1. This judgment DOES NOT need redaction.
2. Redaction HAS NOT been done.

District Judge Chiah Kok Khun
2 January 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 6

District Court Originating Application No 30 of 2025

Between

Gurpreet Gill Maag

… *Applicant*

And

Chubb Insurance Singapore Limited

… *Respondent*

JUDGMENT

[Insurance –Homeowner's insurance policy – Personal liability coverage – Insurer's duty to defend the insured against claims – Insured sued by business associate – Whether insurer liable to indemnify insured against damages arising from suit – Whether insurer's duty to defend insured against suit is separate from duty to indemnify her against damages – Whether insurer's liability to indemnify insured against damages excluded under policy]

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v
Chubb Insurance Singapore Limited

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2 January 2026 Judgment reserved.

District Judge Chiah Kok Khun:

Introduction

1 The respondent is an insurer. The applicant is insured with the respondent under a Chubb Masterpiece Insurance Policy with a policy period from 21 January 2023 to 21 January 2024 (the "Policy"). The Policy is essentially a homeowner's insurance policy. The applicant is applying for a declaration that the respondent is obliged under the defence coverages provision of the Policy to defend her against a counterclaim brought in a High Court suit ("OC 823") against her. The applicant also applies for a declaration that no exclusions under the Policy apply to exclude the respondent's obligation to defend; and an order for parties to agree on the costs of defending the counterclaim to be paid by the respondent, failing which such costs are to be assessed by the court.

2 The respondent's case is that whilst the insuring clause under the Policy has been triggered, coverage is excluded due to several exclusions under the Policy.[1] These would be the business pursuits exclusion, and the director's liability exclusion. The respondent is therefore under no duty to defend the applicant. The respondent also contends that the applicant is not entitled to bring this application as she has failed to comply with various conditions under the Policy.[2]

3 For the reasons below, I am dismissing the application.

Issues to be determined

4 The issues to be decided by me in this case are as follows:

(a) Whether the respondent's duty to defend the applicant is separate from its duty to indemnify her against damages.

(b) Whether the respondent's liability under the Policy to indemnify the applicant against damages is excluded by the following exclusions in the defence coverages provision:

(i) the business pursuits exclusion; or

(ii) the director's liability exclusion.

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1 Para 8 of the respondent's written submissions.

2 Paras 74-89 of the respondent's written submissions.

Analysis and findings

The respondent's duty to defend is not separate from its duty to indemnify against damages

5 I will first deal with the question of the relationship between the respondent's duty to defend and its duty to indemnify. The applicant appears to advance in the oral submissions before me, and in her further written submissions the line of argument that the respondent's duty to defend the applicant under the Policy is broader than its duty to indemnify the applicant against damages. In other words, the applicant asserts that the respondent is liable for the costs of defending the applicant against a lawsuit even if the liability for that lawsuit may not be covered under the Policy.[3]

6 The starting place for the examination of the question is the Policy. There are two provisions that are relevant. The first is the insuring clause of the personal liability coverage section of the Policy, which reads as follows:[4]

> This part of Your Masterpiece Policy provides You with personal liability coverage for which You or a family member may be legally responsible anywhere in the world subject to the terms, conditions and exclusions stated in the Policy.

7 The other is the defence coverages provision ("Defence Coverages provision"). It is one of the coverages included in the personal liability coverages. It states as follows:[5]

> We will defend a Covered person against any suit seeking covered Damages for personal injury or property damage. We provide this defence at Our own expense, with counsel of Our choice, even if the suit is groundless, false or fraudulent. We

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3 Para 13-15 of applicant's further written submissions dated 5 November 2025.

4 P 76 of applicant's affidavit.

5 P 77 of applicant's affidavit.

> may investigate, negotiate and settle any such claim or suit at Our discretion.

8 I turn to the general principles relating to the construction of homeowner's insurance contracts. It would appear that there is a dearth of local case authorities on the interpretation of homeowner's insurance contracts. Both sides referred me only to authorities from foreign jurisdictions, in particular Canadian caselaw. In regard to the question at hand of the relationship between the duty of an insurer to defend and the duty to indemnify, the decision of the Supreme Court of Canada in *Non-Marine Underwriters, Lloyd's London v. Scalera* [2000] 1 S.C.R 55112 ("*Scalera*") provides direct guidance. As in the present case, the decision concerns a homeowner's insurance policy, containing similar provisions. The Supreme Court stated at [49] as follows:

> 49 An insurance company's duty to defend is related to its duty to indemnify. A homeowner's insurance policy entitles the holder to have the insurer indemnify any liability falling within the policy's terms. Since the insurance company will be paying these costs, it has also developed the right — now a duty — to conduct the defence of such claims. However, the duty to defend is not so great that it is presumed to be independent of the duty to indemnify. Absent express language to the contrary, the duty to defend extends only to claims that could potentially trigger indemnity under the policy. Therefore if an insurance policy, like the one in this case, excludes liability arising from intentionally caused injuries, there will be no duty to defend intentional torts.

9 As seen, it was held that the duty of the insurer to defend is not "so great" that it is presumed to be independent of its duty to indemnify. In the absence of express language to the contrary, the duty to defend extends only to claims that could potentially trigger indemnity under the policy. The case concerns a policy that excluded liability arising from intentionally caused injuries. It was held that therefore there would be no duty to defend intentional torts. In other words, the duty to defend the insured from an action only arises if there is a duty of the insurer to indemnify liability arising from that action.

10 This principle is echoed in another Supreme Court of Canada case. In *Nichols v. American Home Assurance Co*., [1990] 1 S.C.R. 801 (S.C.C.) ("*Nichols*"), it was held the duty to defend imposed by the defence clause is restricted to claims for damages which fall within the scope of the policy. *Nichols* is of especial relevance to the present case because it discussed the interaction of the exclusion clauses in the policy with the duty to defend. The application of exclusions clauses in the present case is a matter I will turn to below. The Supreme Court stated in *Nichols* at [14] as follows:

> 14 I conclude that the duty to defend imposed by the defence clause is unambiguously restricted to claims for damages which fall within the scope of the policy. Since damages for fraud do not fall within the policy, one never arrives at the stage of inquiring as to whether there may be an ambiguity in the exclusion clause relevant to the duty to defend. I do not think it amiss, however, to set out my view of the relationship of the exclusion clause to the defence clause, for it is only in reading the policy as a whole that its true intention can be ascertained. As I read the policy, the exclusion clause is primarily concerned with the duty to indemnify. For this reason, it refers to actual acts or omissions, which are the precondition of the duty to indemnify. The scope of the duty to indemnify, in turn, triggers the application of the defence clause, through use of the phrase in the defence clause limiting the duty to claims for "damages which are or may be payable under the terms of this Policy". The duty to defend, unlike the duty to indemnify, is triggered not by actual acts or omissions, but by allegations, applying "even if any of the allegations of the suit are groundless, false or fraudulent". Thus the scope of the duty to defend is not conditioned directly by the exclusion clause, but only indirectly through that clause's definition of the scope of coverage. The error in the Court of Appeal's reasoning lies in attempting to make the exclusion clause directly applicable to the duty to defend, and then concluding that since the exclusion does not refer to allegations as opposed to acts and omissions, allegations of fraud are not excluded from the duty to defend.

11 As seen, after holding that the duty to defend imposed by the defence clause is unequivocally restricted to claims for damages which fall within the scope of the policy, the Supreme Court went on to discuss the interface of the

exclusion clause in the policy to the defence clause. In this regard, it was held that the policy must be read as a whole, and the exclusion clause was deemed to be primarily concerned with the duty to indemnify. The scope of the duty to indemnify, in turn, triggers the application of the defence clause. The scope of the duty to defend is therefore not conditioned directly by the exclusion clause, but only indirectly through that clause's definition of the scope of coverage. In other words, the Supreme Court held that exclusion clauses are not directly determinative of the question of whether there is a duty to defend. Instead, whether there is a duty to defend the insured in an action is determined by whether there is a duty to indemnify him against liability arising from that action.

12 It therefore follows from the authorities that where the insurer's duty to indemnify the insured under the policy does not arise there cannot be any corresponding duty to defend the insured. In my view, this is unsurprising and comports with reason. There is no purpose in the insurer defending the insured against claims that do not fall within the scope of the policy. On the other hand, where the insurer must indemnify the insured against a liability under the policy, it would want the right to conduct the defence against the claim for such a liability. The duty to defend thus applies only to claims that could potentially trigger indemnity under the policy. It follows that by the same token, exclusion clauses are not directly applicable in determining the question of whether there is a duty to defend the insured. They are instead applicable in determining the insurer's scope of coverage and hence its duty to indemnify the insured under the policy. It should also be noted that in determining the insurer's scope of coverage and its duty to indemnify the insured under the policy, reference is to be taken from the pleadings of the claims said to be payable under the policy.

13 The Supreme Court stated in *Nichols* at [16] as follow:

> 16 Thus far, I have proceeded only by reference to the actual wording of the policy. However, general principles relating to the construction of insurance contracts support the conclusion that the duty to defend arises only where the pleadings raise claims which would be payable under the agreement to indemnify in the insurance contract. Courts have frequently stated that "[t]he pleadings govern the duty to defend": *Bacon v. McBride* (1984), 5 C.C.L.I. 146, 51 B.C.L.R. 228, 6 D.L.R. (4th) 96 at 99 (S.C.). Where it is clear from the pleadings that the suit falls outside of the coverage of the policy by reason of an exclusion clause, the duty to defend has been held not to arise: *Opron Maritimes Construction Ltd. v. Canadian Indemnity Co.,* …

14 The relevant question to be answered is thus whether the pleadings raise claims which would be payable under the agreement to indemnify in the insurance contract.

15 Returning to the present case, it follows from the above that the respondent would only be liable for the costs of defending the applicant against a lawsuit if the liability for that lawsuit is covered under the Policy. In other words, contrary to the applicant's contention, the respondent's duty to defend the applicant is not separate from its duty to indemnify her against damages. The respondent's duty to defend the applicant in OC 823 will only be triggered when it is clear from the pleadings in OC 823 that the counterclaim for damages is payable under the Policy. Further, determining whether the counterclaim for damages is payable would entail the examination of any applicable exclusion clauses in order to establish if coverage for damages has not been excluded by virtue of such exclusions. It is to the matter of exclusion clauses that I turn next.

The respondent is not liable to indemnify the applicant against any damages in connection with OC 823 as the business pursuits exclusion is applicable

16 As seen in the wording of the personal liability coverage of the Policy above, the respondent would indemnify against any personal liability that the insured or a family member may be legally responsible for. By the definition

provisions of the Policy, such personal liability includes claims seeking damages for libel or slander or defamation of character against the applicant or a family member.[6] Thus on the face of it, the counterclaim in OC 823, sounding in defamation, would be covered under Policy. However, as discussed, exclusion clauses are applicable in determining the respondent's scope of coverage and hence its duty to indemnify the applicant under the Policy. In turn, the duty to defend the applicant does not arise if there is no duty to indemnify. The exclusion clauses in the Policy are therefore relevant in determining whether defence coverage would ultimately be provided by the respondent.

17 I turn therefore to the matter of the exclusion clauses in the Policy. In order to analyse the application of the exclusions, it is useful to first examine the background and context of OC 823.

18 On 28 November 2023, the applicant, together with three other claimants filed a suit against one Ian David McKee ("Mr McKee) in the General Division of the High Court of Singapore, in OC 823. The other claimants in OC 823 are her husband Daniel Maag ("Mr Maag"), Unum in infinitum Inc ("Unum") and Illume Consulting Pte Ltd. ("Illume"), which are two companies associated with the applicant. In response, Mr McKee counterclaimed against the applicant for defamatory statements made about him (the "Mr McKee's Counterclaim").[7]

19 In brief, OC 823 concerns a claim by the applicant against Mr McKee for:

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6 P 76 of applicant's affidavit.

7 P 227-228 of applicant's affidavit.

(a) Breaches of the confidentiality of fund-raising agreements Unum had in respect of a company called Vuulr Pte Ltd ("Vuulr").

(b) Breaches of the confidentiality of a consulting agreement Illume had with Vuulr.

(c) Defamations uttered by Mr McKee concerning the applicant, including in respect of her role in fund-raising through Unum.

20 In the Mr McKee's counterclaim, it is alleged as follows:[8]

(a) That the applicant was an attendee at an informal meeting on 24 November 2022 with Mr McKee, one Christopher Drumgoole ("Mr Drumgoole"), one Karan Chanana ("Mr Chanana") and Mr Maag at the Four Seasons Hotel, Orchard Boulevard, Singapore ("24 November 2022 Meeting").

(b) That at the end of the 24 November 2022 meeting, the applicant stood up and shouted at Mr McKee at the Four Seasons Hotel in public calling him "a liar" and "someone who is not to be trusted" (the "Words").

(c) That the Words are defamatory of Mr McKee.

(d) That the Words were calculated to disparage Mr McKee's position as a Director and Shareholder in Vuulr.

21 The applicant filed a defence to the Mr McKee's Counterclaim, in which the applicant admitted calling Mr McKee "a liar", but denied all of Mr McKee's

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8 Paras 75-78 of defence and counterclaim in OC 823.

allegations. She also pleaded the defences of justification and qualified privilege. In the applicant's defence of justification, the applicant relied on the following matters to justify calling Mr McKee a "liar":[9]

(a) Mr McKee had conducted the affairs of Vuulr dishonestly or misleadingly.

(b) This included misrepresenting the "burn rate" of Vuulr at the 24 November 2022 Meeting and acting misleadingly regarding commitments to cut costs of Vuulr and salaries of key Vuulr management and also regarding investment opportunities into Vuulr.

22 In the applicant's defence of qualified privilege, the applicant relied on the following matters in calling Mr McKee a "liar":[10]

(a) The 24 November 2022 Meeting was an informal social meeting at which the Mr Mckee chose to raise Vuulr's issues

(b) The Words related to Mr McKee's truthfulness and/or honesty regarding matters that were germane to Vuulr's then financial situation and/or burn rate and/or ability to raise investment from Mr Chanana.

(c) In the circumstances, and also since Mr Chanana was a personal friend with whom the applicant shared common interests in the subject of the communication and whom the applicant had introduced to McKee, the applicant had a duty to alert Mr Chanana of these falsehoods being spoken by Mr McKee to Mr Chanana in the applicant's presence. The applicant was merely a spectator to the conversation Mr McKee had

9 Paras 23-25 of defence to counterclaim of OC 823.

10 Paras 28.1-28.9 of defence to counterclaim of OC 823.

> self-initiated with Mr Chanana in order to further his own interests of raising further funding from Mr Chanana, despite the fact that the meeting was an informal social gathering.

23 The applicant's case is that the exclusions under the Policy do not apply to the parties' pleaded case in OC 823, nor to the evidence regarding the 24 November 2022 meeting.

24 The respondent on the other hand contends that by the operation of the business pursuits exclusion and director's liability exclusion under the personal liability coverage section of the Policy, the Mr McKee's Counterclaim in OC 823 does not constitute a suit seeking personal injury damage that is covered under the Policy. Accordingly, the respondent is under no duty to indemnify and consequently, the Defence Coverages provision does not apply.

25 I turn to the two exclusions in question. I consider first what is known as the business pursuits exclusion (the "Business Pursuits Exclusion") in the Policy. It states as follows:[11]

> We do not cover any damages arising out of a Covered person's business pursuits, investment or other profit seeking activities. But We do cover damages arising out of volunteer work for an organised and registered charitable, religious or community group, a residential investment property, an incidental business away from home, an incidental business at home unless another exclusion applies."

26 At the outset, it is necessary to first analyse the relationship between the applicant and the corporate entities involved in OC 823, and the business dealings amongst those corporate entities. As alluded to above, the entities are Vuulr, Unum and Illume. I note the following in respect of these entities:

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[11] P 14 of applicant's affidavit.

(a) The applicant is a shareholder and a board observer in Vuulr.[12]

(b) The applicant is a 100% shareholder and director of Unum.[13]

(c) Unum had a business relationship with Vuulr through agreements known as fund-raising service agreements which were signed in 2019, 2020 and 2021. Under these agreements, Unum referred investors to Vuulr and would be compensated in equity or by way of a referral fee.[14]

(d) The applicant is a 100% shareholder and director of Illume.[15]

(e) Illume provided consulting and business advisory services to Vuulr relating to investment, fundraising, content partner acquisition and advisory services under a consulting agreement.[16]

27 As a recap, OC 823, in which the Mr McKee's Counterclaim is made, concerns a claim by the applicant against Mr McKee for breaches of the confidentiality of fund-raising agreements Unum had in respect of Vuulr; breaches of the confidentiality of a consulting agreement Illume had with Vuulr; and defamatory words uttered by Mr McKee concerning the applicant in respect of her role in fund-raising through Unum. Therefore, it is seen that the action in which the Mr McKee's Counterclaim is filed is centred on the business activities of the three corporate entities with which the applicant has a direct relationship. Further, as seen above, the Mr McKee's Counterclaim, and the defences to it as

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12 Para 7 of statement of claim.

13 Para 67 of applicant's affidavit.

14 Para 67 of applicant's affidavit.

15 Para 67 of applicant's affidavit.

16 Para 68 of applicant's affidavit.

mounted by the applicant, concerned matters relating to the business activities of Vuulr.

28 Returning to the relevant wording in the Business Pursuits Exclusion, it provides that the respondent does not cover any damages arising out of the applicant's "business pursuits, investment or other profit seeking activities". I note that "business" is given a broad meaning under the Policy. The definitions section of the Policy provides that "business" means "any employment, trade, occupation or profession".[17]

29 With that being the case, on plain reading, the applicant's provision of services by way of introducing investors to Vuulr (through Unum) and providing consulting and business advisory services to Vuulr through Illume would come within the meaning of "business pursuits". As the action in which the Mr McKee's Counterclaim is filed is centred on the business activities of these three corporate entities, and the Mr McKee's Counterclaim itself and the defences to it concerned matters relating to the business activities of Vuulr, it follows that the Mr McKee's Counterclaim arose out of the business pursuits of the applicant.

30 The respondent points out that the available caselaw supports this position. In the decision of *Wilkinson v. Security National Insurance Co* 1999 CarswellAlta 843, 1999 ABQB 675 ("*Wilkinson*"), the Alberta Court of Queen's Bench stated at [22] as follows:

> 22 With respect to the term "business", reference was made to American jurisprudence and the court concluded that two factors must be considered. Lax J. outlined these factors at 356:
>
> > (1) that the activity is one in which the insured is regularly engaged; and

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17 Para 44 of applicant's affidavit.

> (2) that the activity is carried out for the purpose of earning income.

Lax J. then went on to consider the addition of the word "pursuit". He stated at 357:

> [T]he inclusion of the word "pursuit" under the Upper Canada policy is arguably broader and suggests a wider range of activities than a trade, profession, or occupation. . . . . The court should therefore look to see if the activity in question is undertaken for financial gain and bears the hallmarks of continuity or regularity. Under the policy here, the court should also consider if the pursuit can reasonably be regarded as one analogous to a trade, profession or occupation. It should not matter if the pursuit is undertaken on a temporary basis. Nor should it matter if it is undertaken with another pursuit which is compatible with it.

31 As seen, in considering whether an activity comes within the meaning of "business" in the context of a business pursuits exclusions under an insurance policy, it was held that two factors must be considered: a) that the activity is one in which the insured is regularly engaged; and b) that the activity is carried out for the purpose of earning income. Further, where an exclusion applies not just to "business" but to "business pursuits", it was held that the application of the exclusion is arguably broader and suggests a wider range of activities is excluded beyond a trade, profession or occupation. It was held that the relevant consideration is a consideration of whether the activity in question is undertaken for financial gain and bears the hallmarks of continuity or regularity. The court must also consider if the pursuit can reasonably be regarded as one analogous to a trade, profession or occupation. It does not matter if the pursuit is undertaken on a temporary basis. Neither does it matter if it is undertaken with another pursuit which is compatible with it.

32 As for the meaning of the phrase "arising out of" in the context of a business pursuits exclusion in an insurance policy, it was held in *Wilkinson* at [18] as follows:

> 18 The key to the decisions in *Kaler* and *Seeton* was the use of the phrase "arising from" in the "business pursuits" exclusion in each of the policies in question. The Supreme Court of Canada considered the meaning of the phrase "arising out of" in *Amos v. Insurance Corp. of British Columbia*, [1995] 3 S.C.R. 405 (S.C.C.). Major J., writing for the court, stated at 407:
>
> > [T]he words "arising out of" have been viewed as words of much broader significance than "caused by", and have been said to mean "originating from", "having its origin in", "growing out of" or "flowing from", or, in short, "incident to" or "having connection with" the use of the automobile.

33 Therefore, the words "arising out of" are viewed as words of much broader significance than "caused by" and can be equated to "originating from", "having its origin in", "growing out of", "flowing from", "incident to" or "having connection with". They are held to be wider in scope. Returning to the present case, the Business Pursuits Exclusion excludes coverage of damages arising out of the applicant's business pursuits. The employment of the phrase would thus accord a wider reading of the Business Pursuits Exclusion clause and supports the respondent's contention that the Mr McKee's Counterclaim arose out of the business pursuits of the applicant.

34 I note that it is not disputed that in exchange for providing services in the form of referral of investors to Vuulr under the agreements with Unum, Unum would be compensated in equity or by a referral fee.[18] Likewise, in exchange for providing consulting services through Illume, Illume received a payment from Vuulr on a monthly basis.[19] The agreements between Vuulr and Unum, and between Vuulr and Illume, clearly entail Unum and Illume undertaking activities which involved providing various services for financial gain. It should be borne in mind that the applicant is a 100% shareholder in both

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18 P 714 of applicant's affidavit.

19 P 714 of applicant's affidavit.

Unum and Illume. It is also noted that the applicant's activities in Unum and Illume entailed the elements of continuity and regularity. It is undisputed that the applicant had entered into multiple agreements over several years with Vuulr,[20] and that the applicant's services provided under the consulting agreement between Illume and Vuulr also continued on a monthly basis. In the premises, in my view, the applicant's activities in Unum and Illume plainly amounted to a business pursuit under the Policy.

35 Turning to the 24 November 2022 Meeting, as alluded to above, it was attended by four persons, namely, the applicant, Mr McKee, Mr Drumgoole, and Mr Chanana. I note that all of them are connected to Vuulr in some way. The applicant is of course a shareholder and board observer of Vuulr. Mr McKee was a shareholder, the chief executive officer and a director of Vuulr. Mr Drumgoole was a shareholder in Vuulr. Mr Chanana was associated with and controlled an entity which had invested in Vuulr.

36 In my view, the 24 November 2022 Meeting was a business meeting, attended by individuals who were investors or officers of Vuulr, and who have commercial interests in Vuulr. As pointed out by the respondent, the applicant has described the 24 November 2022 Meeting as a meeting of directors and shareholders at which Mr McKee was seeking to address Vuulr's financial situation.[21] Mr McKee has pleaded in the Mr McKee's Counterclaim that the 24 November 2024 Meeting was held subsequent to Vuulr's board meeting on 21 November 2022. The applicant on the other hand contends that the 24 November 2022 Meeting was merely an informal, social meeting, and relied on various references in OC 823 that it was an informal meeting. However, the

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20 P 126 of applicant's affidavit.

21 Para 54 of applicant's affidavit.

question of whether the 24 November 2022 Meeting is a business meeting is a matter of substance and not form. It is plain that the attendees at the meeting discussed commercial and business matters, in particular commercial and business matters relating to Vuulr. Whether the meeting was informal is a different question from whether business was discussed. The evidence is plain that it was a business meeting. That the meeting might be informal does not detract from the fact that it was a business meeting, and that business was in fact discussed.

37 Turning to the Mr Mckee Counterclaim, it is seen that it is centred entirely on the 24 November 2022 meeting. Mr McKee also pleaded that the Words, which were uttered by the applicant at the end of meeting, were calculated to disparage his position as a director and shareholder of Vuulr. As for the applicant's defence to the Mr Mckee Counterclaim, it is seen that she made direct reference to the business of Vuulr. She had pleaded that Mr McKee had conducted the affairs of Vuulr dishonestly or misleadingly. This included misrepresenting the "burn rate" of Vuulr at the 24 November 2022 meeting and acting misleadingly regarding commitments to cut costs of Vuulr and salaries of key Vuulr management and regarding investment opportunities into Vuulr. The applicant also referred in her defence to the question of Mr McKee's truthfulness and honesty regarding matters that were germane to Vuulr's financial situation and "burn rate" and ability to raise investment from Mr Chanana.[22]

38 Further, in Mr McKee's AEIC in OC 823, he likewise referred to various allegations relating to the applicant's business pursuits in Vuulr, Unum and Illume. He referred in particular to the fact that his relationship with the

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22 Paras 28.1-28.9 of defence to counterclaim of OC 823.

applicant and Mr Maag had deteriorated as a result of them being dissatisfied with his operation and management of Vuulr; and that the applicant was dissatisfied with various cost-cutting measures implemented in Vuulr; and the fact of Vuulr's delay and failure to make payment of the outstanding sums owed to Unum and Illume.[23] In my view, it is unarguable that the Mr Mckee Counterclaim arose out of the applicant's business pursuits, investment or other profit seeking activities.

39 For completeness, I note that the applicant places substantial reliance on the facts of *Wilkinson* to argue that the Business Pursuits Exclusion does not apply to the present case. The basis of the applicant's argument is that the facts of *Wilkinson* are similar to the present case and the court held that the business exclusion clause there did not apply to exclude the insurer's liability. *Wilkinson* involved an application by the insured for a declaration that the insurer was liable for the costs of defending an action against him in defamation. The insured, who was a shareholder and an ex-employee of a company, had allegedly made various defamatory remarks against the company president. The court held that the business pursuits exclusion clause did not apply. It should however be noted that the business pursuits exclusion clause in that case did not contain the phrases "arising from" and "arising out of" (unlike the present case). As such, the court construed the business pursuits exclusion to be narrower in scope, and held that the defamatory remarks were not undertaken for a financial gain and were not made for business pursuits. More pertinently, I note that the court in *Wilkinson* found that the alleged defamatory remarks had been made by the insured *after* his employment at the company had ended. As such the causal link of the defamation action to the business of the insured was held to have

[23] P 612-615 of the applicant's affidavit.

been broken (*Wilkinson* at [18]-[19] and [24]). In my view therefore, *Wilkinson* does not assist the applicant.

40 In view of the foregoing, I find that the applicant's activities as a shareholder in Vuulr and her activities as a shareholder and director of Unum and Illume, given their business activities with Vuulr, constituted business pursuits within the meaning of the Business Pursuits Exclusion. These activities were undertaken for financial gain and bear the hallmarks of continuity or regularity. I also find that the Mr McKee's Counterclaim for defamation against the applicant arose out of the above business pursuits. As discussed above, the law is clear that where the claim against the insured falls outside the scope of the policy by virtue of an exclusion clause, the insurer has no corresponding obligation to defend the insured against such claim. It follows that as the Business Pursuits Exclusion applies in the present case, the respondent has no duty to defend the applicant against the Mr McKee Counterclaim.

41 For completeness, I note the respondent's allusion to the Manitoba Court of Appeal decision in *Kaler v Red River Valley Mutual Insurance Co* 1995 CarswellMan 227, [1995] MJ No 284 at [13], where it was held that the thrust of a homeowner's policy is to exclude claims related to the insured's business, on the basis that liability coverage for business claims should be separately rated and insured. In this regard, I note that at its heart, the Policy is a homeowner's policy. A perusal of the Policy shows that its primary coverage is for damage to the residential property of the applicant;[24] including its contents;[25] valuable

[24] P 51 of applicant's affidavit.

[25] P 59 of applicant's affidavit.

articles therein;[26] and any wine collection.[27] Whilst the Policy's coverage includes personal liability,[28] and the coverage of personal injury includes defamation and related torts, I agree with the respondent that to the extent that the Mr McKee's Counterclaim against the applicant arose out of her business pursuits, it's liability coverage ought to be separately rated and separately insured from the personal liability coverage provided under the Policy. In other words, if the applicant is intent on coverage for damage arising from her business or profession, she ought to have sought coverage under a separate policy, which understandably would be priced by the respondent rather differently from a homeowner's policy.

The respondent is not liable to indemnify the applicant of any damages in connection with OC 823 as the director's liability exclusion is applicable

42 It follows from my findings above that as the Business Pursuits Exclusion applies, the respondent has no duty to defend the applicant against the Mr McKee Counterclaim; and the application should be dismissed.

43 For completeness however, I turn next to the director's liability exclusion. As alluded to above, the respondent's case is that by the operation of the director's liability exclusion under the personal liability coverage section of the Policy (the "Director's Liability Exclusion"), the Mr McKee's Counterclaim in OC 823 constituted a suit seeking personal injury damage that is excluded from coverage under the Policy.

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26 P 69 of applicant's affidavit.

27 P 75 of applicant's affidavit.

28 P 76 of applicant's affidavit.

44 The Director's Liability Exclusion provides as follows:[29]

> We do not cover any damages for any Covered person's actions or failure to act as an officer or member of a board of directors of any corporation or organisation. However, We do cover such damages if You or a family member is:
>
> • an officer or member of a board of directors of a management corporation or strata title association; or
>
> • not compensated as an officer or member of a board of directors of a not-for-profit corporation or organisation; unless another exclusion applies.

45 As seen, the Director's Liability Exclusion excludes coverage of damages under the Policy for an insured's action as an officer or member of a board of directors of any corporation.

46 At the outset and as a recap, the applicant is a 100% shareholder and director of both Unum[30] and Illume.[31] She is a shareholder and a board observer in Vuulr.[32] As discussed above, Unum had a business relationship with Vuulr through fund-raising service agreements which were signed in 2019, 2020 and 2021. Under these agreements, Unum referred investors to Vuulr and would be compensated in equity or by way of a referral fee.[33] Likewise, Illume provided consulting and business advisory services to Vuulr relating to investment, fundraising, content partner acquisition and advisory services under a consulting agreement.[34] Further, it is undisputable that as part of her role as board observer on Vuulr's board, the applicant attended board meetings, and

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29 P 80 of applicant's affidavit.

30 Para 67 of applicant's affidavit.

31 Para 67 of applicant's affidavit.

32 Para 7 of statement of claim.

33 Para 67 of applicant's affidavit.

34 Para 68 of applicant's affidavit.

was privy to privileged and confidential information relating to Vuulr.[35] There can therefore be little argument that the applicant is effectively an officer of all three corporate entities.

47 Next, as discussed above, the 24 November 2022 Meeting was a business meeting, attended by individuals who were investors or officers of Vuulr, and who have commercial interests in Vuulr. I had made the finding above that the attendees at the 24 November 2022 Meeting discussed commercial and business matters relating to Vuulr and that the 24 November 2022 Meeting arose out of the applicant's business pursuits, investment or other profit seeking activities. The applicant has also described the 24 November 2022 Meeting as a meeting of directors and shareholders at which Mr McKee was seeking to address Vuulr's financial situation.[36] Further, also as discussed above, Mr McKee had pleaded in the Mr Mckee Counterclaim that the Words, which were uttered by the applicant at the end of meeting, were calculated to disparage Mr McKee's position as a director and shareholder of Vuulr. In the applicant's defence to the Mr Mckee Counterclaim, she also made direct reference to the business of Vuulr and pleaded that Mr McKee had conducted the affairs of Vuulr dishonestly or misleadingly. This included misrepresenting the "burn rate" of Vuulr at the 24 November 2022 meeting and acting misleadingly regarding commitments to cut costs of Vuulr and salaries of key Vuulr management and also regarding investment opportunities into Vuulr.[37] Mr McKee likewise referred in OC 823 to various allegations relating to the applicant's business pursuits in Vuulr, Unum and Illume. He referred in particular to the fact that his relationship with the applicant and Mr Maag had

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35 Pp 491-429 of applicant's affidavit.

36 Para 54 of applicant's affidavit.

37 Paras 28.1-28.9 of defence to counterclaim of OC 823.

deteriorated as a result of them being dissatisfied with the operations and management of Vuulr by Mr McKee; and that the applicant was dissatisfied with the fact of Vuulr's delay and failure to make payment as to the outstanding sums owed to Unum and Illume.[38]

48 Given the business relationship amongst the three corporate entities and given the context of the applicant's interactions and correspondence with Mr McKee prior to the 24 November 2022 meeting, it is plain that the Words were made in the applicant's capacity as a director of Unum and Illume. In the Mr McKee's Counterclaim, Mr McKee has alluded to the applicant raising prior to the 24 November 2022 Meeting the issues of the long overdue payment owed to Illume from Vuulr; and that the applicant had expressed her dissatisfaction with the non-payment of sums due to Illume and Unum at Vuulr's board meeting on 21 November 2022.[39]

49 In my view, in the light of the foregoing, it is clear that the Words were said by the applicant as part of her action as an officer or member of a board of directors of a corporation, namely Vuulr, Unum and Illume. The Mr McKee's Counterclaim is a direct result of the applicant's action as an officer or member of a board of directors of these corporate entities. I therefore find that by the operation of the Director's Liability Exclusion, the Mr McKee's Counterclaim in OC 823 is excluded from coverage under the Policy.

50 To recap the earlier discussion above, the respondent is liable for the costs of defending the applicant against a lawsuit only if the liability for that lawsuit is covered under the Policy. Under the law, the respondent's duty to

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38 P 612-615 of the applicant's affidavit.

39 P 310-312 of the applicant's affidavit.

defend the applicant is not separate from its duty to indemnity her against damages. As I have found that the Mr McKee Counterclaim does not constitute a suit seeking personal injury damage that is covered under the Policy in view of the Business Pursuits Exclusion and the Director's Liability Exclusion, the respondent's duty to defend the applicant in OC 823 does not arise.

Carve-out to the business pursuits exclusion is inapplicable

51 I turn next to the question of the applicability of carve-outs to the Business Pursuits Exclusion. One of the carve-outs the Policy provides to the Business Pursuits Exclusion is where the relevant business pursuit, investment or other profit seeking activity comprises an "Incidental Business at Home".

52 The Policy defines an "Incidental Business at Home" as follows:[40]

> Incidental business at home is a business activity, conducted in whole or in part on the residence premises which must:
>
> • not yield gross revenues in excess of $25,000 in any year, except for the business activity of managing one's own personal investment, regardless of where the revenues are produced;
>
> • have no employees subject to workers' compensation or other similar disability laws; and
>
> • conform to the laws of Republic of Singapore.

53 As seen, for the above carve-out to apply, the applicant must show that her business activity in Vuulr, Unum and Illume satisfies all of the requirements listed as follows:

> (a) The incidental business was conducted in whole or in part from residence premises.

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[40] P 81 of the applicant's affidavit.

(b) The incidental business did not yield gross revenues in excess of $25,000 in any year, or that the relevant business activity comprised the management of her own personal investments.

(c) The incidental business did not have any employees subject to worker's compensation or other similar disability laws.

(d) The incidental business conformed to the laws of Singapore.

54 The applicant asserts that the carve-out applies.[41] First, she essentially contends that her involvement in Vuulr is only as an investor, and her involvement in the three corporate entities is merely her managing her personal investments in Vuulr. Second, she appears to suggest that she conducts a home-based business. I do not see however in what way the applicant is able meet the requirements of the carved-out as listed above. As discussed, it is clear in the pleadings and evidence adduced in OC 823 that the business activities of the three corporate entities entailed raising funds for investment for Vuulr and sourcing for investors for Unum, and for the provision of consulting services for Illume. The applicant is a director in Unum and Illume and is a board observer in Vuulr. I do not see how such business activities can be characterised as the management of the applicant's personal investments.

55 Further, I agree with the respondent that to the extent the applicant has alleged that the services which were provided through Unum and Illume were for the purposes of managing her own personal investment in Vuulr, they cannot be said to be incidental business. As seen above, they were provided for the primary purpose of financial gain though Unum and Illume. The agreements between Vuulr and Unum, and between Vuulr and Illume both entailed the

41 Paras 83-87 of applicant's affidavit.

payment of fees to Unum and Illume respectively. Also as noted by the respondent, the applicant's investments in Vuulr were not solely held by the applicant in her personal capacity, but was also held through various corporate entities.[42] It certainly cannot be said that the applicant's business activity in Vuulr comprised only the management of her personal investments.

56 In any event, I have only the applicant's bare assertions made in her affidavit that the requirements of the carve-out are satisfied. The applicant did not adduce any evidence to support her assertions. In the same vein, the applicant has not adduced any evidence to support her assertion that Unum and Illume did not receive revenues of more than $25,000 in any year.[43]

57 I therefore find that the applicant's business activities through Unum and Illume, and the services provided to Vuulr were not mere incidental business activities undertaken at home. The applicant has failed to prove that the carve-out to the Business Pursuits Exclusion applies.

The applicant's failure to satisfy various conditions under the policy

58 In view of all of the foregoing, I find that the two exclusion clauses apply, and the respondent is under no obligation to indemnify the applicant. Consequently, the Defence Coverages provision is not triggered. The respondent's duty to defend the applicant does not arise.

59 For completeness, I would add that the wording of the two exclusion clauses is clear; and the meaning and effect of the exclusion clauses are plain and unambiguous as well. There is therefore no place for the application of the

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42 P 722 of the applicant's affidavit.

43 Para 87 of applicant's affidavit.

contra proferentem rule as contended by the applicant.[44] There is simply no ambiguity in the wording to be resolved.

60 As well for completeness, I would add that the respondent also contends that it is not liable under the Policy as the applicant had failed to comply with the following condition precedents under the Policy:

(a) The applicant's obligation to co-operate with the respondent.

(b) The applicant's obligation to provide the respondent with all available information, including court papers in OC 823.

(c) A final determination of the amount the applicant has to pay to Mr McKee in OC 823 for the latter's counterclaim in defamation, and that the parties' right to appeal in OC 823 has not yet been exhausted.[45]

61 The respondent contends that its liability is not triggered as a result of the applicant's failure to satisfy the above conditions under the Policy.

62 As I have made the finding that the respondent is not liable under the Policy in view of the two exclusion clauses, there is no necessity for me to discuss this contention of the respondent, and I do not propose to do so.

No admission of liability on the part of the respondent

63 I turn finally to the applicant's contention that the respondent had admitted its liability under the Policy in the following two instances:

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44 Para 41 of the applicant's written submissions.

45 Paras 74-89 of the respondent's written submissions.

(a) The respondent had extended a settlement offer to the applicant in email correspondence without the cover of without prejudice privilege.[46]

(b) The respondent had recommended that the applicant continue with her existing legal counsel in OC 823.[47]

64 It is trite that the question of whether communications are without prejudice is a question of substance and not form. It is not dependent upon the use of the label "without prejudice". The court will examine all the surrounding circumstances to determine whether the without prejudice privilege arises.

65 This in reiterated in *Quek Kheng Leong Nicky and another v Teo Beng Ngoh and others and another appeal* [2009] 4 SLR(R) 181. The Court of Appeal held as follows at [22]:

> 22 Generally, communications between parties which are made on a "without prejudice" basis in the course of negotiations for a settlement are not admissible. As between parties to the negotiations, s 23 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") applies (see the decision of this court in *Mariwu Industrial Co (S) Pte Ltd v Dextra Asia Co Ltd* [2006] 4 SLR(R) 807 ("*Mariwu*") (which also held that the common law as embodied in the House of Lords decision of *Rush & Tompkins Ltd v Greater London Council* [1989] AC 1280 ("*Rush & Tompkins*") governs the situation in relation to third parties)). Section 23 of the EA provides that in civil cases, "no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given". Even though a piece of correspondence is not marked "without prejudice", it may still be excluded if it is made in the course of negotiations to settle a dispute (see *Mariwu* as well as the decision of this court in *Greenline-Onyx Envirotech Phils, Inc v Otto Systems Singapore Pte Ltd* [2007] 3 SLR(R) 40). However, where the correspondence

46 Pp 43-44 of respondent's affidavit.

47 P 428 of applicant's affidavit.

> concerned is in fact marked "without prejudice", "the presence of [these] words would place the burden of persuasion on the party who contended that [these] words should be ignored" (see the Singapore High Court decision of *Sin Lian Heng Construction Pte Ltd v Singapore Telecommunications Ltd* [2007] 2 SLR(R) 433 at [60]).

66 As seen, even though a piece of correspondence is not marked "without prejudice", it may still be excluded if it is made in the course of negotiations to settle a dispute. There is no admission of liability in such a case.

67 In the present case, the settlement offer said to be made to the applicant without the cover of without prejudice privilege is contained in the respondent's email of 5 April 2024. In gist, the respondent stated the following in the email:[48]

(a) That regardless of the original purpose of the 24 November 2022 Meeting, the meeting was a "meeting of directors and/ or shareholders at which [Mr McKee] was seeking to address Vuulr's financial situation and/ or burn rate and/ or investment status".

(b) That there was nothing in the pleadings in OC 823 to suggest that the applicant's Words were said in anything but her business pursuits with Mr McKee.

(c) That the Director's Liability Exclusion is applicable by virtue of the applicant's position as director of Unum and Illume.

(d) That notwithstanding the respondent's position as to the above, the respondent was willing to offer a full and final settlement offer of $10,000 to amicably resolve the matter,

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48 Para 47 of the respondent's affidavit.

68 In my view, it is plain that the respondent's settlement offer was made on a without prejudice basis and does not amount to admission to liability. As seen, the respondent had maintained its position in the email that it was not liable under the Policy. The respondent in fact set out the reasons for its position; that the exclusions under the Policy are applicable. It is seen that these are the same exclusions advanced by the respondent in the hearing before me and which I discussed above. The respondent has maintained the same position throughout this dispute. The respondent nevertheless offered to settle the matter without any admission of liability in the email of 5 April 2024. I agree with the respondent that the settlement offer made by the respondent was made in the course of negotiations with the applicant and for the purposes of the compromising the applicant's then prospective claim against the respondent. The fact that the email was not marked "without prejudice" does not detract from the substance of the email which set out the respondent's unambiguous position that it is not liable. The offer to settle was plainly a goodwill gesture that the respondent made notwithstanding its position that it is not liable.

69 As regards the respondent recommending that the applicant continue with her existing legal counsel in OC 823, there was similarly no admission of liability by the respondent in advising the applicant to do so. The recommendation for the applicant to continue with her existing legal team was contained in an email dated 29 December 2023. The thrust of the email was that the respondent was still assessing its policy liability and that the respondent would inform the applicant of the policy liability and the coverage for the matter after the respondent completed its assessment. The email further stated that as the applicant had already engaged a legal counsel for OC 823, the respondent recommended that the existing legal counsel continue to represent her for purposes of the Mr McKee Counterclaim. I do not see in what way this email can be construed as an admission of liability on the part of the respondent.

Conclusion

70 In summary, I find that the respondent is liable for the costs of defending the applicant against a lawsuit only if the liability for that lawsuit is covered under the Policy. In other words, the respondent's duty to defend the applicant is not separate from its duty to indemnify her against damages. The respondent's duty to defend the applicant in OC 823 will only be triggered when it is clear from the pleadings in OC 823 that the counterclaim for damages is payable under the Policy.

71 I find that the Business Pursuits Exclusion, and the Director's Liability Exclusion apply, and the respondent is under no obligation to indemnify the applicant against any damages in connection with OC 823 under the Policy. I also find that the applicant has failed to show that the carve-out to the Business Pursuits Exclusion applies. Consequently, the Defence Coverages provision is not triggered. The respondent's duty to defend the applicant does not arise.

72 In the premises of the above, I dismiss the application.

73 As for costs, it is to follow the event; and the applicant is to pay the costs of the respondent. As regards quantum, I note that under Appendix H of the State Courts Practice Directions 2021, Pt IV, A2, the range of costs provided for a contested origination application is $2,000 to $15,000. After considering the respective submissions on costs, and taking into account the complex and multifaceted submissions, the novelty of the issues, the dearth of local case authorities, and the necessity for parties to consider the pleadings and documents relating to OC 823; I fix costs at $15,000, inclusive of disbursements.

Chiah Kok Khun
District Judge

Mr Suang Wijaya and Mr Hamza Zafar Malik (Eugene Thuraisingham LLP) for the applicant;
Mr Kevin Kwek Yiu Wing, Ms Charmaine Elizabeth Ong Wan Qi and Mr Sourish Sinha (Legal Solutions LLC) for the respondent.