
> Q: Yes or no?
>
> A: It's for a reference.
>
> Q: Alright, for reference. Means you intend to use it; that must be, right? That's why, correct?
>
> A: But I have not used it because I have said, when I wri – when I joined Indoguna, Indoguna have their own base of customers, and it's enough for me to reach out to all this customer. And on top of that, Indoguna customers are similarly that based on the list here, they also have the same customer. So I did not use this informations.
>
> …

[127] PWS at para 213; Transcript, 15 February 2021 at p 75 lines 12–29; p 107 lines 18–23.

> Your Honour, I already admit that it's foolish and silly of me of doing this. And all I – during that time, and all I think is to have this for my reference so that I can continue to serve Arla customers and continue to tell the customers that where to buy Arla products. And – and – and this is – as I said, it's very foolish of me of doing this. All – all I been thinking is to reach out to Arla customers. During that point of time, I never think of so *fu za*, Your Honour.

Mr Yee's evidence that his main motivation for copying and forwarding the files was for his own "reference" at Indoguna to reach out to customers there is not acceptable. Any such reference would have been as an employee of Indoguna.

81 The timing of the copying and forwarding is pivotal. The crux of Angliss's case is that the coincidence between Mr Yee's meetings with Indoguna representatives, his securing of the Arla brand manager role, and his copying and forwarding of confidential information, suggests that Arla and Indoguna were aware that he had taken this information for Indoguna's use.

82 By mid- to late December, Mr Yee had been offered a role at Indoguna. At the 20 December Meeting with Mr Melwani, it is undisputed that he was offered a role as a dairy brand manager. However, Angliss asserts, and he denies,[128] that Arla was specifically brought up at this meeting. When cross-examined on the 20 December Meeting, he stated that the Arla brand manager role was offered to him.[129] In cross-examination, he seemingly recanted, saying that he was not told the brand, and only found out during the 26 December Meeting from Ms Raudaschl.[130] Nonetheless, by 26 December 2017 at the very

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128 DWS at paras 306 and 309.

129 Transcript, 16 February 2021 at p 93 line 25 to p 94 line 6.

130 Transcript, 16 February 2021 at p 96 lines 26–30.

latest, he knew the role was to be the Arla brand manager role. It is not disputed that Ms Raudaschl had brought up the fact that the role was the Arla brand manager role at this meeting. Further, Mr Yee testified to the effect that by the morning of 29 December 2017, he had essentially secured the Arla brand manager role at Indoguna.[131] Angliss argues that the speed at which he had secured this role suggests that there were no other candidates being considered for the role other than Mr Yee.[132] This was supported by Indoguna's former assistant general manager, Mr Chong, who opined that the "urgency in formalising [Mr Yee's] terms of employment with Indoguna … [was] highly unusual".[133] Overall, the proximity in time within which these events happened are probative of Mr Yee having disclosed his ability to make the information available to Indoguna, thus securing his role as the Arla brand manager.

83 Finally, the sheer volume of information taken raises the inference that it was taken for the purpose of being shared with Indoguna. Although Mr Yee claimed that he was "customer centric" and wanted to keep serving Arla and his customers once he moved to Indoguna, he had taken wide-ranging information that pertained to other brands[134] and went beyond any relevance to Arla. For example, some of the copied documents related to meat products.[135] It was not disputed and was confirmed on the stand by Mr Yee that Indoguna specialises in meat distribution.[136]

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131 Transcript, 17 February 2021 at p 9 line 22 to p 10 line 25.

132 PWS at para 87.

133 Mr Chong's AEIC at para 17.

134 PWS at paras 161–162.

135 1 AB 93–94 ("Angel Bay Nourish Lamb Shank & Beef Ribs 1.pdf"), 566–568 ("NATIONAL BEEF - 07 Dec 2017.pdf") and 569–571 ("NATIONAL BEEF - 09 Dec 2017.pdf").

136 Transcript, 16 February 2021 at p 100 lines 21–22.

84 Viewed as a whole, I find that these circumstances establish that, in all probability, Mr Yee had disclosed confidential information to Indoguna.

Forensic evidence regarding the December 2017 copying

85 The forensic evidence showed copying and onward forwarding of the Crucial Documents. Mr Alireza Fazelinasab ("Mr Alireza"), a digital forensics expert, produced three reports:

(a) In his report dated 28 February 2018,[137] he found that it was highly likely that between 26 and 29 December 2017, Mr Yee had copied three files and four folders (containing a further 125 files) from his laptop to an external Universal Serial Bus drive, and that between 4 August and 29 December 2017, Mr Yee had forwarded four e-mails from his work e-mail address to his personal e-mail address.[138]

(b) In his report dated 29 July 2019,[139] Mr Alireza found that Mr Yee had likely deleted the e-mail containing the Arla Spreadsheet from his personal e-mail inbox, as well as 2061 files from the USB device. He also found that Mr Yee had likely accessed 326 files from a folder titled "ANGLISS 2017" after 29 December 2017.[140]

(c) In his report dated 1 October 2020,[141] Mr Alireza analysed Mr Yee's USB device and found that he had accessed a total of 46 files

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137 Affidavit of Evidence-in-Chief of Alireza Fazelinasab ("Mr Alireza's AEIC") at pp 11–22.

138 Mr Alireza's AEIC, p 13 at paras 4.1 and 4.2.

139 Mr Alireza's AEIC at pp 1700–1710.

140 Mr Alireza's AEIC, p 1704 at para 2.1.

141 Mr Alireza's AEIC at pp 1729–1736.

on 299 separate occasions and had modified 46 files on 159 separate occasions since 29 December 2017. He also concluded that Mr Yee had saved 45 of the 46 files he had modified onto another storage device.[142]

86 Mr Yee has challenged these reports on several grounds. First, he has argued that Mr Alireza's conclusions do not make sense. The forensic evidence shows that he had likely saved most of the files onto another device whenever he would access the files.[143] Mr Alireza testified that he found that the Arla Spreadsheet had been opened over 157 times.[144] He also testified that it was also saved onto a different computer.[145] Mr Yee argues that he would not have saved the information 157 times from the USB device to another device as it would be illogical to do so, and on this basis, he argues that Mr Alireza's evidence must be flawed.[146]

87 Mr Yee has mischaracterised Mr Alireza's evidence. Mr Alireza explained two basic propositions in his report and on the stand:[147]

(a) first, whenever a file (an "original file") is opened or accessed by a user, a "temporary file" is automatically created, which would bear the same file name but with a different prefix; and

142 Mr Alireza's AEIC, p 1731 at paras 2.2.3, 2.2.4 and 2.2.5.

143 Mr Alireza's AEIC, p 1734 at para 6.6.

144 Transcript, 11 February 2021 at p 15 lines 2–22.

145 Transcript, 11 February 2021 at p 17 line 32 to p 19 line 17.

146 DWS at paras 783–786.

147 Mr Alireza's AEIC at pp 1732–1734; Transcript, 11 February 2021 at p 15 lines 5–22.

(b) second, where the date on which the temporary file was modified (the "modified date") changes, but the modified date of the original file does not, it would mean that the file was saved onto a different device.

From this, he was able to conclude when a file was accessed and when it was saved onto a different device, *ie*, where the last modified date of the original file precedes the last modified date of the temporary file, it can be concluded that it was saved elsewhere.

88 Mr Alireza's second report states that the Arla Spreadsheet had been *accessed* 157 times from 3 January 2018 to 19 March 2018.[148] This, according to Mr Alireza, shows that it was opened 157 times.[149] The report shows that the modified date of the *original file* had changed 27 times from 22 February 2018 to 2 March 2018.[150] It also shows that the modified date of the *temporary file* had changed 29 times from 29 December 2017 to 2 March 2018.[151] Thus, at most, Mr Alireza's finding was that the Arla Spreadsheet had been saved onto a different device 29 times, not 157. This takes the weight out of Mr Yee's contentions that Mr Alireza's findings are unreliable and illogical, and I find that it is more likely than not that Mr Yee had saved the information in a different device on numerous occasions, which in turn suggests that he was misusing it.

89 Secondly, Mr Yee attacks the reliability of Mr Alireza's reports, stating that Mr Alireza had only used one type of electronic evidence to make his

148 Mr Alireza's AEIC at pp 3362–3363.

149 Transcript, 11 February 2021 at p 15 lines 15–19.

150 Mr Alireza's AEIC at pp 3373–3374.

151 Mr Alireza's AEIC at pp 3421–3426.

assessment, and that Mr Alireza agreed that this could lead to misunderstandings.[152] This submission arose out of the cross-examination of Mr Alireza regarding his use of the "modified, accessed and created" time stamps to come to his conclusion. Mr Alireza agreed that he was basing his evidence on these time stamps alone.[153] During cross-examination, Mr Yee's counsel pointed the court towards a piece of literature that stated that the proper interpretation of time stamps is more complex than taking them at face value, a proposition which Mr Alireza agreed with.[154] Counsel then attempted to show that because Mr Alireza had only relied on one type of information, his findings were unreliable. Counsel failed to raise any real issue in cross-examination, however, as the following show:

(a) Mr Alireza was directed to an excerpt from the literature which stated that a common mistake in analysing time stamps is not checking the clock or the time zone on the computer.[155] It was then pointed out to Mr Alireza that his report did not mention either. This line of questioning did not raise any valid issue, because a difference in time zone would not have changed the data in this case.[156]

(b) Mr Alireza was then pointed to various excerpts that stated that an examiner cannot use time stamps alone but must also understand the different ways in which time stamps are recorded by different computer operating systems and file types. Mr Alireza agreed, and explained the

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152 DWS at paras 767–776.

153 Transcript, 11 February 2021 at p 61 lines 15–17.

154 Transcript, 11 February 2021 at p 54 lines 1–10.

155 Transcript, 11 February 2021 at p 55 lines 27–31.

156 Transcript, 11 February 2021 at p 56 lines 2–27.

file type in the present case before concluding that this would not change his findings and would in fact support them.[157]

The expert evidence showed persuasively, therefore, that Mr Yee had accessed and saved Angliss's confidential information, such as the Arla Spreadsheet, after 29 December 2017.

January text messages with Mr Melwani

90 The forensic evidence is especially probative when read together with the evidence of the text messages exchanged between Mr Melwani and Mr Yee after 29 December 2017. These messages clearly show that Mr Yee was working with Indoguna and was using Angliss's confidential information. This was in the period when Mr Yee was put on "garden leave" during his notice period and was still under Angliss's employ.

91 At trial, it was accepted by Mr Yee that as of 30 January 2018, Indoguna had not yet confirmed the prices and availability of Arla products.[158] Yet, a series of text messages on and before 30 January 2018 shows that Mr Melwani had been asking Mr Yee about three customers who had previously been Angliss's customers who purchased Arla products: Sun Lik Trading Pte Ltd;[159] The Coffee Bean & Tea Leaf (Singapore) Pte Ltd;[160] and Starbucks Coffee Singapore Pte Ltd ("Starbucks").[161] In particular, Mr Melwani asked Mr Yee whether "Starbucks [was] using 8gm or 20gm butter lurpak", and Mr Yee

157 Transcript, 11 February 2021 at p 61 line 25 to p 62 line 31.

158 Transcript, 17 February 2021 at p 61 line 23 to p 62 line 7; DB at p 27.

159 10 AB 6873.

160 10 AB 6914.

161 10 AB 6930.

replied "8g" and clarified that it had originally used 10 grams but changed to 8.[162] In cross-examination, counsel for Angliss put it to Mr Yee that Mr Melwani only had the specific figure of 8 grams because Mr Yee had given him the Arla Spreadsheet, which showed that Starbucks was purchasing butter in 8-gram increments.[163] In written submissions, Mr Yee's counsel has argued that this argument does not make sense as, if Mr Melwani had the Arla Spreadsheet, he would not have needed to ask Mr Yee this question.[164] Mr Yee's argument misses the point. The fact is that Mr Melwani had the *specific figure of 8 grams*, which matches the figure stated in the Arla Spreadsheet. From the text messages, Mr Melwani seemed to be clarifying between two options. If Mr Melwani truly did not have the Arla Spreadsheet, it would be more likely that he would not have had any options and would have asked a more open-ended question. Thus, these text messages further support that Mr Yee had disclosed Angliss's confidential information to Indoguna. In any event, Mr Yee's confirmation of the figure of 8 grams was itself information that was confidential to Angliss.

92 The text messages also show that Mr Melwani arranged for Mr Yee to meet Arla's Mr Kong, on 4 January 2018 and again on 24 January 2018.[165] This is relevant when considered together with Mr Yee's evidence on the stand that his salary was shared by Arla and Indoguna after he commenced work at Indoguna.[166]

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162 DB at p 27; Mr Yee's AEIC at p 295.

163 1 AB 62; Transcript, 17 February 2021 at p 64 lines 10–16.

164 DWS at para 765.

165 DB at pp 18 and 26.

166 Transcript, 15 February 2021 at p 61 lines 23–27.

Mr Yee's arguments on the causal link

93 Events on the timeline are more fully explained by reference to Mr Yee's argument that he did not cause the loss of the Arla distributorship. His case instead is that Angliss was not amenable to various key terms that Arla required. I why these suggestions are not cogent in this section.

(1) Exclusivity

94 Mr Yee posits that at the 11 July Meeting, Arla expressed that it wanted an exclusive distributorship arrangement with Angliss, where Arla would only distribute its products through Angliss, and, importantly, *Angliss would only distribute Arla's products*.[167] He argues that Angliss was not amenable to this as its business model is based on having a wide variety of brands to attract customers, a fact confirmed by Ms Ding:[168]

> Given the competitive nature of the food supplies distribution industry in Singapore, having a wide network of suppliers and customers, and maintaining good trade relations with them are essential to Angliss' success. The more brands Angliss represents, the more likely customers are to come to Angliss due to the range of products Angliss can offer. *Likewise, the more customers Angliss has, the more likely suppliers are to park their products with Angliss due to the high sales volume Angliss would be able to achieve. Having a large number of suppliers and products, as well as a large number of customers naturally translates to higher sales revenue and higher profits for Angliss.*
>
> [emphasis added]

95 In support of this proposition, he points to Angliss's active efforts to show Arla that it could achieve the sales targets *without an exclusive agreement*.

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167 DWS at paras 224 and 243.

168 Ms Ding's AEIC at para 261.

This was admitted to by Ms Watt during cross-examination,[169] and is evident from the large orders of butter Ms Watt placed with Arla.[170]

96 Mr Yee also argues that the 25 July Draft Distribution Agreement reflects this state of affairs. Mr Kong had edited cl 1.1, which originally stated that there would be a "non-exclusive" right for Angliss to import, market and distribute products. Mr Kong had deleted the prefix "non-", such that it now read as "~~non-~~exclusive", as follows:[171]

> **1. APPOINTMENT AND SCOPE**
>
> 1.1 Subject to the provisions set out herein, AF [*ie*, Arla] hereby grants the Distributor [*ie*, Angliss] for the duration of this Distribution Agreement (hereinafter referred to as the "Agreement") the ~~non-~~exclusive and non-transferable right to import, market and distribute products ~~listed~~ under the Arla Pro brand in Appendix 1 (hereinafter referred to as the "Products") within foodservice within the geographical area of Singapore (hereinafter referred to as the "Territory") under and subject to all terms, conditions and provisions as set forth herein. The Distributor accepts the appointment and agrees to comply with and perform all the terms and conditions of this Agreement.

However, the plain text of the paragraph confers an exclusive right *on Angliss to distribute Arla products*. The "exclusive relationship" bound Arla. Arla would distribute its products through Angliss alone. The clause *did not preclude Angliss from distributing dairy products from other brands*. Ms Watt testified that this was how both Arla and Angliss understood the clause.[172]

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169 Transcript, 4 February 2021 at p 49 lines 28–32.

170 8 AB 5122–5123; Transcript, 4 February 2021 at p 40 lines 17–28.

171 8 AB 5155.

172 Transcript, 4 February 2021 at p 53 lines 5–25.

97 Finally, Mr Yee argues that Arla wanted Angliss to prioritise it and help it grow its brand name, relying on the minutes of the 11 July Meeting. He submits that this shows that Arla wanted Angliss to only distribute Arla products.[173] I would disagree. The minutes stated that Arla was looking for a "partnership that [*sic*] willing to position Arla at the Priority position".[174] The use of the word "[p]riority" in context reflected that Arla did not contemplate a relationship where Angliss would only distribute its products. It expressly contemplated a situation where Angliss would distribute other products but would place emphasis on Arla.

98 Thus, there is no evidence that Arla sought mutual exclusivity with Angliss, and I find that it improbable that it would have. The reality of Angliss's reach and network, which in any event Arla depended upon, would obviate this. Rather fundamentally, there is also no evidence that the relationship between Arla and Indoguna was mutually exclusive.

(2) Disagreement over key terms

99 I deal briefly with Mr Yee's argument regarding a WhatsApp conversation between Mr Kong and Ms Ding on 17 August 2017. He argues that this WhatsApp conversation showed that there remained disagreement over various terms, as the text was said to show Ms Ding telling Mr Kong that Angliss could not compromise on a term. However, when read in its full context, this does not pertain to a material term:[175]

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173 DWS at paras 223–224.

174 7 AB 4295–4296.

175 8 AB 5152.

> [17/8/17, 3:00:06 PM] Vee Hong Arla: By the way, the draft contract pls do let me know is that ok from your side as in general? Then we can move into detail and fix the minor part
>
> [17/8/17, 3:02:06 PM] Angel Ding: With the contract I think we still need to talk
>
> [17/8/17, 3:05:17 PM] Vee Hong Arla: Yes or course we still need to discuss further. For now I just need to prepare and make sure we are on the same page. So when the time we meet up its more to solve the minor worries
>
> [17/8/17, 3:08:02 PM] Angel Ding: <attached: 00000009-PHOTO-2017-08-17-15-08-02.jpg>
>
> [17/8/17, 3:08:16 PM] Angel Ding: I don't think can compromise this term too
>
> [17/8/17, 3:09:34 PM] Vee Hong Arla: But *if key account* . That the trend driver and arla will probably more concern and involving. So how to make it more simplify and yet to minimise the disclose of sensitive info?
>
> [17/8/17, 3:10:00 PM] Angel Ding: It's *general Ac*
>
> [17/8/17, 3:10:25 PM] Vee Hong Arla: The list only apply on *key account*
>
> [17/8/17, 3:11:25 PM] Vee Hong Arla: *General account* no disclose on customer info , but the volume and value in overall
>
> [emphasis added]

100 It is clear from this exchange that the disagreement was to do with terms relating to an "account". This is in all likelihood referring to the key amended terms sent by Mr Kong on 16 August 2017 (*ie*, the "16 August Amendments"), which pertained to marketing reports that Arla wanted Angliss to send, which included key and general accounts.[176] Whilst this shows that there was still some negotiation outstanding, it was not over a key term, and thus this does not materially damage Angliss's case. Parties subsequently met on 29 August 2017 to finalise the contract.

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176 9 AB 5648–5651.

(3) Sales targets

101 Mr Yee also argued that the sales targets were a crucial term, and the reason why Arla did not sign with Angliss was because they differed on the sales targets. Mr Yee asserts that there was no agreement on the sales targets between Arla and Angliss, and thus there could be no "in principle" agreement as Angliss asserts.

102 The minutes of the 11 July Meeting record that Angliss had proposed sales targets of €1.4m for 2017, €2m for 2018, €4m for 2019, and €6m for 2020.[177] However, in Arla's presentation that was sent to Angliss on 14 July 2017, it set out higher sales targets of €1.4m for 2017, €3m for 2018, €5.5m for 2019, and €8m for 2020.[178] Further, on 14 July 2017, Mr Kong had e-mailed Ms Watt and Ms Ding, referring a discussion between them. On 17 July 2017, Ms Watt replied stating that the discussion should only be on what Angliss felt was achievable, and there was no point in agreeing on other figures which Angliss was not comfortable with. Mr Kong then replied stating that he would be going to their office for "further discussion", and that the "[s]ales targets" were on the agenda.[179] There was also correspondence between Mr Björkqvist and Ms Ding on the same day where Mr Björkqvist had set a sales target of €3m, but Ms Ding stated that they could only reach €2m based on the competitive market situation.[180] Mr Yee argues that the fact that the sales targets were still in discussion shows that there was no such "in principle" agreement reached at the 11 July Meeting.

177 7 AB p 4295.

178 8 AB 5144.

179 8 AB 5147–5148.

180 8 AB 5150.

103 But, at Appendix 3 of the 25 July Draft Distribution Agreement, under the heading "Annual Sales Staff Incentive KPI Performance bonus", it states that there would be an incentive in 2018 if Angliss achieved the annual sales value target, which appears to have been €2.5m.[181] This figure was later repeated on 16 August 2017 by Mr Kong in an e-mail to Ms Ding, where he stated that he had included a "[s]implified incentives and bonus scheme" in the 16 August Amendments, which included a table titled "[s]ales person performance incentive" that noted that the target annual sales volume for 2018 was €2.5m.[182] This suggests there was some agreement as to sales targets.

104 It is not disputed that Ms Ding and Ms Watt met Mr Kong and Mr Björkqvist to go through the clauses from the 16 August Amendments on 29 August 2017.[183] What is disputed is whether anything remained in issue after this meeting. Ms Ding and Ms Watt assert that after this meeting, there was an agreement and there was nothing left to discuss other than minor administrative details.[184] Ms Watt states in her AEIC that between 29 August and 30 December 2017, "business with Arla carried on as usual … [Angliss's procurement team] worked hard to fulfil Arla's orders in light of the new sales targets [they] had agreed on and [she] was under the impression that it was a matter [sic] time until parties signed-off on the [amended distributorship agreement]".[185] However, there is no indication as to what had happened in their negotiations after the 29 August meeting. Ms Watt stated that there was no update from Arla, so she

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181 8 AB 5171.

182 9 AB 5648 and 5650.

183 Ms Watt's AEIC at para 23; Transcript, 2 February 2021 at p 87 lines 8–10; AB Vol 8 at p 5152.

184 Transcript, 2 February 2021 at p 90 lines 19–24 (Ms Ding); Transcript, 4 February 2021 at p 39 lines 7–11 (Ms Watt).

185 Ms Watt's AEIC at para 28.

chased them a few times over the phone regarding the date of the signing of the distribution agreement, but Arla stated that it would get back to Angliss.[186] It was clear that sales volumes remained important to Arla. For example, on 24 October 2017, Mr Björkqvist contacted Ms Watt stating that he hoped that revised prices would help them to "hit some numbers above forecast", and then again on 30 October 2017 to ask her whether there was "any possibility to fulfill [Angliss's] forecasted volumes".[187]

(4) Mr Yee and the sales targets

105 In this context, it is pertinent that Mr Yee analysed Arla's products in August and November, and met with Mr Melwani on 13 September and 20 December 2017. Mr Yee's evidence regarding the sales targets for the Arla-Indoguna distributorship shows the crucial reason why Angliss lost the distributorship. The sales targets were, on both parties' cases, an important concern for Arla. This is also clear from my findings above.

106 On this basis, Angliss's key argument is that Arla would not have chosen to sign with Indoguna unless it was offered comparable or better sales targets.[188] I agree with this submission. After some 47 years of steady profit, it would make no sense for a company to sign with a new distributor with no dairy portfolio or experience. The new distributor would have to offer better figures. This Indoguna could now do because, with the Crucial Information, it was able to assure Arla that it had the same reach as Angliss did. At the same time, because Arla was its only dairy client of substance, it was able to focus on and prefer Arla.

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186 Ms Watt's AEIC at para 29.

187 8 AB 5122.

188 PWS at paras 200–203.

107 Further, when asked about these sales targets, Mr Yee was evasive and gave answers that I find difficult to believe. Mr Yee agreed that he was the Arla brand manager and was the only person who would identify customers for Arla products.[189] However, when asked about the sales target set for him when he first joined Indoguna in 2018, he stated that he was unable to recall what it was.[190] He then stated that he was not told, and his only instructions were to develop Arla as a brand.[191] However, only moments later, Mr Yee prevaricated and stated that there was a sales target, and he was told what it was by Mr Björkqvist, but he could not remember.[192] When asked about more recent years' sales revenue, he was also unable to answer.[193] I found his testimony difficult to believe. He was only in charge of one brand, Arla.[194] He was tasked with developing the brand and had to source for customers. With his job scope in mind, it is hard to believe that he could not remember even a rough approximation of the sales targets.

108 I find it much more likely that he did remember the figures, at least approximately, yet deliberately chose not to disclose them in court. Similarly, Mr Yee did not produce a copy of the distributorship agreement between Arla and Indoguna. Angliss made a request for this document in a notice to produce dated 22 May 2020.[195] In a reply filed on 27 May 2020, Mr Yee denied having

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189 Transcript, 15 February 2021 at p 81 lines 5–26.

190 Transcript, 15 February 2021 at p 82 lines 1–2.

191 Transcript, 15 February 2021 at p 82 lines 6–14.

192 Transcript, 15 February 2021 at p 82 line 15 to p 83 line 7.

193 Transcript, 15 February 2021 at p 83 lines 8–14.

194 Transcript, 15 February 2021 at p 83 lines 18–21.

195 Plaintiff's Notice to Produce Documents Referred to in Pleadings or Affidavits dated 22 May 2020.

this document in his possession, custody and/or power.[196] In cross-examination, he maintained that although he was only in charge of Arla as a brand manager, he was not given a copy of the distributorship agreement with Arla and did not ask for one.[197] He asserted that he was not told about this agreement when he joined Indoguna.[198] He was quite unable to explain why he did not have a copy of this agreement: [199]

> Q: So let's look at the – this is effectively a reply from your lawyers, right, when we asked for a copy of the distribution agreement. So they say that they object to giving inspection of this document. Now, on the ground that you don't have a copy of this agreement and you can't even ask for it from Indoguna or anyone or, like, someone like Arla, so did you give that – did you tell your lawyers that you don't have a copy, you can't also ask from it – from either Indoguna or Arla?
>
> A: Yah, I don't have a copy. My understanding is I don't have the copy of the – the distribution signed document.
>
> Q: Yes. But did you also tell your lawyers that, "I can't even ask for a copy of this agreement from either Indoguna or Arla"?
>
> A: I cannot remember.
>
> Q: You can't remember.
>
> A: I can't remember.

109 When queried about his response to the notice to produce, which stated that his knowledge of the distribution agreement arose from a 3 May 2018 letter from Arla to his lawyers, he was quite incoherent:[200]

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196 Notice Where Documents May be Inspected dated 27 May 2020; Plaintiff's Bundle of Documents p 7.

197 Transcript, 15 February 2021 at p 83 line 24 to p 84 line 1.

198 Transcript, 15 February 2021 at p 89 lines 10–15.

199 Transcript, 15 February 2021 at p 90 lines 18–31.

200 Transcript, 15 February 2021 at p 91 lines 13–28.

Q: So, Mr Yee, did you tell your lawyers that the first time you knew there was a written a [*sic*] distribution agreement was around 3rd of May 2018?

A: I don't know.

Q: You don't know?

A: I don't know the distributionship when they sign.

Q: Right. No. Did you tell your lawyers the first time that you knew there was a distribution agreement entered into between Arla and Indoguna – first time, the very first time you found out was on the 3rd of May or sometime after that?

A: I don't know.

Q: What do you mean you don't know?

A: Your question is do I know when they sign, is it? When they sign the –

Q: Not when they signed. When you first found out they signed a written distribution agreement; when you first found out.

A: I cannot remember.

Q: You cannot remember.

A: I cannot remember.

110 I find his testimony incredible. Mr Yee's role at Indoguna was as the brand manager for Arla alone. Mr Yee has argued that he is a mere employee of Indoguna and would not be able to compel either Indoguna or Arla to give discovery.[201] He has not, however, shown any effort to fulfil his discovery obligations for this document which, in the light of his job scope, is within his possession, custody or power.

111 The inference from the above is that the sales figures were (a) derived from Angliss's confidential information; and (b) could only have been achieved by Indoguna if it had Angliss's confidential information. When read with the

201 DWS at paras 654–657.

fact that it is likely that Arla would only have chosen Indoguna if it had been able to achieve certain sales targets, it shows that it was Mr Yee's acts that caused Arla to terminate its distributorship arrangement with Angliss.

Timing of Arla's termination

112 Therefore, Mr Yee's arguments, far from providing alternate reasons as to how the causal link was broken, provide insight into how he interrupted the relationship between Angliss and Arla. The timing of Arla's termination indicates the same. Arla terminated its distributorship arrangement with Angliss on 30 December 2017, one day after it was clear that Mr Yee would move to Indoguna and take the position of the Arla brand manager.[202]

113 This is also supported by the speed at which Mr Yee secured the Arla brand manager role at Indoguna. As I have noted at [82] above, Indoguna's former assistant general manager, Mr Chong, opined that the urgency in formalising Mr Yee's terms of employment with Indoguna was "highly unusual".[203] He maintained this view during cross-examination by Mr Yee's counsel.[204]

114 It was not disputed that Indoguna's strength was in meat supply.[205] It had no existing network or reach for dairy products. There would have been no reason for Arla to terminate its relationship with Angliss if it did not know that it would have an enhancement of the reach and network at Indoguna that it had

202 Transcript, 17 February 2021 at p 9 lines 22 to p 11 line 15.

203 Mr Chong's AEIC at para 17.

204 Transcript, 5 February 2021 at p 16 lines 11–14.

205 Transcript, 5 February 2021 at p 18 lines 4–10 (Mr Chong); Transcript, 16 February 2021 at p 39 lines 4–5, p 100 lines 20–22 and p 107 at lines 21–23 (Mr Yee).

previously enjoyed with Angliss. This reason came about in the form of Mr Yee joining Indoguna with Angliss's confidential information in hand, which gave Indoguna the ability to promise better sales targets for Arla, inducing Arla to terminate its relationship with Angliss.

Conclusion on breach and causation

115 To conclude, the circumstances weigh against Mr Yee's denial that he had disclosed or misused Angliss's confidential information. His analysis of Arla products in August 2017, and his subsequent meeting with Mr Melwani in September 2017, strongly suggest that he had been involved with Indoguna from an early stage. In December 2017, the timing and volume of his copying, as well as his own self-expressed motivations, clearly show that his intention was to use Angliss's confidential information to help his work at Indoguna. Whilst he denies having eventually used this information, the evidence shows otherwise, in the form of the forensic evidence that shows he had accessed and saved the Arla Spreadsheet on a different device multiple times in 2018. As such, aside from having committed a breach of confidence in equity, I find that Angliss has proven on the balance of probabilities that Mr Yee has breached his obligations under the Confidentiality Clause by disclosing its information to Indoguna. This, in context, caused the loss of Angliss's distributorship with Arla.

Contractual duties of loyalty and fidelity

116 Before moving to the issue of the loss caused, I deal briefly with the allegations that Mr Yee breached his duties of loyalty and fidelity to Angliss. This is founded on cl 3.4 of the Employment Contract, which reads as follows:[206]

[206] 7 AB 4285.

> 3.4 At all times, you must faithfully and conscientiously observe and execute your assigned duties and responsibilities and use your best endeavour to further the interest of the Company [*ie*, Angliss]. You will also conduct yourself to credit not only yourself but also the Company.

This clause embodies the position at law that employees owe their employers an implied duty that they "will serve the[ir] employer[s] with good faith and fidelity": *Man Financial* at [193].

117 Breach of such a duty will not be found if there are merely "preparatory steps" taken by the employee: *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 ("*Smile Dental*") at [65]. Thus, if an employee makes preparations to seek new employment, this will not constitute a breach. Instead, the employee must have conducted himself in a manner that amounts to "actual competitive activity": *Smile Dental* at [67] and [70]. On this basis, Mr Yee argues that he had not taken active steps to divert business away from Angliss, and that his actions of copying files were merely preparatory in nature and were undertaken for the singular purpose of ensuring that there was continuity for his customers.[207]

118 I do not agree with Mr Yee. My findings at [84] and [115] make plain that Mr Yee's actions amount to competitive activity. The only issue remaining is whether this competitive activity caused Angliss the loss that it claims. I turn to this issue.

Loss claimed

119 Angliss asserts four alternative heads of damage. These are as follows:

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207 DWS at paras 830–839.

(a) loss of the chance to enter into a three-year distribution agreement with Arla, quantified at S$267,000;[208]

(b) loss of profits as a result of Arla's termination of its distributorship arrangement with Angliss, quantified at S$749,000;[209]

(c) damages on the basis recognised in *Wrotham Park Estate Co Ltd v Parkside Homes Ltd* [1974] 1 WLR 798 ("*Wrotham Park* damages"), as accepted by the Court of Appeal in *Turf Club Auto Emporium*, calculated based on the hypothetical scenario that Angliss would have sold the confidential information to Mr Yee (quantified at S$749,000);[210] or

(d) damages for the cost that Mr Yee would have had to incur to recreate the information from legitimate sources, in line with *I-Admin* ("*I-Admin* damages").[211]

Wrotham Park *damages and* I-Admin *damages*

120 *Wrotham Park* damages deal with a calculation of what Angliss would have sold the confidential information for. There was no reason proffered for why this was quantified at S$749,000. This hypothetical was not a relevant one for the case at hand: the Crucial Information was fundamental to Angliss's business, and the Crucial Information included information relevant not just to

208 PWS at para 229.

209 PWS at para 228.

210 PWS at para 230.

211 PWS at para 230.

Arla but also to its other clients. If Angliss had considered selling it, it is unlikely that it would have set the price as that of a single distributorship.

121 *I-Admin* damages deal with the cost of recreating the information. Again, this is not an appropriate method to apply in the present case. It would not have been possible for an entity without Angliss's historical reach and network to create the information. In any event, Angliss has not tendered any evidence supporting this head or attempted any quantification.

Loss of profit and loss of chance

122 The loss of the chance of obtaining the Arla distributorship and the loss of profits from not obtaining the distributorship were the two alternatives that were pursued by Angliss with seriousness. These were quantified by its expert witness, Mr Kon Yin Tong ("Mr Kon").

123 Mr Yee did not produce any contrary expert evidence. His final written submissions propose the award of nominal damages on the basis that there was no causal nexus between the loss of the distributorship and his disclosure of the information.[212] I have dealt with the causal link above at [62]–[115].

124 The remaining issues are therefore whether the relevant head is loss of the chance of obtaining the distributorship or the larger loss of profits from the distributorship, and the quantification of the relevant head of loss.

Whether loss of profit or loss of chance

125 The issue that follows is whether it was the loss of the chance of securing the distributorship, or the loss of the distributorship itself, that was caused by

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212 DWS at paras 846 and 851.

Mr Yee's conduct. Mr Kon's figures on these alternative heads of loss are as follows:

(a) *Loss of chance*. Mr Kon has quantified the loss of chance at S$267,000.[213] This figure was derived on the assumption that there was only a 50% chance that the distributorship agreement would have been entered into.[214] This assumption rests on the "long-standing relationship" between Arla and Angliss,[215] which has not been disputed by parties.

(b) *Loss of profit*. Mr Kon calculated the loss of profits to be S$749,000,[216] and Mr Yee has not disputed this.[217] The profits lost stem from the loss of the distributorship agreement with Arla, as well as subsequent extensions, pro-rated by Mr Kon to reflect the probability of such extensions. This was based on the assumption that the first three-year agreement from 2018 to 2020 was 100% certain, a three-year renewal from 2021 to 2023 was only 50% certain and there was 0% certainty for subsequent renewals.[218]

126 To establish loss of chance, Angliss must show that the chance lost was real or substantial: *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd and another* [2005] 1 SLR(R) 661 at [135]. To establish loss of profits, Angliss must show that Arla would, as a matter of certainty albeit on the balance of probabilities, have obtained the distributorship but for

213 Affidavit of Evidence-in-Chief of Kon Yin Tong ("Mr Kon's AEIC"), p 51 at para 8.1.

214 Mr Kon's AEIC, p 37 at para 6.12.

215 Mr Kon's AEIC, p 37 at para 6.12.

216 Mr Kon's AEIC, p 51 at para 8.1.

217 PWS at para 228.

218 Mr Kon's AEIC, p 37 at para 6.12.

Mr Yee's breach of confidence. To decide whether either alternative applies, I look at whether Mr Yee's third-party disclosures caused the loss of the distributorship, or instead, the loss of the chance of obtaining it.

127 The relationship with Arla was such that Angliss clearly had *some* chance of signing the distributorship agreement. It is undisputed that their business relationship dated from the 1970s. They had been in discussions to sign an exclusive distributorship agreement and had been exchanging draft agreements from July up until 29 August 2017. As of early December 2017, the two companies were still discussing orders.

128 The evidence goes much further than a finding that Angliss lost a chance of securing the distributorship. I find that, but for Mr Yee's disclosure of Angliss's confidential information to Indoguna, Angliss would, in all probability, have secured the distributorship. Angliss and Arla had worked together for some 47 years. Angliss's network and reach were such that it would not have been logical for Arla to consider another distributor unless it was assured of the same network and reach. There was no evidence that any of Angliss's other competitors could have achieved this. Indoguna's network and reach arose from Mr Yee's actions. And as Indoguna did not have an existing stable of other dairy clients, Arla would have the benefit of Indoguna's focus and priority. Therefore, the applicable head of loss is not loss of chance, but loss of profits.

Quantification of loss of profits

129 Coming to the quantification, the loss specified by Mr Kon may be broken down to two periods:

(a) First, he identified a period of 0.41 years from 4 August to 30 December 2017, from the date Mr Yee sent the Lantmannen Unibake E-mail to his personal e-mail address, to the date of Arla's termination of its distributorship arrangement with Angliss (the "breach period").[219]

(b) Second, he identified a "post-breach period" of six years from 1 January 2018 to 31 December 2023 for the loss of profits.[220] This is the period commencing the day after the termination of the distributorship arrangement by Arla, to a date when the breach would have stopped affecting Angliss.

130 The first breach period specified by Mr Kon is problematic. Whilst Mr Yee's forwarding of the Lantmannen Unibake E-mail on 4 August 2017 was a breach of his obligations of confidentiality, his (plausible) reason for so doing was to seek his wife's help with the drafting of his work e-mails.[221] This may not have been linked to the loss of the Arla distributorship. The Arla material was forwarded on 13 August 2017. Even then, the tipping point for Arla's decision on the distributorship may not have been reached. On the available evidence, on 29 August 2017, Arla and Angliss met to discuss the contract, and Mr Yee met with Mr Melwani on 13 September 2017. While the distributorship agreement remained unsigned, Arla and Angliss were still negotiating deals, as seen by the December negotiations between Ms Watt and Mr Björkqvist. Arla's decision to terminate its relationship with Angliss was clearly made in the context of Mr Yee's new employment with Indoguna. In this context, he copied the Crucial Information from 26 to 29 December 2017, and he also

219 Mr Kon's AEIC, p 24 at para 3.2(a) and p 25.

220 Mr Kon's AEIC, p 24 at para 3.2(b) and p 25.

221 Transcript, 16 February 2021 at p 127 line 29 and p 128 lines 16–19.

communicated with Indoguna's Ms Raudaschl and Mr Melwani from 18 December 2017 onwards, with the job description and pay package for the Arla brand manager role being discussed on 28 December 2017.[222] Arla's termination of its distributorship arrangement with Angliss was on 30 December 2017. This was when Angliss lost the distributorship, and thus the loss in profits began to accrue from 31 December 2017.

131 The loss for the post-breach period for six years from 1 January 2018 was quantified by Mr Kon at S$729,423. As a practical matter, while the loss started to accrue from 31 December 2017, it suffices to use this period commencing on 1 January 2018. The sum of S$729,423 was calculated based on a historical projection of past profits for the first three-year agreement between Angliss and Arla at 100%, and then at 50% for the second contract, on the footing that new contingencies may arise in the chance of a second contract. This quantification is premised on logical reasons which have not been disputed.

Conclusion

132 I award Angliss S$729,423 in damages. I shall hear counsel on costs.

Valerie Thean
Judge of the High Court

[222] DB 11 and 29.

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