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

[2025] SGHC(A) 17

Appellate Division / Civil Appeal No 80 of 2024

Between

(1) Centricore (S) Pte Ltd
(2) Faruk Bin Abdul Kather
(3) Toh Shenglong Louis
(4) Kyaw Htun Win
(5) Danesh s/o Sudinthan Pillai
(6) Kyaw Khaing
(7) Aung Thiha Aung
(8) IdGates Pte Ltd

… *Appellants*

And

(1) ATT Systems (S'pore) Pte Ltd
(2) ATT Infosoft Pte Ltd

… *Respondents*

In the matter of Suit No 447 of 2021

Between

(1) ATT Systems (S'pore) Pte Ltd
(2) ATT Infosoft Pte Ltd

… *Plaintiffs*

And

(1) Centricore (S) Pte Ltd
(2) Faruk Bin Abdul Kather
(3) Toh Shenglong Louis

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(4) Kyaw Htun Win
(5) Danesh s/o Sudinthan Pillai
(6) Kyaw Khaing
(7) Aung Thiha Aung
(8) IdGates Pte Ltd

… Defendants

JUDGMENT

[Confidence — Breach of confidence — Wrongful loss and wrongful gain interests — Whether proof that information was not used is sufficient to defeat wrongful loss claim]
[Contract — Contractual terms]
[Contract — Breach]
[Equity — Defences — Delay]
[Tort — Conspiracy]
[Tort — Inducement of breach of contract — Causation of loss]

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Centricore (S) Pte Ltd and others
v
ATT Systems (S'pore) Pte Ltd and another

[2025] SGHC(A) 17

Appellate Division of the High Court — Civil Appeal No 80 of 2024
Woo Bih Li JAD, Kannan Ramesh JAD and See Kee Oon JAD
7 July 2025

9 September 2025 Judgment reserved.

Kannan Ramesh JAD (delivering the judgment of the court):

Introduction

1 The second to seventh appellants in this appeal are ex-employees of the second respondent. The second respondent and its parent company, the first respondent, allege that the ex-employees conspired to leave *en masse* the second respondent's employment to incorporate a company (the first appellant) or join another company (the eighth appellant), in both instances for the purpose of competing with the respondents. The respondents brought various claims against the appellants resulting or arising from the alleged conspiracy, and three of the appellants, in turn, counterclaimed against the second respondent for wrongful dismissal.

2 The proceedings below were bifurcated. A Judge of the High Court (the "Judge") found against the appellants on most of the respondents' claims and

dismissed the counterclaims. The Judge's decision may be found at *ATT Systems (S'pore) Pte Ltd and another v Centricore (S) Pte Ltd and others* [2025] SGHC 13 (the "GD").

3 Dissatisfied, the appellants appeal against most of the Judge's findings on liability. There is no appeal against the dismissal of the counterclaims. There is no cross-appeal by the respondents on the claims that were dismissed.

4 Having considered the parties' submissions, we dismiss the appeal on all grounds save for the Judge's finding that three heads of loss were caused by the various breaches of contract that were induced by the second appellant. We provide our reasons below and begin by recounting the salient facts.

Facts

The parties

5 We first set out the identities of the appellants:

(a) The first appellant ("Centricore") was incorporated by some of the ex-employees to compete with the respondents. Centricore's principal business was providing various digital information technology ("IT") infrastructure services, including gantry/visitor management solutions and customised security solutions.

(b) The second appellant ("Mr Faruk") was the Deputy Chief Technology Officer and a statutory director of the second respondent, ATT Infosoft Pte Ltd ("ATT Infosoft"), leading its business operations at the material time. On the respondents' case, Mr Faruk was the mastermind behind the ex-employees' plan to leave ATT Infosoft's employment *en masse* to compete with the respondents.

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(c) The third appellant ("Mr Toh") was ATT Infosoft's Business Development Director and led its sales at the material time.

(d) The fourth appellant ("Mr Kyaw HW") was the head of ATT Infosoft's Projects Department at the material time.

(e) The fifth appellant ("Mr Danesh") was the deputy head of ATT Infosoft's Maintenance Department.

(f) The sixth appellant ("Mr Kyaw K") and seventh appellant ("Mr Aung") were software engineers in ATT Infosoft's Software/Research Department.

(g) The eighth appellant, IdGates Pte Ltd ("IdGates"), where some of the Ex-employees came to hold positions, was a company in the business of installing building automated systems such as automated turnstiles and side-gates. Its owner, a Mr Francis Ong Thong Seng ("Mr Francis Ong"), known to Mr Faruk as "Ron Wang", was acquainted with Mr Faruk.

(the second to seventh appellants are collectively defined as the "Ex-employees")

6 The first respondent, ATT Systems (S'pore) Pte Ltd ("ATT Systems"), was in the business of providing systems integration services at the material time. ATT Infosoft was initially a business division of ATT Systems. In or around November 2023, it was spun off and incorporated as ATT Systems' wholly-owned subsidiary. ATT Infosoft specialises in providing intelligent electronic queue management systems ("EQMS"), automated visitor management systems ("AVMS") and payment services solutions.

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Timeline

7 The Ex-employees were initially employed by ATT Systems; however, in 2014, their employment contracts were novated to ATT Infosoft. Shortly after, the terms and conditions of the Ex-employees' employment agreements (collectively, the "Employment Agreements") were updated. For the purposes of this appeal, the material clauses in each Employment Agreement are identical in terms, save for the notice period for termination of employment, which may differ.

8 In March 2019, Mr Faruk and Mr Toh began planning to leave ATT Infosoft. They discussed starting their own business and on 3 May 2019 signed a tenancy agreement for what would eventually become Centricore's office. Mr Toh gave Mr Faruk $7,000 to cover Centricore's rental deposit and start-up costs, while Mr Faruk prepared business cards for himself and all the other Ex-employees.

9 Mr Faruk was the first to resign, giving notice of resignation on 29 July 2019, triggering the three-month notice period under his Employment Agreement. In early August 2019, he was approached to join IdGates by Mr Francis Ong. Mr Kyaw HW and Mr Danesh resigned on 16 August 2019, triggering their respective two-month notice periods. While serving their notice, Mr Kyaw HW and Mr Danesh incorporated Centricore on 19 August 2019. They were its sole shareholders and first directors. Shortly thereafter, Mr Faruk prepared a letter of recommendation for Mr Kyaw HW's work pass application on Centricore's letterhead.

10 Mr Faruk became a shareholder and director of IdGates on 9 September 2019. IdGates submitted a work pass application for Mr Kyaw K on 26 August

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2019, and he resigned from ATT Infosoft on 11 September 2019. IdGates also submitted a work pass application for Mr Aung, following which he resigned from ATT Infosoft on 30 September 2019. Mr Faruk helped Mr Kyaw K and Mr Aung with those work pass applications.

11 In September 2019, Mr Faruk paid for Government Electronic Business ("GeBIZ") applications for Centricore and IdGates, and endorsed IdGates' application for an ME04 licence from the Building and Construction Authority.

12 The respondents became aware of the competitive activity of the appellants for the first time when one of their clients informed them on 28 September 2019 that "Faruk new company" had sent quotations for a gantry maintenance project.

13 On 3 October 2019, Mr Kyaw HW sent documents in a WhatsApp group chat with the respondents' clients. The documents stated that Mr Kyaw HW and Mr Danesh had been appointed as Centricore's directors and that Centricore expected its "first service contract in Jan-Feb 2020 with contract sum of $200,000 and subsequent pipeline of $500,000 in Q2-2020". Mr Kyaw HW deleted the message immediately.

14 ATT Infosoft terminated the employment of Mr Kyaw HW and Mr Danesh on 14 October, Mr Faruk on 16 October, and Mr Toh on 1 November 2019 (Mr Toh did not previously resign from ATT Infosoft). Mr Toh became a shareholder and director of IdGates on 11 November 2019. Mr Kyaw K and Mr Aung joined IdGates as employees on 15 November and 1 December 2019 respectively and were immediately seconded to Centricore for 24 months.

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15 Forensic analysis conducted on the Ex-employees' devices revealed the following:

(a) Information belonging to the respondents was stored in Mr Faruk's personal Dropbox folder (the "Dropbox Folder"), and external storage devices belonging to Mr Faruk, Mr Toh and Mr Danesh. The information had not been returned to ATT Infosoft. The Dropbox Folder contained five categories of documents which the respondents alleged were confidential: (a) pricing information; (b) client contracts for the supply and maintenance of EQMS; (c) operating manuals (including source codes) and technical documents; (d) client-specific materials; and (e) presentation and training materials (collectively, the "Confidential Information"). On appeal, the appellants do not dispute that the information had the necessary quality of confidence.

(b) Second, there was mass deletion of information on Mr Faruk's company-issued desktop and laptop in January, August and September 2019, and on Mr Kyaw HW's company-issued desktop and laptop in January, April and July 2019. Mr Kyaw HW had used data wiping tools the day before he returned the laptop to ATT Infosoft and took steps to hide the deletion activity.

16 The respondents also found that while he was an employee of ATT Infosoft, Mr Faruk had prepared four maintenance proposals under IdGates' name for the maintenance of existing AVMS installed by ATT Infosoft for various hospitals. These maintenance proposals are collectively termed the "four maintenance proposals". In addition, after Mr Faruk's employment was terminated, Centricore undercut ATT Infosoft's bid of $214,260 by about

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$4,000 (with a bid of $210,253) in a public tender for the maintenance, support and servicing of an EQMS put out by the Health Promotion Board on 18 June 2020. The only other bid was placed by a third party for $412,173.

The parties' cases below

17 The respondents claimed for:

(a) Breach of confidence by Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh and IdGates (this was the focus of the proceedings below).

(b) Breach of the Employment Agreements, in respect of the following specific obligations:

(i) a loyalty obligation;

(ii) an International Organisation for Standardisation ("ISO") obligation;

(iii) a non-compete obligation; and

(iv) a confidentiality obligation.

(c) Breach of fiduciary duties by Mr Faruk and Mr Toh.

(d) Inducement and/or procurement of the breaches of Employment Agreements by Mr Faruk.

(e) Conspiracy by unlawful means amongst all the appellants.

18 The appellants denied the claims and raised various defences. They further argued that the respondents' alleged losses were neither suffered by the respondents nor caused by the appellants' alleged conduct. In addition,

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Mr Faruk, Mr Kyaw HW and Mr Danesh counterclaimed against ATT Infosoft for wrongful dismissal, claiming unpaid salary, amounts accrued from unused annual leave and unutilised approved time-off.

Decision below

19 The Judge found that the respondents had made out their case on most of the claims against the appellants. We focus on the findings which are germane to this appeal.

20 **Breach of confidence:** As a preliminary point, the Judge rejected the appellants' argument that the respondents had only pleaded a wrongful gain claim but failed to plead and pursue a wrongful loss claim. Broadly, a wrongful gain claim requires proof of three elements (see [29] below), whereas a wrongful loss claim only requires proof of the first two elements of a wrongful gain claim, after which a breach of confidence is presumed, and the burden shifts to the defendants to prove that their conscience was not affected (see [30] below). The Judge found that the respondents had adequately pleaded both wrongful loss and wrongful gain claims. Turning to the merits of the wrongful loss claim, the Judge found that some of the appellants (comprising Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, and Mr Danesh) had failed to rebut the presumption that their conscience was affected (GD at [73]). The Judge also found that the wrongful gain claims were made out against Mr Faruk and IdGates (GD at [75], [85] and [107]–[111]).

21 **Breach of the Employment Agreements**: The appellants do not appeal against the Judge's finding that they breached the ISO and confidentiality obligations. They only challenge the Judge's findings in respect of the breach

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of the non-compete and loyalty obligations. We therefore only set out the Judge's findings in this regard.

(a) The Judge held that the scope of the **non-compete obligation** extended beyond the list of competitors in Annex A of the Employment Agreements. Accordingly, the appellants breached the obligation as a result of being engaged in or involved with IdGates and Centricore within six months of leaving ATT Infosoft's employment (GD at [114]−[121]).

(b) On the **loyalty obligation**, the Judge rejected two arguments raised by the appellants. First, the Judge disagreed that the scope of the loyalty obligation must mirror that of the non-compete obligation and be similarly circumscribed to activities with the competitors listed in Annex A. Second, the Judge rejected the appellants' argument that the loyalty obligation did not capture preparatory activity. He concluded that: (a) Mr Faruk had breached the loyalty obligation by working for IdGates; (b) Mr Toh had breached the loyalty obligation by contributing money to Centricore; and (c) Mr Kyaw HW and Mr Danesh had breached the loyalty obligation by their extensive work for Centricore (GD at [123]−[128]).

22 **Inducement of breach of contract**: The Judge inferred from the following facts that the actions of Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung were tied to and in effect caused or induced by Mr Faruk, that: (a) Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung resigned within a short time span of each other; (b) Mr Toh, Mr Kyaw HW and Mr Danesh were involved in various ways with Centricore; (c) Mr Kyaw K and Mr Aung were employed by IdGates, but were seconded to Centricore within a

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very short time; and (d) Mr Faruk assisted Mr Kyaw HW, Mr Kyaw K and Mr Aung with their work pass applications. Thus, Mr Faruk was liable for inducing the other Ex-employees to breach their respective Employment Agreements (GD at [147]−[150]).

23 **Conspiracy by unlawful means**: The Judge found that, similar to the analysis for inducement of breach of contract, the facts gave rise to the inference that there was some degree of coordination and acting in concert among the appellants. The unlawful means committed in furtherance of the conspiracy included the Ex-employees' breaches of the non-compete and loyalty obligations (which Centricore procured), Mr Faruk's inducement of breach of contract, and the breach of confidence by Mr Faruk and IdGates. Notably, the Judge found that, save for Mr Faruk, the breaches of confidence by the rest of the Ex-employees were not part of the conspiracy (GD at [151]−[161]).

24 The Judge dismissed the **counterclaims** by Mr Faruk, Mr Kyaw HW and Mr Danesh for breaches by ATT Infosoft of the respective Employment Agreements, given his findings that the appellants had breached various contractual obligations. The appellants have not appealed against this.

25 **As for loss**, while the trial was bifurcated, the Judge summarised the heads of loss which had been made out insofar as loss was an ingredient of the cause of action for inducement of breach of contract and unlawful means conspiracy. The Judge found that for the claim for inducement of breach of contract, loss had been made out, namely increased labour and software costs, and liquidated damages suffered by the respondents as a result of their inability to complete a project (collectively referred to as the "three heads of loss") (GD at [163]). There was some disagreement between the parties as to whether the Judge had made a finding that the three heads of loss also related to the claim

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in unlawful means conspiracy, an issue we discuss below (at [127]–[129]). The Judge further found in relation to the claim for inducement of breach of contract that there was evidence of loss in the form of lower tender prices to account for competition from Centricore and loss of tenders (see GD at [149]).

Cases on appeal

26 The appellants make the following contentions on appeal:

(a) **Breach of confidence:**

(i) First, contrary to the Judge's finding, the respondents had failed to plead a wrongful loss claim in addition to their wrongful gain claim. Further, and in any event, the Judge had incorrectly allowed both claims in respect of the same documents and/or information, which was impermissible.

(ii) Second, the respondents' delay of 1.5 years in commencing proceedings indicated that they had an ulterior motive, which disentitled them from maintaining their claims for breach of confidence because of the equitable doctrine of "clean hands".

(iii) Third, the appellants had proven that their conscience was not affected, which was fatal to the wrongful loss claim.

(b) **Breach of Employment Agreements:**

(i) The Judge erred in holding that the non-compete obligation extended to companies not listed in Annex A. Alternatively, the non-compete obligation would be an

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unenforceable covenant in restraint of trade if it were not limited to the companies listed in Annex A.

(ii) The Judge erred in finding that the loyalty obligation was breached because it did not bar mere "preparatory steps", and in any event, only proscribed activities in relation to the companies listed in Annex A.

(c) **Inducement of breach of contract:** the Judge erred in finding that Mr Faruk had induced breaches of the non-compete, confidentiality and loyalty obligations owed by Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung.

(d) **Conspiracy by unlawful means:** the Judge erred in finding two separate conspiracies, one being a conspiracy between Mr Faruk and IdGates to misuse the Confidential Information, and the other being a conspiracy between the Ex-employees to leave ATT Infosoft's employment *en masse*. The appellants argue that the second conspiracy does not meet the requirements for unlawful means conspiracy as the mass resignations were lawful and not intended to injure the respondents.

(e) **Existence of loss:** the Judge erred in finding that the three heads of loss were caused by Mr Faruk inducing breaches of contract. As noted earlier, the parties disagreed before us as to whether the Judge's finding on the three heads of loss was confined to the inducement of breach of contract claim or included the unlawful conspiracy claim. We consider this below. For completeness, there was no appeal against the Judge's finding on loss in [149] of the GD *ie*, the reduction in tender prices and loss of tenders.

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27 The respondents disagree with each contention and seek to uphold the GD in its entirety.

Issues to be determined

28 The following issues arise for our consideration:

(a) Under breach of confidence:

(i) Whether the respondents had properly pleaded a wrongful loss claim in addition to a wrongful gain claim.

(ii) Whether the Judge had impermissibly permitted double recovery by allowing wrongful gain and wrongful loss claims in respect of the same confidential documents and/or information.

(iii) Whether the respondents had delayed bringing the proceedings below, and if so, whether the alleged delay rendered the respondents' hands unclean.

(iv) Whether the appellants had proven that their conscience was unaffected.

(b) Under breach of the Employment Agreements:

(i) Whether the non-compete obligation was breached.

(ii) Whether the loyalty obligation was breached.

(c) Under inducement of breach of contract:

(i) Whether the Judge erred in finding that Mr Faruk had induced the other Ex-employees to breach their respective Employment Agreements.

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(ii) Whether the three heads of loss were caused by Mr Faruk's inducement of breach of contract.

(d) Under conspiracy by unlawful means:

(i) Whether the Judge had impermissibly found two separate conspiracies.

(ii) Whether the following two elements of unlawful means conspiracy were made out:

(A) the acts underpinning the unlawful means conspiracy were unlawful; and

(B) the conspirators intended to cause damage or injury to the plaintiff.

(iii) Whether the Judge also found that the three heads of loss were caused by the unlawful means conspiracy.

Breach of confidence

Legal principles

29 The parties do not dispute the law regarding claims for breach of confidence. In summary, there are two distinct interests that are protected under the law of confidence. They are the "wrongful gain" interest (referring to a claimant's interest in preventing wrongful gain or profit from exploitation of its confidential information) and the "wrongful loss" interest, which is engaged as long as a defendant's conscience has been impacted in the breach of the obligation of confidentiality (*I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 ("*I-Admin*") at [50]–[53]). For a claimant to

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succeed in a wrongful gain claim, it must prove the following elements (*I-Admin* at [20], citing *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 at 47):

> (a) the information in question has the necessary quality of confidence;
>
> (b) the information has been imparted in circumstances importing an obligation of confidence; and
>
> (c) there was unauthorised use of that information to the detriment of the party from whom the information originated.

30 It is also not disputed that for a claimant to succeed in a wrongful loss claim, it only needs to prove the first two elements of a wrongful gain claim (*I-Admin* at [61]), *ie*:

> (a) the information in question has the necessary quality of confidence; and
>
> (b) the information has been imparted in circumstances importing an obligation of confidence.

Upon proof of these elements, the burden falls on the defendant to prove that the defendant's conscience was unaffected. If the defendant fails to discharge this burden, the wrongful loss claim will succeed.

31 Furthermore, a claimant cannot succeed in *both* wrongful gain and wrongful loss claims in respect of the same confidential documents or information, as it might lead to double recovery (*Lim Suk Ling Priscilla and another v Amber Compounding Pharmacy Pte Ltd and another* [2024] 1 SLR 741 ("*Priscilla Lim*") at [47]–[48]).

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32 With these principles in mind, we examine each of the appellants' arguments with respect to the breach of confidence claim.

Whether the respondents had pleaded a wrongful loss claim

33 On appeal, the appellants maintain their argument below that the respondents had failed to plead a wrongful loss claim. The appellants contend that the statement of claim, properly construed, only disclosed a wrongful gain claim.

34 We do not agree. The general principle is that a statement of claim only needs to set out the material facts of the cause of action (Rules of Court 2021 O 1 r 3; Form 9 of Appendix A to the Supreme Court Practice Directions 2021 at paras 2–3). There is no requirement that the specific name of the cause of action be pleaded (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*") at [43]). In this case, we are satisfied that the material facts to support a wrongful loss claim were sufficiently pleaded in the statement of claim.

35 The statement of claim first asserts (at para 14) that the Confidential Information consisted of confidential and proprietary information belonging to the respondents which was inaccessible to the public. This corresponds to the first element of a wrongful loss claim (see [30(a)] above). The statement of claim then goes on (at para 15) to assert that Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh had access to and/or did access the Confidential Information during their employment with ATT Infosoft. It also explains that this amounted to the imparting of the Confidential Information to Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh in circumstances importing an obligation of confidence.

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This corresponds to the second element of a wrongful loss claim (see [30(b)] above). The wrongful loss claim was thus adequately pleaded against Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh.

36 Next, the statement of claim implicates the two companies, Centricore and IdGates (at para 16). It asserts that by coming into possession of the Confidential Information by accessing or acquiring it without the respondents' knowledge or consent, these companies owed obligations of confidence. This plea supports the wrongful loss claim against Centricore and IdGates. The particulars pleaded in relation to para 16 of the statement of claim make clear that it was Mr Faruk who caused the information to be imparted to Centricore and IdGates.

37 After this, the statement of claim explains how each of the appellants (save for Mr Kyaw K and Mr Aung, against whom claims for breach of confidence were not brought) breached their respective obligations of confidence to the respondents (at paras 17–19). Mr Danesh, Mr Toh and Mr Kyaw HW are alleged to have received and retained the Confidential Information (corresponding to a wrongful loss claim) while Mr Faruk, Centricore and IdGates are alleged to have accessed, used and distributed the Confidential Information to the respondents' detriment (supporting both wrongful loss and wrongful gain claims).

38 From the foregoing, it is clear that the plea satisfies the elements of a wrongful loss claim against all the relevant appellants. In our view, where a statement of claim pleads facts corresponding to both wrongful gain and wrongful loss claims, it would not be right to treat it as only disclosing a wrongful gain claim. After all, the Court of Appeal has explained that the underlying consideration of the law of pleadings is to avoid surprises arising at

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trial, and cautioned that courts should not adopt "an overly formalistic and inflexibly rule-bound approach" which might result in injustice (*SIC College of Business and Technology Pte Ltd v Yeo Poh Siah and others* [2016] 2 SLR 118 ("*SIC College*") at [46], citing *V Nithia* at [39]). The appellants do not allege that they were surprised or prejudiced by the wrongful loss claim.

39 That being said, we accept that the statement of claim would have benefitted from greater clarity and precision in drafting. We therefore take this opportunity to remind counsel of the need for clarity when pleading breach of confidence claims. This is not just a matter of the quality of drafting. It is also a matter of substance as the causes of action for wrongful gain and wrongful loss are not the same and a proper understanding of the difference is vital when pleading the claims (see [20] and [29]–[30] above). In particular, we reiterate the significance of the burden of proof: (a) in a wrongful loss claim, the burden shifts to the defendant to show that the defendant's conscience was not affected; and (b) in a wrongful gain claim, the plaintiff has the burden to show that the defendant's use has caused detriment. Further, following the Court of Appeal's guidance in *Priscilla Lim*, it is important for counsel to plead with specificity which classes of documents or information are subject to a wrongful gain claim and which are subject to a wrongful loss claim. If the claims are made in the alternative, it would be important for this to be stated clearly as well. This ensures that there is a clear link between the specified categories of information and the alleged breaches, such that when the claim is allowed, it is clear which claim has been allowed and as regards which category of document or information, thereby avoiding double recovery.

40 In the present case, the statement of claim failed to clearly differentiate between the information that was subject to the wrongful gain and wrongful loss claims insofar as both claims were pleaded against some of the appellants. That

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said, as noted earlier, the appellants do not allege that they were surprised by the wrongful loss claim, and the appellants concede that they suffered no prejudice as a result of the manner in which the statement of claim was drafted. We are of the view that such an argument, had it been made, would have been challenging. The record shows that the appellants did address the Judge on the wrongful loss claim as well as the wrongful gain claim (despite maintaining that a wrongful loss claim was not pleaded).

41 We therefore do not accept the appellants' contention that the wrongful loss claim was not adequately pleaded.

Whether the Judge had impermissibly allowed double recovery

42 We start by observing that the Judge only granted one type of claim in respect of most of the appellants. As regards Mr Toh, Mr Kyaw HW, Mr Danesh and Centricore, only the wrongful loss claims were allowed. For IdGates, only the wrongful gain claim was allowed (GD at [107]–[109]). Therefore, Mr Faruk is the only appellant in respect of whom the issue of whether there was double recovery arises.

43 It is relevant that when considering the breach of confidence claims that were made against Mr Faruk, the Judge was alive to the possibility of double recovery (GD at [75]). He was careful to deal with the wrongful loss and wrongful gain claims separately (under the headings of "breach by access" and "breach by use" respectively). For the wrongful gain claim, he attempted to set out (GD at [87]) some of the documents and information that were subject to the wrongful gain claim, although we recognise that the list of documents at [87] of the GD (the "Para 87 List") was preceded by the words "particularly" thereby suggesting that the Para 87 List was not exhaustive. Further, at [90] of

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the GD, the Judge stated that some of the Confidential Information was used by the appellants in relation to the four maintenance proposals, but did not outline the subset of information that he was referring to (the "Para 90 Information"). This, with respect, is problematic because the term "Confidential Information" is defined expansively in the GD as referring to all the confidential information that was used or accessed by the appellants (GD at [17]). It is therefore difficult to understand the extent of the Confidential Information that the Judge intended to include in the Para 90 Information.

44 There are similar difficulties in respect of the wrongful loss claim. The Judge simply stated that "Mr Faruk had accessed the Confidential Information" (GD at [76]), which, as explained above, could refer to the entire body of information in respect of which the respondents mounted their breach of confidence claim. He did not specify which of the Confidential Information was subject to a wrongful loss claim. A possible reading of the GD is that the Judge had allowed a wrongful loss claim in relation to the entire body of Confidential Information, resulting in double recovery in respect of the Para 87 List and the Para 90 Information because they too fall within the definition of "Confidential Information".

45 However, we are of the view that this would not be a fair reading of the salient paragraphs of the GD. The Court of Appeal's guidance in *Priscilla Lim* on avoiding double recovery was released before the Judge delivered his brief grounds on 13 August 2024, which likely explains why the Judge emphasised the importance of avoiding double recovery in the GD. Accordingly, a fair reading would be that the Judge allowed the wrongful gain claim against Mr Faruk in respect of the Para 87 List and the Para 90 Information, and allowed the wrongful loss claim against Mr Faruk in respect of the rest of the Confidential Information (*ie*, excepting the Para 87 List and the Para 90

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Information). Having said that, any confusion could have been avoided had this been made more explicit, and the Para 90 Information set out more comprehensively. The need for clarity on the information that is the subject of the respective claims remains important. In the assessment of damages, caution should be exercised in the evaluation of the information that forms the bedrock of the wrongful loss and wrongful gain claims. The classes of information and/or documents subject to each type of claim should be carefully delineated, giving effect to the guidance in *Priscilla Lim* against double recovery (GD at [75]).

Whether the respondents delayed bringing their claim

46 The appellants contend that the respondents are not entitled to bring the claims for breach of confidence due to their delay in bringing the proceedings below. Essentially, the appellants' argument is that the respondents were aware of the Ex-employees' breach in or around November 2019 and should thus have been in a position to commence proceedings soon after. The fact that the respondents only brought proceedings in May 2021 (about a year and a half later) is, the appellants submit, evidence that the respondents commenced proceedings for a collateral or improper purpose. Allegedly, the respondents' true reason for bringing proceedings was to kill off Centricore as a competitor and to dissuade the award of tenders by public bodies to Centricore. The appellants submit that the collateral purpose rendered the respondents' hands unclean, disentitling the respondents from bringing equitable claims, including claims for breach of confidence.

47 We do not accept the appellants' argument. The respondents have cogent justification for the delay. They explain that even though they began contemplating legal action at the end of 2019, the COVID-19 pandemic struck

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in February 2020, threatening the respondents' survival and draining all their energies and resources in keeping the business afloat. The respondents' evidence on this was unchallenged. The appellants' only response that other businesses were able to commence legal proceedings during the pandemic is a *non sequitur*. Furthermore, we observe that if the respondents truly had the intention of destroying the appellants' business, it would have been logical for the proceedings to have been brought as soon as possible rather than later, as any delay would have allowed Centricore and IdGates more time to build their business and submit tenders in competition with the respondents. Therefore, we have no hesitation in rejecting the appellants' arguments on delay.

Whether the appellants' conscience was affected

48 There are essentially two prongs to the appellants' argument that their conscience was unaffected for the purpose of a wrongful loss claim: first, the fact that they had not misused the information proves that their conscience was unaffected; and second, that the Judge erred in declining to find that the Ex-employees had deleted the Confidential Information after they had left ATT Infosoft's employment. We address each argument in turn.

The mere fact that information was not proven to be misused is insufficient to prove that the appellants' conscience was unaffected

49 The appellants' first argument relies on certain passages in *Angliss Singapore Pte Ltd v Yee Heng Khay (alias Roger)* [2021] SGHC 168 ("*Angliss*") which appear to stand for the proposition (at [49]–[50]) that for the purposes of a wrongful loss claim, positive proof that there was no misuse of confidential information is sufficient to show that a defendant's conscience was not affected. The appellants further submit that by virtue of successfully proving below that Centricore had not misused the Confidential Information in

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preparing the three tender bids, the Judge should have applied *Angliss* to find that the wrongful loss claims against Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh and Centricore must fail because their conscience had not been affected.

50 We observe that the appellants had not even shown that they did not misuse the Confidential Information. In this regard, the appellants misinterpret the Judge's finding that there was *insufficient evidence* of use (GD at [92]) as a positive finding that there was no use by them of the Confidential Information. This is not correct. The Judge's finding at [92] must be understood in the context of the wrongful gain claim, where *the respondents* bear the burden of proving that the Confidential Information had been used (to their detriment). However, in the case of the wrongful loss claim, the inquiry is different. It is *the appellants'* burden to show that their conscience was not affected (*I-Admin* at [61]). It follows that the appellants bear the burden of adducing any evidence or proving any fact which would show that their conscience was not affected. This they have not done. In short, a finding that there was insufficient evidence of use in a wrongful gain claim is not the same as a positive finding that there was no use. As the factual substratum of the argument has not been established, the argument fails *in limine*.

51 For completeness, we are of the view that even if the appellants had shown that they had not misused the Confidential Information, this would not be sufficient to demonstrate that their conscience was not affected. We explain.

52 We do not express a view on whether *Angliss* does stand for the proposition which the appellants advance, *ie*, that proving that the confidential information was not misused is sufficient to show that a defendant's conscience is unaffected, in a wrongful loss claim. In any event, this proposition is

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questionable as it assumes that misuse is a necessary ingredient. In *I-Admin*, the Court of Appeal recognised that "the wrongful loss interest may be infringed in a variety of situations outside actual use and disclosure" (*I-Admin* at [60]). It cited with approval an observation that merely accessing, acquiring or threatening to abuse confidential information may also form a breach of confidence (*I-Admin* at [60], citing *Clearlab SG Pte Ltd v Ting Chong Chai and others* [2015] 1 SLR 163 at [205]). It follows, therefore, that mere proof that there was no misuse of the confidential information may not always be sufficient to show that the defendant's conscience was unaffected. To be clear, we are not suggesting that an absence of use can never be sufficient; much will depend on the circumstances of the case, as the present case illustrates.

53 Here, the appellants received and/or accessed the Confidential Information without the respondents' knowledge and approval and, as we shall explain later in this judgment, in breach of various terms of their respective Employment Agreements (see [58]–[90] below), and in furtherance of a conspiracy to cause loss to the respondents by leaving ATT Infosoft *en masse* (see [108]–[129] below). These circumstances stand apart from the situations which, in the Court of Appeal's view, might show that a defendant's conscience was not affected (*I-Admin* at [61]). There is no suggestion in the present case, for instance, that the appellants had come across the information by accident, that they were unaware of the confidential nature of the information, or that they believed there was some strong public interest in accessing the information. Given these circumstances, we do not accept that the appellants had proven that their conscience was unaffected merely by showing that they had not used the Confidential Information.

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The Judge was justified in declining to find that the Ex-employees had deleted the Confidential Information

54 The appellants' second argument is based on the testimony of Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh that they had deleted the Confidential Information. This testimony is corroborated, they submit, by Centricore's evidence that it had not misused the Confidential Information. Furthermore, they argue that it does not make sense for Mr Toh, Mr Kyaw HW, Mr Danesh and Centricore to have not deleted and instead retained the Confidential Information in light of the Judge's finding that they did not use the same. The Judge ought to have inferred from these matters that they had deleted the Confidential Information, which would in turn have demonstrated that their conscience was not affected.

55 This argument can be easily disposed of. An analysis of the Ex-employees' company-issued devices showed that the Confidential Information had been transferred out of those authorised devices to the Dropbox Folder and various unauthorised external storage devices. The appellants' answer to this is that they deleted the Confidential Information from the Dropbox Folder and destroyed the external storage devices. This is a bare assertion. To date, the appellants have not adduced any evidence to support the assertion, which is particularly problematic as the Dropbox Folder and external storage devices were always within their possession and control (GD at [95]). Secondly, it would not have been logical to transfer the Confidential Information only to delete it without more. Furthermore, as explained previously (at [50] above), the appellants are incorrect in asserting that the Judge had made a positive finding that they did not use the Confidential Information. Finally, to the extent that the second argument rests on the appellants' non-use of the Confidential Information, it does not assist them in showing that their conscience was not

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affected for the same reasons as before. Therefore, the Judge was correct to reject this argument.

56 For the reasons above, we do not accept that the appellants have shown that their conscience was not affected, for the purpose of the wrongful loss claim.

Breach of the Employment Agreements

57 In our view, the Judge was correct to find that the Ex-employees had breached the non-compete and loyalty obligations in the Employment Agreements, for reasons which we now explain.

Breach of the non-compete obligation

58 The non-compete obligation is identically phrased in each Employment Agreement and provides:

> **[X]. RESIGNATION OR TERMINATION**
>
> …
>
> [X.Y] Restrictions. Upon your resignation or termination of employment, within six (6) months after your official last day in the Company, you shall not be employed or engaged by any other person, firm, or company or acquire any interest in *any undertaking carrying on business of a similar nature or in competition with the Company*. The list of competitors is stated in **Annex A**. Should you breach the above-said restriction, the company will take legal action accordingly.
>
> [emphasis added]
>
> …
>
> Annex A – List of Competitor Companies
>
> Note: The list is also subject for [*sic*] management's further review as deemed necessary by the company.

No	Company Name

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1	Q'MATIC
2	SMART Q
3	Q-TECH
4	NCS (QUEUE DIVISION)
5	IBM (QUEUE DIVISION)
6	GREEN FOSSIL
7	Q-NET
8	BLUE-BELL DISCOVERY

59 The Judge construed the "focus" of the clause as imposing a "general obligation" on employees not to be employed or engaged by anyone else carrying on business of a similar nature, or which was in competition with the employer. Only after establishing this general obligation did the clause go on to state that "[t]he list of competitors is stated in Annex A". This led the Judge to interpret Annex A as being *illustrative* of the identity of the competitors rather than exhaustive (GD at [116]).

60 In response, the appellants essentially argue that the phrase "any undertaking carrying on business of a similar nature or in competition with the Company" should be read as a single limb of prohibited entities which are exhaustively defined in Annex A.

61 We have difficulties with both the Judge's and the appellants' interpretations. In our view, the phrase should be read disjunctively, as identifying two categories of prohibited entities in the following manner:

> "… you shall not be employed or engaged … in any undertaking carrying on business:
>
> (a) of a similar nature; or
>
> (b) in competition with the Company"

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This disjunctive interpretation is supported by both a textual and purposive interpretation of the non-compete obligation.

Textual interpretation of the non-compete obligation

62 From the plain wording of the clause, the use of the word "or" (as opposed to "and") clearly identifies two distinct categories of prohibited entities. We refer to these two categories hereinafter as falling under the "first limb" and the "second limb". To rebut this, the appellants claim that this disjunctive interpretation is untenable because there is a missing "as" after the word "nature". According to them, the disjunctive interpretation is only workable if the word "as" is added after the word "nature", such that the prohibition reads as follows:

> "… you shall not be employed or engaged … in any undertaking carrying on business:
>
> (a) of a similar nature **^as**; or
>
> (b) in competition with
>
> the Company."

63 We do not accept this. It is an overly technical and pedantic argument. In interpreting contracts, courts apply the well-established "holistic approach" which requires one not to be "excessively focused upon a particular word, phrase, [or] sentence … Rather, the emphasis is on the … utterance as a whole" (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131]; *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61 at [67]). In line with this "holistic approach", we examine the complete prohibition set out by the first limb of the clause:

> Upon your resignation or termination of employment, within six (6) months after your official last day in ***the Company***, you

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> shall not be employed or engaged by any other person, firm, or company or acquire any interest in any undertaking carrying on ***business of a similar nature***…
>
> [emphasis added]

64 Read holistically as a continuous sentence, the prohibition clearly refers to entities with a business of a similar nature *to that of the Company* (*viz*, ATT Infosoft). The phrase "business of a similar nature" is evidently qualified by the specific mention of "the Company" in the opening phrase of the sentence. Understood in this way, there is no need to explicitly spell out "…business of a similar nature *as the Company*" to make sense of the prohibition.

65 Indeed, the appellants' conjunctive interpretation renders the first limb otiose as it would effectively restrict the scope of the non-compete obligation to businesses listed in Annex A. This is not correct as there is generally a "presumption against redundant words" as a matter of contractual interpretation (see *Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 at [20]; *PT Bayan Resources TBK and another v BCBC Singapore Pte Ltd and another* [2019] 1 SLR 30 at [131]). Further, there is good reason for not rendering the first limb otiose. The first limb, in fact, addresses a situation which is not captured by the second limb. We explain.

66 The non-compete obligation seeks to circumscribe the conduct of ex-employees for a period of six months from the last date of their employment. It does this by prohibiting, in that six-month period, the ex-employees from competing with ATT Infosoft, by being involved, whether surreptitiously, covertly or otherwise, in a business similar in nature to or in competition with ATT Infosoft.

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67 It is readily apparent that a temporal distinction arises between the first and second limbs by reason of Annex A. For the second limb to apply, the ex-employee must be involved in a business that is listed in Annex A as a competitor of ATT Infosoft. It will only be possible to list a business in Annex A during the currency of the employment, and that too only if ATT Infosoft knew that business to be a competitor during that period (we return to the latter point at [69] below). It follows therefore that a business that competes with ATT Infosoft post-employment, specifically during the six-month prohibition period, will not be listed in Annex A and therefore captured by the second limb. The second limb thus has a temporal limitation.

68 However, the first limb is not limited in this manner. For the first limb to apply, it suffices that the ex-employee is involved in a "business of a similar nature", which broadly encompasses two distinct situations:

(a) First, a business that is already a competitor of ATT Infosoft during the currency of employment but not identified in Annex A. The ex-employee is prohibited from being involved in such a business.

(b) Second, a business that becomes a competitor of ATT Infosoft during the six-month prohibition period in the non-compete obligation. Such business will include (i) a new business which the ex-employee establishes to compete with ATT Infosoft post-employment; or (ii) an existing business that the ex-employee joined which then becomes a competitor to ATT Infosoft post-employment.

69 It is clear from the above that the second situation is not addressed by the second limb. We make a further point. As noted above, it is axiomatic that for a business to be listed in Annex A, it must be known to ATT Infosoft to be

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a competitor during the currency of the employment. If it was not known, ATT Infosoft would not be in a position to list that business in Annex A. However, the first limb would apply regardless of whether ATT Infosoft knew that the business was a competitor.

70 The analysis above makes it plain why an interpretative approach that will render the first limb otiose should be eschewed. The first limb addresses situations which are not catered for in the second limb and an approach that gives meaning to it should be preferred over one that does not. While an argument may be made that reading the two limbs disjunctively may render the second limb otiose as the first limb may subsume the second (at least in the first situation above), it may be said that the second limb exists to remove any argument as to whether a business is in competition with ATT Infosoft, which invariably is a fact-sensitive exercise. Further, it is important that the disjunctive interpretation is consistent with the purpose of the non-compete obligation, to which we now turn.

Purposive interpretation of the non-compete obligation

71 The textual reading of the non-compete obligation above is fortified by the commercial purpose underlying the prohibition. This accords with the general principle that terms made in a commercial context "should be interpreted in a way that aligns with 'business common sense'" (*Banque de Commerce et de Placements SA, DIFC Branch and another v China Aviation Oil (Singapore) Corp Ltd* [2025] 1 SLR 1146 at [85]; see also *Rainy Sky SA and others v Kookmin Bank* [2011] 1 WLR 2900 at [21]; see also *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [114]–[115] and [133]).

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72 Adopting a purposive interpretation of the non-compete obligation, it cannot be gainsaid that the commercial purpose of the non-compete obligation must also be to prevent the conduct in the second situation identified at [68(b)] above. It is a fact that the ex-employee would be competing with ATT Infosoft in that situation as well. To then contend that the non-compete obligation would not apply because the business was not listed in Annex A would be to ignore the commercial purpose of the obligation (as well as the first limb). Accordingly, a reading that promotes this purpose should be favoured over one that does not, provided of course that the text supports the interpretation. For the reasons explained above, we are of the view that the text does support this interpretation.

73 In our judgment, the overarching commercial purpose of the non-compete obligation is served by reading the two limbs disjunctively. On one hand, the second limb (*viz*, prohibited businesses "in competition with the Company") addresses *existing and known* competitive threats (at the time of the contract or before its expiration) by preventing ex-employees from joining existing competitors that are listed in Annex A. We note, in this regard, that the chapeau to Annex A expressly provides that the list of existing competitors is subject to the respondents' "management's further review as deemed necessary". As noted above, the contractual right to review and update Annex A can only be meaningfully exercised if the competitor is in existence and known to the respondents at the material time. It follows that if the (putative) competitor is *not* in existence because the competitor was only created upon the departure of the employee, the second limb would be ineffective in protecting ATT Infosoft. This does not accord with the commercial purpose of a non-compete obligation. Indeed, it rewards an ex-employee who surreptitiously or covertly sets up a competing business, giving rise to an absurd result. This is

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where the first limb serves a distinct preventive function by capturing, *inter alia*, *emerging* competitive threats as illustrated in the second situation above (at [68(b)]) and existing competitors unknown to the respondents at the material time. Emerging competitive businesses would include new ventures like Centricore, established by the appellants with the intention of competing with ATT Infosoft, and existing ventures like IdGates which intended to pivot their business to one that would compete with ATT Infosoft.

74 We are therefore of the view that the two limbs of the non-compete obligation should be read disjunctively. Accordingly, Centricore and IdGates fall within the first limb of "undertaking[s] carrying on business of a similar nature", such that they could trigger the prohibition under the non-compete obligation.

The appellants' new restraint of trade argument

75 For completeness, we note the appellants' alternative argument that the non-compete obligation is an unenforceable covenant in restraint of trade. This is a new argument which was not raised in the proceedings below.

76 In our view, the appellants should not be allowed to raise this new argument on appeal. It is well established that a party cannot introduce a new point if it would unduly prejudice the opposing party's ability to adduce evidence to refute the new point (*JWR Pte Ltd v Edmond Pereira Law Corp and another* [2020] 2 SLR 744 at [27]).

77 In this case, the new restraint of trade argument would necessarily involve an assessment of the *reasonableness* of the non-compete obligation in protecting the parties and the public. This is evidently a "factually sensitive"

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inquiry (see *PH Hydraulics & Engineering Pte Ltd v Intrepid Offshore Construction Pte Ltd and another* [2012] 4 SLR 36 at [66]).

78 The appellants attempt to overcome this issue with an argument that is superficially attractive. They argue that a global restraint can never be reasonable, and no amount of evidence the respondents adduce can justify the reasonableness of a non-compete covenant without any geographical limitation. However, this argument assumes that the non-compete obligation does indeed have an unlimited geographical scope. It overlooks the possibility of the respondents adducing contextual evidence to show that the non-compete obligation only applied to entities operating in Singapore. Indeed, the respondents advance this very argument on appeal but are unable to fully develop it as they did not have the opportunity to adduce evidence to support it.

79 Besides, even if the respondents could succeed in demonstrating the limited geographical scope of the non-compete obligation without fresh evidence, this would raise further questions of whether this geographical limitation is reasonable. This may, in turn, require further evidence regarding, for instance, what the industry considers reasonable as a matter of common practice.

80 It is therefore evident that the respondents would be prejudiced because they were denied the opportunity to present evidence on these issues below Therefore, we do not allow the appellants to raise the new restraint of trade argument.

Breach of the loyalty obligation

81 We turn to the loyalty obligation, which is set out in cll 2.2 and 2.3 of the Employment Agreement, and states:

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> **2. DUTIES AND RESPONSIBILITIES**
>
> …
>
> 2.2 During the term of your employment you will work for no other employers, unless pre-approved by your immediate superior.
>
> 2.3 You have been told and you understand that you shall devote all of your working time, attention, knowledge and skill to our business interests and shall do so in good faith, with best efforts, and to the reasonable satisfaction of Company. You shall only be entitled to compensation, benefits and profits as set forth in this Agreement. You shall refrain from any interest of any kind whatsoever in any business competitive to the Company's business. You understand that you shall not engage in any form of activity that produces a conflict of interest with those of the Company unless otherwise agreed in writing.

82 The Judge found that the loyalty obligation was breached by the Ex-employees in the following ways: (a) Mr Faruk by working for IdGates; (b) Mr Toh by contributing moneys to Centricore; and (c) Mr Kyaw HW and Mr Danesh by their "extensive work" for Centricore (GD at [128]). The Judge did not specify what this "extensive work" was, but he was presumably referring to Mr Kyaw HW and Mr Danesh incorporating Centricore and becoming its first shareholders and directors, submitting a GST-registration application for Centricore, and preparing figures pertaining to prospective service contract sums and projected sales revenue for Centricore.

83 On appeal, the appellants divide the loyalty obligation into the following three sub-obligations:

> (a) *Express Duty of Fidelity*: to work for no other employer than ATT Infosoft, and to act in good faith and to devote all of their working time, attention, knowledge and skill to ATT Infosoft in good faith with best efforts and to the reasonable satisfaction of ATT Infosoft.

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(b) *No Competing Interest Undertaking*: to refrain from any interest in any business competitive to ATT Infosoft's business.

(c) *No Conflicting Activity Undertaking*: not to engage in any form of activity that produces a conflict of interest with those of ATT Infosoft unless otherwise agreed in writing.

84 The appellants then mount the following two arguments in relation to these three sub-obligations: (a) first, s*olely* in relation to the Express Duty of Fidelity, they argue that in so far as some of the steps they took were undertaken before they were employed by IdGates or Centricore, these were preparatory steps and this duty does not encompass "preparatory steps"; and (b) second, the No Competing Interest and No Conflicting Activity Undertakings must be read consistently with the non-compete obligation such that they only prohibit competitive activity with the entities listed in Annex A.

The loyalty obligation captures "preparatory steps"

85 The appellants limit their argument on "preparatory steps" only to the Express Duty of Fidelity. In other words, they do not challenge the Judge's finding that the No Competing Interest and No Conflicting Activity Undertakings were clearly "capable of capturing such preparatory steps anyway" (GD at [126]). Therefore, even if we accept that the Express Duty of Fidelity excludes "preparatory steps", the Judge's finding that these "preparatory steps" breach the other components of the loyalty obligation continues to stand. This disposes of the appellants' first argument.

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The loyalty obligation is not circumscribed to companies listed in Annex A

86 Next, the appellants argue that the loyalty obligation – like the non-compete obligation – should only prohibit competitive activity with the entities listed in Annex A.

87 In our view, this argument fails at the threshold level. As the appellants themselves recognise, the argument can only succeed if we accept their interpretation of the non-compete obligation. Since we do not (see [61]–[74] above), it follows that the appellants have no remaining argument on this issue.

88 In any event, even if we were to accept their interpretation that Annex A is exhaustive, there is no textual basis for importing Annex A into the loyalty obligation. Annex A is *only* referred to in the non-compete obligation and is completely absent in the loyalty obligation. The appellants then contradict the plain wording of the loyalty obligation and seek to import Annex A into it because "it would be odd" and "inconsisten[t]" if the non-compete and loyalty obligation have different scopes. This is a bald assertion. It appears to be an attempt to read additional terms into an unambiguous provision, which exceeds the bounds of contractual interpretation. If the appellants wish to argue that such terms should be *implied* in fact, they would have needed to plead and argue this specifically. They did neither.

89 Further, apart from the lack of a textual basis, we find this argument to be lacking in commercial logic. In our view, there is a reasonable explanation for why the two obligations may have different scopes of application. The loyalty obligation regulates *current* employees' conduct while they are still employed and owe duties to the employer. On the other hand, the non-compete obligation restricts *former* employees who may have legitimate interests in

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pursuing other endeavours after leaving the employer – hence the need to examine the reasonableness of the restraint. It is therefore logical for the loyalty obligation to provide for broader restrictions on current employees' conflicting activities compared to former employees.

90 We therefore dismiss the appellants' appeal on breach of contract and uphold the Judge's finding that:

(a) all of the Ex-employees breached the non-compete obligation; and

(b) Mr Faruk, Mr Toh, Mr Kyaw HW, and Mr Danesh breached the loyalty obligation.

Inducement of breach of contract

91 The tort of inducement of breach of contract requires the plaintiff to establish the following five elements (*Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 ("*Turf Club Auto*") at [311]):

(a) the tortfeasor knew of the existence of the contract;

(b) the tortfeasor intended to interfere with the plaintiff's contractual rights;

(c) the tortfeasor directly procured or induced a third party to breach the contract;

(d) the contract was in fact breached; and

(e) the plaintiff suffered injury as a result of the breach of contract.

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92 In this appeal, the only two elements in contention are (c) and (e) above. We uphold the Judge's findings on inducement and find that Mr Faruk induced the various contractual breaches. However, we reverse the Judge's findings on the three heads of loss, as we find that the respondents failed to establish that they suffered those losses *as a result of* the various breaches of contract that Mr Faruk induced. We explain.

Mr Faruk's inducement of breach of contract

93 First, we agree with the Judge that Mr Faruk did induce the various Ex-employees to breach the non-compete and loyalty obligations (Mr Faruk's only ground of appeal in relation to his inducement of breach of the confidentiality obligation is that it caused no loss, an issue we address below at [98]–[107]). The appellants mount different arguments for each set of contractual obligations, and we therefore deal with each obligation in turn.

Non-compete obligation

94 The appellants' sole argument on why Mr Faruk did not induce breaches of the non-compete obligation is that there was no breach to begin with. We disagree that there was no breach of the non-compete obligation, for the reasons above (at [58]–[80]). Since Mr Faruk does not challenge that he induced the conduct in question *ie*, breach of the non-compete obligation, liability follows.

Loyalty obligation

95 As to the loyalty obligation, the appellants' first argument is that there was in fact no breach of the loyalty obligation. Again, for reasons we have explained above (at [84]–[89]), we disagree with this conclusion and as such this contention falls away.

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96 The appellants' alternative argument is that the Judge had insufficient evidence on which to infer that Mr Faruk intended to interfere in ATT Infosoft's contractual rights and/or that Mr Faruk procured the breaches of the loyalty obligation by Mr Toh, Mr Kyaw HW and Mr Danesh. The appellants rely on [128] and [147]–[148] of the GD and take issue with the acts from which the Judge drew this inference. They submit that because these acts are not elements of the tort, the Judge was not entitled to infer from these acts that Mr Faruk had induced the relevant breaches of contract.

97 We find this argument to be a *non sequitur*. The elements of a tort are not the same as the facts giving rise to an inference that the tort occurred. It is trite that circumstantial evidence can suffice as proof of procurement of breach (*Abani Trading Pte Ltd v P T Delta Karina Mandiri and another* [2001] 3 SLR(R) 404 at [36]). In our view, the Judge was entitled to infer that Mr Faruk had induced the breaches of the various Employment Agreements from the circumstances, including the following facts: (a) Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung resigning within a short span of each other and without a credible reason after Mr Faruk; (b) Mr Toh, Mr Kyaw HW and Mr Danesh being involved in various ways with Centricore, with Mr Kyaw HW and Mr Danesh acting as its directors and Mr Toh giving financial support and signing its tenancy agreement for office space; (c) Mr Kyaw K and Mr Aung being seconded to Centricore very shortly after joining IdGates; and (d) Mr Faruk assisting Mr Kyaw HW, Mr Kyaw K and Mr Aung with their work pass applications. Just because these facts led to the Judge's inference that Mr Faruk had induced the Ex-employees' breaches of contract does *not* mean that the Judge found these facts to constitute elements of the tort of inducing breach of contract (of the loyalty obligation). Overall, we find that the Judge's inference was sensible and should not be disturbed.

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Proof of loss caused by the breaches of contract

98 We turn to the appellants' arguments on the three heads of loss.

99 In essence, the appellants argue that (a) two of the three heads of loss are not supported by sufficient evidence, and (b) the three heads of loss were not caused by the various breaches of contract. We reject (a) and accept (b) for reasons we discuss shortly.

Insufficient evidence

100 The appellants argue that the first two heads of loss (*ie*, the increased labour and software costs) are not supported by sufficient evidence.

(1) Increased labour costs

101 As regards the labour costs, the respondents' evidence as to the existence of the increased labour costs was adduced by the Director of Operations of ATT Systems, Ms Salvador Gesa Katrina Queja ("Ms Gesa"). Ms Gesa's testimony was that the departure of the Ex-employees and six other employees left ATT Infosoft severely shorthanded to handle the ongoing projects that they had been leading before their departure. This resulted in the respondents having to pay a premium to hire replacements to take over existing projects. This resulted in an increase in manpower costs, namely for the extra manpower and higher salary costs for the remaining employees due to increased job scope and in order to retain them to assume the Ex-employees' roles at short notice. Ms Gesa explained her methodology for calculating this increased cost – essentially, she calculated the difference between the actual salary paid by ATT Infosoft to its employees in the Project Team from August 2019 to December 2021, and the

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estimated salary that ATT Infosoft would have paid to the employees of the Project Team had the Ex-employees left in an orderly manner.

102 The appellants' objection is that Ms Gesa did not produce evidence from the respondents' payroll software to support her assertion that increased labour costs had been incurred. They submit that her evidence should be rejected, following the Malaysian decision of *Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360 ("*Popular Industries*").

103 We reject this objection. *Popular Industries* is of limited assistance to the appellants as it was *not* a bifurcated trial (the court there stated "[i]t is with the above principles in mind that I turn to examine the evidence adduced by the plaintiffs to determine if they have proved the fact of damage ***and*** its amount" [emphasis in original]). Thus, when the High Court of Penang required the plaintiffs to produce the account books forming the basis of the accountant's oral testimony, this was to prove the *quantum* of damages. Therefore, the Judge was entitled to rely on Ms Gesa's testimony that increased labour costs *existed* as a head of loss. The precise quantum of that loss is an issue that can be left to the assessment of damages.

(2) Increased software costs

104 As regards the increased software costs, the appellants make the bare submission that they question "the authenticity of the software developer invoices and/or the causal link between those expenses and the actions of the defendant(s)", without developing this argument further. This argument takes the appellants nowhere since the parties, by the appellants' own admission, agreed that the appellants would reserve their right to challenge the authenticity

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of the software developer invoices at the assessment of damages. Thus there is no reason for this court to concern itself with this question now.

Causation

105 We turn next to whether the various breaches of contract caused the three heads of loss.

106 To establish causation for inducement of breach of contract, the plaintiff must establish a causal link between the loss suffered and the *breach of contract* (*Turf Club Auto* at [311(e)]). Causation is generally established via the but-for test, which poses the question whether the loss or harm would have occurred if not for the breach. Here, the breach of the non-compete obligation only occurred when the Ex-employees *joined* competitor firms (and not when they *left* ATT Infosoft). This is important because the increased labour costs were incurred as a result of the Ex-employees *leaving* ATT Infosoft by giving notice of termination, which they were contractually entitled to do. Applying the but-for test, the losses (increased labour and software costs and the liquidated damages from the delays in completing the EQMS Project for National University Polyclinics) were not tied to any of the alleged breaches that were induced by Mr Faruk, but rather the termination of their respective Employment Agreements which was not a breach. In other words, regardless of whether there was any breach, the three heads of loss would still have occurred. We therefore depart from the Judge's findings that the three heads of loss were caused by Mr Faruk inducing the various breaches of contract.

107 However, as noted above (at [25]), the Judge also found that there was evidence of loss in relation to the claim for inducement of breach of contract in

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the form of "lower tender prices" and "the loss of tenders" (GD at [149]). As there was no appeal against this finding, we say no more about it.

Conspiracy by unlawful means

108 Finally, we turn to the respondents' cause of action based on conspiracy by unlawful means.

109 The crux of the appellants' arguments is that the Judge impermissibly held that there were two separate and distinct conspiracies by different actors to commit different unlawful acts. The "First Conspiracy" is the conspiracy between Mr Faruk and IdGates to misuse the Confidential Information (GD at [159]); while the "Second Conspiracy" is the conspiracy between Centricore, Mr Faruk, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung to resign in the manner that they did *ie*, *en masse* (GD at [155]). In their submission, this finding of two separate conspiracies was impermissible for two reasons:

(a) First, this constitutes a violation of pleading rules resulting in prejudice to the appellants.

(b) Second, in any event, the Second Conspiracy does not meet the requirements of unlawful means conspiracy.

In our view, neither argument has any merit.

Whether the Judge had found two separate conspiracies

110 We begin by explaining why, on a proper reading of the GD, the Judge had only found one conspiracy. As stated above at [109], the two salient paragraphs of the GD which the appellants rely on as setting out the two

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allegedly separate conspiracies are [155] and [159], which we reproduce in full here for convenience:

> [155] The findings of fact were similar to those for inducement of breach of contract. There were activities that seemed to show some level of coordination and acting in concert, on the balance of probabilities. The inferences to be drawn came from the resignations in quick succession and in a coordinated manner and the fact that the [appellants] came together in Centricore and IdGates in different ways. *There was a combination between Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung as to the resignations of the individual [appellants] in the manner they did.* Work conditions did not appear to be a sufficient explanation. Among other things, again as above, the inference may be drawn from Mr Faruk helping Mr Kyaw HW, Mr Kyaw K and Mr Aung with work passes, and Mr Kyaw HW and Mr Danesh being helped in relation to Centricore.
>
> …
>
> [159] I found no conspiracy in relation to the breach of confidence, whether contractual or equitable, except as between Mr Faruk and IdGates. The plaintiffs' case on the unlawful acts in relation to the Confidential Information was, as I understood it, premised primarily on the use of that information. As noted above, I found use only by Mr Faruk, and not the others. In the circumstances, I could not conclude on the evidence that there was any conspiracy as to the Confidential Information involving the individual [appellants] and Centricore. The fact that the names of the other individual [appellants] may have been in any proposal or document was not enough. On the other hand, *I accepted that a conspiracy was established on the facts involving Mr Faruk and IdGates, through attribution of Mr Faruk's actions to IdGates.*
>
> [emphasis added]

111 The appellants cite the italicised portions above as justification for the argument that the Judge found two separate conspiracies. We find that the Judge was using the word "conspiracy" loosely to refer to the unlawful means that were used to effectuate one single unlawful means conspiracy.

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112 The analysis begins at [153] of the GD where the Judge sets out the respondents' claim for conspiracy. In this paragraph, the Judge expressly recognised that the respondents were bringing a claim for a single conspiracy "in the form of a coordinated plan to set up a competing business and exploit the Confidential Information". He then went on to recognise that this single conspiracy claim was underpinned by "[u]nlawful acts … committed in furtherance of the conspiracy, namely, acts including the misuse of Confidential Information, which constituted actionable civil wrongs". This broadly tracks his subsequent analysis.

113 At [155] of the GD, the Judge begins by finding that there was a single conspiracy in the form of "*a* combination between Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung as to the resignations of the individual [appellants] in the manner they did" [emphasis added]. This finding was based on the "findings of fact [that] were similar to those for inducement of breach of contract".

114 Having established this single combination at [155] of the GD, the Judge went on to identify the specific unlawful acts which concerned this combination. This is the context in which the Judge had used "conspiracy" to describe what was actually the unlawful means that were used to effectuate the unlawful means conspiracy. This explains why "conspiracy" was used to describe the breach of confidentiality obligation through use by Mr Faruk and IdGates in [159] of the GD, in the same way "conspiracy" was used to describe the various contractual breaches in [156]–[158] of the GD.

115 Therefore, rather than having found two separate conspiracies (as the appellants suggest), what the Judge really meant was that two sets of unlawful acts were committed in furtherance of the appellants' (singular) coordinated

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plan as set out in the GD (at [153]) – the first set of unlawful acts was the breaches of the Employment Agreements and Mr Faruk's inducement of the same, and the second set was Mr Faruk and IdGates' misuse of the Confidential Information. This is not a bar to a finding of unlawful means conspiracy given that an unlawful means conspiracy can be established by the commission of different unlawful acts by different persons as long as all of these acts were in furtherance of a common agreement with the intention to cause injury, and each conspirator can join the execution thereof at different points in time (*OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2004] SGHC 115 at [49]–[50]).

Whether the elements of unlawful means conspiracy are satisfied

116 Alternatively, the appellants argue that the conspiracy in terms of "the resignation of the individual [appellants] in the manner they did" does not satisfy the requirement for: (a) the acts to be unlawful; and (b) the intention to cause harm to the plaintiffs by those acts.

117 In our view, this argument proceeds on a mischaracterisation of each element in a claim for unlawful means conspiracy. To illustrate, we first set out the elements in a claim for unlawful means conspiracy. In essence, the plaintiff must show, with reference to *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112] that:

(a) there was a combination of persons to do certain acts (the "combination element");

(b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts (the "intention element");

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(c) the acts were unlawful (the "unlawful element");

(d) the acts were performed in furtherance of the agreement; and

(e) the plaintiff suffered loss as a result of the conspiracy.

The unlawful acts

118 We begin with the appellants' contention that the acts underpinning the unlawful means conspiracy were not "unlawful". In our view, this argument is a non-starter. Similar to their arguments under inducement of breach of contract (see [97] above), the appellants erroneously conflate the evidence of the "combination element" with the acts that must be shown to be "unlawful". In this case, the mass resignations were evidence of the "combination element" and did not constitute the unlawful acts themselves.

119 To establish the "combination element", it must be shown that "there was an agreement between the appellants to pursue a particular course of conduct, and that concerted action was taken pursuant to that agreement"; the existence of this agreement is "often inferred from the circumstances and acts of the alleged conspirators" (*EFT Holdings* at [113]). This is important because the "circumstances and acts of the alleged conspirators" here do not need to be unlawful in themselves. We illustrate this with the "pizza delivery" example Menon CJ raised at [93] of *EFT Holdings*. In short, Menon CJ suggested that there would be an unlawful means conspiracy if:

> … two pizza delivery companies agree to purposefully violate parking regulations and instruct their drivers to park their vehicles across the car park entrance of a third competitor in order to injure the third competitor's business …

120 In this example, if the conspirators suddenly rented a fleet of unusually large vehicles and hired specific drivers – these acts, in themselves, are clearly

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not unlawful. However, they may give rise to the inference of an "agreement" or "combination" to injure the third competitor's business.

121 Similarly, although the mass resignations in themselves may not be unlawful, the Judge correctly relied on them as *evidence* of a "combination" (which he identified as a "coordinated plan to set up a competing business and exploit the Confidential Information"). This inference was further strengthened by the acts set out at [97] above which also supported the inference of Mr Faruk's inducement of breach of contract. None of these acts are "unlawful" *per se*, but they collectively demonstrated an "agreement" by the appellants to set up a competing business and exploit the Confidential Information.

122 On the other hand, the unlawful acts which satisfy the "unlawful element" were the civil wrongs identified by the Judge (namely breach of confidence, and breaches of the Employment Agreements). The appellants do not dispute that these civil wrongs are unlawful.

123 Rationalised in this manner, the appellants have no basis to argue that the "unlawful element" was not satisfied.

The intention to cause harm

124 Next, we consider the appellants' argument that the conspirators did not intend to cause injury by simply resigning.

125 This argument is again rooted in a misidentification of the wrongful acts by which the conspirators must have intended to cause injury. To establish the "intention element", the conspirators must have intended to cause injury or damage to the plaintiff *by the unlawful acts* (see [117(b)] above). As we explained above (at [121]–[122]), the unlawful acts were not the mass

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resignations but rather the specific civil wrongs identified by the Judge, including:

(a) In respect of the breach of the non-compete obligation – the Ex-employees joining competing businesses, *ie*, Centricore and IdGates;

(b) In respect of the breach of the loyalty obligation –

(i) Mr Faruk working for IdGates;

(ii) Mr Toh contributing money to Centricore; and

(iii) Mr Kyaw HW's and Mr Danesh's extensive work for Centricore.

126 The appellants' intention to injure the respondents is inherent in these unlawful acts. For instance, their breaches of the non-compete and loyalty obligations were not incidental, but instrumental to establishing competing businesses through Centricore and IdGates. The success of these ventures necessarily required diverting business from the respondents – which is precisely what had occurred. Ultimately, the evidence clearly demonstrates that the appellants intended to cause injury to the respondents by their civil wrongs as a means to establishing their competing business.

Causation

127 Finally, we record some observations on the issue of causation in relation to the unlawful means conspiracy claim. There was some initial confusion as the Judge was unclear on whether the three heads of loss he identified applied to the claim for unlawful means conspiracy as well (see [163] of the GD). The appellants understood the Judge's finding to be limited to the claim for inducement of breach of contract and accordingly appealed on the

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basis that the three heads of loss only related to the inducement of breach of contract claim.

128 When the ambiguity was raised by the court, counsel for the appellants Mr Mirza Namazie ("Mr Namazie"), took the position that the finding was limited to the claim for inducement of breach of contract. However, in the event the court were to take a different view, he sought permission to amend the notice of appeal to challenge the finding of losses across all claims brought by the respondents. On the other hand, counsel for the respondents, Ms Celeste Ang ("Ms Ang"), took the position that the finding extended to the unlawful means conspiracy claim as well.

129 In the end, the amendment sought by Mr Namazie was unnecessary as the parties agreed to address the existence of loss (both for the conspiracy claim and all other causes of action not requiring proof of loss) at the assessment of damages stage. Ms Ang confirmed that she would not object to the appellants challenging those issues at that stage. We therefore say no more on this matter.

Conclusion

130 For the reasons above, we allow the appeal only in respect of the Judge's finding that the three heads of loss were caused by the various breaches of contract. The appeal is otherwise dismissed.

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131 If the parties are unable to agree on costs, they are to file written submissions on costs within 14 days from the publication of this judgment, limited to 5 pages each.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

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