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DISTRICT JUDGE
CLEMENT SEAH CHI-LING
8 OCTOBER 2025

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGDC 268

District Court Suit No 2892 of 2020

Between

De Beaute (SSC) Pte Ltd

... Plaintiff

And

Tan Mong Ngoh

… Defendant

JUDGMENT

[Contract] – [Breach]
[Contract] – [Breach] – [Damages]
[Unjust enrichment] – [Failure of Basis]
[Evidence] – [Admissibility of evidence] – [Hearsay] – [Business Record Exception]

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v
Tan Mong Ngoh

[2025] SGDC 268

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8 October 2025 Judgment reserved.

District Judge Clement Seah Chi-Ling:

Introduction

1. The Plaintiff brought the present action against the Defendant for misconduct and wrongdoings allegedly committed by the Defendant during her term of employment with the Plaintiff. These included unauthorized absences from work, causing the company staff to perform treatment services on her without charge, providing free and/or upgraded treatment to the company's customers without collecting the payments due, and misappropriating of the Plaintiff company's funds, among others.

Background Facts

2. The Plaintiff is a company incorporated in Singapore and has its registered address at 120 Lower Delta Road, Cendex Centre #03-13/14, Singapore 169208. At all material times, Mr. Leo Meng Foo ("**Mr. Leo**") and his wife, Ms. Cori Teo Hooi Peng ("**Cori Teo**") were the directors of the Plaintiff.

3. The Plaintiff operates a spa and wellness business providing massage, facial and slimming treatments, among other services. The Plaintiff has three outlets located at:

(a) 190 Clemenceau Avenue, Singapore Shopping Centre #B1-00/10 and #01-01/10, Singapore 239924 (the "**SSC Outlet**");
(b) 50 East Coast Road, Roxy Square #03-22, Singapore 420769; and
(c) 10 Anson Road, International Plaza #02-42/44, Singapore 079903.

4. The outlet relevant to this suit is the SSC Outlet where the Defendant was employed as outlet general manager at the relevant time.

5. The Defendant, Ms. Tan Mong Ngoh, is also known as Anna Tan. She was first employed by the Plaintiff in or around October 2003 as a beauty therapist. The Defendant ceased working for the Plaintiff in October 2014 when the Plaintiff terminated her employment for misconduct. According to the Plaintiff, the Defendant had from a very early stage showed a propensity for insubordination. The Defendant was rude to the Plaintiff's management and failed to issue invoices to customers upon making sales. The Plaintiff also received complaints from customers over the Defendant's poor work attitude and customer service. Despite receiving various warning letters, the

Defendant's misconduct continued to deteriorate. Amongst other things, the Defendant allegedly started to copy the Plaintiff's customer data, leak confidential and personal information to third parties and spread untrue rumors about the Plaintiff's financial position. This led to the Defendant's first dismissal from the Plaintiff's employment on 13 October 2014.

6. Approximately two years later, around February 2017, the Plaintiff rehired the Defendant as the Outlet Manager of the SSC Outlet. According to the Plaintiff, the Defendant had pleaded with the Plaintiff to let her re-join the Plaintiff as she was in desperate need of a job. The Plaintiff reemployed the Defendant with effect from 1 February 2017 out of goodwill. The Defendant's account, on the other hand, was that she was "invited" by the Plaintiff to rejoin the Plaintiff as the Plaintiff felt that she was good in sales[1]. The key terms of the Defendant's re-employment were contained in a Letter of Appointment ("**LOA**") and a document entitled 'Company Policies and Guidelines' ("**CPG**") dated 19 January 2017[2].

Circumstances leading to the termination of the Defendant's employment with cause on 2 December 2020 and the commencement of the present action

7. It was not disputed that the Plaintiff's director, Ms. Cori Teo, was absent from work for an extended period of time from April 2018 to early 2020 due to her cancer treatment[3].

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[1] Defendant's Bundle of Interlocutory Affidavits ("**DIA**") p 5 at [5]

[2] Agreed Bundle of Documents ("**AB**") Volume 1, p 20-36.

[3] Plaintiff's Bundle of AEICs ("**PA**") Volume 1, p 52 at [72]

8. It is the Plaintiff's case that the Defendant took advantage of Cori Teo's medical absence and started to commit various acts of misconduct and wrongdoing. The Defendant's misconduct and wrongdoing were first discovered in August 2020 when a number of staff at the SSC Outlet began to complain about the Defendant's conduct and this came to the attention of the Plaintiff's management. Amongst other things, the staff members complained that the Defendant was habitually late for work, and coerced other staff members to perform unauthorised facial and massage treatments on her without charge. There were also complaints from customers that the Defendant did not provide adequate customer service to them[4].

9. In or around August or September 2020, rumors also began to circulate amongst staff and customers that the Defendant either owned or worked at another beauty salon called L'avenir Aesthetics Pte Ltd ("**L'Avenir**") located at Far East Plaza. She also failed to report to work at the SSC Outlet on numerous Mondays. On two different Mondays in mid-October 2020, one of the Plaintiff's staff, Ms. Febrrika Pratiwi Tjiptade ("**Ms. Febrrika**"), travelled to Far East Plaza to determine if these rumors were true, and on both occasions, she saw the Defendant entering the L'Avenir outlet[5].

10. On 27 October 2020, the Defendant tendered her resignation, giving 3-months' notice of her intention to resign and specifying a last date of service of 27 January 2021[6], which the Plaintiff accepted. As investigations into the Defendant's misconduct were ongoing, the Plaintiff, through its then solicitors, Arbiters Inc Law Corporation, sent the Defendant a letter dated 28 October 2020

[4] 1PA23 at [19]

[5] 1PA26 at [23]

[6] DIA6 at [9]-[10] and DIA54

wherein she was placed on garden leave with immediate effect whilst her case was being investigated.

11. Pursuant to Guidelines issued by the Ministry of Manpower and the Tripartite Alliance for Dispute Management, as a prelude to a potential dismissal of the Defendant for misconduct, the Plaintiff conducted an independent inquiry into the allegations made against the Defendant. A "documents-only" inquiry into the Defendant's misconduct was convened on 1 December 2020, with Mr. Daniel Ho of Summit Law Corporation ("**Mr. Ho**"), a practicing lawyer, chairing the independent inquiry. The Defendant was invited to participate in the inquiry but declined to provide any substantive response[7]. Pursuant to the inquiry, Mr. Ho determined that there was sufficient evidence of misconduct having been committed by the Defendant. A dismissal of the Defendant was accordingly recommended by Mr. Ho, and the Defendant was dismissed from employment on or around 2 December 2020[8]. The Defendant was paid her salary for the month of November 2020 and subsequently for 1 December 2020.

12. In or around December 2020, the Defendant lodged a claim with the Employment Claims Tribunal (the "**ECT**") seeking: (a) 2 months' salary in lieu of notice of termination for December 2020 and January 2021; and (b) $600 as unpaid sales commission for the month of October 2020. I shall not be going into the ECT proceedings in detail as they are not strictly relevant, save to point out that the ECT substantially dismissed the Defendant's claims on 28 April 2021.

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[7] 3PA318-321

[8] 1PA31-32 at [36]-[38]

The Action

13. Following the Plaintiff's investigations into the Defendant's conduct carried out between around August and December 2020 led by Mr. Leo, and the conclusion of the independent inquiry, the Plaintiff determined that the Defendant had committed numerous acts of misconduct during her employment with the Plaintiff, in breach of the terms of the LOA and the CPG, which had caused the Plaintiff loss and damage. On 9 December 2020, the Plaintiff commenced the present suit against the Defendant.

14. The Plaintiff pleaded the following claims against the Defendant in the Plaintiff's Statement of Claim (Amendment No. 2)[9] ("**SOC**"):

(a) Breach of clause 4.0 of the LOA and/or clause 5.0 of the CPG by failing to report for work on at least 17 Mondays during the period from January 2020 to October 2020 (the "**Relevant Period**") without authorization: see paragraph 10(a) SOC[10] (the "**Monday Absences Claim**").

(b) Breach of clause 4.0 of the LOA by working less than the stipulated work hours during the Relevant Period without reason or authorization: see paragraph 10(c) SOC[11] (the "**Shortfall in Working Hours Claim**");

[9] Set Down Bundle ("**SDB**") at p. 7

[10] SDB20-21

[11] SDB22

(c) Claim in unjust enrichment arising from the Defendant instructing various SCC Outlet staff to perform massages and/or facials on her during working hours without charge and/or authorization from the Plaintiff: see paragraph 11 SOC[12] (the "**Unauthorised Anna Treatments Claim**"):

(d) Breach of clause 3.0 and/or 5.0(e) of the LOA and/or clause 3.3(m) of the CPG and/or the Defendant's fiduciary duties and/or implied duties by (i) promising and providing treatments to customers without charge and/or failing to collect payment; and (ii) promising and providing upgrades to more expensive treatments to customers without charge and/or failing to collect payment for such upgrades (collectively, the "**Unauthorised Free Treatments/Upgrades Claim**"): see paragraph 12 SOC[13]:

(e) Breach of clause 3.0 and/or 5.0(e) of the LOA and/or clause 3.3 of the CPG and/or the Defendant's fiduciary duties and/or implied duties by misappropriating customers' monies intended for the purchase of treatment packages with the Plaintiff; or alternatively, a claim in unjust enrichment for the same: see paragraph 13A SOC[14] (the "**Misappropriation Claim**").

[12] SDB29

[13] SDB52

[14] SDB73

15. There is additionally a claim for $30.00 being the Defendant's personal medical consultation charges charged to the Plaintiff after the Defendant left the Plaintiff's employment which the Defendant does not dispute is repayable[15].

Residual claims

16. The Plaintiff has in its SOC claimed the following additional reliefs:

(a) damages for slander and defamation to the Plaintiff to be assessed (Prayer (v) of SOC)[16] (the "**Defamation Claim**");

(b) damages for malicious falsehood to be assessed (Prayer (vi) of SOC)[17] (the "**Malicious Falsehood Claim**");

(c) An injunction restraining the Defendant from:

(i) Using or disclosing any confidential information of the Plaintiff in relation to the Plaintiff's customers; and

(ii) Acting in further breach of her contract of employment with the Plaintiff, including but not limited to contacting and/or soliciting the Plaintiff's customers (Prayer (vii) of SOC)[18];

[15] SOC at [23]; SDB86

[16] SDB87

[17] SDB88

[18] SDB88

(d) Delivery up and/or deletion of all of confidential information and property which are in the power, custody and possession of the Defendant, including but not limited to the personal information of the Plaintiff's customers and any and all other confidential information, the use or disclosure of which would offend against the foregoing injunction (Prayer (viii) of SOC)[19];

(e) An inquiry as to damages for breach of confidence and/or diversion of the Plaintiff's business or, at the option of the Plaintiff, an account of the profits made by Defendant and/or the Competing Businesses by reason of the Defendant's breach of confidence (Prayer (ix) of SOC)[20] (together with [16(c) and (d)], the "**Breach of Confidence and Unlawful Diversion of Business Claims**");

(f) An order for the payment of all sums found to be due to the Plaintiff upon the taking of such inquiry or account under prayers [(a), (b) and/or (e)] above (Prayer (x) of SOC)[21];

17. On the third day of the 14-day trial, Plaintiff's Counsel informed the court that the Plaintiff would not be pursuing damages for:

(a) the Defamation Claim[22];

(b) the Malicious Falsehood Claim[23];

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[19] SDB88

[20] SDB88

[21] SDB89

[22] Notes of Evidence ("**NE**") 26 September 2024, p 92

[23] NE 26 September 2024, p 93

(c) the Breach of Confidence and Unlawful Diversion of Business Claims[24];

(together with [16(f)], collectively, the "**Residual Claims**").

18. Plaintiff's Counsel, however, intimated that they were still claiming an injunction in respect of the Residual Claims to restrain future breaches[25]. However, in the Plaintiff's Closing Submissions ("**PCS**") and the Plaintiff's Reply Closing Submissions ("**PCSR**"), no submissions whatsoever were made to address whether the elements of each cause of action comprising the Residual Claims[26] were made out so as to warrant the grant of injunctive relief (notwithstanding that damages are no longer being pursued). I will therefore proceed on the basis that both damages and injunctive relief are no longer being pursued in respect of the Residual Claims[27].

19. I will now elaborate on the Plaintiff's case on the claims the Plaintiff are pursuing.

The Plaintiff's case

Monday Absences Claim

[24] NE 26 September 2024, p 91-92

[25] NE 26 September 2024, p 93

[26] See, for *e.g.*, PCS at [184]

[27] PCS [184]

20. The Plaintiff's case is that during the Relevant Period, the Defendant was absent from work on at least 17 Mondays without authorization. These were evidenced by the Plaintiff's clock-in and clock-out thumbprint system ("**Electronic Time Cards**") introduced in or around end-December 2019. Details of the Plaintiff's Monday Absences are particularized in the table at paragraph 10(b) of the SOC[28].

21. Plaintiff's case is that contractual damages arising from the employee's unauthorised absence should be quantified by the salary paid to the employee during the period of unauthorised absence. The Plaintiff is therefore claiming the amount of $2,415.65 for the Defendant's unauthorised absence on 17 Mondays during the Relevant Period.

Shortfall in Working Hours Claim

22. In relation to the shortfall in working hours, Plaintiff again relied on the Electronic Time Cards which showed the shortfall in hours worked by the Plaintiff during the Relevant Period. The shortfall hours were computed on the basis that each working day comprised 7.5 working hours (*i.e.* excluding meal times and rest times) as set out in the Plaintiff's LOA: see 10(c) SOC[29]. The Plaintiff computed that the Defendant had accumulated a shortfall in hours worked of at least 232 hours 59 minutes (about 31 working days) during the Relevant Period. The Plaintiff claims a refund of the sum of $4,420.78 from the Defendant.

[28] SDB21

[29] SDB22-28

Unauthorised Anna Treatments

23. The Plaintiff's case is that from around January 2018 to October 2020, the Defendant had instructed staff members to perform massages and facials on the Defendant during working hours, each lasting 3 hours, at no cost. On average, the Defendant would instruct staff members to perform facials on her once a week and massages once a week without purchasing any packages. This was discovered during the Plaintiff's investigations into the Defendant's conduct when four of the Plaintiff's staff members, namely, Ms. Chan Yet Ngo ("**Ms. Chan**"), Ms. Zhou Ying ("**Ms. Zhou**"), Ms. Michelle Ung ("**Ms. Ung**") and Ms. Han Meifeng ("**Ms. Han**") informed the Plaintiff's management that the Defendant had instructed them to perform free massages and/or facials on the Defendant. These four staff members had noted in their personal notebooks the occasions on which the free treatments were rendered to the Defendant. Details of the Unauthorised Anna Treatments performed on the Defendant are set out in para 11 of the SOC[30].

24. The Plaintiff claims the Defendant was unjustly enriched at the Plaintiff's expense, as the Defendant received the Unauthorised Anna Treatments without having to pay for them, and this was at the Plaintiff's expense given the Plaintiff was deprived of the costs of the Unauthorised Anna Treatments. Further, given that the Unauthorised Anna Treatments were performed during the Defendant's stipulated working hours, the Plaintiff should also be compensated for the Defendant's shortfall in working hours as a result of the Unauthorised Anna Treatments[31].

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[30] SDB29-51

[31] SDB51

25. The Plaintiff claimed the sum of $78,828.62 for the Unauthorised Anna treatments comprising: (a) $69,491.33 being the costs of the Unauthorised Anna Treatments that the Plaintiff should have received; and (b) $9,337.29 being the shortfall in working hours of 515 hours and 56 minutes (which translated to about 68 working days) by the Defendant while the Unauthorised Anna Treatments were being performed: see paragraph 11 of SOC[32].

Unauthorised Free Treatments/Upgrades

26. The Plaintiff's case is that the Defendant had on numerous occasions, altered the Plaintiff's Point of Sale System ("**POS**") at the SSC Outlet, issued invoices indicating prices which were below the Plaintiff's standard price list and entered the details of more expensive treatments or treatment packages into the manual customer treatment booklets ("**Customer Treatment Booklets**"), which resulted in the customers paying less than what ought to have been paid to the Plaintiff. Effectively, the Defendant had provided more expensive treatments and treatment packages but had charged the customers for cheaper treatments and treatment packages[33].

27. The Defendant allegedly altered the prices in the Plaintiff's POS system by calling the Plaintiff's head office by telephone and requesting for the access code to the POS system, claiming that the POS system had hung. Defendant claimed that this had prevented her from logging in, and requested the access code urgently to rectify such error. Upon receipt, she keyed in the access code

[32] SDB30, 51-52

[33] 1PA52 at [72]

into the POS system to change the price of the packages sold and manually keyed in the amended prices into the invoices[34].

28. Separately, the Defendant had also on different occasions issued blank invoices to customers, and asked the customers to sign on the blank invoices. The Defendant then inserted details of a cheaper treatment onto the blank invoice, but handwrote a more expensive treatment package in the customer's Customer Treatment Booklet. The completed invoice will often not be given to the customer. In other cases, treatment packages were written onto the Customer Treatment Booklet without any accompanying invoices, or free of charge or upgraded treatments would be written into the Customer Treatment Booklet by the Defendant, or by the therapist or customer at the Defendant's direction or concurrence[35]. The Plaintiff's case is that this is contrary to the Plaintiff's company policy which prescribes that treatment packages should never be handwritten into the Customer Treatment Booklets. It was not disputed that the proper procedure upon a sale being made is for the selling staff to print out an invoice generated by the Plaintiff's POS, which would include a sticker label indicating the package purchased in the invoice (including any Free-of-Charge sessions offered). The sticker label would then be pasted on the Customer Treatment Booklet so that the treatment shown on the Customer Treatment Booklet matched those in the invoice[36] (the Defendant's practices in [26]-[28] collectively, the "**Defendant's Modus Operandi**").

29. The Plaintiff's case further was that during the Defendant's tenure with the Plaintiff, treatments were rendered to customers in accordance with the

[34] 1PA52 at [73]

[35] 1PA53 at [75]

[36] 1PA53 at [76]

treatment package details handwritten in the Customer Treatment Booklets. Even after the Defendant was placed on garden leave in September 2020, customers continued to demand that the Plaintiff honour the treatment packages handwritten onto the Customer Treatment Booklet as promised by the Defendant.

30. The Plaintiff initially made claims for losses arising from the Unauthorised Free Treatments/Upgrades in respect of the following customers:

(a) Ivy Bong (Tan Poey Hong) ("**Ivy Bong**");
(b) Lilian Seet
(c) Joyce Lee Mei Ling
(d) Shanan Lim
(e) Christabel Chan
(f) Dorinda Yeong
(g) Raymond Kan/Ezanne Ng[37] (collectively the "**Affected Customers**")

31. To particularize the losses suffered by the Plaintiff arising from the consumption of free or more expensive packages by the Affected Customers, the Plaintiff tendered computer records of treatments consumed by the Affected Customers as printed from the Plaintiff's computerised system commissioned sometime in September or October 2020, shortly before the Defendant was placed on garden leave: see AB5, and reproduced as Exhibit FPT-8 to Ms. Febrrika's supplemental affidavit at 9PA (hereinafter, the "**Consumption Records**"). The Plaintiff thereafter compiled a table showing, *inter alia,* (i) the amounts (if any) invoiced and/or paid by the Affected Customers (Column 4);

[37] SDB54-66

(ii) the value of the treatments promised to the Affected Customers as handwritten in their Customer Treatment Booklets (Column 6); and (iii) the number and value of the consumed treatments corresponding to each Customer Treatment Booklet as extracted from the Consumption Records (Column 8) ("**Exhibit P6**").

32. Ultimately, none of the above Affected Customers testified at trial, with the exception of Dorinda Yeong ("**Ms. Yeong**"). Ms. Yeong, however, was not available for cross-examination after affirming her affidavit ("**AEIC**") during her examination-in-chief. It was agreed that all her evidence (including her AEIC), with the exception of an audio recording between Ms. Yeong and the Defendant which the Defendant had independently confirmed during the Defendant's cross-examination was a genuine conversation between her and Ms. Yeong, would be expunged.

33. Plaintiff further informed the court in the course of trial that it would be confining its claims for the Unauthorised Free Treatments/Upgrades to those involving Ivy Bong and Lilian Seet only[38], and would not be pursuing these claims against the remaining five Affected Customers.

Misappropriation of customers' monies

34. The Plaintiff's case under this heading is that the Defendant "trained" the Plaintiff's customers to make payments of treatment packages to her personal bank account. This was done under the pretext of securing

[38] NE 28 May 2024, pp 101, 108

savings/benefits to the customers – in the form of waiver of GST and/or additional treatment sessions, promotions and gifts.

35. The Plaintiff's case is that having "trained" the Plaintiff's customers to become comfortable with such arrangements, the Defendant would then misappropriate monies intended to be paid by these customers to the company for her own purpose. For present purposes, the Plaintiff claimed three sums of $4,000, $500 and $1,500 paid by one of Plaintiff's customers, Ms. Valerie Lee ("**Ms. Lee**"), through the Defendant which were not accounted for to the Plaintiff. These were uncovered when Ms. Lee had gone to the SSC Outlet to check on her outstanding packages in or around November 2020, after the Defendant had been placed on garden leave. Ms. Lee discovered that the above three sums that she had previously transferred to the Defendant's personal bank account on the Defendant's instructions, with the intention of paying for treatment packages with the Plaintiff, were not shown as having been received by the Plaintiff. The Plaintiff claims a refund of the sum of $6,000 transferred by Ms. Lee under contract, or alternatively, under unjust enrichment.

36. For completeness, as the total amount claimed by the Plaintiff exceeded the District Court's monetary jurisdiction of $250,000 (the "**District Court Limit**"), pursuant to s 22(1) of the State Courts Act (2007 Rev Ed), Plaintiff's Counsel confirmed that the Plaintiff was abandoning any excess amounts claimed in the action to the extent it exceeded the District Court Limit[39].

The Defendant's case

[39] NE 28 May 2024, p 19; and 1PA 70 at [82]

37. As far as I can distil from the Defendant's Closing Submissions ("**DCS**") and the Defendant's Reply Closing Submissions ("**DCSR**"), the Defendant's defence is essentially premised on the argument that the Plaintiff had failed to discharge its burden of proving all of its claims against the Defendant[40].

38. The main arguments raised by the Defendant are as follows. The Defendant contends that the evidence relied upon by the Plaintiff in proving its case are largely hearsay evidence. The evidence are "non-contemporaneous, non-source and/or non-official in nature" and "have not been verified at all material times by independent evidence[41]. The Defendant pointed out that no source documents and/or other direct contemporaneous evidence were referred to and/or adduced in court by the Plaintiff to show how the information relied upon by the Plaintiff to prove the Unauthorised Anna Treatments and/or the Unauthorised Free Treatments/Upgrades were generated[42]. In particular, the Defendant argued that it was important for the Plaintiff to provide a full set of the Customer Treatment Booklets and commission service slips (being a form that the therapist would fill up after each treatment session involving manual labour and then submit to the accounts department for their commissions to be processed) (hereinafter, "**Commission Service Slips**"), given that these documents were generated contemporaneously with each treatment[43].

39. Mr Leo, further, never called the Plaintiff's accounting employees "who did the transfer of data of the treatments" into the computer system[44] (*i.e.* the

[40] Defendant's Closing Submissions ("**DCS**") at [20]

[41] DCS [18-19], [20(2)]

[42] DCS [39(17)]

[43] DCS [39(13)]

[44] DCS [39(8), (14), (16), (17)]

Consumption Records) to prove that the value of the treatments actually consumed by the affected customers in fact exceeded the amounts they were invoiced. Proof of actual consumption, which was a necessary component of proving the losses suffered by the Plaintiff in respect of the Unauthorised Free Treatments/Upgrades was therefore not made out. Further, to the extent the Plaintiff's claimed losses were computed based on the prices of the different treatments, the Plaintiff's price list and the prices of packages as printed from the POS and annexed to Febrrika's affidavit were similarly hearsay evidence. They were hearsay evidence as Ms. Febrrika, who adduced these pricing lists, was not an accounting staff during the relevant time, and "did not personally see and did not personally know what the prices of the therapy services … were for the period from early 2018 till end October 2020"[45].

40. In relation to the Plaintiff's specific claims, the Defendant's defences are as follows.

Monday Absences and Shortfalls in Working Hours

41. The Defendant's defence is that the Defendant was absent on Monday or worked less than the full work hours on the various working days with the acquiescence and consent of Cori Teo. These claims have therefore been unequivocally waived by the Plaintiff[46].

Unauthorised Anna Treatments

[45] DCS [39(16)]

[46] DCS [98]-[99]

42. In relation to the Unauthorised Anna Treatments, the Defendant contended that both Ms. Ung and Ms. Chan were not called as witnesses at trial. Their AEICS were thus inadmissible and were expunged. There was accordingly no evidence in support of the Unauthorised Anna Treatments performed by Ms. Ung and Ms. Chan on the Defendant[47].

43. As for Ms. Zhou and Ms. Han, although they were called as witnesses and testified in court, there was no evidence to show that their notebook entries were verified against the Customer Treatment Booklets and Commission Service Slips[48]. The Defendant submits that independent verification with the source documents was crucial for the Plaintiff to show that it had adduced *prima facie* evidence to support its claim for the Unauthorised Anna Treatments[49]. At any rate, Defendant contended that the failure by the Plaintiff to provide a complete set of Customer Treatment Booklets and Commission Service Slips warranted the drawing of an adverse inference that if produced, these documents would be unfavourable to the Plaintiff's case[50].

44. Defendant also contended that the notebook entries maintained by Ms. Zhou and Ms. Han were inadequate proof of the Unauthorised Anna Treatments performed by them as there were no acknowledgments by the Defendant against these notebook entries[51]. The notebook entries were further not made contemporaneously by Ms. Zhou and Ms. Han. Ms. Zhou and Ms. Han were in

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[47] DCS [45]-[46], [55]

[48] DCS [47]

[49] DCS [48]

[50] DCS [65]

[51] DCS [50]

any event interested parties, being incentivised to give testimony assisting the Plaintiff's case to preserve their employments with the Plaintiff[52].

45. Lastly, Defendant contended that Ms. Zhou and Ms. Han's handwritten entries were incomplete and/or bereft of details, creating doubts as to how they could have come up with details of the Unauthorised Anna Treatments they provided at 7PA7-13 and 7PA196-198 respectively. For example, there were no indications in their notebooks as to the types and duration of the unauthorised treatments allegedly provided by them[53].

Unauthorised Free Treatments/Upgrades

46. In relation to the Unauthorised Free Treatments/Upgrades, the Defendant's key defence is that the Plaintiff has not adduced sufficient evidence to discharge its burden of proving the losses allegedly suffered by the Plaintiff arising from the treatments promised to Ivy Bong and Lilian Seet[54].

47. First, Defendant argued that there was no evidence that Ivy Bong and Lilian Seet were adamantly demanding that the Plaintiff honour the more expensive treatments promised to them by the Defendant. For example, the Plaintiff had during the trial claimed that there were written communications between Plaintiff and Ivy Bong's lawyers documenting Ivy Bong's legal demand that the Plaintiff fulfilled the treatments handwritten in her Customer Treatment Booklet. The letter of demand was, however, not adduced as

[52] DCS [52]

[53] DCS [61]-[63]

[54] DCS [67], [71-72], [77]

evidence in court. The Defendant submitted that an adverse inference should be drawn against the Plaintiff[55].

48. Defendant next contended that Plaintiff has also not adduced any or sufficient evidence in the form of the Customer Treatment Booklets and Commission Service Slips to show that the Plaintiff did in fact provide the more expensive treatments to Ivy Bong and Lilian Seet than those stated in the corresponding invoices[56]. Plaintiff further failed to call Ivy Bong and Lilian Seet as witnesses[57]. Furthermore, Ms. Michelle Ung's name appeared repeatedly in the consumption records as the therapist who serviced Ivy Bong and Lilian Seet. Notwithstanding this, the Plaintiff failed to call Ms. Ung as a witness to testify as to the type, frequency and prices of the Unauthorised Free Treatments/Upgrades allegedly given to Ivy Bong and Lilian Seet[58]. All these greatly undermined the Plaintiff's efforts in discharging its burden of proof.

49. It is also the Defendant's position that the treatment price list and the annexed screenshots of the POS showing the treatment prices were all hearsay evidence as Ms. Febrrika was not one of the Plaintiff's staff who inserted the pricing data contemporaneously on the Customer Treatment Booklets and Commission Service Slips[59]. Ms. Febrrika thus had no personal knowledge of what prices were shown on the Plaintiff's computer system and reflected the prices of the treatments consumed. The Plaintiff further failed to call the relevant employees (particularly the accounting staff who did the data transfer

[55] DCS [69]-[71]

[56] DCS [72]

[57] DCSR [37]

[58] DCS [78]

[59] DCS [73(1) and (2)]

of the consumption entries in the Customer Treatment Booklets to the computer system) to testify as to the details of the alleged prices and consumption entries referred to in the Consumption Records[60].

50. I would mention in passing that the Defendant also contended that the variances between the treatment packages purchased by the Affected Customers, and what was written into the relevant Customer Treatment Booklets, were in some cases attributable to Plaintiff's practice of allowing the unused value of any unconsumed sessions in an existing treatment package to be converted and upgraded to a different treatment package ("**Conversion and Upgrade of Existing Packages**")[61]. The issue of the Conversion and Upgrade of Existing Packages was, however, not pleaded in the Defence (Amendment No. 2)[62] (the "**Defence**"). The Defendant is thus precluded from raising any arguments in connection with this point, and I shall say no more on this issue.

Misappropriated Sums

51. The Defendant's case is that the $4,000 payment forming part of the Misappropriated Sums was not claimable as there was no evidence that Ms. Valerie Lee demanded that the Plaintiff honour the $20,000 treatment allegedly purchased[63]. Defendant contended that Ms. Lee was in any event bound by the invoice that she signed which showed that she only purchased a $16,000 package. In any event, Defendant submitted that Ms. Lee's testimony was not credible as it was unlikely that an experienced and educated person like Ms.

[60] DCS [74]

[61] DCS [40(2)]; DCSR [41]-[43]

[62] SDB93

[63] DCS [85(2)]

Lee, who was coincidentally a sales executive in an established company, would sign an invoice in blank as the Plaintiff alleged[64].

52. With regards to the $500 Payment, the Defendant maintained that it was for the purchase by Ms. Lee of a Louis Vuitton pouch from the Defendant[65]. As for the $1,500 Payment, Defendant maintained that it is for the purchase of a facial machine on Ms. Lee's behalf. In any case, the issue of the $1,500 Payment is moot as the Defendant had returned the $1,500 to Ms. Lee, and no loss was therefore suffered by the Plaintiff[66].

53. Based on the foregoing, Defendant submitted that all of the aforementioned claims against the Defendant should be dismissed.

The Trial

54. The trial took place over 14 days. A total of 8 witnesses gave evidence at the trial. The following witnesses were called by the Plaintiff:

(a) Mr. Leo Meng Foo ("**PW1**" or "**Mr. Leo**");

(b) Ms. Ong Ming Khim ("**PW2**" or "**Ms. Ong**");

(c) Ms. Zhou Ying ("**PW3**" or "**Ms. Zhou**");

(d) Ms. Lee Lay Geok ("**PW4**" or "**Ms. Valerie Lee** or "**Ms. Lee**")

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[64] DCS [85(5)]

[65] DCS [100]

[66] DCS [102]

(e) Ms. Han Meifeng ("**PW5**" or "**Ms. Han**");

(f) Ms. Febrrika Pratiwi Tjiptade ("**PW6**" or "**Ms. Febrrika**");

(g) Ms. Yeong Wei Lan Dorinda ("**PW7**" or "**Ms. Yeong**");

55. The Defendant ("**DW1**" or the "**Defendant**") was the sole witness for the Defendant's case.

The Issues

56. Given that the Plaintiff is no longer pursuing the Residual Claims, I will analyse the Plaintiff's claims in the present case under the following headings:

(a) Whether the Defendant failed to report for work on at least 17 Mondays without authorization;

(b) Whether the Defendant worked less than the full working hours set out in the LOA without authorization;

(c) Whether the Defendant received free massages/facials from the Plaintiff's staff without authorization and was unjustly enriched;

(d) Whether the Defendant had provided unauthorized free treatments and/or upgrades to customers without charge;

(e) Whether Defendant received monies from the Plaintiff's customers amounting to misappropriation.

My Decision and Reasoning

Whether the Defendant had failed to report for work on at least 17 Mondays without authorization?

57. Under clause 4 of the LOA, the Defendant's working hours are:

(a) Mondays to Fridays – 11.00am to 8.30pm, including: (i) lunch (45 minutes); (ii) dinner/tea break (45 minutes); and (iii) rest/break time (30 minutes).

(b) Saturdays – 10.00am to 6.00pm, including: (i) lunch (45 minutes); (ii) rest/break time (45 minutes).

58. As noted above, the Plaintiff's case was that during the Relevant Period, the Plaintiff was absent from work on 17 days on Mondays on the dates set out in [10] of the SOC[67]. This was evidenced by the Plaintiff's Electronic Time Cards.

59. The Defendant does not dispute the authenticity and truth of the Electronic Time Cards, and that she was absent on the 17 Mondays specified by the Plaintiff. She testified at trial that "[she] will agree if the absences follow the punch card"[68]. Her only defences are:

[67] SDB21

[68] NE 27 May 2025 p 40, ll. 22; NE 27 May 2025 p 42

(a) Her absences from work on the specified Mondays were verbally agreed to and approved by Cori Teo (the "**Alleged Verbal Agreement**"). The Alleged Verbal Agreement dated back to 2005 when she gave birth to her second child and wanted more time to take care of her children[69], and Cori Teo had then allegedly consented to her not working on Mondays (the "**Consent Argument**");

(b) Further, Cori Teo had at all material times possession of the Defendant's punch cards, and had paid out the monthly salaries and commissions to the Defendant without any deductions, suggesting that Plaintiff has accepted the "shortfalls" in hours as being authorized by Cori Teo. Defendant argued that the Plaintiff was therefore forborne from claiming any such shortfalls in days worked against the Defendant as the Plaintiff had in effect waived such claims (the "**Waiver Argument**")[70].

Consent Argument

60. Since the Defendant had argued that her absence on Mondays was based on a verbal agreement with Cori Teo, the burden of proof was on the Defendant to prove the existence of such an agreement. I found that the Defendant had failed to discharge her burden of proving such a verbal agreement on a balance of probabilities:

(a) The Defendant's contention that such an agreement existed was based on no more than her bare assertions. No evidence was

[69] NE 27 May 2025 p 27, 33

[70] SDB104 [30A(5) of the Defence]

adduced in support of her claim. Indeed, the material facts surrounding the Consent Argument as set out in [59(a)] above were not even pleaded in the Defence;

(b) The Defendant had also given inconsistent testimonies as to how the Alleged Verbal Agreement by Cori Teo to excuse her from work on Mondays came about. In the Defendant's trial Affidavit of Evidence-in-Chief ("**AEIC**") at [34(d)][71] and at [34(d)] of the Defence, she asserted that the Monday off days were approved by Cori Teo by way of replacements for extra hours worked by the Defendant during the ordinary workdays. This was, however, inconsistent with her account in her earlier AEIC filed on 8 September 2023 in which she deposed that the Monday absences were authorized by the Plaintiff: (i) to allow her to run errands for the Plaintiff; (ii) were related to her outlet manager role; (iii) were to allow her to attend to family matters; and/or (iv) to enable her to clear offs in compensation for working longer hours[72]. At trial, she then claimed inconsistently for the first time that the consent was given way back in 2005 when her second child was born as she had told Cori Teo that she wanted to spend more time with her family[73]. According to her, Cori Teo had then agreed that she could take Mondays off. When confronted with these inconsistencies, the Defendant then stated that she "may have explained them wrongly to [her] lawyer"[74]. I did not find

[71] Defendant's Bundle of AEICs ("**DA**")15

[72] Defendant's Bundle of Interlocutory Affidavits ("**DIA**") p. 268

[73] NE 27 May 2025, p 27, 33-34.

[74] NE 27 May 2025, p 39.

the Defendant's attempts at trying to brush aside these inconsistent statements convincing. If anything, it belied her candour.

(c) The Defendant's latest explanation at trial - that the agreement was given way back in 2005 when she gave birth to her second child – was further suspect as it did not explain why, when the Plaintiff was rehired by the Plaintiff in 2017 after ceasing to work for some two years, the LOA entered into on 19 January 2017 was not regularized to reflect the Alleged Verbal Agreement, and instead continued to refer to Mondays as workdays.

(d) The contemporary documents evidence also did not support the Defendant's argument that Mondays were authorized off-days for the Defendant. The Electronic Time Cards, which the Defendant did not challenge, consistently reflected Sunday as a "Restday" and Monday as a "Workday"[75], contrary to the Defendant's assertion that she was not required to work on Mondays. As a matter of fact, the Defendant did come to work on a not insignificant number of Mondays during the Relevant Period – see PCS at [45].

61. I therefore rejected the Defendant's Consent Argument as it was wholly unsupported by the evidence adduced at trial.

Waiver Argument

[75] 1AB28-45

62. In the Defence and the DCS, the Defendant appeared to raise the concepts of waiver and estoppel interchangeably. While the doctrine of waiver by election and estoppel are conceptually distinct concepts, both a plea of waiver and a plea of estoppel require proof of an unequivocal representation by the other party: see *The Kanchenjunga* [1990] 1 Lloyd's Rep. 391 at 399.

63. The burden of proof is on the Defendant to prove that the Plaintiff had unequivocally represented that it would not be insisting on the Defendant's performance of her contractual obligations to come to work on Mondays. Based on the evidence before me, I found that the Defendant had failed to discharge her burden of proving on a balance of probabilities that the Plaintiff had made an unequivocal representation to such effect:

(a) The Defendant's key argument on the waiver and estoppel issues was that the Plaintiff had acquiesced to the Defendant's Monday absences by not raising any objections earlier, notwithstanding that the Plaintiff was in possession of the time punch cards and/or Electronic Time Cards at all material times and knew that the Defendant was constantly absent on Mondays. In my mind, this was insufficient to amount to an unequivocal representation to give rise to a waiver or estoppel defence. I accepted the Plaintiff's argument that the Plaintiff was not under a duty to constantly monitor the attendance of the Defendant at all times. The Defendant was a long-standing employee of the Plaintiff, holding the position of General Manager of the SSC outlet. There was no reason for the Plaintiff to closely monitor her attendance records by checking the Electronic Time Cards regularly until

allegations of misconduct raised by the Defendant's colleagues, including her constant unauthorized absences on Mondays, started to surface in or about August 2020: see Mr. Leo's affidavit at [19][76]. The fact that the Plaintiff did not raise any issues about the Defendant's Monday absences until after the Plaintiff commenced formal investigations, did not amount to a waiver or representation that the Plaintiff had agreed to waive any antecedent breaches of her LOA arising from her unauthorized absences from work.

(b) The WhatsApp exchanges between the Plaintiff's Human Resource ("**HR**") department and the Defendant at Defendant's trial affidavit ("**DA**") pp. 73-77 also suggested that the Plaintiff's HR department was monitoring and querying the Defendant's attendance at work on Mondays in the months of March, July and September 2020. The Defendant was thus reminded in one of the WhatsApp messages that she would need to let HR know if she was not working on any Monday, presumably so that her leave entitlements or salaries would be deducted accordingly. All these were inconsistent with the Defendant's contention that the Plaintiff had acquiesced or otherwise waived the Defendant's absences from work on Mondays by failing to query such absences.

[76] 1PA23

64. Based on the foregoing, I found that the Plaintiff is entitled to recover salaries paid to the Plaintiff in respect of her absences on the Mondays set out in [10(b)] of the SOC in the amount of **$2,415.65**.

Whether the Defendant worked less that her stipulated hours on days she was at work without authorisation?

65. Similarly, Defendant had confirmed that she was not challenging the authenticity and truth of the Electronic Time Cards based upon which the shortfall in hours worked by the Plaintiff during the days she was at work were computed, as set out in [10(c)] SOC (the "**shortfall hours**").

66. The Plaintiff claimed that the Defendant breached clause 4.0 of the LOA by accumulating shortfall hours of at least 232 hours and 59 minutes (equivalent to 31 working days) during the Relevant Period: see [10(c) SOC].

67. The Defendant's defence was that: (a) the working hours specified in clause 4.0 of the LOA were excessive and contravened the provisions of the Employment Act 1968 (2020 Ed) ("**Employment Act**"): see [39] of Defence; and (b) Plaintiff had in any event waived or was estopped for claiming in respect of the shortfall hours: see [30A(5)] of the Defence.

68. In my mind, these defences are unmeritorious:

(a) The defence based on the alleged contravention of the Employment Act is a non-starter, given that the Plaintiff's salary during the Relevant Period exceeded $2,600 per month. Section 35 of the Employment Act expressly provides that the provisions

of s 38 of the Employment Act, which prescribes the statutory maximum working hours, does not apply to an employee who receives a salary exceeding $2,600 per month.

(b) Additionally, for the same reasons set out in [63] above, I found that the Defendant's arguments based on estoppel or waiver arising solely from the Plaintiff's delay in raising the Defendant's shortfall hours to be unmeritorious. As mentioned, Defendant failed to establish that the Plaintiff had a positive duty to scrutinize, or had in fact scrutinized, the Defendant's Electronic Time Cards on a frequent basis given the Defendant's seniority in the company. That these claims were made by the Plaintiff only after formal investigations into the Defendant's misconduct were commenced in August 2020 could not amount to an unequivocal representation that the Plaintiff was forgoing any claims in respect of the shortfall hours during the Relevant Period.

69. Absent any contrary submissions in the Defendant's DCS as to how the shortfall hours are to be computed, I accepted the Plaintiff's calculation of the sums due in respect of the shortfall hours and awarded the Plaintiff damages under this head in the sum of **$4,420.78.**

Whether the Defendant received free massages/facial treatments without authorisation and was unjustly enriched?

70. The Plaintiff claimed the following sums in respect of massage and/or facial treatments allegedly instructed by the Defendant to be performed by the Plaintiff's staff named below (collectively, the "**Therapists**") on her during workhours without charge (the "**Unauthorized Anna Treatments**"): see paragraph 11 of SOC[77]:

Therapists Involved		**Amount**
1. Zhou Ying ("**Ms. Zhou**"); 2. Han Meifeng ("**Ms. Han**"), 3. Chan Yet Ngo ("**Ms. Chan**"); and 4. Michelle Ung Qin Min ("**Ms. Ung**")		$55,001.33[78] (plus $7,464.97 based on hours Defendant did not work while receiving the Unauthorized Anna Treatments)
1. Rowena, and 2. Zhang Xuemei ("**Tong Tong**")		$14,490.00[79] (plus $1,872.32 based on hours Defendant did not work while receiving the Unauthorized Anna Treatments)

71. The Plaintiff bears the burden of proving that the Unauthorized Anna Treatments were carried out by each of the named therapists. The principles with regards to the application of the burden of proof was summarized in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* 2007] 4 SCR(R) 855 ("**Britestone**") as follows:

[77] SDB29-30

[78] Table A at SDB 30-47

[79] Table B at SDB 48-51

> "
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> ……
>
> [58] The term "burden of proof" is more properly used with reference to the obligation to prove. There are in fact two kinds of burden in relation to the adduction of evidence. *The first, designated the legal burden of proof, is, properly speaking, a burden of proof, for it describes the obligation to persuade the trier of fact that, in view of the evidence, the fact in dispute exists. This obligation never shifts in respect of any fact*, and only "shifts" in a manner of loose terminology when a legal presumption operates. *The second* is a burden of proof only loosely speaking, for it falls short of an obligation to prove that a particular fact exists. *It is more accurately designated the evidential burden to produce evidence since, whenever it operates, the failure to adduce some evidence, whether in propounding or rebutting, will mean a failure to engage the question of the existence of a particular fact or to keep this question alive.* As such, this burden can and will shift.
>
> …..
>
> [60] To contextualise the above principles, *at the start of the plaintiff's case, the legal burden of proving the existence of any relevant fact that the plaintiff must prove and the evidential burden of adducing some (not inherently incredible) evidence of the existence of such fact coincide. Upon adduction of that evidence, the evidential burden shifts to the defendant, as the case may be, to adduce some evidence in rebuttal. If no evidence in rebuttal is adduced, the court may conclude from the evidence of the plaintiff that the legal burden is also discharged and making a finding on the fact against the defendant. If, on the other hand, evidence in rebuttal is adduced, the evidential burden shifts back to the plaintiff. If, ultimately, the evidential burden comes to rest on the defendant, the legal burden of proof of that relevant fact would have been discharged by the plaintiff.* The legal burden of proof – a permanent and enduring burden – does not shift. A party who has the legal burden of proof on any issue must discharge it throughout. Sometimes, the legal burden is spoken of, inaccurately, as "shifting"; but what is truly meant is that another issue has been engaged, on which the opposite party bears the legal burden of proof." *[emphasis added]*

72. In respect of the Therapists whom Plaintiff alleged performed the Unauthorized Anna Treatments on the Defendant, only Ms. Zhou and Ms. Han

testified at trial. While both Ms. Chan and Ms. Ung had filed affidavits, they ultimately did not testify at trial and their affidavits were expunged. As for Rowena and Tong Tong, no affidavits were filed by each of them in respect of the complaint. The Unauthorized Anna Treatments allegedly performed by them was deposed to by Ms. Zhou who had, in her affidavit, attached a notebook (Exh. P2) which contained entries of the dates on which both Ms. Zhou, Rowena and Tong Tong allegedly performed treatments on the Defendant: see [13] of Ms. Zhou's affidavit[80]. Plaintiff's claim of Unauthorised Anna Treatments performed by Rowena and Tong Tong were based solely on the records contained in Ms. Zhou's notebook.

Unauthorized Anna Treatments by Ms. Zhou and Ms. Han

73. I found that the Plaintiff had discharged its burden of proving on a balance of probabilities that Ms. Zhou and Ms. Han had performed the Unauthorized Anna Treatments stated in their respective affidavits.

74. First, Ms. Zhou and Ms. Han had given direct testimonies in court on the Unauthorized Anna Treatments performed by them and were extensively cross-examined by Defendant's Counsel on the same. Both presented themselves as confident witnesses who gave internally consistent testimonies. Their testimonies were unshaken and both displayed a positive demeanor in court. I had no reasons to doubt their credibility. Ms. Zhou's testimony, for instance, was not singularly one-sided in the Plaintiff's favor. Where she could not be sure who wrote various markings on the Customer Treatment Booklets

[80] 7PA15

(see below), she was candid in conceding the same, instead of attributing all the writings to the Defendant[81].

75. More importantly, Ms. Zhou and Ms. Han's account of the Unauthorized Anna Treatments they gave were corroborated by their respective notebooks (Exh. P2 and Exh. P1 respectively) which they tendered in court. Ms. Zhou testified that she recorded these records for her personal reference in case she needed to "let the boss know and/or to complain against the [Defendant]"[82] in the future. Ms. Zhou further testified that her recordings of the Unauthorized Anna Treatments in her notebook were done contemporaneously in 2018, and not at the time of the investigations in 2020[83]. Ms. Han similarly testified that she recorded entries of the Unauthorized Anna Treatments performed by her on the same day of the treatment, on the bus, on her way home[84].

76. Defendant, however, argued that the records in Ms. Zhou and Ms. Han's notebooks were incomplete and/or inadequate in proving that the Unauthorized Anna Treatments were in fact carried out by them. There were, for instance, no details of what type of treatments each administered, as well as the duration of each session. According to the Defendant, this cast significant doubts as to how Ms. Zhou and Ms. Han could have come up with the details of the Unauthorized Anna Treatments set out in their respective affidavits.

77. In my mind, the brevity of Ms. Zhou and Ms. Han's notebook entries, to the contrary, lent credence to the authenticity of the entries recorded by each of

[81] NE 15 October 2024, p. 40, 84, 85

[82] NE 15 October 2024, p 94

[83] NE 15 October 2024, p 92

[84] NE 20 May 2025 p 24

them after the relevant Unauthorized Anna Treatment sessions. The fact that the records were not embellished, nor padded with detailed information, corroborated Ms. Zhou and Ms. Han's account that they merely wanted to keep an informal record of the free treatments they performed for the Defendant for their personal reference. I further found that their explanation that they could recall the type and duration of treatment they rendered on the Defendant believable as both testified that they only performed a single type of treatment on Defendant each, and invariably, the treatment instructed by the Defendant was for 3 hours.

78. Similarly, I did not accept the Defendant's contention that the Plaintiff's failure to corroborate the Unauthorized Anna Treatments performed by Ms. Zhou and Ms. Han with Customer Treatment Booklets and Commission Service Slips was fatal to the Plaintiff's attempt at discharging its burden of proof. It was precisely because these Unauthorized Anna Treatments were done surreptitiously for the Defendant, a non-customer, without charge, that one cannot reasonably expect that a Customer Treatment Booklet would be created for these unauthorized treatments. Equally, as these treatments were performed without charge, it was logical that there would be no accompanying Commission Service Slips to back up these treatments.

Defendant's evidence

79. I also found it noteworthy that the Defendant did not deny that she had received treatments from the staff[85], save that she challenged the number of times, the duration and purpose of the sessions. In particular, she pleaded in her Defence that the massages performed on her by the therapists were for "training

[85] NE 26 May 2025 p 21-22

purposes"[86]. I found her testimony in this regard to be highly unsatisfactory and conflicting:

(a) Defendant vacillated repeatedly between characterizing the sessions she received from the Therapists as "training" sessions versus "testing" sessions. She initially testified orally in court that she tried out the skills of some of the Plaintiff's staff, especially the newcomers, as part of the "training" of the staff[87]. This included Ms. Zhou, Ms. Han, Rowena and Tong Tong[88]. However, when Plaintiff's Counsel confronted her: (i) with the names of the existing in-house trainers of the Plaintiff - *e.g.* one June (who was purportedly the trainer in charge of massaging) and one May Lim (who was purportedly the trainer in charge of facials) [89]; and (ii) the fact that training was not part of the Defendant's scope of work under the LOA, the Defendant then denied that she rendered "training" for her staff[90], and started to recharacterize the sessions as "testing" sessions for her to "test" the skills of her staff[91]. This was despite the fact that the Defendant had deposed numerous times in her trial AEIC that the treatments given was part of her efforts at "training" the staff: *e.g.* at [56] and [57] of her trial affidavit[92]. In fact, the Defendant

[86] Defence at [56]-[57]

[87] NE 26 May 2025 p. 21-22

[88] NE 26 May 2025 p. 22

[89] NE 26 May 2025 p. 23-25

[90] NE 26 May 2025 p. 24-26

[91] NE 26 May 2025 p. 25

[92] DA21

had in her Defence at [52(7)][93] and her earlier affidavit dated 30 April 2024 at [5(7)] deposed that the Plaintiff was not entitled to restitutionary relief as the Defendant had "changed her position by providing valuable *training* to the staff"[94]. Indeed, in her Defence, the Defendant also referred to these treatment sessions as part of the "training" of the staff involved, and that it was her duty to give the staff, especially the newer staff, "training": see [56]-[57] of Defence.

(b) Further, when it was put to the Defendant that the Defendant was not required to provide training as the Plaintiff had in-house trainers, the Defendant's denied that the Plaintiff had in-house trainers. This was, however, contradicted by Ms. Han's testimony that the Plaintiff required staff hired by them to go through training, unless the staff had prior experience[95]. Ms. Han also testified that there were specialized trainers in the Plaintiff, namely one "Mei" (*sic*) and one "Jean" (*sic*)[96]. Ms. Han struck me as a confident witness who provided candid responses to the questions asked. In this regard, the Defendant's testimony that the Plaintiff did not have inhouse trainers also sat very uncomfortably with her own testimony subsequently when she stated that if she found the staff that she tested to be unsatisfactory, she would inform Cori Teo who will "maybe get

[93] SDB11

[94] DA303

[95] NE 20 May 2025 p. 16

[96] NE 21 May 2025 p. 28

someone to *retrain* the staff"[97]. This suggested to me that it was more probable than not that the Plaintiff did in fact have its own in-house trainers as the Plaintiff claimed.

(c) The Defendant also vacillated repeatedly on the issue of who would initiate the "testing sessions". In her interlocutory affidavit dated 23 January 2024, she deposed that it was the therapist in question who initiated the performance of the treatment on her. She would then make sure that the staff first checked and obtained clearance from Cori Teo first before performing the treatment on her (at [19])[98]. However, in her trial affidavit dated 3 May 2024, she then deposed that it was Cori Teo who had instructed her to "provide the training to the staff at the SSC outlet, and she had then provided the training as requested and directed by the Plaintiff/Cori Teo"[99]. In court, she vacillated yet again and claimed that she was the one who sought approval and/or asked Cori Teo for the staff to perform the testing sessions on her[100]. She claimed she would ask Cori Teo for permission herself as the therapist would be "worried that they would be scolded by the boss"[101]. I agree with Plaintiff's Counsel that not only is the Defendant's explanation of who initiates or seeks permission from Cori Teo on the carrying out of the "testing sessions" on the Defendant inconsistent, it also

[97] NE 26 May 2025 p. 27

[98] DIA 516-517

[99] DA302 at [5(3)]

[100] NE 26 May 2025 33

[101] NE 26 May 2025 34-35

> did not make sense for the Defendant to contend that the staff would be worried about "being scolded by the boss" if they merely wanted to perform a short treatment session on the outlet manager to improve their skills.

80. Considering: (a) Ms. Zhou and Ms. Han's testimonies in court which were largely unshaken and consistent, (b) my assessment of Ms. Zhou and Ms. Han's credibility, and (c) the Defendant's inconsistent and shifting accounts and explanations for the alleged Unauthorized Anna Treatments which spoke volumes about her lack of credibility as a witness, I found that the Plaintiff had proven on a balance of probabilities that the Unauthorized Anna Treatments claimed to be performed by Ms. Zhou and Ms. Han did in fact take place.

81. I also found the Plaintiff's Price List at 9PA8-30 (the "**Price List**") to be admissible evidence of the prices of the different treatment services offered by the Plaintiff. I was of the view that this was a document kept by the Plaintiff in the ordinary course of its business within the meaning of s 32(1)(b) of the Evidence Act. The document was, on its face, described as a "Price List" for different treatment services provided by the Plaintiff for the period from 1 January 2018 to 31 December 2020. There were further no substantiated allegations of unreliability in relation to the Price List. Indeed, Ms. Zhou and Ms. Han had in both of their affidavits referred to the prices of "Total Relaxation Massage" as being priced at $138/hour (see Ms. Zhou's affidavit at [7][102] and Ms. Han's affidavit at [7][103]), consistent with the Price List. Their testimonies on the prices of the "Total Relaxation Package" was not challenged by the Defendant at trial. Nor was it suggested by the Defendant that Ms. Zhou and

[102] 7PA7

[103] 7PA196

Ms. Han, who were in a position to sell packages, would be unfamiliar with, or did not have personal knowledge of, the prices of the Plaintiff's products.

82. The Plaintiff claimed the sum of $50,508 in respect of the costs of the Unauthorized Anna Treatments performed by Ms. Zhou and Ms. Han: see Table A at SDB 30-47 (after deducting the costs of the treatments performed by Ms. Chan and Ms. Ung). Plaintiff also claimed overpaid salaries in the sum of $6,626.22[104] being the time which Defendant took during working hours to receive the Unauthorized Anna Treatments from Ms. Zhou and Ms. Han. The total loss claimed by Plaintiff from the Defendant in respect of the Unauthorized Anna Treatments performed by Ms. Zhou and Ms. Han is therefore $57,134.22.

83. The Plaintiff claimed these sums based on unjust enrichment. The four elements for establishing an unjust enrichment claim were summarized in *Zaiton bte Adom v Nafsiah bte Wagiman and anor* [2023] 3 SLR 533 ("**Zaiton**") at [181]. I allowed the Plaintiff's claim for unjust enrichment as I found all four elements to have been made out in the present case:

(a) the Defendant had been enriched by receiving the Unauthorized Anna Treatments from Ms. Zhou and Ms. Han without charge;

(b) the enrichment was at the Plaintiff's expense;

(c) the enrichment was unjust (there had been a total failure of basis in relation to the Unauthorized Anna Treatments); and

[104] Based on: (a) a shortfall of 207 hours (or 27.6 working days) worked during the period from 2018 to 31 May 2019 at $130.77 per working day; and (b) a shortfall of 159 hours (or 21.2 working days) worked during the period after 1 June 2019 at $142.31 per working day, with each working day comprising 7.5 work hours.

(d) the Defendant had not established any defence to the unjust enrichment claim. The Defendant's claim that she had changed her position by providing "valuable training" to the Plaintiff's staff simply could not be sustained given the sheer number of Unauthorized Anna Treatments carried out, my finding that the Plaintiff did in fact have their own inhouse trainers, as well as the Defendant's abrupt shift in testimony at trial that she did not in fact provide any training.

84. I therefore awarded Plaintiff the sum of **$57,134.22** in respect of the Unauthorized Anna Treatments performed by Ms. Zhou and Ms. Han.

Unauthorized Anna Treatments by Michelle Ung, Chan Yet Ngo, Rowena and Tong Tong

85. The Plaintiff's claim for unjust enrichment in respect of Unauthorized Anna Treatments allegedly performed by Ms. Ung, Ms. Chan, Rowena and Tong Tong stand on a different footing as none of these Therapists testified at trial.

Michelle Ung and Chan Yet Ngo

86. In respect of Ms. Ung and Ms. Chan, while they were included in the Plaintiff's original line-up of witnesses, and affidavits had been tendered in respect of each of them, Ms. Ung and Ms. Chan ultimately did not testify at trial and their affidavits, including the exhibited Statutory Declarations, were expunged. It followed that there was no evidence whatsoever in respect of any

Unauthorized Anna Treatments performed by Ms. Ung and Ms. Chan. No claim in unjust enrichment could therefore be sustained.

87. Plaintiff, however, purported to rely on the Statutory Declarations of Ms. Ung and Ms. Chan found in the Agreed Bundle of Documents ("**AB**"), relying on the hearsay exception found in s 32(1)(j)(iii) of the Evidence Act 1893 (2020 Rev Ed) ("**Evidence Act**")[105]. However, apart from Plaintiff's Counsel's statement from the bar[106] that: (a) both Ms. Ung and Ms. Chan are currently outside Singapore; *and* (b) it is not practicable to secure their attendance, there was no independent evidence sworn by any witness, nor any other evidence, attesting to such facts. There was thus no sworn evidence from any witness as to the current location of Ms. Ung and Ms. Chan, the efforts made to secure them as witnesses, and what their responses were when approached. As the Court of Appeal noted in *Gimpex*, the party attempting to relying on s 32(1)(j) Evidence Act must prove the ground of unavailability relied upon; a mere allegation of unavailability is insufficient (at [97]). In this regard, Plaintiff's Counsel's own evidence from the bar is insufficient to fulfill the unavailability condition to trigger the application of the hearsay exception in s 32(1)(j)(iii) Evidence Act.

88. I should also point out that Plaintiff's Counsel had submitted in the PCSR that I have, in the course of the trial, indicated that the Statutory Declarations were admissible based on the case of *Jiangsu New Huaming International Trading Co Ltd v PT Musim Mas and another* [2024] SGHC 81 ("**Jiangsu New Huaming**"). This is incorrect. Beyond the extract of my remarks Plaintiff's Counsel quoted at [72] of PCSR, I had clearly gone on to

[105] PCSR at [71]

[106] NE 20 May 2025 p 4-5

state that the groundwork must still be laid by the Plaintiff if it wished to rely on the Statutory Declarations, specifically to show that the relevant preconditions in s 32 of the Evidence Act sought to be relied upon had been satisfied[107]. This was not done in the present case.

Rowena and Tong Tong

89. In respect of Rowena and Tong Tong, while Ms. Zhou had in her notebook recorded the Unauthorized Anna Treatments allegedly performed by Rowena and Tong Tong as well, the record was inadmissible hearsay, being out of court assertions by Rowena and Tong Tong to Ms. Zhou as to the Unauthorized Anna Treatments performed by them. Plaintiff's Counsel sought to rely on the hearsay exceptions in s 32(1)(j)(ii) and (iii) of the Evidence Act[108]. As noted above, the Court of Appeal in *Gimpex's* case had held that the unavailability condition must be strictly proven before the exception in s 32(1)(j) can be relied upon. Here the only evidence tendered that might show unavailability was Ms. Zhou's evidence that Rowena left the Plaintiff's employment in September 2020 and is currently in the Philippines; as well as Ms. Zhou's testimony that Tong Tong left the Plaintiff's employment in 2019 and is currently in China. There was no evidence showing the efforts made to locate Rowena and Tong Tong, and that despite such efforts, Rowena and Tong Tong could not be found. Nor was there any evidence to show why it was impracticable to secure Rowena and/or Tong Tong's attendance in court, via video conferencing, in person or otherwise. The Plaintiff has therefore not proven that it is entitled to rely on the hearsay exceptions in s 32(1)(j)(ii) or (iii) of the Evidence Act. Accordingly, there is no evidence to substantiate Plaintiff's

[107] NE 21 May 2025 p 4-5

[108] PCSR [68]

claim in respect of Unauthorized Anna Treatments for Rowena and Tong Tong, and no award is made in that regard.

Whether the Defendant had provided Unauthorised Free Treatments/Upgrades to customers?

90. The Plaintiff claimed against the Defendant losses and damages suffered arising from (i) the Defendant's promise and provision of treatments to customers without charge and/or failure to collect payment; and (ii) the Defendant's promise and provision of upgrades to more expensive treatments to customers without charge or failure to collect payment for such upgrades (collectively, "**Unauthorised Free Treatments/Upgrades**"). The Plaintiff's claim was based on breaches of the Defendant's employment contract (clause 3.0 and/or 5.0(e) of the LOA and/or 3.3(m) of the CPG[109]) and/or breach of the Defendant's fiduciary duties and/or implied duties: see [12] of SOC[110]. The alleged Unauthorised Free Treatments/Upgrades took place over a long period, from as early as April 2018 to shortly before the Defendant was placed on garden leave in October 2020[111]. As noted in [33] above, the Plaintiff had confirmed that it was confining its claims for the Unauthorised Free Treatments/Upgrades to those involving Ivy Bong and Lilian Seet only.

Did the Defendant grant the Unauthorised Free Treatments/Upgrades wrongfully by handwriting non-matching treatment packages in the Customer Treatment Booklets?

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[109] 1AB24

[110] SDB52

[111] SDB54

91. The Plaintiff bears the burden of proving that the Defendant had granted the Unauthorised Free Treatments/Upgrades in respect of Ivy Bong and Lilian Seet on a balance of probabilities.

92. The Defendant had initially indicated on the index page of the Agreed Bundle of Documents ("**AB**") that she was objecting to the "authenticity and veracity" of all the Customer Treatment Booklets and the accompanying invoices[112]. At the commencement trial, Defendant's Counsel informed the court that it was withdrawing its objection as to authenticity, but maintaining its objections as to the truth of the contents[113] of the Customer Treatment Booklets.

93. Having considered all the evidence, I was satisfied that the Plaintiff had proven on a balance of probabilities that the Defendant had extended the Unauthorised Free Treatments/Upgrades to Ivy Bong and Lilian Seet by hand-writing the same on the Customer Treatment Booklets by adopting the Defendant's Modus Operandi. I considered the following.

94. First, the Plaintiff acknowledged that the Plaintiff's SOP was for a sticker label to be printed at the time of the generation of the invoice on the invoice itself, which will then be pasted onto the Customer Treatment Booklet so that there was no dispute as to what the customer had purchased. The very fact that the Defendant did not attach the sticker labels to the pages of Ivy Bong and Lilian Seet's Customer Treatment Booklets containing the disputed treatments, in breach of the SOP, supported the inference that the Defendant had deliberately circumvented the Plaintiff's SOP so that she could offer the Unauthorised Free Treatments/Upgrades to Ivy Bong and Lilian Seet by

[112] 3AB2-9

[113] NE 28 May 2024, pp 13, 18

proceeding to write non-matching treatment descriptions and session numbers onto the Customer Treatment Booklet.

95. Secondly, there was also evidence from the Plaintiff's staff and customers who testified at trial that they had individually witnessed or had been subject to these practices:

(a) PW2 Ong Ming Khim ("**Ms. Ong**"), a client of the Plaintiff, who was serviced by the Defendant, gave testimony in court that the Defendant had asked her to sign blank invoices on numerous occasions, where the description of the treatments purchased were left blank, save for the invoiced amount (Ms. Ong's affidavit at [7])[114]. The Defendant would not provide her with a copy of the receipt upon her payment against the blank invoice, citing reasons such as the printer was spoilt. When Ms. Ong requested to see her Customer Treatment Booklet after the Defendant left the Plaintiff, she noted that what was reflected in her Customer Treatment Booklet was different from what she purchased, and she demanded an explanation from the Defendant (Ms. Ong's affidavit at [10])[115]. Ms. Ong further filed a police effect deposing to the events[116]. Ms. Ong's testimony was unshaken when she was cross-examined at trial.

(b) Valerie Lee ("**Ms. Lee**"), another client of the Plaintiff, testified to the same effect, namely that on many occasions when she

[114] 8PA244

[115] 8PA245

[116] 8PA 250-251

purchased packages from the Defendant, the Defendant would not issue receipts and would rush her to sign on blank invoices. When she asked for copies of the receipts and invoices, the Defendant would tell her to simply refer to the Customer Treatment Booklet as the booklets were "more accurate". On several occasions she tried to view her Customer Treatment Booklet, but was informed by the Defendant that the Customer Treatment Booklet was with the Plaintiff's head office for updates (Ms. Lee's affidavit at [34])[117].

(c) There was further an audio recording between the Defendant and Ms. Yeong which was played in court[118]. The Defendant admitted that the voices heard on the voice recording were hers and Ms. Yeong's. In the audio recording, Ms. Yeong was recorded as asking the Defendant why the Defendant had told her she would be given 100 times of the treatment in question, when the receipt indicated a lesser quantum. In the audio recording, the Defendant told Ms. Yeong that the Defendant would update "100++" sessions in Ms. Yeong's Customer Treatment Booklet, that the Defendant could not "key [such information] into the system", but the Defendant would "record onto [Ms. Yeong's] card" that she was entitled to 125 sessions. While Ms. Yeong's AEIC has been expunged due to her unavailability to stay for cross examination, the audio recording and the contents thereof stood as real evidence of what the Defendant said to Ms. Yeong, given Defendant's own testimony

[117] 8PA19

[118] See transcripts at 1AB261

during her cross-examination that the audio recording was genuine and recorded the conversation between her and Ms. Yeong[119].

(d) Ms. Han, a therapist working for Plaintiff, also testified that she had personally witnessed the Defendant changing the prices of the packages in the POS system, and handwriting wrong details of the packages into the customers' Customer Treatment Booklets, resulting in the customers paying less than what they ought to have paid (Ms. Han's affidavit at [17])[120]. She further explained how she witnessed the Defendant altering the price in the POS system (Ms. Han's affidavit at [18])[121].

(e) Ms. Zhou, another therapist who testified at trial, deposed to the same effect as Ms. Han in her affidavit at [21]-[22][122]. Ms. Zhou included a table of discrepancies between the invoices and the corresponding Customer Treatment Booklets that she personally noticed when reviewing the documents in the lead up to trial (at [27])[123].

96. To the extent the admissibility of the Customer Treatment Booklets are being challenged on the grounds of hearsay (on the basis that the persons who inserted the manuscript writings onto the Customer Treatment Booklets were

[119] NE 27 May 2025 p. 14

[120] 7PA201

[121] 7PA202

[122] 7PA [18-19], [25].

[123] 7PA19

either not definitively established or were not called in court), I am of the view that the hearsay exception in s 32(1)(b)(iv) Evidence Act applied as the Customer Treatment Booklets were, based on the witnesses' testimonies at [95] above, contemporaneous records of what was written down in the Customer Treatment Booklet by the Defendant, or third parties upon the Defendant's instructions, in the ordinary course of the Plaintiff's business. Further, given the factors highlighted in [94]-[95] above, I am satisfied that the Customer Treatment Booklets have a minimum degree of assurance of reliability and therefore should be admitted as evidence pursuant to the hearsay exception. There were no countervailing considerations to warrant the exclusion of the Customer Treatment Booklets and the accompanying invoices in the interest of justice pursuant to s 32(3) Evidence Act, subject to considerations of weight under s 32(5) Evidence Act.

97. In light of the above evidence, under the *Britestone* analysis, the evidential burden shifted to the Defendant to prove that she did not offer Ivy Bong and Lilian Seet the Unauthorised Free Treatments/Upgrades by adopting the Defendant's *Modus Operandi*. The Defendant, however, failed to adduce any evidence to rebut the Plaintiff's evidence, except to make bare assertions in her AEIC that the Unauthorised Free Treatments/Upgrades attributed to Ivy Bong and Lilian Seet were authorized by the Plaintiff, and/or she had the "sole discretion" to grant selected customers upgrades and/or free treatments: see Defendant's trial affidavit at [68][124].

98. I am of the view that the rebuttal evidence adduced by the Defendant was highly unsatisfactory.

[124] DA24

99. First, the Defendant's contention that Cori Teo had expressly authorized the Unauthorised Free Treatments/Upgrades were not substantiated by any documentary evidence or witness testimony. The Defendant failed to call any witnesses – whether current or ex-employees or customers of the Plaintiff - to prove that Cori Teo had in fact authorized her to award these free treatments or upgrades previously.

100. Secondly, there is an inherent contradiction between the Defendant's position that Cori Teo had approved the Unauthorised Free Treatments/Upgrades, and the Defendant's alternate contention that she had the "sole discretion" to offer such discounts and free treatments: see [68] of her trial AEIC[125]. At any rate, the Defendant's evidence in her affidavit that she had sole discretion to grant such discounts/free treatment was immediately contradicted when she testified in court that her discretion was in fact circumscribed. According to her, she had the discretion to give up to five free sessions[126], and that if she wanted to offer more than five free sessions she would usually call Cori Teo for permission[127]. On the other hand, if a lot more free sessions were to be given by her, she would have to submit a request form to the office for approval[128]. She then went on to state that even if free sessions were granted, it would normally be a treatment that did not require manual work (such as body wrap treatments)[129]. Given her constantly shifting testimonies, the Defendant had simply not put forward any credible evidence that she had a discretion to

[125] BA24-25

[126] NE 28 May 2025 p 18-19

[127] NE 28 May 2025 p 18

[128] NE 28 May 2025 p 19

[129] NE 28 May 2025 p 19

grant free treatments and upgrades, and that even if she had, what the precise scope of the discretion conferred on her was.

101. Viewed as a whole, I found that the Plaintiff had discharge its burden of proving on a balance of probabilities that the Defendant had granted Unauthorised Free Treatments/Upgrades to Ivy Bong and Lilian Seet without authorization to the extent what was written onto Ivy Bong and Lilian Seet's Customer Treatment Booklets was at variance with and/or exceeded the treatment types and prices charged as set out in the corresponding invoices (or were not captured by any invoices at all). In doing so, the Defendant had breached clause 3 and 5(e) of the LOA.

Damages claimable by the Plaintiff in respect of the Unauthorised Free Treatments/Upgrades extended to Ivy Bong and Lilian Seet

102. The Plaintiff claimed damages under 2 alternate heads:

(a) Anticipated losses – *i.e.* losses computed based on the amount by which the value of the treatment the Defendant had *promised* Ivy Bong and Lilian Seet as written on their Customer Treatment Booklets exceeded the amounts Ivy Bong and Lilian Seet actually paid under the corresponding invoices (if any), regardless of whether Ivy Bong and Lilian Seet had consumed these treatments in full. The purported justification for claiming anticipated losses was that Ivy Bong and Lilian Seet had demanded that the Plaintiff fulfill the treatments based on the description and number of treatment sessions written in their

Customer Treatment Booklets even after the Defendant's departure.

(b) Actual consumption losses – *i.e.* losses computed based on the amount by which the value of the treatments actually *consumed* by Ivy Bong and Lilian Seet as shown in the Plaintiff's Consumption Records exceeded the amounts Ivy Bong and Lilian Seet actually paid under the corresponding invoices (if any).

103. Plaintiff, however, clarified that the Plaintiff's primary claim for losses for the Unauthorised Free Treatments/Upgrades is based on anticipated losses, *i.e.* what was contractually promised to the Plaintiff's customers as written in the Customer Treatment Booklets: see Exhibit P6 (Column 7: Loss to Plaintiff). The Plaintiff is only claiming actual consumption losses in the event the court finds that the Plaintiff is not entitled to claim anticipated losses: see Exhibit P6 (Column 9: Loss to Plaintiff (based on consumption)).[130]

104. Defendant's Counsel, on the other hand, appeared to proceed on the basis that Plaintiff had committed to claiming actual consumption losses only. In my view, that is not correct. While Mr. Leo had on the second day of trial mentioned in a single sentence that the Plaintiff is "only claiming the consumptions"[131], he clarified later on the same day the Plaintiff is leaving to the court to decide if the correct award of damages should be based on anticipated losses or actual consumption losses, and hence they have provided

[130] See PCSR [44].

[131] NE 24 September 2024, p 40 ll. 22

quantifications on both basis by way of Exh. P6[132]. This same point was reiterated by the Plaintiff's Counsel during the trial[133].

Whether damages should be awarded based on anticipated loss or actual consumption loss?

105. In *The Law of Contract in Singapore* (Andrew Phang Boon Leong General Editor, Academy Publishing, 2022) ("***The Law of Contract in Singapore***"), the learned authors noted at [20.065]:

> "[In] general, damages for breach of contract are compensatory. Unliquidated damages arise from a court order for the payment of money, *and compensation by way of damages simply means, "the award of a sum of money which, so far as money can be so, is equivalent to the claimant's loss*". *(Emphasis added)*

106. Further on, the learned authors observed, albeit in the context of a discussion of the difference between the tort and the contract measure of damages as follows:

> "[20.098]. The point is made must clearly, perhaps, by Friedmann:
>
> > It is assumed that tort damages look backwards and aim at returning the plaintiff to the status quo ante whereas contract damages look forward and strive to put the plaintiff in the position in which he would have been had the contract been performed. Reliance damages are thus, akin to the tort principle since they are meant to put the plaintiff in his pre-contract

[132] NE 24 September 2024, p 63

[133] NE 24 September 2024, p 131

> position, whereas performance damages reflect the contract principle.
>
> This analysis is based on a misconception which derives from the failure to adequately distinguish between rights and remedies. *It is submitted that the basic principle as to damages is identical in contract and tort, though there may be some variations in its application* [for example, as to the rules on remoteness of damages]. *The principle provides in essence that the purpose of damages is to put the plaintiff, in economic terms, in the position in which he would have been had the wrong (either a tort or breach of contract) not been committed.* The different results reached in tort and contract derive from the fact that they are usually called on to protect different rights. Where, however, they are invoked to protect the same right, the calculation of damages, which reflect the value of this right, either in tort or in contract will be similar.
>
> …

[20.099] Descriptions of contract damages as being "forward looking" as contrasted with "backward looking" tort damages are therefore best taken with a pinch of salt: whether contract damages are indeed "forward looking" (or not) depends on the contractual promise undertaken, and the loss being claimed. *Instead of being distracted by these labels, the better approach is, it is suggested, to always begin with the fundamental principle of compensation, being, to place the claimant, so far as money can do so, in the position as though the contract had been fully performed.*

[20.100] As Baron Parke stated in Robinson v Harman:

> *Where a party sustains a loss by reason of a breach of contract he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed.*

For all its complexities, awards of compensatory damages for breach of contract cannot stray very far from this fundamental principle. So, to avoid missing the wood for the trees, this principle should always be kept uppermost in mind."

[Emphasis added]

107. In sum, the exercise of awarding damages awarded is to place the Plaintiff in economic terms in the same position which it would have been if the wrong had not been committed.

Anticipated losses not claimable

108. Against this backdrop, I am unable to accept that the Plaintiff is entitled to claim anticipated losses.

109. First, Mr. Leo had confirmed that besides Ivy Bong and Lilian Seet, the other five Affected Customers have accepted the Plaintiff's position that without any supporting invoices, they were not entitled to any treatments even if these treatments were handwritten into their Customer Treatment Booklets[134]. It would be reasonable to infer that this is the Plaintiff's analysis of its legal position, which it had consistently taken against all seven Affected Customers, except that only five Affected Customers (*i.e.* excluding Ivy Bong and Lilian Seet) accepted this position initially.

110. Secondly, while Mr. Leo claimed that Ivy Bong and Lilian Seet did not accept the above legal position, other than Mr. Leo's bare assertion, there was no documentary proof that Ivy Bong and Lilian Seet are currently still contesting their legal entitlements against the Plaintiff.

Ivy Bong

[134] NE 28 May 2024, pp 101, 108

111. In relation to Ivy Bong, Mr. Leo had testified that there had been exchanges between Ivy Bong's lawyers and the Plaintiff's lawyers, and that Letters of Demand were issued by Ivy Bong. However, no documentary proof was tendered to show that Ivy Bong was still insisting on being accorded the full value of the treatments allegedly promised by the Defendant. In fact, Mr. Leo seemed to concede that Ivy Bong had stopped demanding what Defendant had promised after several rounds of legal letters:

Notes of Evidence ("NE") 24 September 2024: Cross-Examination ("XE") of PW1 Mr. Leo at p 72

Q: Witness, you already said that 12 was the actual consumption. So, 38, according to you, was anticipated transac---consumption, which you are claiming as part of the 50 G5 slim sessions. *So, am I right to say that you have not tendered any evidence that Ivy Bong was going to claim for---to receive from the plaintiff the 38 G5 slim treatments?* You have no---you have not tendered evidence, right?

A: *We have not tendered because she has stopped coming after our legal letters with her. So, she has stopped.*

Q: *Since she had stopped---Ivy Bong had stopped coming, you are also saying that she had stopped demanding, correct? …*

A: *After several rounds of legal letters.*

[Emphasis added]

112. That Ivy Bong had stopped demanding the treatments written in her Customer Treatment Booklet, and that Plaintiff had prevented further losses from accruing based on the treatments promised by the Defendant, was further evidenced by the following:

NE 24 September 2024: XE of PW1 Mr. Leo at p. 78

Q: Then, my next point is that I want to put it to you that the plaintiff

has no basis to claim for the 38 G5 potential treatments because it has not been demanded for by Ivy Fong[*sic*]. Do you agree or disagree?

A: The question is: *If we do not have the trial here and bring the matter to Court, and we keep silent about it, this will be the loss we going to suffer. But if---since we have already taken action,* ***we've already prevented this and we disallow the Ivy Bong to continue to come and do treatment without providing invoice to us*** and she exchange law---lawyer letter and we have referred the matter to the police. That is the current status. So, if you say that we did not suffer loss – not true.

Q: *So, witness, I'm going to put it to you based on the answer that you just gave, I put it to you that the plaintiff has not, to date, suffered loss for the 38 G5 slim sessions in terms of the amounts chargeable for the 38 slim---G5 slim sessions. Do you agree or disagree?*

A: *Correct.*

[Emphasis added]

NE 24 September 2024: XE of PW1 Mr. Leo at p 113-114

Q So, witness, earlier in Court this morning, *you said that Ivy Bong demanded the plaintiff to provide the treatments in the treatment card, but then the plaintiff responded to Ivy Bong that she had no invoice to back up her entitlement to the treatments in the treatment card, therefore she cannot claim.* ***And then you said that she stopped demanding, correct****?* That's what your evidence is in the morning, correct?

A: ***Correct. That is between the two lawyer, they settled in depth.***

[Emphasis added]

NE 26 September 2024: XE of PW1 Mr. Leo at p 74-75

Q: So, in this Court, you already clarified the status of Ivy Bong's demands for the anticipated treatments through her lawyer is that you---the plaintiff got their lawyers to respond is that because she doesn't have invoice to back up her demand, the response from the plaintiff is that---*according to you, is that the plaintiff therefore takes the position that the anticipated treatments, the plaintiff is not obliged to perform these anticipated treatments. Is that correct?*

A: *Correct.* But we---we did not cut it off completely because of the legal correspondence still ongoing. *It took about close to about a month or so to actually end it, because it was very hostile in the beginning.* And she came to the outlet and make a lot of commotion. So, we have to then manage the situation. *So, we still have to deal with her and---until her lawyer agree, then---then we stop producing for her---produce to her, take about a month.*

Q: *So, what you are saying is that---just now you said the word, "Until it ended and her lawyer agreed". So, you are saying that there is a finality to her*---to Ivy Bong's claim for the anticipated treatment as evidenced by Ivy Bong's lawyers written response. Is that correct?

A: *No written response from her lawyer, but she physically never appear anymore. So, that is the cut off, we took it.*

Q: *Okay. You "Cut off you took it" means that you---*

A: *We don't---we don't serve her anymore.*

[Emphasis added]

113. From the above answers given by Mr. Leo in court, any contention by the Plaintiff that Ivy Bong will continue to demand treatments based on what Defendant promised her is wholly speculative. Indeed, the above testimonies suggested that Ivy Bong had stopped demanding such treatments anymore. Given this, any award of damages in respect of Ivy Bong based on anticipated loss is likely to lead to overcompensation of the Plaintiff, contrary to the principles of awarding damages as highlighted in [105]-[106] above.

Lilian Seet

114. As for Lilian Seet, Mr. Leo also confirmed that Lilian never sent any lawyer's letter demanding treatment. She only came to the outlet to demand for treatment[135]. Mr. Leo however went on to testify that at the present time, Lilian Seet appeared to "understand" that she has no right to claim the treatments promised by the Defendant and has stopped demanding those treatments:

NE 26 September 2024: XE of PW1 Mr. Leo at p 75-76

Q: Okay, thank you. Next point, let's look at Lilian Seet. Now, you said Lilian Seet came down to the outlet to make demand for the anticipated treatments?

A: Correct.

……

Q: ---between 2nd December 2020, when was the last time she came to the outlet? In which month and which year?

A: *She actually now still coming,* ***but she now buy new packages and we provide her based on her new---new purchase. But the old one that Edna (*****sic*****) give, we actually stopped giving her*** *until---until* ***she understands and she even make a police report that she will stop coming to demand all this.*** Is a few---about a few months, those treatment we provide to her because she demands it. So, that time, we still no clarity, we not sure is---what is our position. *So, it takes a while to actually get her to understand*.

Q Okay. First of all, for Lilian Seet, okay, you say that---what you are saying is that after 2nd December 2020, Lilian Seet came to demand for treatments that she allegedly signed up for and paid with the plaintiff. So, you are saying is that there were some treatments given to---

A: Spilled over.

Q: ---Lilian Seet after 2nd December 2020?

A: Correct, because she demand for it. And I must say, during the time, we are managing the situation. Because on one hand, we have to satisfy our customer, because there are a lot of customers in the outlet, and when she get upset, she---she will, you know, throw her voice and all this affect our business. *So, we sort of like managing it and gradually, we manage to convince her. So,*

[135] NE 26 September 2024, 75.

it take a while.

Q Okay. *So, I'm talking about, again, after 2nd December 2020. Now, you say that you---the plaintiff managed to convince her to stop the demanding for treatments allegedly under Edna (*sic*).*

A: *Correct.*

[Emphasis added]

115. Given Mr. Leo's clear concessions above, I am again unable to see how an award of damages on account of anticipated loss is consistent with the principle of award of damages given that both Ivy Bong and Lilian Seet have stopped demanding the treatments promised by Defendant. I am therefore unable to quantify the damages due to Plaintiff in respect of Ivy Bong and Lilian Seet's Unauthorised Free Treatments/Upgrades based on the anticipated loss measure.

Actual consumption losses

116. I turn now to Plaintiff's alternate claim for actual consumption losses.

117. It is trite that a claimant entitled to damages must prove the amount of damages claimed. In *McGregor on Damages* (Sweet & Maxwell; Thomson Reuters), 21st ed, the learned authors thus noted at [10-001]:

> "A claimant claiming damages must prove their case. To justify an award of substantial damages where loss is asserted the claimant must satisfy the court both as to (i) the fact of damage, that is an adverse consequence; and (ii) *as to its amount*. If the claimant satisfies the court on neither, the action will fail, or at the most the claimant will be awarded nominal damages where a right has been infringed. *If the fact of damage is shown but no evidence is given as to its amount so that it*

> *is virtually impossible to assess damages, this will generally permit only an award of nominal damages; ….” (emphasis added)*

118. This is subject to the caveat in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623, where the Court of Appeal noted that the law does not demand the Plaintiff to prove with complete certainty the exact amount of damages he has suffered in every case (at [28]). Where precise evidence of loss is obtainable, the law naturally requires to have it. However, where it is clear that there has been actual loss which is difficult to prove in monetary terms, it is for the court to do its best to estimate (at [30]). The Court of Appeal noted at [31]:

> *“To summarise, a plaintiff cannot simply make a claim for damages without placing before the court sufficient evidence of the loss it has suffered even if it is otherwise entitled in principle to recover damages.* On the other hand, where the plaintiff has attempted its *level best* to prove its loss *and the evidence is cogent*, the court should allow it to recover the damages claimed.” *[Emphasis added]*

119. The authors of the Law of Contract in Singapore summarized the position at [21.239]:

> “These passages continue to represent the present state of the law. In particular, the latter statement in Robertson Quay brings home the point, often repeated, that the court will always proceed to quantify or assess the damages, that is the sum of money that should be awarded in compensation for loss suffered, *even where such assessment is difficult or, indeed, artificial (as it is, invariably, in relation to non-pecuniary loss*) – in other words, that “difficulty of assessment is no bar”. *That said, although the exercise of quantification is, by and large, a matter for the trier of fact at first instance, where the quantification exercise is shown to lack any rational basis, it will not be upheld on appeal. Therefore, it behoves the claimant to bring sufficient cogent proof, that is, evidence of such loss which may be used by the trier of fact to formulate a rational (that is, reasoned) basis for the quantification; the*

> *sufficiency and cogency of which will be gauged by reference to the nature of the loss and the manner by which it occurs.*
>
> *[Emphasis added]*

Evidence of actual consumption loss adduced

120. The evidence of actual consumption loss adduced by the Plaintiff was based in large part on the entries in the Consumption Records relating to Ivy Bong and Lilian Seet (matched against the relevant Customer Treatment Booklets and invoices) as summarised in Exh. P6. Defendant's Counsel had confirmed that the Consumption Records were not challenged as to authenticity, but reserved the right to challenge the "timing of [their] generation"[136]. Defendant's Counsel further reserved the right to strike out the Consumption Records[137]. While the Defendant's Counsel could have been clearer as to what "a challenge as to the timing of the generation of the Consumption Records" meant, on a reasonable interpretation, Defendant's Counsel was clearly reserving the right to challenge the truth and admissibility of the Consumption Records. Indeed, in the DCS, Defendant's Counsel confirmed that the admissibility of the Consumption Records on the grounds of hearsay was being challenged. This was on the basis, *inter alia*, that: (a) Ms. Febrrika had no personal knowledge whether the Consumption Records accurately reflected the actual consumptions by the customers (see [27(4)(e)] DCSR); (b) Ms. Febrrika and Mr. Leo were not personally involved in the transfer of the data and/or information in the Customer Treatment Booklets to the Plaintiff's computer system (see [27(4)(b)] DCSR); and (c) the Plaintiff did not call its accounting

[136] NE 24 September 2024, 5-6.

[137] NE 14 October 2024, p 26.

employees and backend staff who did the data transfer to the computer system to verify and show that the Consumption Records were accurate and up-to-date (see [74] DCS).

Whether the business record exception applied

121. Plaintiff's Counsel, however, argued that the Consumption Records constituted business records generated in the ordinary course of business admissible under s 32(1)(b)(iv) of the Evidence Act. S 32(1)(b)(iv) of the Evidence Act states:

> 32.—(1) Subject to subsections (2) and (3), statements of relevant facts made by a person (whether orally, in a document or otherwise), are themselves relevant facts in the following cases:
>
> ….
>
> (b) when the statement was made by a person *in the ordinary course of a trade, business, profession or other occupation and in particular* when it consists of —
> ….
>
> (iv) a document constituting, or forming part of, the records (whether past or present) of a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation, and includes a statement made in a document that is, or forms part of, a record *compiled by a person acting in the ordinary course of a trade, business, profession or other occupation* based on information supplied by other persons;
>
> and includes a statement made in a document that is, or forms part of, a record *compiled by a person acting in the ordinary course of a trade, business, profession or other occupation* based on information supplied by other persons;
>
> …

[Emphasis added]

122. In *Oversea-Chinese Banking Corporation Limited v Aroglobal Underwriting Asia Pacific Pte Ltd & Ors* [2025] SGHC 82 ("**Aroglobal**"), the High Court noted the rationale of the business record exception at [101]:

> "In Management Corporation Strata Title Plan No 3556 (suing on behalf of itself and all subsidiary proprietors of Northstar @ AMK) v Orion-One Development Pte Ltd (in liquidation) and another [2020] 3 SLR 373 ("*Orion-One*"), the High Court held at [22] that *the rationale for the business records exception is that a statement made in the ordinary course of business is a record of historical fact made from a disinterested standpoint, and which may thereby be presumed to be true*. In Banque de Commerce et de Placements SA, DIFC Branch and another v China Aviation Oil (Singapore) Corp Ltd (Shandong Energy International (Singapore) Pte Ltd, third party; Golden Base Energy Pte Ltd, fourth party) [2024] SGHC 145, the High Court held at [121] *that in order for this exception to be engaged, the statements in question must have been made contemporaneously with the facts which have occurred, or as soon as the exigencies of the situation will permit." [Emphasis added]*

123. Pinsler elaborated on the rationale of the business record exception in Evidence and the Litigation Process, LexisNexis (8th edition) at [6.006A] ("**Evidence and the Litigation Process**") in the following terms:

> "The rationale for the exception to the hearsay rule in s 32(1)(b) is *that statements in the course of 'a trade, business, profession or other*

> *occupation' are assumed to be reliable* because of their official, legal and/or professional nature. *The underlying commitment involved in such communications tends to imbue them with a degree of veracity,* although this may not always be the situation (in which case, the evidential value statement may be reduced or it may be excluded altogether). *Statements and documents which are specifically prepared for the purpose of litigation (**as opposed to being spontaneously generated in the usual and ordinary course of a trade, business, profession or other occupation**) are certainly not admissible under s 32(1)(b).* For example, a party would not be able to rely on s 32 (1)(b) for the purpose of admitting a document as evidence of its content if that document was prepared specifically for trial. The person who prepared the document would be expected to give evidence of the information in the document. *[emphasis added*]

124. It is clear from a literal construction of s 32(1)(b)(iv) Evidence Act that a predicate to the applicability of s 32(1)(b)(iv) Evidence Act is that the record must be made "in the ordinary course of a trade, business, profession or other occupation". See also Evidence and the Litigation Process at [6.008].

125. Against this backdrop, I am of the view that the business record exception in s 32(1)(b)(iv) is not applicable in the present case as the Consumption Records (contained in 5AB, and replicated as Exhibit FPT-8 to Ms. Febrrika's supplemental affidavit at 9PA), as stored in the Plaintiff's computer system, were not made or compiled in the ordinary course of the Plaintiff's business. I considered the following.

126. First, the compilation of the computer records from which the Consumption Records were generated only started in September or October 2020, and not *contemporaneously* as each treatment session was being performed by the therapist from the commencement of the relevant period (*e.g.* the treatments starting from as early as 2018):

NE 14 October 2024: XE of PW1 Mr. Leo at p 58-59

Q: *My question is, for each of the treatment session entry, from 5AB 172 to 5AB 367. … The entry was made either at the time of transfer of the treatment session data from the ---*

A: *Treatment card.*

Q: *---treatment card to the computer.*

A: *Correct.*

Q Or at the time after the plaintiff only used computer entry of treatment session, correct?

A: Correct.

Q: Okay. *And then you alleged that in 2018, these computer entries of treatment session wasn't in existence in 2018*. That's what you said earlier, right?

A: *Correct, correct.*

Q *Okay. So the transfer or the start of the transition from---which is the transfer of the treatment session data from the treatment card to the computer system, took place at a time that you cannot testify exactly, correct?*

A: *It was over a period of time, but I can safely tell you, during her daughter who came in to key in the data, it was sometime in October, early October or end September, that time she came in volunteer---*

Ct: Of which year, which year October? .

A: *2020. 2020 October, safely can say it's October*, because September she may also already there keying in part of the data.

Q: Witness, let's be more exact. Be more exact, okay?

A: Because I am not the one who gave the contract to her.

Q: *No, when did this transfer of treatment data from the customer treatment card to computer system took place? According to*

you, it should have first started in September 2020, correct?

A: *Around that time.* [138]

[Emphasis added]

127. Further, it became evident in the course of trial that the consumed treatment sessions (hereinafter, "**consumptions**") manually recorded in a number of Customer Treatment Booklet pages and the corresponding computerised Consumption Records did not match in a number of cases. When asked why the manual entries in the Customer Treatment Booklet did not match the Consumption Records, Ms. Febrrika explained that they checked "several sources of information" when compiling the Consumption Records in the computer system, and updated the computer records accordingly to reflect the actual consumptions. Viewed in this light, the Consumption Records were, in my opinion, not a contemporaneous and/or spontaneous record or compilation of the consumptions as they took place. Instead, the compilation of the Consumption Records involved an *ex post facto* consolidation, reconciliation and/or rationalisation of various sources of information to come up with a purported complete record of the consumptions. In other words, *investigative efforts* were undertaken to compile the Consumption Records. And all these happened while investigations into the Defendant's alleged misconduct was ongoing:

NE 14 October 2024: XE of PW1 Mr. Leo at p 54

Q Sometime between 5th June 2024 and August 2024, she [Febrrika] only looked through at the time, correct? June 2024 and--

A: That's the time when we compiled this report.

[138] See also NE 9, 71; and NE 23 May 2025, 40

Q ---August 2024, correct?

A: *Those records is already there in the treatment book, they transferred it to computer and then she double-checked them and then she print out the final report, which is your P6, they study together with the lawyer before they put it up to the Court. ….*

Q: ---so there are two different times. *First, at the time when the transaction of treatment was given, am I right to say that Febrrika did not check and oversee that computer entry, correct?*

A: *Disagree.* ***The treatment given, for example this one, some could be in 2018. We don't see any problem at that time. She will not be there to go and supervise the entry. This entry is only after we know this problem, they retrieved the data from the treatment card and keyed into the computer system. So she start to look at during that time.***

[Emphasis added]

NE 23 May 2025: XE of PW6 Febrrika at p 30-31

Q: Now, what you have on 9PA246 is only a document generated by the computer, right?

A: Correct.

Q: Yes. So where is the evidence of the treatment card, showing that the defend---customer had used 33 sessions? Don't give me all these computer printout because your treatment card on 4PA 348 30 shows 12 sessions. Then you jump to a computerised document. Where is the treatment card that shows 33 sessions? …

…..

A: *So we have check several source of information to validate what has been written in the treatment book*. If you see that it's only for 12 treatment actually *based on our tracking system from other source of data, for example, from the customer appointment information data*, so that is clearly indicated the customer come at what time and complete the treatment or not, who is the therapist, and so on and so on, and other source of information that we have is *customer in-and-out registration book---or this registration book*, so it's also tracked the treatment, the customers and the package and everything there. *Then when you check the treatment book, it only says 12 while*

> *the other system stays* (sic) differently. *Why* ***we think*** *that it is like discrepancy in recording the data because we think that she did not fill in the treatment book completely and correctly* and there is no stricter sticker label that should be stick on the treatment hook (*sic*) that---to make sure that it's all the packages and the treatment and recorded well. *And as you can see, it is 200 sessions for this MTM at the treatment book while---during other source of information, it says differently. Another way that we validate this information is based on the service chip sheet that is filled out by the therapist and it says the MTM service given to the customer,* ***so we use this information as well*** and then that we properly give the commission should be paid accordingly to the staff.
>
> *[Emphasis added]*

128. The reason why the records were migrated to the computer system appeared to be the problems encountered by the Plaintiff with the manual Customer Treatment Booklets managed by the Defendant, including the alleged mis-recordings of the purchased treatments by the Defendant. The commissioning of the computerised system was thus in large part motivated by the desire to investigate the discrepancies noted in the invoices issued by the Defendant and the corresponding Customer Treatment Booklet (see also PCSR [40]):

NE 28 May 2024: XE of PW1 Mr. Leo at p 66

Ct:	And you're saying that after the migration to the computer system, the consumption maybe---
A:	There'll be more. (indistinct) consumption.
Q:	---will be recorded in the computer system. So, you don't use these manual treatment booklets anymore?
A:	*Yes,* ***because manual we notice this is a problem that we face. That's why we upgraded to the computer system. Defendant have this tendency of handwriting the treatment cards.***

NE 14 October 2024: XE of PW1 Mr. Leo at p 59-60

Q: No, when did this transfer of treatment data from the customer treatment card to computer system took place? According to you, it should have first started in September 2020, correct?

A: Around that time.

Q: And that would---September 2020 was before Anna was put on garden leave, correct? Correct?

A: That time, before the garden leave.

Q: Yes. At the time before the garden leave, in September 2020, the plaintiff never complained to Anna that there were discrepancies between the invoice and what was handwritten in the treatment cards, correct? The plaintiff never bring this up.

A: ***We did question her, she did not explain. And then that's why we do this computerised system, it's to capture the invoice and the treatment card, so that we can see it clearly.***

[Emphasis added]

129. Based on the foregoing, the computerization efforts and hence the compilation of the computerized Consumption Records were largely motivated by the investigations into, and for the objective of uncovering, the misconduct of the Defendant. It involved an *ex post facto* validation, rationalization, reconciliation and matching of various information sources with the aim of coming up with a comprehensive set of consumption records. So construed, the Consumption Records were not, in my opinion, compiled in the ordinary course of business, and did not possess the inherent attribute of reliability that underpins the business record exception rule. In my view, the business record exception in s 32(1)(b)(iv) of the Evidence Act therefore did not apply to the Consumption Records.

Whether it is in the interest of justice to exclude the hearsay evidence

130. Even if I were wrong on the non-applicability of s 32(1)(b)(iv) of the Evidence Act (*i.e.* that the business record exception *prima facie* applied), it is still necessary to consider if the court should exercise its discretion to exclude the Consumption Records in the interest of justice pursuant to s 32(3) of the Evidence Act.

131. In Gimpex *Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ("***Gimpex***") at [106], the Court of Appeal endorsed the factors suggested by Professor Pinsler in the Evidence and the litigation Process which the court could take into consideration in determining whether a relevant statement declared relevant under s 32 Evidence Act should be excluded under s 32(3) Evidence Act:

> "Ideally, the court would balance the significance of the evidence (its probative value or importance to one or more of the issues) against any factors that militate against its admission. That is, the admissible evidence may be excluded if it does not justify the disadvantages that would result from its admission. *Such disadvantage would include the danger of unreliability or other harm which might compromise fair adjudication,* additional costs (as when a hearsay statement is not necessary because it essentially duplicates other evidence in the case), delay in the proceedings (where additional time is needed to adduce the evidence or the proceedings have to be postponed), the distraction of the court and/or the parties (where the evidence raises collateral issues that require undue attention), *its tendency to confuse or its misleading effect (as when there are doubts about authenticity and good faith), lack of reliability (where the circumstances of the author of a statement or in which the statement was made raise concerns about its truthfulness) and*

> *prejudice (in the sense of evidence that would have the effect of being substantively unjust or procedurally oppressive)*. It seems to be clear that the less significant or probative the statement, the less forceful the countervailing factors would need to be to justify exclusion. *Nevertheless, as the evidence is declared to be admissible by s 32(1) of the Evidence Act, the court should not normally exercise its discretion to exclude the statement unless the countervailing factors clearly outweigh the benefit that would be gained by its admission.*" *[Emphasis added]*

132. Applying these factors, I was of the view that it would be in the interest of justice to *exclude* the Consumption Records as the countervailing factors outweighed the benefit of having the evidence admitted.

133. First, there was an inherent risk that the Consumption Records were unreliable as the majority of the Consumption Records, especially those in respect of treatments rendered before September 2020, were not generated contemporaneously with the provision of the treatment by the relevant therapist and the customer: see *Aroglobal's* case referred to in [122] above. Necessarily, some value judgment would have been exercised by the compilers to match and reconcile the different information sources with a view to coming up with a complete set of Consumption Records, which carried with it an inherent risk of errors being made in the process.

134. Secondly, the risk of unreliability was exacerbated by the fact that the Consumption Records were compiled by the Plaintiff's accounting and backend staff under the supervision of Mr. Leo and Ms. Febrrika. Mr. Leo and Ms. Febrrika were clearly interested persons. While Ms. Febrrika was not part of the

senior management of the Plaintiff, she was at the material time, when the computerization was implemented, the Personal Assistant of Cori Teo and assumed a significant role in the investigations into the Defendant's misconduct.

135. Further, while Ms. Febrrika claimed she was familiar with the Plaintiff company's procedures with regards to the recording of treatment sessions and the documentation of proper records to facilitate the calculation of commission due to the therapists, there were marked discrepancies in her testimony on one hand, and Ms. Zhou and Ms. Han's testimonies on the other. For example:

(a) Ms. Febrrika vacillated when asked who would record the treatment in the Customer Treatment Booklet after each treatment session. She initially said that it could be the therapist or the manager[139]. She then stated definitively that after the treatment is completed, all treatments should be recorded on the Customer Treatment Booklet by the manager[140]. This was, however, inconsistent with both Ms. Zhou and Ms. Han's testimonies. Ms. Zhou thus testified that after she performs a treatment, under the manual system, she would record the treatment twice *herself*, once in the Customer Treatment Booklet and once in the Commission Service Slip[141]. Ms. Han testified to similar effect - pre-computerisation, she would record the treatment into the Customer Treatment Booklet[142] after the treatment was completed.

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[139] NE 22 May 2025, p. 70-71.

[140] NE 22 May 2025, p 71 (ll. 29-32); p 72 (ll. 1-10); p 73 (ll. 6-7), p 74 (ll. 13-20) to p. 75 (ll. 11-14) and p. 77 (ll. 6-13).

[141] NE 15 October 2024, p 10-11

[142] NE 20 May 2025, p 62.

(b) Ms. Febrrika further testified that the Commission Service Slip would be submitted on a daily basis to prevent backlog[143]. This was inconsistent with Ms. Zhou's testimony where Ms. Zhou stated that the Commission Service Slips were submitted in a monthly basis, at the end of each month[144].

136. Thirdly, the evidence adduced at trial also bear out the unreliability of the Consumption Records. Mr. Leo had thus testified that the manual entries in the Customer Treatment Booklet were transferred into the computer system[145]. He also agreed that the therapist had an interest in recording consumptions accurately in the Customer Treatment Booklet because they claimed commission on that basis[146]. Both Ms. Zhou and Ms. Han also confirmed that they would record treatments into the Customer Treatment Booklets after the services were performed[147]. However, Mr. Leo was then unable to provide a satisfactory explanation when Defendant's Counsel pointed out the Consumption Records and the manual Customer Treatment Booklet for S/N 4 of Exh. P6 were discrepant. For example, Defendant's Counsel queried Mr. Leo on the Customer Treatment Booklet referred at S/N 4 of Exh. P6 (*i.e.* 1PA393-394) which showed that a total of 20 G5 Melior Tummy treatments ("**G5 treatments**") were consumed, whereas the corresponding computerized Consumption Records at 5AB 182-184 showed a total of 80 G5 treatments. Despite Mr. Leo's explanation that Ivy Bong had continued to demand

[143] NE 23 May 2025, p 17.

[144] NE 14 October 2024, p 9-10.

[145] NE 14 October 2024, p 63 (ll. 32) to p. 64 (ll. 7); NE 14 October 2024 p. 109 (ll. 6-13).

[146] NE 26 September 2024, 60.

[147] NE 15 October 2024, p 10-11.

treatment after the Defendant went on garden leave in October 2020 and the Plaintiff had acceded to Ivy Bong's requests initially, even after deducting the 14 G5 treatments performed after 1 September 2020[148], the Consumption Records for G5 treatments consumed by Ivy Bong as shown in the Consumption Records at 5AB182-184 still far exceeded the consumptions recorded in the corresponding Customer Treatment Booklet by 46 entries.

137. As a further example, Defendant's Counsel also questioned Mr. Leo on the Customer Treatment Booklet in respect of the 30 Pressor treatments in S/N 2 of Exh. P6, which corresponded with the Customer Treatment Booklet at 1PA387 and the Consumption Records at 5AB176-178[149]. Defendant's Counsel highlighted that *no* entries of any Pressor treatment rendered by the Plaintiff's therapists was recorded in the Customer Treatment Booklet at 1PA 387[150]. On the other hand, there were 40 entries of the treatment in the corresponding Consumption Records at 5AB176-178 (or 19, if consumptions after 1 September 2020 were excluded).

138. In this regard, I did not find Febrrika's explanation that certain entries were found in the Consumption Records but not in the corresponding Customer Treatment Booklet page simply because the Defendant did not record certain treatments in the Customer Treatment Booklet convincing[151]. Mr. Leo had earlier confirmed that the therapist in question had an interest in recording the manual Customer Treatment Booklet entries correctly as their commissions

[148] 1 September 2020 was used as a cut-off point for the present illustration as the computerised system was commissioned, and the Defendant went on garden leave, at or around that time.

[149] NE 24 September 2024, p 84.

[150] NE 24 September 2024, p. 84 (ll. 8-9).

[151] NE 23 May 2025 p. 31.

would be affected thereby. Ms. Zhou and Ms. Han further confirmed that they would personally record in the Customer Treatment Booklet for treatments performed by them. The foregoing are two instances raised at trial in which the Consumption Records were clearly at odds with the corresponding Customer Treatment Booklet entries without any convincing reasons, thus pointing to the potential unreliability of the Consumption Records.

139. Fifthly, the way Exhibit P6 was compiled was that the Plaintiff had matched the relevant Consumption Records (*i.e.* 5AB, and and replicated as Exhibit FPT-8 in 9PA) to the corresponding pages of the Customer Treatment Booklets and the associated invoices. However, some of the Consumption Records matched to a *particular* Customer Treatment Booklet page/invoice were noted to have duplicates in the Consumption Records traced to *another* Customer Treatment Booklet page/invoice. For example, Defendant's Counsel had put to Mr. Leo that the 30 Presor sessions attributed to the Customer Treatment Booklet at 1PA387 (S/N 2 of Exh. P6) was in fact subsumed by the 120 Presor sessions reflected in another Customer Treatment Booklet at 1PA385 (S/N 1 of Exh. P6)[152]. Mr. Leo disagreed on the basis that 1PA387 and 1PA 385 were two separate Customer Treatment Booklet pages, and hence they related to two different transactions[153]. However, while the 38 Pressor Consumption Records at 9PA226 (S/N 1 of Exh. P6) did not appear to overlap with the 40 Pressor Consumption Records at 9PA232 (S/N 2 of Exh. P6), at least 15 of the 38 Pressor consumption entries at 9PA226 (S/N 1 of Exh. P6) appeared to be duplicated in the Consumption Records at 9PA243, which was matched to a different Customer Treatment Booklet page/invoice at 1PA394 (S/N 4 of Exh. P6). In other words, certain consumption entries in the

[152] NE 24 September 2024 p.83 (ll. 25-31)

[153] NE 24 September 2024 p. 83-84

Consumption Records were attributed to more than one Customer Treatment Booklet page/invoice, suggesting a possibility of double-counting.

140. Sixthly, the questions surrounding the accuracy of the Consumption Records were not helped by the fact *none* of the informational sources – *e.g.* the "customer appointment information data", the "customer in-and-out registration book", the Commission Service Slip, etc.[154] – which Ms. Febrrika claimed were used to validate the manual entries in the Customer Treatment Booklets, were adduced at trial to illustrate how the various informational sources were accurately cross-checked, such that the final Consumption Records were accurate, not inflated nor prone to double counting or other errors. Ms. Ung, who appeared to have rendered the majority of the treatments to Ivy Bong and Lilian Seet as shown in the Consumption Records was *also* not called to lend some credence to the accuracy of the Consumption Records. All these raise serious concerns in my mind about the reliability of the Consumption Records in 9PA (and replicated at AB5), in particular the risk of erroneous matching of the Consumption Records to the Customer Treatment Booklets, with the attendant risk of double counting.

141. Seventhly, considerations of substantive and procedural prejudice to the Defendant also militated against the admission of the Consumption Records. The Consumption Records were tendered very late, on the second day of trial, on 24 September 2024. Plaintiff's Counsel argued that if there were any specific documents (*e.g.* the Commission Service Slips) which the Defendant needed to verify the accuracy of the Plaintiff's Consumption Records, the Defendant could, and ought to, have sought specific discovery of the same. This, however,

[154] NE 23 May 2025 p. 30-31

overlooked the fact that the additional information resources which the Plaintiff used to come up with the Consumption Records – *e.g.* the "customer appointment information data", the "customer in-and-out registration book", the Commission Service Slip, etc. – were only revealed by Ms. Febrrika during her cross-examination on day 11 of trial[155] (*i.e.* 25 May 2025), by which time it would have been way too late for the Defendant to seek discovery of the documents mentioned by Ms. Febrrika. This was especially so having regard to the large number of Customer Treatment Booklet pages which formed part of the Plaintiff's claim.

142. There was also a related issue, namely that the Plaintiff did not serve a Notice of Intention to Admit Hearsay Evidence (Form 66B, ROC) giving notice of its intention to rely on the Consumption Records (which constituted hearsay evidence) as required under s 32(4)(b) of the Evidence Act read with O 38 r 4 Rules of Court (2014 Rev Ed) ("**ROC**").

143. It is trite law that it is open to the court to exercise its discretion under O 2 of the ROC to cure such non-compliance: see *Gimpex* at [137]. As the High Court noted in *Agroglobal:*

> "The purpose of notice is to "enable the opposing party to carry out his own investigation prior to the trial in order to ascertain its significance and veracity and to secure information which may refute it or reduce its weight": *Pinsler* at paragraph 6.042, cited with approval in *Gimpex* at [138]. Hence, whether or not such discretion should be exercised is "*ultimately … much dependant on the extent to which the non-compliance causes prejudice to the opposing party which would render*

[155] NE 23 May 2025, 31

> *it unfair for the hearsay evidence to be admitted*": *Gimpex* at [138]–[140]; see also *Kiri Industries* at [121]."

144. The considerations underlying the issue of whether the court should exercise its discretion to exclude hearsay evidence under s 32(3) of the Evidence Act, and whether the court should exercise its discretion under O 2 of the ROC to cure non-compliance with the requirement to serve a Notice of Intention to Admit Hearsay Evidence prescribed under s 32(4)(b) of the Evidence Act, overlap to a substantial degree: *Agroglobal* at [60].

145. In view of the concerns highlighted in [133] to [140] above, I was of the view that the prejudice to the Defendant associated with the non-compliance of s 32(4)(b) Evidence Act by the Plaintiff was substantial. I would therefore: (a) not have exercised my discretion to cure the Plaintiff's non-compliance to serve a Notice of Intention to Admit Hearsay Evidence in connection with the Consumption Records in light of the substantial prejudice caused to the Defendant; and (b) have taken the view that even if the business record exception *prima facie* applied in the present case, the substantive and procedural prejudice caused to the Defendant was yet another material factor which pointed to it being in the interest of justice to exclude the Consumption Records under s 32(3) of the Evidence Act.

146. For completeness, I deal with the Plaintiff's Counsel's argument that they had showed that there were certain safeguards or measures that applied to the Consumption Records which would ensure a minimal degree of reliability: see PCSR [54]. In this regard, Plaintiff highlighted the following:

(a) Ms. Febrrika testified that she had personal knowledge of the computer records as she oversaw the transition process from the manual system to the computerized system. Mr. Leo confirmed the same.

(b) Ms. Febrrika further testified that she checked several sources of information to validate the Consumption Records, including the Customer Treatment Booklets, the customer information data, customer registration book, the Commission Service Slip and further spoke to the therapist(s) concerned[156].

147. The Plaintiff argued that given the comprehensive cross-checking carried out by Ms. Febrrika of all available sources to ensure that the information captured in the computer records were complete[157], the Plaintiff has shown that the Consumption Records had a minimum degree of reliability, and the court should be slow to exercise its discretion to exclude such evidence: see *Gimpex* at [109].

148. Applying the approach on analyzing the legal and evidential burden of proof as discussed in *Britestone's* case, I agree that the Consumption Records coupled with Febrrika's testimony as to the "comprehensive checks" she had carried out, constituted some evidence, not inherently incredible, which was sufficient to satisfy Plaintiff's evidential burden of showing that the Consumption Records had a minimal degree of reliability. The evidential burden then shifted to the Defendant to adduce some evidence in rebuttal. The Defendant had, in my view, adduced sufficient rebuttal evidence by highlighting

[156] NE 23 May 2025, 74

[157] see PCSR60

the non-matching entries between the specific Customer Treatment Booklets and the corresponding Consumption Records (see [136], [137] and [139] above). The legal burden thus falls squarely back on the Plaintiff to prove, on a balance of probabilities, that the Consumption Records did indeed have the requisite minimum degree of reliability. Having regard to the following, I found that the Plaintiff has not discharged this burden for the following reasons:

(a) the contention that Ms. Febrrika had cross-checked the Consumption Records against the various information sources was based on no more than Ms. Febrrika and Mr. Leo's bare assertions;

(b) not a single source document which would corroborate the accuracy of at least a sampling of the Consumption Records was adduced;

(c) not a single witness, such as Ms. Ung, who appeared to have performed most of the Ivy Bong and Lilian Seet treatments, and could corroborate that the number of treatment sessions reflected in the Consumption Records were in fact accurate, and/or explain the discrepancies between the Customer Treatment Booklets and the Consumption Records, was called;

(d) Ms. Febrrika and Mr. Leo were clearly non-independent parties in relation to the compilation exercise; and

(e) The errors noted in [139] above which suggested that there were significant risks of double counting.

149. Considered as a whole, I had severe doubts as to the reliability of the Consumption Records and was of the view that it would not be in the interest of justice to admit the Consumption Records as proof of consumption. Indeed, despite the Unauthorised Free Treatments/Upgrades comprising the bulk of the Plaintiff's claims against the Defendant, the evidential package adduced by the Plaintiff to prove actual consumption loss was regrettably inadequate, with key witnesses (*e.g.* Ms. Ung) and/or other corroborating evidence not being called or adduced. Instead, reliance was placed on Ms. Febrrika and Mr. Leo's bare assertions that they had done an extensive cross check to ensure the accuracy of the Consumption Records, and thereafter inviting the court to accept at *face value, in toto,* the Consumption Records to justify an enormous award of damages against the Defendant.

150. Given that the Consumption Records were inadmissible, there was no evidence to support the Plaintiff's claim that the actual consumptions by Ivy Bong and Lilian Seet in fact exceeded the invoiced sums by the amounts claimed by the Plaintiff.

If the Consumption Records were admissible, what weight should be assigned to the Consumption Records?

151. Assuming that I was wrong in finding that: (a) the Consumption Records should be excluded under s. 32(3) Evidence Act, and (b) the failure to serve the Notice to Rely on Hearsay Evidence under s 32(4)(b) Evidence Act should not be cured, there would be a further need to consider the weight to be ascribed to the Consumption Records under s 32(5) Evidence Act, if they were admitted. Having regard to the concerns regarding the Consumption Records which I have highlighted above, the weight I would assign to the Consumption Records

would necessarily be minimal. Given the limited weight that I would have assigned to the Consumption Records if they were admitted, they would, in any event, have been insufficient to discharge the Plaintiff's legal burden of proving the quantum of its losses on a balance of probabilities.

152. As the amount of actual consumption losses has not been proven on a balance of probabilities, I am only able to award the Plaintiff nominal damages of $1,000 in respect of the Unauthorised Free Treatments/Upgrades.

Amounts allegedly misappropriated by the Defendant

153. The Plaintiff claims the following amounts allegedly misappropriated by the Defendant:

(a) A sum of $4,000 allegedly transferred by Ms. Lee to the Defendant's personal bank account on 8 February 2019 as part-payment of a $20,000 treatment package. It was not disputed that $16,000 was paid by Ms. Lee to the Plaintiff via credit card payments. The Defendant, however, issued an invoice for $16,000 only, and did not transfer the $4,000 to the Plaintiff (the "**$4,000 Payment**");

(b) A sum of $500 allegedly transferred by Ms. Lee to the Defendant's personal account on 23 January 2020 as payment for a promotional package. There was in fact no promotion at the relevant time and the Defendant did not transfer the $500 to the Plaintiff (the "**$500 Payment**"); and

(c) A sum of $1,500 allegedly transferred by Ms. Lee to the Defendant's personal account on 11 September 2020 as payment for a promotional package. There was in fact no promotion at the relevant time and the Defendant did not transfer the $1,500 to the Plaintiff (the "**$1,500 Payment**").

The $4,000 Payment

154. Against the Plaintiff's contention that the $4,000 Payment was in part-payment of a $20,000 treatment package purchased by Ms. Lee, the Defendant contended that the $4,000 Payment was in actual fact for the payment of a second-hand black Chanel bag which Ms. Lee had purchased from her. I found that the Plaintiff had proven, on a balance of probabilities, that the $4,000 Payment was not for the purchase of the black Chanel bag but was rather intended to be paid to the Plaintiff in connection with the purchase of the $20,000 treatment package. I considered the following:

(a) Ms. Lee had testified at trial and given testimony consistent with the Plaintiff's account that the $4,000 was part payment for the purchase of the $20,000 treatment package. Ms. Lee testified that she had given the Defendant two credit cards to effect the $20,000 payment, but was informed that only a payment of $16,000 was cleared. Defendant then informed her that if Ms. Lee paid $4,000 to the Defendant's personal bank account, the Defendant would help her obtain additional sessions that will be recorded in her Customer Treatment Booklet[158]. In this regard, I

[158] Ms. Lee's affidavit at [23]; 8PA14

agreed with the Plaintiff's Counsel that Ms. Lee was an independent witness who was not affiliated with either the Plaintiff or the Defendant. As between Ms. Lee and the Defendant's conflicting testimonies, I would ascribe significantly more weight to Ms. Lee's testimony.

(b) Ms. Lee's testimony was corroborated by a police report she lodged on 2 December 2020, shortly after the Defendant's departure from the Plaintiff, in which she narrated the same events to the police. There was in my mind no reason for Ms. Lee to lodge a false police report containing serious accusations against the Defendant under the pain of perjury[159] just to assist the Plaintiff's case.

(c) Defendant's assertion that the $4,000 Payment was for the purchase of a 10-year-old second-hand Chanel bag was, on the other hand, based on the Defendant's bare assertions. The Defendant was unable to refer to adduce any supporting documents, *e.g.* WhatsApp or text messages, referencing discussions between Ms. Lee and her on matters such as the price and the condition of the bag prior to the alleged purchase of the bag by Ms. Lee;

(d) The Defendant's story about the sale of the black Chanel bag was also rendered improbable by the fact that Ms. Lee had on the date of the transfer of the $4,000 received a limited gold edition Chanel bag from the Plaintiff as a token of appreciation for her

[159] 8PA 34-35

> patronage of the Plaintiff. This rendered it unlikely that Ms. Lee would purchase another Chanel bag from the Defendant on the same day: see Ms. Lee's affidavit at [26][160].

155. Based on the foregoing, I found on a balance of probabilities that the Defendant did, on or around 8 September 2019, misappropriate the sum of $4,000 paid to her by Ms. Lee meant for the Plaintiff.

The $500 Payment

156. Ms. Lee testified that she had transferred the $500 Payment to the Defendant's bank account as the Defendant had informed her of a promotional package that was available to selected VIP customers only for one day: see Ms. Lee's affidavit at [17][161]. As Ms. Lee was not at the outlet, Defendant suggested that Ms. Lee transferred the $500 to the Defendant's bank account and the Defendant would then pay the sum to the Plaintiff. As it turned out, the Plaintiff never received the $500 when Ms. Lee checked with the Plaintiff after the Defendant's departure from the Plaintiff company, and there was no such promotion that day: see Ms. Lee's affidavit at [19][162]. The Defendant's defence was that the $500 was payment made by Ms. Lee to Defendant for the purchase of a small Louis Vuitton pouch from the Defendant.

157. For reasons similar to the $4,000 Payment, I preferred Ms. Lee's testimony to the Defendant's. I found that the Plaintiff had discharged its burden

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[160] 8PA 16

[161] 8PA 12

[162] 8PA 12

of proving on a balance of probabilities that the $500 was misappropriated by the Defendant.

The $1,500 Payment

158. The $1,500 was, by Ms. Lee's testimony, represented to her by the Defendant as being a promotion which Plaintiff had with NETS, under which Ms. Lee would be entitled to 45 additional treatment sessions if she made the payment to Plaintiff by cash or NETS on 11 September 2020: see Ms. Lee's affidavit at [5]-[6][163]. Ms. Lee's testimony was that as she was rushing for another appointment, the Defendant suggested that Plaintiff pay the $1,500 to the Defendant's bank account, on the Defendant's assurance that the Defendant would then assist Ms. Lee to make the $1,500 payment to the Plaintiff on Ms. Lee's behalf by NETS.

159. I accepted, on a balance of probabilities, that Ms. Lee's account of what transpired was true:

(a) First, the Defendant had given an inconsistent story as to why the $1,500 payment was made. Defendant initially stated in an earlier interlocutory affidavit dated 28 June 2021 that the $1,500 was for the purchase of treatment packages at other beauty spas and companies[164]. She, however, changed her account at trial and claimed that the $1,500 was for the purchase of a facial machine

[163] 8PA 6

[164] DIA 122 at [69.1]

at Ms. Lee's request[165]. This material change in the Defendant's story severely undermined the Defendant's candour.

(b) The Defendant's latest version that the $1,500 was for the purchase of a facial machine[166] was further based on no more than her bare assertions. No documentary evidence documenting discussions between Ms. Lee and the Defendant as to the type, range and model of the machine that was to be purchased was adduced at trial, when one would have expected such discussions to have taken place between Ms. Lee and the Defendant, and in some cases documented in text or other messages, if Ms. Lee and the Defendant had indeed discussed the purchase.

(c) The $1,500 Payment was paid by Ms. Lee on 11 September 2020. Yet, no facial machine was purchased even after two months[167], nor did the Defendant take any steps towards that end. This supported the inference that there was never any agreement for the Defendant to purchase a facial machine for Ms. Lee.

(d) The circumstances under which the Defendant returned the $1,500 to Ms. Lee was also suspicious. Ms. Lee had stated in her affidavit at [10][168] that she had made a telephone call to the Defendant on or around 5 November 2020 threatening to make a police report if the Defendant did not return the money. The

[165] DA60 at [7]

[166] DA60; DA305 at [9(6)]; and NE 27 May 2025 at p 3.

[167] NE 27 May 2025 at p 4.

[168] 8PA 8

Defendant then took a taxi to Ms. Lee's house that very evening to return the $1,500 to Ms. Lee. On the stand, the Defendant confirmed Ms. Lee's account that Ms. Lee did make the call in question, that Ms. Lee did mention that she would be making a police report, and it was after the call that the Defendant decided to return the $1,500[169]. The Defendant tried to explain away the repayment by stating that: (i) as she was no longer working for the Plaintiff company, she decided not to help Ms. Lee with the purchase of the machine; and (ii) she had further decided to repay Ms. Lee because the Plaintiff had asked Ms. Lee to make a police report and the Defendant did not want to be embroiled in a matter that may end up in a police report[170]. These explanations were hardly convincing. The Defendant had testified that she returned the $1,500 to Ms. Lee *voluntarily* on 5 November 2020 because Defendant was no longer working for the Plaintiff and she found out that Ms. Lee was unhappy about this[171]. This was, however, contradicted by Defendant's testimony that she had repaid after receiving the call from Ms. Lee in which the latter *threatened to make a police report*. At any rate, if there was in fact a private agreement for the Defendant to purchase the facial machine on Ms. Lee's behalf, there was no reason for the Defendant to be concerned about being embroiled in a police case if Defendant proceeded based on the original private agreement and proceeded to acquire the facial machine. The repayment of the $1,500 by Defendant after the call was made by Ms. Lee

[169] NE 27 May 2025 at p 6.

[170] NE 27 May 2025, p. 6-7

[171] DIA 123 at [69.2]

amounted, in my mind, to an implied admission on the Defendant's part that the $1,500 was paid by Ms. Lee to the Defendant for the Plaintiff's account to purchase treatment packages.

(e) Ms. Lee's testimony on the $1,500 Payment was again corroborated by a police report she lodged on 18 November 2020[172]. Again, there was no reason for Ms. Lee to lodge a false police report just to assist the Plaintiff's case.

160. The Plaintiff claimed a refund of the $4,000 Payment, the $1,500 Payment and the $500 Payment (collectively, the "**Misappropriated Sums**") on the ground that the Defendant had breached the terms of the LOA or, alternatively, in unjust enrichment.

161. Based on the foregoing, I found that the Defendant had breached clause 3.0 and 5.0(e) of the LOA, and the Plaintiff was entitled to claim the Misappropriated Sums in the amount of **$6,000** in full from the Defendant by way of contractual damages. This included the $1,500 Payment which the Defendant had voluntarily returned to Ms. Lee on 5 November 2020. The Defendant had misappropriated the $1,500 which Ms. Lee had intended to pay to the Plaintiff in return for the purchase of a treatment package from the Plaintiff. Notwithstanding that Defendant had refunded an equivalent sum of money to Ms. Lee, the fact remained that the Defendant had deprived the Plaintiff of a sum which the Plaintiff was entitled to, in breach of clause 3.0 and 5.0(e) of the LOA.

[172] 8PA 28-29

162. As I have found for the Plaintiff in contract for the Misappropriated Sums, there is no need for me to consider whether an alternate claim founded in unjust enrichment have been made out on our facts.

Conclusion

163. Based on the above, I awarded the Plaintiff damages in the following sums:

	Claim		**Amount awarded**
1.	Monday Absences Claim		$2,415.65
2.	Shortfall in Working Hours Claim		$4,420.78
3.	Unauthorised Anna Treatments		$57,134.22
4.	Unauthorised Free Treatments/Upgrades		$1,000.00
5.	Misappropriation Claim		$6,000.00
6.	Reimbursement of medical charges		$30.00
	Total		**$71,000.65**

164. Judgment is therefore entered in the Plaintiff's favour for the sum of $71,000.65, with interest at 5.33% per annum from the date of writ to the date of payment.

165. I will hear parties on costs separately. Parties are to tender written submissions on costs (including all reserved costs in the interlocutory

proceedings) within 1 week from the date of this judgment limited to 7 pages each.

166. To avoid doubt, time for appealing against this judgment will start to run from the date the decision on costs is delivered.

Clement Seah Chi-Ling
District Judge

Gavin Neo Jia Cheng with Tian Warren (WongPartnership LLP) for the Plaintiff;
Diana Foo (M/s Legal Eagles) with instructed counsel Hassan Esa Almenoar (M/s R Ramason & Almenoar) for the Defendant.