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

[2024] SGHC 286

Suit No 752 of 2021

Between

Farm to Fork Sdn Bhd

… *Plaintiff*

And

(1) Adamas Sg Pte Ltd
(2) Kim Jin Wu

… *Defendants*

JUDGMENT

[Confidence] — [Breach of confidence]
[Contract] — [Breach]
[Tort] — [Inducement of breach of contract]

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v
Adamas Sg Pte Ltd and another

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14 November 2024 Judgment reserved.

Andre Maniam J:

Introduction

1 Where a consultancy agreement provides that either party may terminate the agreement by prior written notice, can the client instead terminate the agreement immediately with payment in lieu of notice? If the client says it is terminating with payment in lieu of notice, but does not make payment, is the agreement nevertheless immediately terminated? If the consultancy agreement remains in force, must the client keep paying the consultant consultancy fees, although the consultant has done no work since the purported termination?

Background

2 The plaintiff, Farm to Fork Sdn Bhd, ("Farm to Fork") is a Malaysian company founded in 2015 by Jonathan Weins ("Mr Weins"), Christian

Edelmann ("Mr Edelmann"), and Jessica Li ("Ms Li") (collectively, the "Founders").

3 Pursuant to a consultancy agreement[1] (the "Consultancy Agreement") between Farm to Fork and the first defendant, Adamas Sg Pte Ltd ("Adamas"), Adamas provided the services of the second defendant, Mr Kim Jin Wu ("Mr Kim"), as the chief financial officer ("CFO") of Farm to Fork from 11 May 2021 to 1 September 2021. Mr Kim is the sole shareholder and director of Adamas. I will refer to the first and second defendants collectively as "the Defendants".

4 On 1 September 2021, Farm to Fork purported to terminate the Consultancy Agreement with immediate effect, although cl 3.2 of the Consultancy Agreement provided for termination by prior written notice of not less than three months. In its termination notice, Farm to Fork referred to cl 3.2 and said that as it intended to terminate the agreement with immediate effect, it would pay Adamas $66,660 "representing 3 months' of consultancy fees as payment in lieu of notice".[2] The termination notice was however not accompanied by payment of the stated sum, and Farm to Fork never made that payment.

5 The Defendants contend that because Farm to Fork did not give three months' prior notice of termination, its purported termination of the Consultancy Agreement was invalid, and the agreement remains in force to date.[3]

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1 Agreed Bundle of Documents (Vol No. 1) dated 19 January 2024 ("1AB") at p 323.

2 Agreed Bundle of Documents (Vol No. 2) dated 19 January 2024 ("2AB") at p 707.

3 Defence and Counterclaim (Amendment No. 3) dated 5 January 2024 ("DCC") at para 46.

6 Farm to Fork maintains that the Consultancy Agreement was terminated with immediate effect on 1 September 2021: it says it was entitled to, and did, terminate the Consultancy Agreement "with immediate effect with payment in lieu of notice".[4] In the alternative, Farm to Fork says that the Consultancy Agreement was terminated by 1 December 2021 (three months from the date of the termination notice).[5]

Farm to Fork's claims and Adamas' counterclaims

7 Farm to Fork sued the Defendants on 10 September 2021. Farm to Fork claims:

(a) an order for the delivery up and/or destruction of all documents, books, manuals, materials, records, correspondence, papers and information relating to the business or affairs of Farm to Fork or its related companies;

(b) an order restraining the Defendants from disclosing, using and disseminating any confidential information relating to the business, customers, products, affairs and finances of Farm to Fork and its related companies, as well as any trade secrets;

(c) an order restraining the Defendants, for a period of two years from 1 September 2021 (a period which has since ended) from:[6]

(i) inducing or attempting to induce any employee or service provider of Farm to Fork to quit employment with Farm to Fork;

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4 Reply and Defence to Counterclaim (Amendment No. 2) dated 15 January 2024 ("Reply") at para 41(a).

5 Reply at para 41(e).

6 Statement of Claim (Amendment No. 1) dated 6 January 2023 ("SOC") at pp 22–24.

(ii) otherwise interfering with or disrupting Farm to Fork's relationship with its employees or other service providers; and

(iii) soliciting, inducing, enticing, procuring, facilitating or encouraging any client, customer or business associate of Farm to Fork to cease being such a customer, client or business associate, or to reduce or cease the business which that client, customer or business associate does with Farm to Fork;

(d) damages to be assessed; and

(e) interest, costs and/or further or other relief.

8 Farm to Fork claims damages for:

(a) breaches by Adamas of the Consultancy Agreement, after the termination notice:

(i) breaches of confidentiality obligations and removal obligations; and

(ii) breach of non-solicitation obligations;

(b) breach by Mr Kim of an equitable duty of confidentiality; and

(c) Mr Kim inducing Adamas' breach of the Consultancy Agreement.

9 Adamas counterclaims:[7]

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7 DCC at p 54.

(a) a declaration that Adamas is to be paid $22,220 monthly from 1 September 2021;

(b) damages of $22,220 monthly from 1 September 2021;

(c) alternatively, $66,660;

(d) further and/or alternatively, damages to be assessed; and

(e) interest, costs and/or further or other relief.

10 Farm to Fork acknowledges that Adamas is entitled to $66,660 (three months' worth of consultancy fees) but seeks to set off that sum against losses and damages suffered by it.

11 I will first consider the issue of termination of the Consultancy Agreement (which is central to Adamas' counterclaims), and then Farm to Fork's claims against the Defendants.

Termination of the Consultancy Agreement

Did Farm to Fork terminate the Consultancy Agreement with payment in lieu of notice?

12 Clause 3.2 of the Consultancy Agreement between Farm to Fork and Adamas[8] addressed the term of Adamas' engagement by Farm to Fork (the "Engagement"):

> **3. TERM OF ENGAGEMENT**
>
> …
>
> 3.2 The Engagement shall commence on the Commencement Date and shall continue for such term

[8] 1AB at p 323.

> as stated in Section 3 of Schedule 1 of this Agreement (or such other period as agreed in writing between the Client and the Consultant) unless terminated in these manners:
>
> (a) as provided by the terms of this Agreement; or
>
> (b) by either party giving to the other prior written notice of not less than the number of days stated in Section 6 of Schedule 1 of this Agreement.

13 Section 6 of Schedule 1 of the Consultancy Agreement provided that three months' prior written notice of termination was to be given.[9]

14 Farm to Fork recognises that the Engagement was not terminated by three months' prior written notice; it did not give any prior notice, but purported to terminate the Consultancy Agreement with immediate effect. Its termination notice dated 1 September 2021 stated:[10]

> As we intend for the Agreement to be terminated with immediate effect, under Clause 3.2(b) and Section 6 of Schedule 1 of the Agreement, we will pay you SGD$66,660 representing 3 months' of consultancy fees as payment in lieu of notice.

15 Farm to Fork also recognises that the Engagement was not terminated pursuant to any other *express* term of the Consultancy Agreement – it thus relies on an *implied* term that it could terminate the Consultancy Agreement with payment in lieu of notice.[11]

16 The Consultancy Agreement is governed by Malaysian law, and both sides put forward expert opinion on Malaysian law, including on whether a term

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9 1AB at p 335.

10 2AB at p 707.

11 Reply at para 41(b).

should be implied into the Consultancy Agreement allowing Farm to Fork to terminate with payment in lieu of notice.

17 As Farm to Fork's expert, Siva Kumar Kanagasabai ("Mr Kumar"), accepted, however, even if such a term were implied the court would still need to consider if termination is effective if no payment is made.[12]

18 On this, the UK Supreme Court decision in *Geys v Societe Generale, London Branch* [2013] 1 AC 523 ("*Geys*") is instructive. Clause 8.3 of the employment contract in that case – titled "Termination by SG [Societe Generale] and payment in lieu of notice" provided that the bank "reserves the right to terminate your employment at any time with immediate effect by making a payment to you in lieu of notice". The bank made a payment in lieu of notice to the claimant's bank account on 18 December 2007, but only wrote to the claimant on 4 January 2008 by post to notify him of this. By virtue of a clause in the contract, the claimant was deemed to have been notified of this on 6 January 2008. The court found that the contract was only terminated on 6 January 2008, Baroness Hale explaining that it is insufficient that the employee only receive his payment in lieu of notice; he must also receive a clear and unambiguous notification from his employer that such a payment has been made (*Geys* at [58]).

19 The above reasoning applies to the present case, where Farm to Fork asserts an implied term allowing it to immediately terminate the Consultancy Agreement "with payment in lieu", said in the termination notice that it "will pay", but then never paid.

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[12] Transcript, 6 February 2024, 80:16–80:21.

20 Even if the implied term contended by Farm to Fork were to be implied, as Farm To Fork never made payment it never terminated the Consultancy Agreement with payment in lieu of notice.

21 If it were Farm to Fork's contention that a term should be implied allowing it to terminate a contract with a prescribed notice period, simply by saying that it "will" make payment in lieu of notice (and then not do so), I would reject such an implied term. In the employment context, the authorities have not gone further than to imply a term that an employer can terminate an employment contract "by payment" in lieu of notice (see *Goh Chan Peng and others v Beyonics Technologies Ltd and another and another appeal* [2017] 2 SLR 592 at [90]).

Does the Consultancy Agreement remain in effect to date?

22 The next question is: if Farm to Fork did not terminate the Consultancy Agreement with payment in lieu of notice, does the Consultancy Agreement remain in effect to date?

23 That is Adamas' contention, both for its implications on post-termination obligations (which Adamas contends would not arise unless the agreement has been terminated), and in relation to remedies (as Adamas seeks declaratory relief, and damages, on the basis that it is entitled to consultancy fees to date).

24 Whether the Consultancy Agreement remains in force, and whether Adamas is entitled to consultancy fees to date, are related but separate issues (in that even if the Consultancy Agreement remains in force, Adamas' remedies might not extend to indefinite payment of consultancy fees). I first consider whether the Consultancy Agreement remains in force.

25 There are two sub-issues:

(a) in the context of an employment contract, or a contract for personal services, if the employer/client (Farm to Fork) purports to terminate the contract in a wrongful manner, does that nevertheless effectively terminate the contract; and

(b) has the consultant (Adamas) accepted that the contract is terminated?

Did the wrongful purported termination by Farm to Fork as a client terminate the Consultancy Agreement?

26 Farm to Fork contends that even if its 1 September 2021 termination notice was a *wrongful* repudiation of the contract, it was nevertheless *effective* in terminating it:[13]

(a) under s 20(1)(*b*) of the Specific Relief Act 1950 of Malaysia ("Specific Relief Act"), contracts for personal service cannot be specifically enforced;

(b) the Malaysian cases of *Fung Keong Rubber Manufacturing (M) Sdn Bhd v Lee Eng Kiat & Ors* [1981] 1 MLJ 238 ("*Fung Keong*"), and *Jerome Francis v The Municipal Councillors of Kuala Lumpur* [1962] 1 WLR 1411 ("*Francis*") establish that in the case of an employer's wrongful repudiation of a contract of employment, the contract is terminated, and the employee's remedy is in damages;

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[13] Plaintiff's Closing Submissions dated 19 April 2024 ("PCS") at paras 58–62.

(c) the position in Singapore, as expressed by the Court of Appeal in *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] 4 SLR 357 (at [39]), is similar: "there cannot be specific performance of a contract of employment under the common law" (citing *Francis*);

(d) the same principle applies to independent contractor agreements involving the provision of personal services: *Denmark Productions Ltd v Boscobel Productions Ltd* [1969] 1 QB 699 ("*Denmark v Boscobel*")).

27 On the other hand, the Defendants rely on the general principle that a wrongful repudiation of a contract does not effectively terminate it; the contract is only terminated if the innocent party chooses to accept the repudiation and treat the contract as terminated:[14]

(a) in *Dato' Abdullah bin Ahmad v Syarikat Permodalan Kebangsaan Bhd & Ors* [1990] 3 MLJ 505 ("*Dato' Abdullah*"), the High Court of Kuala Lumpur decided that contracts of employment are not automatically terminated by the employer's repudiation; and

(b) in *Geys*, the UK Supreme Court held (by a majority) that a contract of employment is not terminated by the employer's repudiation, instead "the elective theory is to be preferred – that a party's repudiation terminates a contract of employment only if and when the other party elects to accept the repudiation" (at [15])

28 What is the position under Malaysian law?

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[14] First and Second Defendants' Closing Submissions dated 19 April 2024 ("DCS") at paras 380–388.

29 *Francis* was a Privy Council decision on appeal from Malaya. In that case, the appellant had been employed by the municipal councillors of Kuala Lumpur as a clerk. This was an office in respect of which the president of the council, under the Municipal Ordinance of the former Straits Settlements (Cap. 133), had the power of appointment and removal. The council, rather than the president of the council, purported to dismiss the appellant (although it should be noted that the president was a party to the council's decision). The appellant commenced proceedings against the respondent municipal councillors, contending that his employment had been wrongly terminated and that he could continue his employment with the respondents.

30 Although the appellant's claim was dismissed at first instance, this decision was overturned by the Court of Appeal, which held that there was a wrongful dismissal that entitled the appellant to damages. Dissatisfied, the appellant appealed to the Privy Council, seeking a declaration that his dismissal was null and void, and so he was still employed by the respondents.

31 The Privy Council dismissed the appeal, holding that the appellant was only entitled to damages. To the Privy Council, it was wholly unrealistic to agree with the appellant that he remained an employee of the respondents (*Francis* at 1417). The Privy Council affirmed "the general principle of law that the courts will not grant specific performance of contracts of service", and stated that once a contract of service has purportedly been terminated, it would be rare for a declaration to be made that the contract of service still subsists; such a declaration would only be granted where special circumstances exist. On the facts, no special circumstances existed that would justify the court exercising its discretion to grant that declaration (at 1417–1418).

32 *Francis* was followed by the Malaysian Federal Court in *Fung Keong*, where the court observed that where a workman has been wrongfully dismissed, it would not usually grant a declaration that his dismissal was invalid and reinstate him back to his employment (*Fung Keong* at 239F–G).

33 In *Dato' Abdullah*, however, the Kuala Lumpur High Court held that the general rule (which applied equally to contracts of employment) is that repudiation does not terminate the contract until the innocent party accepts the breach. Thus, an employee can only sue for damages for wrongful dismissal if he accepts his employer's repudiation of the contract. The court also seemed to suggest that viewed through the correct lens, the plaintiff in *Francis* had accepted that his contract of service had been terminated (at 507C–F), as he had sued for damages for wrongful dismissal (for which he had to accept the repudiation of his contract of services as having terminated it).

34 With respect, however, *Francis* cannot be distinguished in that way. In *Francis*, the plaintiff had sought various declarations, including one that the termination of his employment was wrongful and void, and that he had the right to continue his employment with the municipal council. The plaintiff also included an *alternative* claim for damages for wrongful dismissal (*Francis* at 1414). The fact that an *alternative* claim for damages was included should not amount to acceptance of the employer's repudiation so as to defeat the plaintiff's *primary* claim for a declaration that the contract still subsisted. Nor was this the basis on which the Privy Council rejected the contention that the plaintiff continued to be employed. Rather, the Privy Council took the view that the plaintiff had been excluded from the council's premises and had not done any work for the council, so he must be regarded as having been wrongly dismissed, and his claim thus lay only in damages (*Francis* at 1417).

35 Similarly, Adamas in the present case seeks a declaration that it is to be paid S$22,220 monthly from 1 September 2021, on the basis that "there has been no termination of the Agreement and/or any purported termination of the Agreement was invalid and/or wrongful. The Agreement is therefore still subsisting".[15] Alternatively, Adamas seeks damages. If I were to accept *Dato' Abdullah's* reading of *Francis*, this would mean that Adamas' alternative prayer for damages would amount to an acceptance of the other party's repudiation. But, as highlighted above (see [34]), *Francis* stands for no such proposition.

36 I pause here to note that in *Geys*, the UK Supreme Court did not suggest that the plaintiff in *Francis* had accepted the repudiatory breach of his contract of service as terminating it. Rather, Lord Wilson JSC merely pointed to the Privy Council's observation that on a rare occasion in the context of a purported termination of a contract of service, a declaration that the contract still subsists might be granted, and that was inconsistent with the theory that a party's repudiation of a contract of employment automatically terminates the contract (at [63] and [85]). That still leaves *Francis* standing for the proposition that where the general principle (that the court will not grant specific performance of contracts of service) applies, a wrongful repudiation of a contract of employment is effective in terminating it.

37 In holding that repudiation does not terminate the contract until the innocent party accepts the breach, the court in *Dato' Abdullah* traced the history behind this rule. It observed that at one stage, the rule seemed to be that in contracts of employment, a contract was automatically determined upon the wrongful repudiation by one party (at 507, citing *Vine v National Dock Labour Board* [1957] AC 488 ("*Vine*") and *Sanders v Ernest A Neal Ltd* [1974] 3 All

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15 DCC at para 103 and p 54.

ER 327). Indeed, *Vine* has been recognised as introducing this rule into English law (see *Geys* at [83]); in *Vine*, Viscount Kilmuir LC said that where an employer wrongfully dismisses his employee, the employment is effectively terminated (at 500). In *Sanders* – regarded by *Dato' Abdullah* as the high watermark of this rule (at 507H) – Sir John Donaldson P said that the repudiation of a contract of employment terminates the contract without the need for acceptance by the innocent party (at 333e–f). The court in *Dato' Abdullah* then opined that two decisions, *Thomas Marshall Ltd v Guinle* [1979] 1 Ch 227 ("*Thomas Marshall*") and *Gunton v Richmond-upon-Thames London Borough Council* [1980] 3 WLR 713 ("*Gunton*"), had turned the tide and laid down the rule that repudiation does not terminate an employment contract until the repudiation is accepted.

38 In my view, however, *Dato' Abdullah* does not represent the Malaysian law on the point. I say this for two reasons.

39 First, *Thomas Marshall* and *Gunton* were decided several years after *Francis*, a 1962 Privy Council decision on appeal from Malaya. *Francis* was decided at a time when (as the court in *Dato' Abdullah* noted) the general rule seemed to be that contracts of employment would be automatically determined by wrongful repudiation.

40 Second, the Kuala Lumpur High Court in *Dato' Abdullah* did not consider the 1981 Malaysian Federal Court's decision of *Fung Keong*, which reiterated the general rule that a workman who has been wrongfully dismissed will not usually be granted a declaration reinstating him back to employment (*Fung Keong* at 239F–G).

41 In any event, although the court in *Dato' Abdullah* considered that the employment contract still subsisted, it acknowledged that under s 20(1)(*b*) of the Specific Relief Act it could not grant specific performance. Thus, the court held that the plaintiff was not entitled to a decree of specific performance compelling the defendant company to employ him as the company's executive chairman and managing director (*Dato' Abdullah* at 509C–D and 511G). In that regard, *Dato' Abdullah* is an authority that goes against the Defendants' contention that Mr Kim continues to be Farm to Fork's CFO to date.

42 The court in *Dato' Abdullah* only went as far as to maintain an injunction restraining the second defendant (the purported new chairman) from exercising the powers and duties of the office of chairman of the first defendant company. The court discharged the injunctions that had been granted which concerned the plaintiff remaining in office as executive chairman and managing director, and the exercise by him of the powers and duties of the holder of such office (*Dato' Abdullah* at 512C–E).

43 My conclusion thus is that Malaysian law is represented by *Francis* and *Fung Keong*, rather than by *Dato' Abdullah*.

44 The present case is not one in which specific performance would be ordered. Illustration (a) of s 20(1)(*b*) of the Specific Relief Act provides that contracts for personal service cannot be specifically enforced, and I consider that the same principle would apply to contracts for personal services, under an independent contractor agreement (see *Denmark v Boscobel* at 726C–E). For this purpose, it makes no difference that Mr Kim was Farm to Fork's CFO not as an employee of Farm to Fork, but with his services being provided by Adamas under the Consultancy Agreement. In both instances, Mr Kim's position as Farm to Fork's CFO is one that is so dependent on the personal

qualifications or volition of the parties such that the court cannot enforce specific performance of the material terms of the contract (s 20(1)(*b*) of the Specific Relief Act). Or, in common law terms, since the relationship between employer and employee is based on mutual trust and confidence, the court should not grant a decree of specific performance where that mutual trust and confidence has broken down; to do so would be a plain recipe for disaster since one cannot make either of them do what they do not want to (see *Chappell and others v Times Newspapers Ltd and others* [1975] 1 WLR 482 at 492G–H and 506C). On the evidence, I am satisfied that those observations apply fully to the present case.

45 It is true that in *Vine*, the House of Lords exercised its discretion and granted a declaration that the employee's dismissal was illegal, *ultra vires* and void. But the facts of *Vine* are quite different, in that it involved the registration status of persons in a particular trade. In the present case, there are no special circumstances to justify a departure from the general rule, such that court would declare that Mr Kim continues to be Farm to Fork's CFO. I reject Adamas' contention that this is an exceptional case like that in *Hill v CA Parsons & Co Ltd* [1972] Ch 305 ("*Hill")* such that the court could still grant specific performance. In *Hill*, the majority of the Court of Appeal decided to grant an interlocutory injunction restraining the defendant employer from terminating the plaintiff employee's employment. One of the reasons proffered by the majority is that unlike the typical employer-employee case where there was no personal confidence between the parties, there was such confidence on the facts of that case (at 320E *per* Sachs LJ). Here, in contrast, Adamas had not retained the confidence of Farm to Fork. Adamas contends that it "*would* still retain the mutual trust and confidence of the plaintiff's shareholder FTFI [Farm to Fork Inc.] and its board" had the Founders of Farm to Fork not concealed relevant

information from the other board members of FTFI during their discussions on the termination of the Agreement.[16] But the fact is that Adamas has fully canvassed its case since, and there is no evidence that Farm to Fork, or its shareholder FTFI, wish to retain the services of Adamas (or Mr Kim). Adamas has not retained the confidence of Farm to Fork, and Farm to Fork does not want Adamas back.

46 In the circumstances, Farm to Fork's repudiation of the Consultancy Agreement by the 1 September 2021 termination notice effectively terminated the Consultancy Agreement, and specific performance of the agreement is not available.

In any event, had Adamas accepted the termination notice as terminating the Consultancy Agreement?

47 If, contrary to my conclusion above, the termination notice had not terminated the Consultancy Agreement, the agreement would still have been terminated if Adamas had accepted Farm to Fork's repudiation as terminating the agreement.

48 I find that Adamas had accepted the termination notice as terminating the agreement:

(a) In Mr Kim's email to Mr Saemin Ahn ("Mr Ahn") dated 2 September 2021, at 10.11pm, Mr Kim said that until he was terminated without notice the day before, he served as CFO and President of Operations at Pop Meals (the brand name used by Farm to Fork);[17]

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16 DCS at para 405.

17 2AB at pp 749–750.

(b) In Mr Kim's email to Mr Ahn dated 2 September 2021, at 10.13pm, he referred to "my termination" and what had happened "before I was terminated";[18]

(c) In Mr Kim's email to Mr Ahn dated 2 September 2021 at 10.25pm, he mentioned what happened "before I was terminated" and said that following his termination, his access privileges were immediately revoked and his email "brute force unlocked";[19]

(d) At a hearing on 13 September 2021 before Andrew Ang SJ, Mr Kim said that 3 September 2021 was "2 days after I was terminated";[20]

(e) In Mr Kim's email of 16 November 2021 (the "16 November 2021 Email") he introduced himself as having "served as Chief Financial Officer and President of Operations at the Company."[21]

49 I do not accept Adamas' contention that Mr Kim was not aware of his right to elect whether to treat the Consultancy Agreement as still subsisting or terminated. Mr Kim says he believed he had been wrongfully terminated.[22] I consider that Adamas (and Mr Kim) knew that if the termination notice were "wrongful", they could have maintained that the Consultancy Agreement was still in force; instead Mr Kim spoke about having been "terminated", and having "served" as CFO. In any event, Adamas and Mr Kim knew the *facts* based on

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18 2AB at p 752.

19 2AB at p 760.

20 Second Affidavit of Evidence-in-Chief of Jonathan Weins dated 25 October 2021 at p 129.

21 Agreed Bundle of Documents (Volume No. 3) dated 19 January 2024 ("3AB") at p 316.

22 Transcript, 7 February 2024, 55:19–55:22 and 56:6–56:9.

which Adamas had a choice whether to treat the Consultancy Agreement as terminated or not, and in so far as Adamas is relying on ignorance of the *law*, Farm to Fork's expert points out that ignorance of the law is not a defence or excuse, whether for locals or foreigners (see *Derek Victor Cawton & Anor v Fatimah binti Mohd Hashim* [2015] MLJU 2315 at [15]).

50 As such, even if the termination notice had not in itself terminated the Consultancy Agreement, Adamas by its conduct had accepted the termination notice as terminating the agreement.

Is Adamas entitled to consultancy fees to date?

51 In view of the above, Adamas is not entitled to consultancy fees to date, because the Consultancy Agreement has been terminated: either by the termination notice, or by Adamas accepting the termination notice as terminating the agreement.

52 In any event, even if the Consultancy Agreement had continued in force, it does not follow that Adamas is entitled to its consultancy fees to date.

53 First, as recognised in *Dato' Abdullah*, even if an employment contract continues in force after it has been repudiated, if specific performance is not available the court will not grant relief compelling the employer to employ the employee. It follows that the employer would not have to continue paying for the employee's services.

54 Second, it was accepted in *Geys* that the wrongly dismissed employee cannot sue for his wages on the basis that he remained ready, able and willing to resume work. Lord Wilson JSC recognised that contracts of employment are a special case in terms of remedies (*Geys* at [78] and [79]):

> 78 Where did the unavailability of specific performance leave the wrongly dismissed employee? Specifically, could he sue for his wages on the basis that at any rate he had remained ready, able and willing to resume his work for the employer? The Victorian work ethic helped to provide a negative answer. In *Goodman v Pocock* (1850) 15 QB 576, 583–584, Erle J said:
>
> > "I think that the servant cannot wait till the expiration of the period for which he was hired, and then sue for his whole wages on the ground of a constructive service after dismissal. I think the true measure of damages is the loss sustained at the time of the dismissal. The servant, after dismissal, may and ought to make the best of his time; and he may have an opportunity of turning it to advantage."
>
> 79 Ever since then the law has been clear that, save when, unusually, a contract of employment specifies otherwise, the mere readiness of an employee to resume work, following a wrongful dismissal which he has declined to accept, does not entitle him to sue for his salary or wages. "He cannot", as Salmon LJ said in *Denmark Productions Ltd v Boscobel Productions Ltd* [1969] 1 QB 699, 726, "sit in the sun…" The law takes the view that it is better for the employee (as well, of course, as for the employer) that his claim for loss of wages or salary should be confined to a claim for damages and therefore be subject to his duty to mitigate them by taking all reasonable steps to find other work.

55 Adamas is thus limited to a claim for damages for wrongful termination, it is not entitled to claim consultancy fees on an ongoing basis to date.

56 The normal measure of damages for wrongful termination is – subject to the principles of mitigation – the amount that the employee would have received under the employment contract if the employer had lawfully terminated the contract, either by giving the required notice or by paying salary in lieu of notice (see, *eg*, *Wee Kim San* at [25]).

57 Farm to Fork was entitled to terminate the Consultancy Agreement with three months' prior notice, and it follows that the normal measure of damages is three months' consultancy fees, *ie*, $66,660. There is nothing in the present

case to displace the normal measure of damages. Damages cannot be assessed on the basis that the relationship would have continued indefinitely as that would be incompatible with specific performance not being available (see, *eg*, *Wee Kim San* at [39]). Moreover, Farm to Fork was entitled to terminate the Consultancy Agreement with prior notice; it would be contrary to such a contractual right to require the employer to pay the employee damages that go beyond the amount of salary payable for the contractual notice period (see, *eg*, *Wee Kim San* at [38]).

58 Thus, for Farm to Fork's wrongful repudiation of the Consultancy Agreement by the termination notice, what Adamas is entitled to is $66,660 in damages (and interest thereon), subject to Farm to Fork's claims, which I consider next.

Breach of confidentiality obligations in the Consultancy Agreement

59 Farm to Fork asserts that Adamas breached non-solicitation obligations, confidentiality obligations, and removal obligations. I will first address the alleged breaches of confidentiality obligations.

The confidentiality obligations

60 The confidentiality obligations Farm to Fork says Adamas breached are in cl 8 of the Consultancy Agreement, which provides as follows:[23]

> **8. CONFIDENTIAL INFORMATION**
>
> 8.1 The Consultant acknowledges that in the Engagement the Consultant will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause.

[23] 1AB at pp 327–328.

> 8.2 The Consultant shall not (except in the proper course of their duties), either during the Engagement or after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
>
> (a) any use or disclosure authorised by the Client or required by law; or
>
> (b) any information already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.
>
> 8.3 At any stage during the Engagement, the Consultant will promptly on request return all and any Client Property in their possession to the Client.

61 Confidential Information is defined in cl 2.1 of the Consultancy Agreement as follows:[24]

> **Confidential Information:** information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client (or any Group Company) for the time being confidential to the Client (or any Group Company) and trade secrets including, without limitation, technical data and know-how relating to the Business of the Client (or of any Group Company) or any of its (or their) suppliers, customers, agents, distributors, shareholders, management or business contacts, information that the Consultant creates, develops, receives or obtains in connection with its Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

62 Client Property is defined in cl 2.1 of the Consultancy Agreement as follows:[25]

> **Client Property:** all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs

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[24] 1AB at pp 323–324.

[25] 1AB at p 323.

> of the Client (or Group Company) or its (or their) customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant on the Client or the Consultant's computer systems or other electronic equipment during the Engagement.

Was there was accounting fraud or misrepresentation?

63 An important part of the Defendants' case is that they had discovered that the Founders of Farm to Fork had misstated the company's financial position, such that for the Defendants to have disclosed that to interested parties was not a breach of confidence.[26] In this section I will address whether there were misrepresentations of Farm to Fork's financial position, before considering what implications that may have.

64 The Defendants say that the Founders of Farm to Fork had represented that:[27]

(a) the Cyberjaya outlet had attained an EBITDA (earnings before interest, taxes, depreciation and amortisation) margin of more than 20% in April 2021 (the "Cyberjaya Representation");

(b) the other outlets were performing at the same level as the Cyberjaya outlet; and

(c) an EBITDA margin of more than 20% was attainable for all existing outlets and any future outlets.

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26 DCS at paras 91, 106–109, 115, and 126,

27 DCS at para 33; DCC at paras 17–17A.

65 Farm to Fork does not dispute that the Cyberjaya Representation was made; instead, it contends that the Cyberjaya Representation was true.[28] Farm to Fork says, however, that no representations were made as to the actual or prospective performance of any other outlet, existing or future.[29]

66 I agree with the Defendants that the Cyberjaya Representation was *not* true: the Cyberjaya outlet had *not* attained an EBITDA margin of more than 20% in April 2021.

67 I accept Mr Kim's explanation that:[30]

(a) based on the profit and loss statement for Farm to Fork's central kitchen ("Central Kitchen") from the management accounts (the "CK P&L"), the total production cost was RM452,924 in April 2021, which for the 50,280 meals produced in April 2021 works out to around RM9 per meal;

(b) the Cyberjaya outlet sold 10,006 meals in April and so the cost of goods sold ("COGS") was around RM90,134 (after rounding) – Mr Kim said that figure was based on a lot of detail, and was the figure that he understood was right from employees at the Central Kitchen;

(c) using RM90,134 as the COGS for the Cyberjaya outlet in April 2021, the COGS margin was 57.2% and the EBITDA margin was 0.6%;

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28 PCS at paras 259–266..

29 PCS at paras 271–276.

30 Transcript, 9 February 2024, 106:17 to 108:15 and 109:13–109:17; 2AB at p 332; First Affidavit of Kim Jin Wu dated 1 October 2021 ("1KJW") at paras 31–32.

(d) the COGS for the Cyberjaya outlet in April 2021 was reflected in the "Outlet P&L" at a much lower figure of RM57,575, which worked out to a COGS margin of 33.1% and an EBITDA margin of 19.2% (corresponding to the Cyberjaya Representation); the figure of RM57,575 was just an input into the Outlet P&L, and was not derived by any calculations;

(e) the Outlet P&L should tally with the CK P&L, but they did not; the CK P&L was based on actual costs, and Mr Kim understood it to be correct from employees at the Central Kitchen;

(f) Mr Kim had calculated the "Correct Outlet P&L" in an internal memorandum sent to the Founders on 29 April 2021, and provided an Excel document titled "Revised COGS (Jan 21 – Jun 21)" late on 31 August 2021;

(g) the Cyberjaya outlet's EBITDA margin in April 2021 was thus 0.6%, not 19.2%, and so the Cyberjaya Representation that the Cyberjaya outlet had attained an EBITDA margin of over 20% in April 2021 was incorrect.

68 Farm to Fork does not directly engage with Mr Kim's calculations, (which he had done in August 2021 for the month of April 2021). In particular, it does not seek to prove that the figure of RM57,575 stated as COGS for the Cyberjaya outlet in April 2021 in the "Outlet P&L" was based on *actual* costs, rather than being a figure that had simply been input into the Outlet P&L based on some target.[31] Instead, it relies on a *later* document, the audited financial statement for 2021 ("AFS 2021"), to contend that the "COGS Margin of 35%

[31] Transcript, 9 February 2024, 108:16 to 109:17.

was attainable, and consequently, [the] 20% Cyberjaya Outlet EBITDA Margin was attainable".[32]

69 The question, however, is not whether looking at Farm to Fork's performance over a whole year (which includes the month of April 2021), an EBITDA margin of 20% for the Cyberjaya outlet in April 2021 "was *attainable*" [emphasis added]. Rather, it is whether that EBITDA margin for that outlet in April 2021 was *attained*. Likewise, Farm to Fork submits that an EBITDA margin of 20% for the Cyberjaya outlet was "realistic".[33] Again, the question is not whether that margin was "realistic", but whether it had actually been achieved.

70 The AFS 2021 merely shows that a COGS margin of around 35% was achieved for the financial year until 30 September 2021 (one of the 12 months in that period being April 2021), with the Cyberjaya outlet being one of Farm to Fork's outlets. The AFS 2021 does not show that the *Cyberjaya outlet* had a COGS margin of 35% (and consequently an EBITDA margin of 20%) in *April 2021*, but that is what the Cyberjaya Representation represented. When Mr Kim expressed his concerns to the Founders in August 2021, April 2021 was a period in the past, and he used historical data, not targets or forecasts, to work out what the Cyberjaya outlet's financial performance *was*.

71 Having produced audited financial statements for the year that included the month of April 2021, Farm to Fork must have had the accounting documents from which the *actual* EBITDA margin for the Cyberjaya outlet could be

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32 Affidavit of Evidence-in-Chief of Christian Edelmann dated 11 November 2023 ("CE") at para 28–31.

33 PCS at paras 22 and 261.

calculated, but it never locked horns with Mr Kim on such a calculation; Farm to Fork simply relied on AFS 2021 as a whole to argue that the EBITDA margin of 20% for the Cyberjaya outlet in April 2021 was "attainable" or "realistic", which misses the point.

72 I accept Mr Kim's evidence that in April 2021 the Cyberjaya outlet had not performed as well as the Cyberjaya Representation represented it had, indeed the performance was substantially poorer: the Cyberjaya Representation was untrue.

73 It is not necessary for me to reach a conclusion on whether the Founders had also represented that other outlets were performing, or could perform, as well as the Cyberjaya outlet had in April 2021. For the purposes of this case, it is sufficient that I have found that the Cyberjaya Representation was untrue.

74 I do not, however, make a finding that the Founders had engaged in accounting fraud. What appears to have happened is that the EBITDA margin was derived from a COGS margin which was input based on what Farm to Fork was targeting to achieve (rather than what had actually been achieved).[34] The Founders may have been fraudulent in doing so; or this may have been done carelessly, or innocently. The parties were at cross-purposes as to how to prove the correctness or otherwise of the Cyberjaya Representation, and Mr Kim's explanation of his calculations was fleshed out only in his re-examination, by which time the cross-examination of Mr Edelmann and Mr Weins had been completed.

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[34] Transcript, 9 February 2024, 108:16 to 109:17.

75 As such, I do not find fraud, but I do find that the Founders had misstated Farm to Fork's financial position in that the Cyberjaya Representation was untrue.

76 I nevertheless find that Mr Kim had a *reasonable suspicion* that the Founders were engaged in accounting fraud. In making this finding, I have had regard to the sequence of events leading to the Consultancy Agreement being terminated summarily, and Mr Kim being terminated as CFO:

(a) In seeking to interest potential investors, Mr Kim had made representations to them about Farm to Fork's financial performance that were based on the Founders' Cyberjaya Representation;[35]

(b) One of these potential investors, Hanwha, had by the end of July 2021 obtained final approval from its Investment Committee;[36]

(c) When Mr Kim looked into the operations of the Central Kitchen, he discovered that the Cyberjaya Representation was untrue;[37]

(d) Mr Kim was concerned that Farm to Fork, and he himself (among others), thus ran the risk of being accused of accounting fraud or misrepresentation;[38]

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35 Twelfth Affidavit of Evidence-in-Chief of Kim Jin Wu dated 1 November 2023 ("12KJW") at paras 27–35.

36 12KJW at para 36.

37 12KJW at paras 37–52.

38 12KJW at para 63.

(e) In particular, Mr Kim did not want Hanwha to invest based on representations that were premised on the Cyberjaya Representation (which he had discovered was untrue);[39]

(f) From 20 August 2021, Mr Kim raised his concerns with the Founders;[40]

(g) On 1 September 2021, during a call from around 5.30pm, Farm to Fork purported to terminate the Consultancy Agreement and Mr Kim's services as CFO.[41]

77 Farm to Fork maintains, though, that even if there were accounting fraud and/or misrepresentation (which is denied), if Adamas were to reveal this to interested parties there would nevertheless be a breach of the confidentiality obligations in the Consultancy Agreement.[42] I evaluate this by first looking at the pleadings.

The pleadings on breach of confidentiality obligations

78 Farm to Fork asserts in its statement of claim that in breach of the confidentiality obligations, Adamas "unlawfully made use of Confidential Information and/or disclosed Confidential Information to third parties".[43] The particulars provided of that allegation repeat earlier paragraphs of the statement of claim, relating to the Defendants' communications with Mr Ahn[44], Mr

39 12KJW at paras 64 and 76.

40 12KJW at paras 65–79.

41 12KJW at paras 83–84.

42 PCS at para 277.

43 SOC at para 35.

44 SOC at para 17.

Nicolas El Baze ("Mr El Baze"),[45] Mr Shaik Ali Fikri Bajunid ("Mr Bajunid"),[46] and a letter titled "Joint-Responses to Show Cause Letter – Received September 3, 2021" (the "Joint Letter") which was forwarded to certain Malaysian government officials.[47]

79 Farm to Fork also says:[48]

(a) it "believes that [Mr Kim] disclosed Confidential Information in the Appeal Letter to Hanwha"; and

(b) on 16 November 2021, in breach of (among other things) the confidentiality obligations, Mr Kim sent the 16 November 2021 Email to various shareholders and investors of Farm to Fork about this suit, directing them to access affidavits filed which contained Confidential Information.

80 The "Appeal Letter" was a letter dated 1 September 2021 from certain employees of Farm to Fork, to the company and its shareholder FTFI asking that Mr Kim be reinstated as Farm to Fork's CFO.[49]

81 In response to the alleged breach of confidentiality obligations, the Defendants plead the following (among other things) in their defence and counterclaim:

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45 SOC at paras 18 and 28.

46 SOC at para 19.

47 SOC at para 29.

48 SOC at paras 31–31A.

49 SOC at para 18.

(a) they deny breach of the confidentiality obligations;[50]

(b) the Consultancy Agreement continued in force, Adamas was still Farm to Fork's consultant, and Mr Kim was still Farm to Fork's CFO; accordingly, the Defendants were entitled to continue communicating information relating to Farm to Fork to investor representatives such as Mr Ahn and Mr El Baze, and to employees like Mr Bajunid;[51]

(c) even if the Consultancy Agreement had validly been terminated, Adamas was not in breach of the confidentiality obligations:[52]

(i) under Malaysian law, the confidentiality obligations were unenforceable as restraints of trade;[53]

(ii) even if the confidentiality obligations were enforceable, Adamas had not breached them:

(A) no Confidential Information had been disclosed to Mr Ahn, Mr El Baze or Mr Bajunid;

(B) even if Confidential Information had been disclosed to Mr Ahn, Mr El Blaze or Mr Bajunid, they were not "third parties" within cl 8.2 of the Consultancy Agreement, and would in any case have had access to the information disclosed to them;

(C) any disclosure of Confidential Information fell within the exceptions in cl 8.2 of the Consultancy

50 DCC at para 66.

51 DCC at para 67.

52 DCC at para 68.

53 DCC at para 69.

Agreement – it was disclosed in the proper course of Adamas' duties or was required by law, the use or disclosure of the information was authorised by Farm to Fork, or the information was already in, or had come into, the public domain otherwise than through Adamas' disclosure;[54] and

(iii) in relation to the disclosures made or allegedly made by Mr Kim to Mr Ahn, Mr El Baze, and Mr Bajunid, what was done by Mr Kim cannot be imputed to Adamas.[55]

82 Further, the Defendants:

(a) deny having disclosed any Confidential Information to Hanwha;[56]; and

(b) deny that the 16 November 2021 Email contained any Confidential Information, assert that the information would not be confidential vis-à-vis its recipients, and deny any breach of the confidentiality obligations.[57]

(c) deny having forwarded the Joint Letter to the Malaysian government officials.[58]

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54 DCC at paras 70–72.

55 DCC at paras 73 and 78.

56 DCC at para 63.

57 DCC at para 63A.

58 DCC at paras 61 and 76.

83 I have summarised the parties' pleaded positions at some length because Farm to Fork contends that the Defendants' pleadings were deficient; specifically:

(a) that the Defendants have not pleaded that, as a matter of law, if Mr Kim had discovered accounting fraud it would not be a breach of confidence for him to disclose that;[59] and

(b) that the Defendants have only pleaded defences to breach of confidence in relation to disclosures to Mr Ahn, Mr El Baze, and Mr Bajunid.[60]

84 At this juncture, I will deal with the former, *ie*, whether on the Defendants' pleadings they can argue that, as a matter of law, it would not be a breach of confidence to disclose accounting fraud. I will address the latter (*ie*, whether the Defendants have pleaded defences to all the various allegations against them) as I consider Farm to Fork's specific allegations of breach of confidence.

85 The dispute over the Defendants' pleadings arose because the Defendants' closing submissions prompted me to query if an aspect of those submissions related to a pleaded defence. The Defendants' closing submissions stated:[61]

> The second point arises from the Plaintiff's clarification at the trial that its position is that even if Mr Kim had discovered accounting fraud, this still constitutes a breach of confidence because "the contract says what it says". This is unsustainable as a matter of law. It is well accepted, as noted in *Shanmugam*

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59 Plaintiff's Further Submissions dated 5 July 2024 ("PFS") at paras 3–12.

60 PFS at paras 13–17.

61 DCS at para 91.

> *Manohar v Attorney-General and another* [2021] 3 SLR 600 ("***Shanmugam***"), that "*there is no confidence as to the disclosure of iniquity*", and "*no private obligations can dispense with* ***that universal one which lies on every member of society to discover every design which may be formed, contrary to the laws of the society, to destroy the public welfare***". Therefore, "*while it is well established that personal or private information is protected by the law of confidence… such information is* ***nevertheless not protected*** *where there is a* ***reasonable suspicion*** *that it* ***relates to crimes, frauds or misdeeds, or misconduct of such a nature that ought in the public interest be disclosed to others***". In this case, the Defendants had a "*reasonable suspicion*" that the Co-Founders' Representation was false and/or inaccurate, or that accounting fraud was being perpetrated. This fraud or misconduct was a matter which ought to be disclosed in the public interest, and the information relating to such fraud or misconduct would lose the protection of the law of confidence.
>
> [emphasis in original]

The parties then put in further submissions, in which Farm to Fork put forward its pleading objections.

86 In *Shanmugam Manohar v Attorney-General and another* [2021] 3 SLR 600 ("*Shanmugam*"), the applicant was a lawyer facing disciplinary proceedings before a Disciplinary Tribunal for alleged touting practices. In investigating a related matter, the Commercial Affairs Department ("CAD") had recorded statements from the applicant and other persons. The Attorney-General's Chambers, with the concurrence of the CAD, forwarded those statements to the Law Society for use in the disciplinary proceedings. The applicant sought declarations that the statements were confidential, and that it was improper and unlawful for them to have been provided to the Law Society. It was common ground that there was generally a duty of confidence, but it was also common ground that there was a public interest exception. The court found that the disclosure of the statements to the Law Society was justified in the public

interest, and thus, such disclosure was not in breach of confidence (*Shanmugam* at [81]–[94]).

87 On the Defendants' pleadings, Adamas' primary position is that the Consultancy Agreement still subsists, and that Mr Kim remains Farm to Fork's CFO; as such, the Defendants were authorised to communicate Confidential Information to investors and employees.[62] On the premise that Mr Kim was still Farm to Fork's CFO, Adamas does not rely on a public interest exception to justify the disclosures to Mr Ahn, Mr El Baze, and Mr Bajunid.

88 In the alternative, if the Consultancy Agreement had validly been terminated, Adamas relies on (among other things) the exceptions in cl 8.2 of the agreement, *ie*, that disclosure was in the proper course of Adamas' duties and/or was "required by law".[63]

89 As for Mr Kim, he pleads that (among other things) the disclosures to Mr Ahn, Mr El Baze, and Mr Bajunid were not unauthorised and/or not to Farm to Fork's detriment, but were in Farm to Fork's interests (in that Mr Kim had found the behaviour of the Founders to be wrongful, and believed that they would continue to conceal the truth from the other directors, shareholders and investors).[64] Mr Kim also pleads that in relation to the 16 November Email, disclosure would fall within the exceptions listed in cl 8.2 of the Consultancy Agreement, including that it was in the proper course of Adamas' duties and/or was "required by law".[65]

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62 DCC at para 67.

63 DCC at paras 72(b)(i) and 77.

64 DCC at para 92(d).

65 DCC at para 91G(b).

90 The Defendants' reliance on the "required by law" exception in cl 8.2 is reliance on a contractual provision, rather than on a public interest exception. Moreover, saying that a disclosure is "required by law" is conceptually different from saying that the disclosure is "justified in the public interest". A disclosure may be "justified in the public interest" even where the person disclosing is not "required by law" to make that disclosure.

91 In *Shanmugam*, the court did not find that the AGC and CAD were "required by law" to disclose the statements to the Law Society, *ie*, that the AGC and CAD were under a legal obligation to make that disclosure. The court disagreed with the applicant that the disclosure had to be "necessary"; disclosure could still be warranted even if there were alternatives to disclosure. The court held that the disclosure could be made where the public interest reasonably requires it, found that the decision to disclose the statements was a reasonable one, and thus concluded that disclosure was justified in the public interest (*Shanmugam* at [94]–[95].

92 The court in *Shanmugam* quoted from the judgment of Lord Denning MR in *Initial Services Ltd v Putterill* [1968] 1 QB 396 at 405 ("*Initial Services*"), which in turn quoted from *Annesley v Anglesea (Earl)* (1743) LR 5 QB 317n ("*Annesley*") that "no private obligations can dispense with that universal one which lies on every member of society to discover every design which may be formed, contrary to the laws of the society, to destroy the public welfare" (*Shanmugam* at [82]). That extracts suggests that there is some universal *obligation* to discover unlawful designs to destroy the public welfare. Even so, the court in *Shanmugam* did not decide the matter on the basis that the AGC and CAD were *legally obliged* to disclose the statements, but rather that they were *justified* in doing so in the public interest.

93 In *Sa'adiah bte Jamari v Public Prosecutor* [2023] 3 SLR 191 ("*Sa'adiah*"), Aedit Abdullah J ("Abdullah J") cited *Initial Services* as well as *Malone v Metropolitan Police Commissioner* [1979] Ch 344 (at 377) for the proposition that information is not protected by the law of confidence "where there is a reasonable suspicion that it relates to crimes, frauds or misdeeds, or misconduct of such a nature that ought in the public interest be disclosed to others" (*Sa'adiah* at [75]). These observations were made in the context of deciding whether there was scope for any right or privilege to be recognised protecting the privacy or confidentiality of information from one's own body and Abdullah J found that there was no scope for the development of any such right or privilege. Abdullah J found that on the facts, the Prosecution could rely on the toxicology report in respect of blood and urine samples collected from the accused (at [5]). He did not say, however, that the Prosecution was "required by law" to rely on the report.

94 Although Lord Denning MR in *Initial Services* reproduced a quote from *Annesley* about there being a "universal [obligation] on every member of society to discover every design which may be formed, contrary to the laws of the society, to destroy the public welfare", he did not elaborate on whether that was a *legal* obligation, or a *moral* obligation. Locally, neither the court in *Shanmugam* nor that in *Sa'adiah* decided that there is a legal obligation to disclose information reasonably suspected to relate to "crimes, frauds or misdeeds, or misconduct of such a nature that ought in the public interest be disclosed to others" (*Sa'adiah* at [75]). Indeed, the fact that some, but not all, offences are reportable offences militates against the general existence of a legal obligation on everyone to report any criminal conduct, let alone wrongdoing more generally.

95 The Defendants here plead that they had made disclosures that they were "required by law" to make. They are entitled to rely on that. Indeed, as I elaborate below, some of the disclosures were "required by law". The question remains whether the Defendants' pleadings are also sufficient to support their submissions on the public interest exception.[66]

96 The Defendants plead that the Founders had made representations (including the Cyberjaya Representation) which the Defendants later found to be false,[67] and so there was no breach of confidence in disclosing that. However, the legal concepts advanced by the Defendants for that conclusion do not include the public interest exception. Instead, the Defendants invoke contractual exceptions in cl 8.2 of the Consultancy Agreement, and say: the disclosures were not unauthorised, they were made in the proper course of Adamas' duties, were "required by law", and they were not to Farm to Fork's detriment but in Farm to Fork's interests.

97 Put simply, in denying breach of confidence the Defendants say they had discovered accounting fraud or misrepresentation, and disclosed that to interested parties, but they do not say that this was justified in the public interest. I consider this a case where all the material facts have been pleaded, albeit in support of a different legal conclusion than that which is subsequently advanced (see *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 ("*How Weng Fan*") at [29(a)]).

98 Farm to Fork contends that the Defendants ought to have pleaded as a material fact that disclosure was justified in the public interest. Farm to Fork

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66 DCS at para 91.

67 DCC at paras 17–17A.

further contends that it is prejudiced since it did not during the trial lead any evidence or question Mr Kim on whether there was any public interest for Mr Kim to disclose the allegedly confidential documents.[68] Farm to Fork does not, however, suggest what evidence it might have led, or sought to obtain from Mr Kim, to the effect that it was *not* in the public interest for accounting fraud or misrepresentation to be disclosed to interested parties. Farm to Fork does not say what facts are not now before the court, for the court to decide whether such disclosure was justified in the public interest.

99 Indeed, Farm to Fork goes on to make submissions on how, if the Defendants are allowed to rely on the public interest exception, that has not been established:[69]

(a) accounting fraud has not been proven, and the AFS 2021 shows that there was no accounting fraud;

(b) disclosure was not made to a professional regulatory body, unlike in *Shanmugam*;

(c) the Defendants have not proven a "strong public interest" in the disclosure, and a "mere allegation of iniquity is not of itself sufficient" – the person making the disclosure must have made investigations reasonably open to him, and the allegation must reasonably be regarded as being a credible allegation from an apparently reliable source;

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68 PFS at para 9.

69 PFS at paras 18–28.

(d) the confidentiality obligations here are contractual obligations such that greater weight should be accorded to the confidentiality obligations, and Mr Kim was aware of the confidentiality obligations;

(e) the Defendants had not attempted to properly clarify the purported accounting fraud with Farm to Fork;

(f) confidential information has been disclosed to various parties including third parties with no direct relations to Farm to Fork (*eg*, potential investors), such as in the 16 November 2021 Email and the email dated 16 January 2023 (the "16 January 2023 Email").

100 In any event, even if the Defendants ought to have pleaded the public interest exception, the court can allow them to rely on it if the parties had engaged with the issue at trial (*How Weng Fan* at [29(b)]), or if it would be clearly unjust for the court not to allow the issue to be raised (see *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [40]).

101 At trial, the parties did engage with the issue of whether the Defendants had disclosed accounting fraud or misrepresentation, in that they canvassed whether there was accounting fraud or misrepresentation. The parties did not, however, engage with the issue of whether, if there were accounting fraud or misrepresentation, it would be in the public interest for the Defendants to disclose this to interested parties.

102 At the close of the trial, I questioned the parties as to whether, if Mr Kim had indeed discovered accounting fraud, his communications with Mr Ahn, Mr El Baze and Mr Bajunid would be a breach of the Consultancy Agreement. In response, Farm to Fork's counsel stated that Farm to Fork's position was that

the contract says what is says, and even if there were fraud, there would still be a breach of the confidentiality obligations.[70] Farm to Fork maintains that position in its closing submissions.[71]

103 I consider that the Defendants can seek to rely on the public interest exception in the present case:

(a) although public interest was not raised in the Defendants' pleadings, or at trial, the Defendants had pleaded that the disclosures included disclosure to interested parties of accounting fraud or misrepresentation which the Defendants had discovered;

(b) I have found that there was misrepresentation of Farm to Fork's financial position, in that the Cyberjaya Representation was untrue;

(c) I do not see what evidence Farm to Fork could obtain, to prove that disclosure of accounting misrepresentation to interested parties is *not* in the public interest; and

(d) the parties have made submissions as to whether the public interest exception applies, and in Farm to Fork's submissions it is notable that Farm to Fork does not argue that if there were accounting fraud or misrepresentation, disclosure of that to interested parties would *not* be in the public interest.

104 I have found that there was accounting misrepresentation, and it would clearly be unjust to shut the Defendants out from justifying their disclosure of that accounting misrepresentation to interested parties as being in the public

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70 Transcript, 9 February 2024, at 131:16–131:20 and 134:11–134:32.

71 PCS at para 277.

interest, just because they had pleaded that disclosure was "required by law" rather than "justified in the public interest".

105 With that, I turn to address the disclosures complained of.

Are the confidentiality obligations enforceable?

106 I do not accept the Defendants' contention that the confidentiality obligations are unenforceable under Malaysian law as restraints of trade. The Defendants rely on s 28 of the Malaysian Contracts Act 1950, which provides:

> **Agreement in restraint of trade void**
>
> **28.** Every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void.

I do not find that the confidentiality obligations restrained Adamas (or Mr Kim) from exercising a lawful profession, trade, or business of any kind, and indeed, the disclosures made by Adamas (or Mr Kim) were not made in the exercise of any lawful profession, trade, or business. In this regard, several Malaysian cases have accepted the validity of confidentiality obligations in contracts (see *Electro Cad Australia Pty Ltd & Ors v Melati RCS Sdn Bhd & Ors* [1998] 3 CLJ Supp 196 at 207–208, 223, and 226; *Svenson Hair Center Sdn Bhd v Irene Chin Zee Ling* [2008] 8 CLJ 386 ("*Svenson*") at [14]–[15], and [16(b)]; *Angel Candies Sdn Bhd v Loo Yan Wah & Ors* [2015] 5 CLJ 364 at [41], and [50]–[52]; *Dynacast (Melaka) Sdn Bhd & Ors v Vision Cast Sdn Bhd & Anor* [2016] 6 CLJ 176 at [18]–[21], and [25]; *Karen Yap Chew Ling v Binary Group Services Sdn Bhd & Another Appeal* [2023] 7 CLJ 534 at [44]).

Were the Defendants' pleadings on confidentiality deficient?

107 As noted above (at [83(b)]), Farm to Fork asserts that the Defendants only plead a defence to some, but not all, of the alleged breaches of confidence. In evaluating this, one must first ask what breaches have been pleaded by Farm to Fork.

108 Farm to Fork pleads breaches of confidence in relation to the Defendants' disclosures to Mr Ahn, Mr El Baze, and Mr Bajunid, as well as the Joint Letter forwarded to certain Malaysian government officials (see [78] above). The Defendants' pleadings respond to all of these (see [81]–[82] above).

109 Further, Farm to Fork pleads that it believes that Mr Kim disclosed Confidential Information to Hanwha through the Appeal Letter (see [79(a)] above), and that it "has reason to believe" that in breach of confidence the Defendants disclosed confidential information when Mr Kim spoke with representatives of Hanwha.[72] The Defendants deny disclosing Confidential Information to Hanwha (see [82(a)] above). I thus reject Farm to Fork's submission that no defence is pleaded for Mr Kim's communication with Hanwha.[73]

110 Besides Mr Kim's communication with Hanwha, Farm to Fork also says that no defence is pleaded for the following instances of breach of confidence:[74]

(a) the Appeal Letter;

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72 Reply at para 51.

73 PFS at para 13(c).

74 PFS at para 13.

(b) a WhatsApp message from Mr Kim to Mr Rosland in the "MDV <> POP" group chat;

(c) the 16 January 2023 Email; and

(d) Mr Kim's correspondence between 16 and 18 January 2023, including Mr Kim's email dated 18 January 2023.

111 Farm to Fork does not, however, plead the Appeal Letter as an instance of breach of confidence in itself, but instead as an instance of solicitation.[75] The Defendants cannot be criticised for not pleading a defence to an allegation that is not pleaded against them. In so far as the Appeal Letter featured in the breaches of confidence that were pleaded, such as the disclosures to Mr Ahn, Mr El Baze, and Mr Bajunid, the Defendants' pleadings duly respond to that.

112 Similarly, Mr Kim's communications with Mr Rosland are pleaded in the statement of claim as an instance of solicitation,[76] and not as a breach of confidence. The Defendants do plead in response to the allegations in the statement of claim about Mr Rosland.[77] In turn, Farm to Fork pleads in its reply and defence to counterclaim that it had reason to believe that the Defendants – in breach of the non-solicitation and confidentiality obligations – had disclosed confidential information and attempted to solicit or encourage a potential investor, Malaysia Debt Ventures Berhad ("MDV"), to cease doing business with Farm to Fork. The Defendants did not file a pleading in response to the reply and defence to counterclaim. Without leave of court, they could not do so

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75 SOC at para 21.

76 SOC at para 30.

77 DCC at para 62.

(see O 18 r 4 of the Rules of Court (2014 Rev Ed)). But the Defendants are entitled to join issue with the assertions in the reply and defence to counterclaim.

113 The latest version of Farm to Fork's statement of claim is dated 6 January 2023.[78] Farm to Fork's allegations about the 16 January 2023 Email and Mr Kim's correspondence between 16 and 18 January 2023 related to subsequent events that were thus not covered in the statement of claim. Instead, Farm to Fork alleges in its reply and defence to counterclaim (the latest version of which is dated 15 January 2024) that the 16 January 2023 Email was a breach of confidentiality and non-solicitation obligations.[79]

114 In so far as Farm to Fork asserts claims for the first time in its reply and defence to counterclaim, rather than by amending its statement of claim to include them in there, it is not a fair criticism to say that the Defendants' defence and counterclaim (which was a pleading filed *before* the reply and defence to counterclaim) does not plead a defence to those allegations. As for the other correspondence of Mr Kim's in the period between 16 and 18 January 2023, Farm to Fork does not plead any claims, not even in its reply and defence to counterclaim. It is unsurprising that the Defendants do not plead a defence to those claims, when those claims were never pleaded in the first place.

115 In summary, I do not consider the Defendants' pleadings about breach of confidence to be deficient.

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78 SOC at p 1.

79 Reply at para 51A.

Confidentiality – preliminary matters

116 As the outset, it is helpful to bear in mind certain preliminary points which the Defendants properly highlight:[80]

(a) first, the burden is on the plaintiff to prove that confidential information was taken (see *Stratech Systems Ltd v Nyam Chiu Shin (alias Yan Qiuxin) and others* [2005] 2 SLR(R) 579 at [38]);

(b) second, when a plaintiff brings a claim grounded in breach of confidence, that plaintiff must plead with sufficient particularity the information forming the subject matter of that claim (see *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng and others* [2024] 3 SLR 1098 ("*Shanghai Afute*") at [107]); and

(c) third, a plaintiff who fears that disclosure of his confidential information in legal proceedings would destroy their confidentiality may seek the necessary orders to protect their confidentiality (*Shanghai Afute* at [107]), otherwise documents filed or used in court may become part of the public domain and lose any confidential status (see *Summit Holdings Ltd and another v Business Software Alliance* [1999] 2 SLR(R) 592 at [43]) – here, Farm to Fork never sought any orders protecting the confidentiality of any documents filed or used in court, and the trial proceeded in open court.

117 I do not, however, agree with Adamas' contention that what Mr Kim did should not be imputed to Adamas. Whether Mr Kim's actions should be attributed to Adamas is determined in the legal and factual context of the case

[80] DCS at paras 86–90.

at hand (see *Red Star Marine Consultants Pte Ltd v Personal Representatives of Satwant Kaur d/o Sardara Singh, deceased and another* [2020] 1 SLR 115 at [41]). Mr Kim was Adamas' sole shareholder and director, Adamas only acted through Mr Kim, and there are no legal considerations pointing away from attributing Mr Kim's conduct to Adamas. Thus, what Mr Kim did in relation to Farm to Fork is properly imputed to Adamas. In any event, this point was not pursued by the Defendants in their closing submissions.

118 Farm to Fork pleads that the confidentiality obligations are those set out in cl 8 of the Consultancy Agreement. That includes cl 8.3 which is about the return of Client Property upon request by Farm to Fork. As discussed below, Farm to Fork had used cl 8.3 of the Consultancy Agreement as part of its case on breach of removal obligations under cl 11 of the agreement.[81] Thus, Farm to Fork's submissions on breach of the confidentiality obligations cite cl 8.2 but not cl 8.3. In this section, when I address whether the confidentiality obligations have been breached, I likewise deal only with cll 8.1 and 8.2 of the Consultancy Agreement. I will deal with cl 8.3 in relation to removal obligations, in a later section (see [217]–[235] below).

119 I now turn to specifically deal with the allegations of breach.

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[81] Reply at para 52.

Were the confidentiality obligations breached?

Had Adamas breached the confidentiality obligations by the Appeal Letter?

120 The Appeal Letter[82] was a letter dated 1 September 2021 purportedly from "Managers, Head of Departments, and Employees, Farm to Fork Inc (Pop Meals)" and addressed to the "Board of Directors and Shareholders, Farm to Fork Inc (Pop Meals)". It was circulated by Ms Ana Ululiyatul ("Ms Ana") through email on 2 September 2021 at 11.41am[83] (the "Appeal Email"), and was addressed to various individuals including Mr Ahn and Mr El Baze, also copying in Mr Kim and one Mr Jeremy Clark (among others). The Appeal Email and Appeal Letter conveyed a request for reconsideration of Mr Kim's removal, saying that those who signed the letter were extremely happy with his leadership throughout his tenure, and listing various key achievements that included a general quantifiable reduction in monthly costs from April 2021 to August 2021.

121 Farm to Fork pleads that Mr Kim had procured, facilitated, or encouraged the employees to send the Appeal Letter[84] and the Appeal Email[85] and that by this:

> (a) the Defendants "induced or attempted to induce the employees of [Farm to Fork], or interfered with or disrupted [Farm to Fork's] relationship with its employees";[86]

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82 2AB at pp 711–713.

83 2AB at p 744.

84 SOC at para 21.

85 SOC at para 22.

86 SOC at para 21.

(b) the Defendants "induced, interfered with or disrupted [Farm to Fork's] relationship with Mr Shane Ang…, a principal of Korea Investment Partners Southeast Asia – one of [Farm to Fork's] investors and shareholder in FTFI"[87]

(c) the Defendants "induced, interfered with or disrupted [Farm to Fork's] relationship with Mr Jeremy Clark…, a consultant of [Farm to Fork]" who terminated his consultancy services with Farm to Fork after receiving the Appeal Letter from Ms Ana.[88]

122 Farm to Fork does not, however, plead that the Defendants were in breach of confidence in allegedly instigating the sending of the Appeal Letter and the Appeal Email. Breach of confidence is only alleged in relation to the Appeal Letter for Mr Kim *subsequently* sending the Appeal Letter to Mr El Baze and Mr Bajunid.[89] Farm to Fork also says that it "believes" that Mr Kim disclosed Confidential Information in the Appeal Letter to Hanwha.[90]

123 Had Farm to Fork pleaded an allegation of breach of confidence against the Defendants in respect of the sending of the Appeal Letter and Appeal Email to those who received the Appeal Email (but this was not pleaded), that would have entailed consideration of whether FTFI as Farm to Fork's sole shareholder and/or the individual recipients of the email were "third parties" to whom Confidential Information should not be disclosed under cl 8.2 of the Consultancy Agreement, or if disclosure to them should in any event be regarded as authorised by Farm to Fork. This was not fully explored at trial.

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87 SOC at para 22.

88 SOC at para 23.

89 SOC at paras 18–19.

90 SOC at para 31.

124 I thus do not allow Farm to Fork to make in closing submissions an unpleaded breach of confidence claim in respect of the sending of the Appeal Letter and Appeal Email, especially when it chose to plead only breach of non-solicitation obligations in that regard. In any event, Farm to Fork has no direct evidence that Mr Kim was involved in the preparation and sending of the Appeal Letter (and the Appeal Email), and I accept Mr Kim's evidence that he was not involved.[91]

125 In summary, Farm to Fork cannot pursue unpleaded breach of confidence claims against the Defendants in relation to the sending of the Appeal Letter and Appeal Email, and even if they could, I would have dismissed those claims.

Had Adamas breached the confidentiality obligations by Mr Kim's 2 September 2021 correspondence with Mr Ahn?

126 Farm to Fork pleads that the Defendants acted in breach of confidence by way of Mr Kim's emails to Mr Ahn on 2 September 2021, describing Mr Ahn as "Managing Partner of Rakuten Capital, one of the Plaintiff's investors and shareholders".[92] At trial, however, Farm to Fork changed its position as to who Mr Ahn was. Farm to Fork now says that Mr Ahn was *not* a managing partner of Rakuten *Capital* (one of Farm to Fork's investors and shareholders), but instead "a Singapore-based managing partner of Rakuten *Ventures*" [emphasis added], with Rakuten Capital and Rakuten Ventures said to be "distinct and separate".[93] Farm to Fork, however, did not amend its pleadings which expressly state that Mr Ahn was a managing partner of Rakuten Capital,

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91 Transcript, 8 February 2024, 64:11–64:16.

92 SOC at para 17.

93 PCS at para 134.

nor did it lead any evidence as to which Rakuten organisation(s) he was involved with.

127 The Defendants' pleaded position is that Mr Ahn was a representative of both Rakuten Capital and Rakuten Ventures: he was a Partner of Rakuten Capital (FTFI's largest shareholder and investor, which had a representative on FTFI's board), and Managing Partner of Rakuten Ventures.[94] On the pleadings, it was (and is) thus common ground that Mr Ahn was a representative of Rakuten Capital.

128 The Defendants point to Rakuten Capital's website as at 3 November 2021, which described Rakuten Capital as the corporate venture capital arm of Rakuten, said that Rakuten Ventures was one of Rakuten Capital's funds, and listed Mr Ahn as one of the Partners involved with Rakuten Ventures.[95] They also point to Mr Ahn's Crunchbase and PitchBook profiles which mention his involvement with Rakuten Capital.[96] Further, it was Mr Kim's evidence that Mr Swarup told him that Mr Ahn was Mr Swarup's "boss", and that Rakuten Ventures was "just an internal division within Rakuten Capital".[97] Mr Swarup was Rakuten Capital's representative on FTFI's board, and in that capacity he was involved in the management of Farm to Fork. I regard what Mr Swarup told Mr Kim as an admission as to who Mr Ahn was, and I find that Mr Ahn was a representative of Rakuten Capital (which is consistent with publicly available information, and moreover is what both parties pleaded).

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94 DCC at para 50(a).

95 3AB at pp 282–284.

96 DCS at para 96; Defendants' Bundle of Documents dated 29 January 2024 at pp 36 and 42.

97 Transcript, 9 February 2024, 64:14–64:25.

129 Farm to Fork contends nevertheless that whichever Rakuten organisation Mr Ahn represented, he was a "third party" to whom the Defendants could not disclose Confidential Information, or this would be in breach of cl 8.2 of the Consultancy Agreement.[98]

130 Farm to Fork pleads that:[99]

(a) Mr Kim informed Mr Ahn of the termination of the Consultancy Agreement and matters relating to the Hanwha investment;

(b) Mr Kim forwarded Mr Ahn an email dated 20 August 2021 containing Confidential Information relating to Farm to Fork's audited finances and financial performance;

(c) Mr Kim disclosed Confidential Information relating to an internal investigation report prepared by Farm to Fork's Finance Department (the "Investigation Report"); and

(d) Mr Kim disclosed Confidential Information relating to Farm to Fork's potential investment from Hanwha and an internal memorandum marked "Private and Confidential" containing information concerning the business, affairs, and finances of Farm to Fork.

131 On these, I agree with the Defendants that:[100]

(a) Mr Ahn already knew about the termination of the Consultancy Agreement from Ms Ana's Appeal Email dated 2 September 2021 at

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98 PCS at paras 134–138.

99 SOC at para 17.

100 2AB at pp 749, 752–756, 758 and 760.

11.41am (which Mr Kim was copied on) – by the time Mr Kim communicated with Mr Ahn later that evening at 10.11pm, the fact of the termination was not confidential vis-à-vis Mr Ahn;

(b) Farm to Fork's audited finances are not confidential but publicly available;

(c) Farm to Fork has not identified what in the Investigation Report is "Confidential Information"; and

(d) the emails were filed in the court file and used in the proceedings in unredacted form and without any orders protecting their confidentiality – they were all included in the agreed bundle of documents.

132 In its submissions, Farm to Fork complains that Mr Kim had told Mr Ahn that Farm to Fork is "at the brink of bankruptcy with only US$1.6m in cash reserves and a 5 month average burn of US$700,000 (*ie*, 2 month runway)".[101] The suggestion is that financial information such as this should have been kept from Farm to Fork's investors, even its parent company's largest shareholder Rakuten Capital (which had a representative on FTFI's board). However, Farm to Fork's Mr Weins had admitted that Mr Swarup (who was on the FTFI board) could share information with the partners in Rakuten Capital – and I find that those partners included Mr Ahn. I would not regard such information as Confidential Information *vis-à-vis* Mr Swarup: Farm to Fork being on the verge of bankruptcy is information that he as a board member of FTFI would be entitled to know (and Mr Weins confirmed that Farm to Fork provides information about its financial position to the FTFI board, and to

[101] PCS at para 130(a).

investors).[102] By extension, it would not be Confidential Information vis-à-vis Mr Ahn, to whom Mr Swarup could share such information within Rakuten Capital. This conclusion is strengthened by the fact that Mr Ahn was Mr Swarup's "boss".

133 I do not accept the Defendants' defence that Mr Kim's communication was done "in the proper course of [Adamas'] duties" within cl 8.2 of the Consultancy Agreement. As I have found (see [46] and [76(g)] above), the Consultancy Agreement and Mr Kim's services had been terminated with immediate effect during the call from 5.30pm on 1 September 2021. Moreover, the termination notice stated that Adamas and Mr Kim were no longer authorised to communicate with any of Farm to Fork's investors, suppliers, customers, employees, or business partners regarding Farm to Fork's business or financials.[103]

134 However, I find that the disclosures to Mr Ahn were "required by law", in that the Defendants were concerned that potential investors, Hanwha in particular, should not be investing based on representations as to Farm to Fork's financial position which (to the extent of the Cyberjaya Representation) were untrue. With Mr Kim (and by extension Adamas) having been involved in making representations to potential investors to procure investments into Farm to Fork, they were obliged to take steps to correct representations that they had found to be untrue, or to prevent investments from being made in reliance on those representations. To that end, Mr Kim was justified in communicating to Mr Ahn his concerns about having been "terminated without notice yesterday for exposing an accounting fraud related to imminent investment from the

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102 Transcript, 1 February 2024, 53:5–53:12 and 61:9–61:12.

103 2AB at p 707.

Korean conglomerate, Hanwha";[104] and that he had told the Founders "the better option would be to tell Hanwha the truth".[105]

135 I further find that Mr Kim's disclosure to Mr Ahn was justified in the public interest. This is because Mr Kim had found that there had been accounting misrepresentation, a potential investor (Hanwha) was about to invest based on that misrepresentation, and Mr Kim's services had been terminated summarily such that he could do nothing more as Farm to Fork's CFO. Although I have not found accounting fraud, I have found that Mr Kim had a reasonable suspicion of accounting fraud (see [76] above). The Defendants accept that the disclosure must be made to a person who has a proper interest in receiving that information (*Initial Services* at 405G, *X Pte Ltd and another v CDE* [1992] 2 SLR(R) 575 at [40]). Mr Ahn was such a person – he was a representative of Rakuten Capital, FTFI's largest shareholder, and was also the "boss" of Rakuten Capital's representative on FTFI's board, Mr Swarup.

136 For the above, reasons, I dismiss Farm to Fork's breach of confidence claim in relation to Mr Kim's disclosures to Mr Ahn.

Had Adamas breached the confidentiality obligations by Mr Kim's correspondence with Mr El Baze on 3 September and/or 6 September 2021?

137 Farm to Fork pleads that it was a breach of confidence for Mr Kim to send Mr El Baze emails on 3 September 2021 and 6 September 2021. Farm to Fork says that these emails constituted a misuse or disclosure of Confidential Information. According to Farm to Fork, this Confidential Information includes the Investigation Report, an internal memorandum, as well as the Appeal Letter

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104 2AB at p 749.

105 2AB at p 753.

(which disclosed, amongst other information, specific figures concerning Farm to Fork's ad hoc purchases and its monthly expenses).[106]

138 Mr El Baze was on the FTFI board, he was a General Partner of Partech Entrepreneur Fund III FCPI ("Partech"), which is one of Farm to Fork's investors (in that Partech was a shareholder in FTFI).[107]

139 My findings above in relation to Rakuten Capital as a shareholder in FTFI, and Mr Swarup as a board member of FTFI (and by extension, Mr Ahn as his "boss" in Rakuten Capital that he could share information with) apply equally to Partech as a shareholder in FTFI, and Mr El Baze as Partech's representative on the FTFI board.

140 Like Mr Ahn, Mr El Baze had received the Appeal Letter and Appeal Email directly from Ms Ana, before being sent the Appeal Letter again by Mr Kim. In so far as Farm to Fork complains about Mr Kim sharing the internal memorandum with Mr El Baze, Mr El Baze had already received that from the Founders even before Mr Kim's services were terminated.[108] Moreover, Mr Weins acknowledged that the Founders had explained to the FTFI board (including Mr El Baze) the situation with Mr Kim and the gist of the correspondence in the period between 20 and 31 August 2021.[109]

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106 SOC at paras 18 and 28.

107 SOC at para 18; PCS at para 191.

108 Transcript, 30 January 2024, 15:30–15:32, 17:10–17:13 and 18:21–18:30; Transcript, 1 February 2024, 95:14–95:20 and 98:31 to 99:3.

109 Transcript, 1 February 2024, 100:14–100:21.

141 Farm to Fork focuses on Mr Kim's 3 September 2021 email to Mr El Baze. Regarding Mr Kim's 6 September 2021 email to Mr El Baze,[110] Farm to Fork cursorily asserts:[111]

> In relation to the email from Kim to Nicolas on 6 September 2021, the email contained Confidential Information which include investment details with Hanwha as well as the 3 Sep Joint Response [the "Joint Letter"] and matters relating to the Plaintiff's auditors which also relate to the business affairs and finance of the Plaintiff.

142 The email itself, however, mentions:[112]

(a) Mr Weins having sent out emails announcing Mr Kim's termination to the investors (including Hanwha) – it contains no "investment details with Hanwha", as alleged by Farm to Fork;

(b) the Joint Letter, sent in response to the show cause letters from Farm to Fork; and

(c) KPMG having reached out due to the cancellation of Farm to Fork's audit launch meeting, and KPMG considering resigning as auditor.

143 I do not regard any of these as matters that Farm to Fork could keep confidential from Mr El Baze, an FTFI director. Further, as with Mr Kim's disclosures to Mr Ahn, I find that Mr Kim's disclosures to Mr El Baze were required by law, and justified in the public interest. Given the circumstances in which his services were terminated, Mr Kim was justified in thinking that the

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110 3AB at p 67.

111 PCS at para 150.

112 3AB at pp 67–68.

Founders might seek to keep in the dark even members on the FTFI board, and I do not fault him (and by extension Adamas) for providing Mr El Baze with such information about Farm to Fork.

Had Adamas breached the confidentiality obligations by Mr Kim's WhatsApp messages with Mr Bajunid?

144 Farm to Fork pleaded that Mr Kim's WhatsApp messages to Mr Bajunid dated 3 September 2021 misused and disclosed Confidential Information, with such Confidential Information including the Appeal Letter.[113]

145 Although Mr Bajunid was not one of the original recipients of the Appeal Letter by way of the Appeal Email, he was Farm to Fork's General Manager of the "Outlets Department". Farm to Fork complains that Mr Kim was providing to Mr Bajunid its monthly cost, financial and business information. Farm to Fork complains that Mr Bajunid, though an employee of Farm to Fork, was a "third party" to whom Confidential Information could not be disclosed by Adamas (or Mr Kim), and that Mr Bajunid was not authorised by Farm to Fork to receive the information.[114] Mr Bajunid was, however, involved in the financial reporting process for the Outlet P&L.[115] The Appeal Letter recounted improvements in the Central Kitchen operations, and reduction in costs – I would not regard those as matters to be kept confidential from Farm to Fork's General Manager of Outlets who was involved in financial reporting. Moreover, in these proceedings, Farm to Fork took no steps to protect the

113 SOC at para 19.

114 PCS at paras 161–163.

115 Supplementary Affidavit of Evidence-in-Chief of Kim Jin Wu dated 27 November 2023 at para 206.

confidentiality of the contents of the Appeal Letter – it was filed and used in unredacted form, and included in the Agreed Bundle.[116]

146 The thrust of Mr Kim's WhatsApp messages to Mr Bajunid was also not to convey Farm to Fork's monthly costs, financial and business information in the Appeal Letter, but rather to inform Mr Bajunid that for sending that letter to the shareholders of FTFI, Ms Ana had been suspended, and everyone who signed the letter had been sent a show cause letter (the first step in the termination process). Mr Kim's purpose of sending the WhatsApp messages was to convey the message to Mr Bajunid that it was not right to treat the staff in this way. Mr Bajunid responded to say that he would raise the issue with the Founders.[117]

147 I would also consider Mr Kim's disclosure to Mr Bajunid to be justified in the public interest: the thrust of his message to Mr Bajunid was that the Founders should not be allowed to do as they pleased, and Mr Bajunid responded to that positively. This should be viewed in the broader context of Mr Kim's efforts to stop the perpetuation of the accounting misrepresentation that he had discovered; as Mr Kim put it to Mr Bajunid, "[t]he shareholders control [Farm to Fork] not the [F]ounders".[118]

148 I thus dismiss Farm to Fork's breach of confidence claim in relation to Mr Kim's disclosures to Mr Bajunid.

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116 2AB at pp 711–713.

117 2AB at p 786.

118 2AB at p 786.

Had Adamas breached the confidentiality obligations by the Joint Letter?

149 The document referred to by Farm to Fork as the "3 Sep Joint Response" is actually dated *6* September 2021 (and I thus refer to it simply as the "Joint Letter"). The Joint Letter was a letter from eight employees (the "Employees") to Farm to Fork's Head of People Operations and Senior Management. In other words, the Joint Letter was addressed to the Founders. It was sent by an email of 6 September 2021, and described as a "Show Cause Reply", *ie*, it was the reply to show cause letters issued by Farm to Fork on 3 September 2021. The Minister of Human Resources, the Chief Secretary of the Ministry of Home Affairs (Kementerian Dalam Negeri), and the Director of Jabatan Kemajuan Islam Malaysia ("JAKIM" – the Department of Islamic Development Malaysia) were copied in the Joint Letter.[119]

150 Farm to Fork pleads in its reply and defence to counterclaim that it had reason to believe that Mr Kim had used the Employees as his agents to indirectly send the Joint Letter to high-ranking Malaysian government officials; and that in doing so, the Defendants interfered with and disrupted Farm to Fork's relationship with its employees.[120] But Farm to Fork has no direct evidence of any of this; indeed, Farm to Fork simply asserts in its closing submissions that Mr Kim instigated the Employees to send the Joint Letter so as to stir a reaction from the government authorities.[121]

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119 3AB at p 72; Plaintiff's Bundle of Documents (Volume No. 3) dated 31 January 2024 at p 163.

120 Reply at para 54(b), (f).

121 PCS at para 121.

151 Farm to Fork's case is based on an inference that the Employees were incapable of writing such an "eloquent" letter.[122]

152 I decline to draw that inference. Looking at Ms Ana's emails (*eg*, her email of 26 July 2021[123]), I cannot infer that she (or the other employees) could not have written the Joint Letter without Mr Kim's help. Mr Kim's evidence is that he had not even told the Employees to send the document,[124] and I accept his evidence on this.

153 Farm to Fork says that the Joint Letter enclosed the Appeal Letter which contained Confidential Information.[125] But it must be borne in mind that the Joint Letter was a response to show cause letters for sending the Appeal Letter, with the Employees explaining to the government authorities why sending the Appeal Letter to the directors and shareholders of FTFI was not an act of insubordination, and not a breach of confidentiality.[126]

154 Farm to Fork says that the government authorities to which the Joint Letter was copied were third parties to the Consultancy Agreement, and were not authorised by Farm to Fork to receive the Joint Letter. If Farm to Fork were suggesting that the relevant authorities had to be authorised by Farm to Fork to receive the Joint Letter, before the Employees could raise their concerns with the authorities, I would not accept such a submission. If it were necessary to say

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122 Affidavit of Evidence-in-Chief of Jonathan Weins dated 1 November 2023 ("JW") at para 77.

123 1AB at p 791.

124 12KJW at para 123(b).

125 PCS at para 122.

126 3AB at p 72.

that, in the public interest, employees may raise employment issues with the relevant authorities, I would say so.

155 The Joint Letter did not involve any breach of the confidentiality obligations in the Consultancy Agreement. I thus dismiss Farm to Fork's claim for breach of confidence in relation to the Joint Letter.

Had Adamas breached the confidentiality obligations by Mr Kim's communication with Mr Rosland?

156 Mr Rosland was a representative of MDV, a potential investor.

157 In its statement of claim, Farm to Fork pleads that a WhatsApp message from Mr Kim to Mr Rosland on 8 September 2021 was a breach of Adamas' non-solicitation obligations. Mr Rosland had sent a WhatsApp message asking if Mr Kim had found the date and time for a certain introduction meeting. Mr Kim responded, "…we are in the middle of a bit of a crisis at the moment. May I give you a call this afternoon to inform you of the details."[127] Mr Kim responds in his defence and counterclaim that he had not said that *Farm to Fork* was "in a middle of a bit of a crisis at the moment"; Mr Kim did speak to Rosland, and simply informed him that there were certain internal issues with Farm to Fork, and that he (Mr Kim) had reached out to FTFI's board for assistance.[128] Farm to Fork then pleads in its reply and defence to counterclaim that it had reason to believe that the Defendants had, in breach of their non-solicitation and confidentiality obligations, disclosed confidential information and attempted to

127 SOC at para 30; 3AB at p 76.

128 DCC at para 62; 12KJW at para 128.

solicit or encourage MDV to cease doing business with Farm to Fork, when Mr Kim spoke with Mr Rosland.[129]

158 In its closing submissions, however, Farm to Fork contends that Mr Kim's conduct indicates that Mr Kim must have divulged Confidential Information to Mr Rosland regarding Farm to Fork's business and affairs or the alleged accounting fraud, and must have further instigated Mr Rosland not to invest in Farm to Fork. Indeed, the allegation is that by specifically referring to a "crisis", Mr Kim was sharing information about Farm to Fork's business and affairs which were not in the public domain.[130]

159 However, Farm to Fork only pleads an alleged breach of non-solicitation obligations in relation to the WhatsApp message. It is not open to Farm to Fork now to pursue an unpleaded claim for breach of confidence in relation to the WhatsApp message. In any event, I do not accept that Mr Kim's reference to "crisis" was a breach of confidence. By cl 8.1 of the Consultancy Agreement, Adamas acknowledged that in its Engagement with Farm to Fork, it would have access to Confidential Information, which (in the context of cl 2.1) was information that Adamas "creates, develops, receives, or obtains in connection with its Engagement".[131] I do not regard the fact that Farm to Fork had terminated the Consultancy Agreement and Mr Kim's services as CFO to be Confidential Information within the Consultancy Agreement, such that it would be a breach of confidence for Adamas and Mr Kim to have told any third party about their termination. Likewise, the suspension of the Employees and the service of show cause notices to them were events taking place after Adamas'

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129 Reply at para 50.

130 PCS at paras 170–173.

131 1AB at pp 323–324, 327.

Engagement with Farm to Fork had ended, which would not be covered by cl 8 of the Consultancy Agreement.

160 When Mr Kim said, "we are in the middle of a bit of a crisis at the moment", "we" may have referred to him and other Farm to Fork representatives on the WhatsApp chat like Ms Ana. And indeed, they *were* "in the middle of a bit of a crisis", given Mr Kim's termination as CFO and its aftermath.

161 Farm to Fork has no evidence of what Mr Kim said to Mr Rosland on the call. It simply says that Mr Kim must have divulged Confidential Information to Mr Rosland, and that Mr Kim's evidence to the contrary should be disbelieved. Farm to Fork did not call Mr Rosland as a witness; it did not even ask Mr Rosland what Mr Kim had told him on the call.[132] In fact, MDV eventually proceeded to invest in Farm to Fork.[133]

162 I accept Mr Kim's evidence that he had simply informed Mr Rosland that there were certain internal issues with Farm to Fork, and that he had reached out to FTFI's board of directors for assistance.[134] I do not regard this as a breach of confidence.

163 I thus dismiss Farm to Fork's breach of confidence claim in relation to Mr Rosland.

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132 Transcript, 2 February 2024, 28:7–28:12.

133 3AB at p 316.

134 12KJW at para 128.

Had Adamas breached the confidentiality obligations by Mr Kim's communication with Hanwha?

164 Farm to Fork pleads that it "believes" that Mr Kim disclosed Confidential Information in the Appeal Letter to Hanwha; it says that when Farm to Fork's CEO spoke with representatives from Hanwha, Hanwha's representatives were aware of details found in the Appeal Letter.[135]

165 The Defendants say that Hanwha contacted Mr Kim, wishing to speak about an email from Farm to Fork to Hanwha announcing Mr Kim's departure. Mr Kim's evidence is that he simply informed Hanwha that there were certain internal issues with Farm to Fork, and that he had reached out to FTFI's board for assistance. The Defendants deny that Mr Kim had disclosed any Confidential Information in the Appeal Letter to Hanwha.[136]

166 Farm to Fork then pleads in its reply and defence to counterclaim that it has "reason to believe" that the Defendants had breached their non-solicitation obligations and confidentiality obligations when Mr Kim spoke to Hanwha.[137]

167 As with Mr Kim's call with Mr Rosland, Farm to Fork has no evidence of what Mr Kim said to Hanwha. Farm to Fork did not call any representative of Hanwha as a witness; instead, Farm to Fork relies on an 8 September 2021 call which Mr Weins had with Hanwha from which he understood that Mr Kim had spoken to Hanwha, and that Hanwha was aware of details in the Appeal Letter . Because of this, Farm to Fork contends that Mr Kim must have shared the details in the Appeal Letter with Hanwha. Mr Weins also says that Mr Ahn

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135 SOC at para 31.

136 DCC at para 63; 12KJW at paras 130–131.

137 Reply at para 51.

had told him that Mr Kim had informed Hanwha that Mr Kim had the backing of the board and that the Founders would be replaced.[138] Mr Ahn, however, was not called as a witness and what Mr Weins (who was a witness) says Mr Ahn told him is inadmissible hearsay.

168 I accept Mr Kim's evidence as to what he told Hanwha, which is also what he told Mr Rosland: that there were certain internal issues with Farm to Fork, and that he had reached out to FTFI's board of directors for assistance. For the same reasons discussed above in relation to Mr Rosland, I do not regard Mr Kim's communications with Hanwha as a breach of confidence.

169 I do not draw the inference that Hanwha knowing details of the Appeal Letter means that Mr Kim must have shared that with Hanwha. The Appeal Letter was sent by Ms Ana to many parties, any of whom could have shared details of the Appeal Letter with Hanwha. Faced with the lack of evidence on this, Mr Weins claimed on the stand that Hanwha said they received the information from Mr Kim; but when pressed on this, he admitted that he could not recall if Hanwha had specifically said that.[139] In any event, what Mr Weins had to say about what Hanwha told him is inadmissible hearsay too.

170 I thus dismiss Farm to Fork's breach of confidence claim in relation to Mr Kim's communication with Hanwha.

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138 JW at para 86; Transcript, 2 February 2024, 21:18–21:25.

139 Transcript, 2 February 2024, 30:22 to 32:6.

Had Adamas breached the confidentiality obligations by the 16 November 2021 Email?

171 The 16 November 2021 Email was sent by Mr Kim to shareholders of FTFI. After recounting developments in the suit, the email said:

> As a shareholder, you have a right to view the Court Records… There are four affidavits, two filed by the Co-Founders and two by me, in which opposing statements are set forth. These affidavits can be requested online on your behalf by a Singapore law firm with access to the eLitigation system. After reviewing the facts contained within the affidavits, you will be able to decide for yourself if I was upholding my fiduciary duty to the shareholders or making false allegations.

Mr Kim concluded by encouraging the shareholders to seek the truth from the court records.[140]

172 Farm to Fork says that the email contains Confidential Information because it referred to affidavits that contained Confidential Information and asked shareholders to request access to those affidavits.[141] But that does not mean the email contained Confidential Information; all the email did was tell the shareholders about the suit and affidavits filed in the suit. I thus find that the email did not *contain* Confidential Information.

173 If Farm to Fork were truly concerned about protecting Confidential Information in the affidavits, it could have sought protective orders from the court. But it never did so, not even after finding out about the 16 November 2021 Email. There is moreover no evidence of any shareholder requesting, let alone obtaining, access to the court documents. The trial then proceeded in open court and any shareholder (or indeed anyone) could freely

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140 3AB at p 316.

141 PCS at para 193.

attend the proceedings. Farm to Fork did not seek to protect the confidentiality of anything mentioned in court.

174 I thus dismiss Farm to Fork's breach of confidence claim in relation to the 16 November 2021 Email.

Had Adamas breached the confidentiality obligations by the 16 January 2023 Email?

175 Farm to Fork pleads in its reply and defence to counterclaim that the Defendants sent the 16 January 2023 Email to various third parties as well as to Farm to Fork's investors, and this email was in breach of the Defendants' confidentiality and non-solicitation obligations.[142] But Farm to Fork does not otherwise plead what Confidential Information might be contained in this email.

176 The 16 January 2023 Email was addressed to board members and observers of FTFI. Mr Kim provided a further update about the suit, referred to affidavits filed in the suit (by then he had filed eight affidavits), and encouraged the board to request these affidavits and determine the truth for themselves.[143]

177 Again, Farm to Fork contends that the email contains Confidential Information, in that it directed third parties to the Consultancy Agreement to access Confidential Information disclosed in these proceedings, while this time also specifying the kind of information that they can expect to access.[144] As with the 16 November 2021 Email, the 16 January 2023 Email did not contain Confidential Information, there is no evidence of any shareholder requesting (let

142 Reply at para 51A.

143 3AB at p 393.

144 PCS at paras 207–212.

alone obtaining) access to the court documents, and the trial proceeded in open court without any confidentiality protections.

178 In so far as Farm to Fork complains about Mr Kim's references to having discovered accounting fraud by the Founders, as discussed above I consider that not to be a breach of confidence because disclosure was required by law, and justified in the public interest.

Had Adamas breached the confidentiality obligations by correspondence in the period between 16 and 18 January 2023?

179 Farm to Fork also advances unpleaded claims of breach of confidence regarding Mr Kim's other correspondence (and communications) in the period between 16 and 18 January 2023, namely:[145]

(a) Mr Kim's emails to Mr Jose, a shareholder representative and board observer in FTFI;

(b) Mr Kim's telephone calls with Mr Jose; and

(c) other investors (who were not listed as recipients of the 16 January 2023 Email) contacting Farm to Fork expressing concern about that email.

180 Farm to Fork is not entitled to advance these unpleaded claims. I thus dismiss these claims by Farm to Fork.

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145 PCS at paras 217–226.

Conclusion

181 For the above reasons, I dismiss all of Farm to Fork's claims against Adamas for breach of confidentiality obligations.

Breach by Mr Kim of an equitable duty of confidentiality

182 Besides alleging breach by Adamas of confidentiality obligations in the Consultancy Agreement, Farm to Fork asserts breach by Mr Kim of an equitable duty of confidentiality.[146]

183 For the same reasons that I have dismissed Farm to Fork's breach of confidence claim against Adamas (see [120]–[181] above), I dismiss its breach of confidence claim against Mr Kim.

184 Articulated in terms of the elements of a claim for breach of an equitable duty of confidence, the claim against Mr Kim fails because the information has no necessary quality of confidence, or was not received in circumstances importing an obligation of confidence (see *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 ("*I-Admin*") at [61]). In particular, Mr Kim can rely on disclosures being required by law, or justified in the public interest, just as Adamas can, to resist liability.

Breach of non-solicitation obligations in the Consultancy Agreement

Are the non-solicitation obligations enforceable?

185 I do not accept the Defendants' contentions that the non-solicitation obligations (contained in cll 13.1(a), (b) and (e) and 13.2 of the Consultancy

146 SOC at paras 41–49.

Agreement) are unenforceable under Malaysian law as restraints of trade. I do not find that the non-solicitation obligations restrained Adamas (or Mr Kim) from exercising a lawful profession, trade, or business of any kind, and indeed, the conduct by Adamas (or Mr Kim) that Farm to Fork complains of, did not involve them acting in the exercise of any lawful profession, trade, or business. Moreover, Malaysian cases have accepted the validity of various non-solicitation obligations in contracts (see *Svenson* at [16(b)]; *Agensi Pekerjaan Talent 2 International Sdn Bhd v Kenneth Yong Fu Loong & Anor* [2012] 10 CLJ 217 at [30]).

Were the non-solicitation obligations breached?

Had Adamas induced the Employees to go on strike, or attempted to induce and/or otherwise interfered in this way?

186 Farm to Fork says the Defendants had induced the Employees to go on strike; that is disputed by the Defendants. There are three aspects to this:[147]

(a) whether the Defendants had induced the Employees to take medical leave for non-medical reasons;

(b) whether the Defendants had induced the Employees to send the Appeal Letter; and

(c) whether the Defendants had induced the Employees to send the Joint Letter to Malaysian government officials.

187 In dealing with the claim for breach of confidence, I have already found that the Defendants did not induce the Employees to send the Appeal Letter or

147 PCS at para 91.

the Joint Letter (see [124] above). Those claims for breach of non-solicitation obligations are thus dismissed as well.

188 As for the claim regarding medical leave, Farm to Fork has no direct evidence that Mr Kim asked any employee to take medical leave for non-medical reasons, and I accept Mr Kim's evidence that he did not do so. The contemporaneous evidence supports Mr Kim's position:

(a) Ms Lisa Kappe ("Ms Kappe"), one of Farm to Fork's employees, received a letter from Farm to Fork informing her that her contract would not be renewed and that her last day was on 1 September 2021. Thus, as conceded by Mr Edelmann, Ms Kappe did not turn up for work after 3 September 2021 because her contract was not renewed, and not because Mr Kim has instigated her to take medical leave or go on strike.[148]

(b) Ms Ana received a show cause letter from Farm to Fork informing her that she was suspended from 2 September 2021. She then received a further letter informing her that her contract would not be renewed once it expired on 26 October 2021. Thus, Ms Ana did not turn up for work in the relevant period because she was suspended (and then her contract ended), and not because Mr Kim had asked her to take medical leave for non-medical reasons.[149]

(c) For Mr Zainuddin Isa ("Mr Zainuddin"), I accept Mr Kim's evidence that he did not ask Mr Zainuddin to take medical leave for non-medical reasons. It is true that Mr Kim had suggested to Mr Zainuddin

148 3AB at p 144; Transcript, 30 January 2024, 37:3–37:25.

149 3AB at pp 38–40 and 146–147.

to take medical leave on 3 September 2021.[150] Farm to Fork latches onto this admission to support its assertion that Mr Kim asked Mr Zainuddin to take leave *for non-medical reasons*.[151] But the one does not follow from the other. Mr Kim's evidence was that when Mr Zainuddin called him on 3 September 2021, the latter was in a state of anxiety because the Founders had been hurling verbal abuse and threats at him. It was in this context that Mr Kim suggested that Mr Zainuddin take medical leave, *ie*, to alleviate the latter's anxiety caused by the continued threats and abuse being directed towards him.[152] That is not taking medical leave *for non-medical reasons*.

(d) For the remaining Employees, Farm to Fork points to an email dated 3 September 2021 from Mr Kim to Mr El Baze, in which Mr Kim said that he had asked his "leaders to take medical leave to avoid the continued threats and abuse that is being directed towards them".[153] Farm to Fork argues that this email is evidence that Mr Kim spoke not only to Mr Zainuddin to take medical leave, but to the other employees too. I accept Mr Kim's explanation that he had referred to "leaders" (and in his affidavit dated 1 October 2021 to "several employees"[154]) because he understood that the remaining Employees – chefs who reported to Mr Zainuddin – were in the same state of anxiety as Mr Zainuddin was, and Mr Zainuddin had suggested that they take medical leave that day.[155] In

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150 12KJW at para 111.

151 PCS at paras 93–97.

152 Transcript, 8 February 2024, 74:12–74:24; Transcript, 9 February 2024, 7:13–7:16.

153 2AB at p 771.

154 1KJW at para 109.

155 Transcript, 8 February 2024, 74:14–74:21.

any case, whether Mr Kim only conveyed this directly to Mr Zainuddin, or to others as well, the key question is whether they took medical leave *for non-medical reasons*. After trial, Farm to Fork sought to disclose the medical certificates of Mr Nathan Somasundaram dated 3 September 2021 and Mr Anoop Sasidharan dated 6 September 2021;[156] but if anything, those tend to rebut Farm to Fork's contention that medical leave was being taken for non-medical reasons.

(e) For the period beyond 3 September 2021, in the Joint Letter the Employees (other than Ms Kappe) said they were applying for paid leave from 5 to 11 May 2021.[157] In their 12 September 2021 letter ("Joint Final Letter"), they then said that their access privileges had been revoked as of 3 September 2021,[158] and Mr Edelman confirmed that from 12 September 2021 onwards they continued to have no access privileges and were unable to work. On 21 September 2021, Farm to Fork terminated their employment.[159] The absence of these employees after 3 September 2021 thus had nothing to do with them taking medical leave for non-medical reasons.

189 I thus dismiss Farm to Fork's claim that the Defendants had induced the Employees to take medical leave for non-medical reasons.

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156 Plaintiff's Letter to Court dated 5 March 2024.

157 3AB at p 73.

158 3AB at p 113.

159 Transcript, 30 January 2024, 44:10–44:28; 3AB at pp 150–159.

Had Adamas induced Mr Clark to quit his retainer, or attempted to induce and/or otherwise interfered in this way?

190 Farm to Fork pleads that the Defendants induced Mr Clark to quit his retainer, in that Mr Kim induced Ms Ana to send the Appeal Email to Mr Clark, who then terminated his consultancy services with Farm to Fork after receiving the Appeal Letter from Ms Ana.[160] I have found that Mr Kim did not induce the sending of the Appeal Letter or Appeal Email (see [124] above), and accordingly the claim that the Defendants thereby induced Mr Clark to quit his retainer fails.

191 Farm to Fork seeks to bolster this claim in its closing submissions, by saying that Mr Kim and Mr Clark were close, and Mr Kim had admitted to asking his leaders to go on medical leave and Mr Clark had thereafter gone on medical leave. Farm to Fork also points to the fact that Mr Kim had asked Mr El Baze to reach out to Mr Clark if he wanted an opinion on Farm to Fork, and that on 2 September 2021, Mr Kim had spoken with Mr Clark (among others). Farm to Fork highlights that following all of these events, Mr Clark quit on 3 September 2021. Farm to Fork thus asserts that the Defendants breached the non-solicitation obligations in the Consultancy Agreement because Mr Clark quit his retainer due to the Defendants' inducement, interference, or disruption.[161]

192 It remains the case that the only pleaded inducement by the Defendants of Mr Clark quitting, is them having allegedly induced the sending of the Appeal Email to Mr Clark, and I have found that did not happen. In any event:

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160 SOC at para 23.

161 PCS at paras 109–113.

(a) Mr Kim and Mr Clark being close does not mean Mr Kim induced Mr Clark to quit; Mr Clark could well have quit because he was upset about Farm to Fork having terminated Mr Kim's services, and about the matters in the Appeal Letter and Appeal Email. Indeed, this appears to be the case from Mr Clark's resignation email.[162]

(b) Farm to Fork does not say that Mr Clark was one of the employees who took medical leave for non-medical reasons. Even if Mr Kim had asked Mr Clark to take medical leave, that does not mean Mr Kim asked Mr Clark to quit.

(c) There is no evidence that Mr El Baze contacted Mr Clark following Mr Kim's suggestion that he do so, or that any contact made contributed in any way to Mr Clark quitting.

(d) Just pointing to a call between Mr Clark and others (and Mr Kim) on 2 September 2021 is of little probative value – it does not prove that Mr Kim asked Mr Clark to quit.

(e) Ultimately, Mr Edelmann admitted that Farm to Fork did not have any proof that Mr Kim had directly encouraged Mr Clark to terminate his retainer. Mr Edelmann also said that he did not have any proof that Mr Kim had asked Ms Ana to send the Appeal Letter to Mr Clark. Finally, Mr Edelmann admitted that the claim that the Defendants had induced Mr Clark to terminate his retainer was speculative.[163]

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162 2AB at p 762.

163 Transcript, 30 January 2024, 45:6 to 46:4.

193 I thus dismiss Farm to Fork's claim that the Defendants induced Mr Clark to quit his retainer.

Had Adamas breached the non-solicitation obligations by Mr Kim's 2 September 2021 correspondence with Mr Ahn?

194 Farm to Fork does not plead that Adamas had breached the non-solicitation obligations by Mr Kim's 2 September 2021 correspondence with Mr Ahn (its pleadings only say this was a breach of confidence). Yet it advanced this unpleaded claim in closing submissions.[164] This claim fails for it not having been pleaded.

195 In any event, the claim would fail on the merits. Farm to Fork contends that by saying that Farm to Fork's EBITDA had been falsified and accounting fraud was being committed, the Defendants were inducing Rakuten Capital as Farm to Fork's investor to cease doing business and reduce its investment in Farm to Fork. I have, however, found that the Cyberjaya Representation (which related to the Cyberjaya outlet's EBITDA in April 2021) was untrue, and that Mr Kim had a reasonable suspicion that accounting fraud was being committed (see [76] above). The disclosure of that to Mr Ahn was required by law, and justified in the public interest.

196 I thus dismiss this claim.

Had Adamas breached the non-solicitation obligations by Mr Kim's correspondence with Mr El Baze on 3 September or 6 September 2021?

197 Beginning with the 3 September 2021 correspondence with Mr El Baze, Farm to Fork did not plead that Adamas had breached the non-solicitation

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164 PCS at paras 137–142.

obligations by this correspondence (it only said this was a breach of confidence). When Farm to Fork referred to Mr Kim's 3 September 2021 correspondence with El Baze under the heading "Interference with Plaintiff's employees", Farm to Fork did so to substantiate its claim that Mr Kim had asked the Employees to take medical leave, and it then said that the Defendants had interfered with Farm to Fork's relationship with the Employees by inducing them to send the Appeal Letter.[165]

198 Farm to Fork did not plead that Mr Kim's 3 September 2021 correspondence with Mr El Baze breached non-solicitation obligations in respect of Farm to Fork's relationship with Mr El Baze or Partech (which Mr El Baze represented). Yet it advanced this unpleaded claim in closing submissions.[166] This claim fails for it not having been pleaded.

199 In any event, the claim would fail on the merits. As with Mr Kim's 2 September 2021 correspondence with Mr Ahn, the Defendants can rely on the similar disclosures to Mr El Baze (a representative of Partech, and a director of FTFI) on 3 September 2021 as being required by law, and justified in the public interest.

200 I thus dismiss the claim in relation to Mr Kim's 3 September 2021 correspondence with Mr El Baze.

201 On the other hand, Farm to Fork did plead Mr Kim's 6 September 2021 correspondence with Mr El Baze as a breach of non-solicitation obligations.[167]

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165 SOC at paras 20–21.

166 PCS at paras 155–158.

167 3AB at pp 67–68; SOC at paras 28–29, and 39.

202 In its closing submissions, however, in the section on Adamas' breach of its non-solicitation obligations in relation to Mr Kim's correspondence with Mr El Baze, Farm to Fork only addressed the 3 September 2021 correspondence, and not the 6 September 2021 correspondence.[168] Farm to Fork cited the cross-examination of Mr Kim on the 3 September 2021 email, but it did not deal with the 6 September 2021 email.[169] Farm to Fork therefore does not explain how the 6 September 2021 correspondence (the contents of which have been reviewed above at [141]–[143]) breached the non-solicitation obligations, and I am not satisfied that it did.

203 I thus dismiss this claim.

Had Adamas breached the non-solicitation obligations by Mr Kim's communication with Mr Rosland?

204 MDV was a potential investor, and Mr Rosland its representative. I agree with the Defendants that neither MDV nor Mr Rosland was a "client, customer or business associate" of Farm to Fork for the purposes of cl 13.1(e) of the Consultancy Agreement.[170] Moreover, Mr Kim's communications with Mr Rosland/MDV could not cause them to "cease being a customer, client or business associate" (which they were not), "cease doing business with" Farm to Fork (which they did not do), or "reduce the business which [they] would normally do with" Farm to Fork (as they did not do any business with Farm to Fork).

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168 PCS at paras 155–157.

169 Transcript, 9 February 2024, 28:15 to 29:18.

170 1AB at p 330.

205 In any event, Farm to Fork's complaint is about Mr Kim using the word "crisis" in his communication with Mr Rosland/MDV. I have discussed this above in the context of breach of confidence (see above at [156]–[163]). As explained above, I consider Mr Kim's reference to a "crisis" to relate to Farm to Fork's termination of the Consultancy Agreement and his services as CFO, and the events that flowed from that. In informing Mr Rosland/MDV that there were certain internal issues with Farm to Fork, and that Mr Kim had reached out to FTFI's board for assistance, Mr Kim did not induce Mr Rosland/MDV not to invest in Farm to Fork. Indeed, MDV did proceed to invest in Farm to Fork thereafter.[171]

206 I thus dismiss this claim.

Had Adamas breached the non-solicitation obligations by Mr Kim's communication with Hanwha?

207 As with MDV, Hanwha was a potential investor. I agree with the Defendants that Hanwha was not a "client, customer or business associate" of Farm to Fork for the purposes of cl 13.1(e) of the Consultancy Agreement.[172] Moreover, Mr Kim's communications with Hanwha could not cause it to "cease being a customer, client or business associate" (which it was not), or to "cease doing business with" Farm to Fork (which it did not do), or to "reduce the business which [it] would normally do with" Farm to Fork (as it did not do any business with Farm to Fork).

208 I have considered Mr Kim's communication with Hanwha in the context of breach of confidence (see [164]–[170] above). As with Mr Rosland/MDV,

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171 Transcript, 2 February 2024, 28:26–28:27.

172 1AB at p 330.

what Mr Kim communicated to Hanwha was that there were certain internal issues with Farm to Fork, and that he had reached out to FTFI's board for assistance. Mr Kim did not thereby induce Hanwha not to invest in Farm to Fork. But even if he did, the Defendants were rightly concerned that Hanwha should not be investing in Farm to Fork based on accounting misrepresentation as to the EBITDA margin achieved by the Cyberjaya outlet in April 2021. It would not have been wrong of the Defendants to have averted that outcome by communicating to Hanwha that there were certain internal issues with Farm to Fork.

209 I thus dismiss this claim.

Had Adamas breached the non-solicitation obligations by the 16 November 2021 Email?

210 Clause 13.1(e) of the Consultancy Agreement only relates to "any client, customer or business associate of [Farm to Fork] with whom [Adamas] had contact with during its Engagement with [Farm to Fork]", and Mr Kim only had contact with Mr El Baze and Ms Cindy Teoh (of GEC Tech Ltd) prior to the 16 November 2021 Email.[173]

211 More generally, I have discussed this email in the context of breach of confidence (see [171]–[178] above). While Farm to Fork complains that Mr Kim had given a one-sided picture of developments in the suit, Mr Kim had said that the shareholders of FTFI should review the facts contained within the affidavits, and "decide for [themselves] if [Mr Kim] was upholding [his] fiduciary duty to the shareholders or making false allegations".[174] I do not find

[173] 12KJW at para 132.

[174] PCS at para 200; 3AB at p 316.

the email to be an inducement to the shareholders to reduce their investment with FTFI (and thus, indirectly, Farm to Fork). The thrust of Mr Kim's email was that he was defending himself against a claim brought by the *Founders*, and that he had not made false accusations of accounting fraud to FTFI's board. As I have found, Mr Kim had discovered accounting misrepresentation, had a reasonable suspicion that accounting fraud was being committed, and believed that disclosure of that to FTFI's shareholders was required by law and justified in the public interest (see [76] and [134]–[135] above).

212 I thus dismiss this claim.

Had Adamas breached the non-solicitation obligations by the 16 January 2023 Email?

213 As with the 16 November 2021 Email (discussed in the preceding section), Mr Kim identified which of the recipients of the 16 January 2023 Email he had previously been in contact with.[175]

214 I have discussed this email in the context of breach of confidence (see [175]–[178] above). In similar vein to the 16 November 2021 Email (see [211] above), I do not find the 16 January 2023 Email to be an inducement to the recipient parties to reduce their investment with FTFI (and thus, indirectly, Farm to Fork).

215 I thus dismiss this claim.

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175 12KJW at para 140.

Conclusion

216 For the above reasons, I dismiss all of Farm to Fork's claims for breach of non-solicitation obligations under the Consultancy Agreement.

Breach of removal obligations in the Consultancy Agreement

217 The removal obligations which Farm to Fork says were breached, are found in cl 11 of the Consultancy Agreement:[176]

> **11. OBLIGATIONS ON TERMINATION**
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> On the Termination Date the Consultant shall:
>
> (a) immediately deliver to the Client all Client Property in their possession or under their control;
>
> (b) irretrievably delete any information relating to the Business of the Client (or any Group Company) stored on any magnetic or optical disk or memory and all matter derived from such sources which is in their possession or under their control outside the premises of the Client. To avoid doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and must be deleted from personal social or professional networking accounts; and
>
> (c) State that the Consultant has complied fully with their obligations under this clause.

218 "Client Property" is defined in cl 2.1 of the Consultancy Agreement as follows:[177]

> **Client Property:** all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Client (or Group Company) or its (or their) customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant's use by the Client during the Engagement, and any data or documents (including copies)

176 1AB at pp 329–330.

177 1AB at p 323.

> produced, maintained or stored by the Consultant on the Client or the Consultant's computer systems or other electronic equipment during the Engagement.

219 Under the Consultancy Agreement, Farm to Fork was the "Client", and Adamas was the "Consultant".[178]

220 Farm to Fork pleads that on 3 September 2021, a cease-and-desist letter was sent to demand that the Defendants cease and desist from breaching (among other things) the removal obligations. The Defendants, however, failed to confirm in writing that they would do so; instead, they continued to breach those obligations in the period from 4 September 2021 onwards. Further, Farm to Fork pleads that, in breach of the removal obligations, Adamas failed to deliver up and destroy information relating to Farm to Fork, and also failed to state that the removal obligations had been complied with.[179]

221 Farm to Fork submits that, in breach of the Consultancy Agreement, Adamas failed to deliver up Client Property in the period between 1 and 3 September 2021, and that this breach continued after the cease-and-desist letter of 3 September 2021.[180] In fact, Farm to Fork argues that this breach continued even after the second injunction order made on 12 November 2021 which required delivery up of Farm to Fork's documents.[181]

222 Adamas pleads that it was not in breach of the removal obligations because those were post-termination obligations, and only arise upon

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178 1AB at p 323.

179 SOC at paras 26–27 and 34.

180 2AB at pp 774–780.

181 PCS at para 42.

termination. Thus, since the Consultancy Agreement had not been validly terminated, Adamas did not have to comply with the removal obligations.[182]

223 I do not accept this argument. As I have found that the Consultancy Agreement was terminated as of 1 September 2021 (see [46] above), thus, the removal obligations did arise. Even if the Consultancy Agreement had continued in effect, Mr Kim's services as CFO had been terminated as of 1 September 2021, and it would only make sense for the Defendants then to have to return Client Property to Farm to Fork. In any event, Farm to Fork points to cl 8.3 of the Consultancy Agreement (which is part of cl 8 on "Confidential Information), which provides as follows:[183]

> **8. CONFIDENTIAL INFORMATION**
>
> 8.3 At any stage during the Engagement, the Consultant will promptly on request return all and any Client Property in their possession to the Client.

Thus, even if Adamas were right that the Consultancy Agreement had not been terminated, when Farm to Fork requested the return of Client Property in the termination notice, Adamas ought to have complied with the request.[184]

224 The termination notice provides:[185]

> As set out in Clause 11 of the Consultancy Agreement, you are required to:
>
> - Immediately deliver to us all client property in your possession or under your control;

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182 DCC at para 65.

183 SOC at para 11(b); 1AB at p 328.

184 Reply at para 52.

185 2AB at p 707.

> - Irretrievably delete any information relating to our business (including contact details of business contacts made during your engagement);
> - State in writing that you have fully complied with the above

Although this request was made with reference to cl 11 of the Consultancy Agreement, I would regard it as a request for the return of Client Property under cl 8.3 of the Consultancy Agreement in the event that the termination was not effective and Adamas' Engagement with Farm to Fork continued.

225 Further, the relevant portion of the cease-and-desist letter provides:[186]

> For the reasons set forth hereinabove, **DEMAND IS HEREBY MADE** for you (and Adamas) **IMMEDIATELY TO CEASE AND DESIST**:
>
> …
>
> (6) From maintaining any Client Property and Confidential Information, as those terms are defined in the Consultancy Agreement, on your devices in electronic format (*ie*, irretrievably delete all such information)

Although it would have been clearer if Farm to Fork had simply asked for the return (or deletion) of any Client Property, without reference to devices or format, by this time it would have been clear to the Defendants that Farm to Fork did not want them to retain any Client Property.

226 Whatever legal arguments the Defendants might have had about the removal obligations, the second injunction order required them, within seven days of the order, to deliver up to Farm to Fork's lawyers, pending determination of this suit, "all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of [Farm to Fork] or its subsidiaries,

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[186] 2AB at p 779.

holding company, or fellow subsidiaries of its holding company… or their customers and business contacts".[187]

227 Pursuant to the second injunction order, the Defendants delivered up documents on 19 November 2021. Farm to Fork points out that this did not include the "Nicolas Sept 2021 Email Chain",[188] *ie*, the chain of Mr Kim's emails with Mr El Baze from 3 to 7 September 2021 (with the relevant attachments), but the Defendants say that this was an inadvertent omission as explained by Mr Kim.[189]

228 Farm to Fork also says that the Client Property that the Defendants had wrongly retained included contact details of business contacts made during Farm to Fork's Engagement with Adamas. In this regard, cl 11(b) of the Consultancy Agreement provides:[190]

> **11. OBLIGATIONS ON TERMINATION**
>
> On the Termination Date the Consultant shall:
>
> …
>
> (b) … To avoid doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and must be deleted from personal social or professional networking accounts; and
>
> …

Thus, Farm to Fork contends that the Defendants' use of such contact details was a breach of cl 11 or, alternatively, cl 8.3 of the Consultancy Agreement.

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187 JW at pp 271–272 (at para 3).

188 JW at para 144; PCS at para 42.

189 Transcript, 7 February 2024, 38:23 to 40:6.

190 1AB at pp 329–330.

Farm to Fork specifically says that Mr Kim's communications with Mr El Baze on 6 November 2021 as well as with Mr Roland and representatives from Hanwha, used contact details that Mr Kim ought to have deleted upon termination (but had not).[191] This point is repeated in relation to the 16 November 2021 Email.[192] At this juncture, I note Mr Kim's evidence that he had a personal relationship with Hanwha going back more than ten years; in this regard, Farm to Fork has not proven that any Hanwha contact details that Mr Kim may have used were only acquired during Adamas' Engagement with Farm to Fork.

229 Subject to any applicable defences, Adamas ought to have returned Client Property to Farm to Fork (or deleted it), upon receiving the termination notice, either under cll 8.3 or 11 of the Consultancy Agreement.

230 In so far as I have found Adamas entitled to make disclosures because they were required by law, or justified in the public interest, however, it would follow that Adamas was entitled to retain Client Property (including contact details of business contacts made during Adamas' Engagement with Farm to Fork) for that purpose. Put another way, Farm to Fork could not use cll 8.3 or 11 of the Consultancy Agreement to prevent Adamas from making disclosures which were required by law, or justified in the public interest.

231 Aside from such contact details, and Mr Kim's retention and use of his 3 to 7 September 2021 emails with Mr El Baze (and attachments), which I discuss below, there is no evidence of the Defendants retaining any Client Property after their delivery up of documents on 19 November 2021.

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191 PCS at para 231.

192 PCS at para 236.

232 Farm to Fork suggests that the Defendants may still have some Client Property which has not been returned: it says Mr Kim likely lied about having deleted his correspondence with others from 1 September 2021, and that an adverse inference should be drawn that Mr Kim has self-incriminating documents that he has not deleted and not disclosed.[193] I do not agree. The first injunction order made on 13 September 2021 required that:[194]

> The Defendants immediately deliver up and/or destroy all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of the Plaintiff or its subsidiaries, holding company, or fellow subsidiaries of its holding company (the "**Plaintiff's Group**") or their customers and business contacts.
>
> [emphasis in original]

With Mr Kim facing this injunction, I accept his explanation that he had deleted almost all of the documents that he believed were not relevant to his defence, only keeping those documents that he believed were absolutely critical to his defence.[195]

233 That leaves Mr Kim's 3 to 7 September 2021 emails to Mr El Baze, and their attachments. Mr Kim's explanation of why that was not also delivered up on 19 November 2021, is as follows:[196]

> (a) he had checked his office emails, and also his Hotmail email account, but his emails with Mr El Baze were sent from his personal Gmail account;

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193 PCS at paras 242 and 246–253.

194 JW at pp 260–261 (at para 1).

195 Transcript, 7 February 2024, 65:1–65:4.

196 JW at pp 374–377; Transcript, 7 February 2024, 39:20 to 40:6.

(b) when Mr Jose (a board observer in FTFI) asked him for the emails he had sent to Rakuten and Partech, he located his email chain with Mr El Baze, and thought that because he had received the same document as part of the discovery process, it was not a problem for him to forward that to Mr Jose; and

(c) it was only when he read the affidavits and documents submitted by Farm to Fork that he realised that he had made a mistake; nonetheless, what he did was unintentional, and he did not try to mislead the court or breach court orders in any way.

234 Although I consider that Mr Kim's 3 to 7 September 2021 emails with Mr El Baze were not a breach of confidence or a breach of non-solicitation obligations, pursuant to the second injunction order the Defendants ought to have delivered up those emails together with the other documents that they delivered up on 19 November 2021. But this is because that was required by the second injunction order, not because it was required by the Consultancy Agreement. I would not regard it as a breach of cll 8.3 or 11 for the Defendants to have retained those emails and attachments for the time being, in view of my findings that the disclosures to Mr El Baze were required by law and justified in the public interest (see [143] above).

235 I thus find that Farm to Fork has not made out a case of breach of removal obligations, whether under cll 8.3 or 11 of the Consultancy Agreement.

Mr Kim inducing Adamas to breach the Consultancy Agreement

236 I have found above that Adamas did not breach the Consultancy Agreement. It follows that Farm to Fork's claim against Mr Kim for inducing breach of the Consultancy Agreement fails.

237 In any event, the claim would have failed because the requirements in *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 ("*Sandipala*") are not satisfied. In *Sandipala*, the Court of Appeal stated that a director would typically be immune from tortious liability where he has authorised or procured his company's breach of contract in his capacity as a director. But an exception exists where the director's decision breaches any of his personal legal duties to the company (*eg*, breach of a fiduciary duty to act in the best interests of the company). Nonetheless, the burden is on the plaintiff to show that the defendant director's conduct breached his personal legal duties to the company (at [65]):

238 The plaintiff must prove the breach of the director's personal legal duties to the company, as a requirement of liability for the director to be liable for inducing breach of contract by the company. Here, Farm to Fork failed to do so. Farm to Fork does not even plead that Mr Kim was in breach of any personal legal duties to Adamas. In *Ok Tedi Fly River Development Foundation Ltd and others v Ok Tedi Mining Ltd and others* [2023] 3 SLR 652, the plaintiffs at least pleaded the point; even so, the court found that the plaintiffs could not discharge their burden of proof on the basis of their pleaded case simply because the pleading was bereft of all particulars and any evidential basis (at [125]–[128]).

239 The claim against Mr Kim for inducing breach would also have failed because Mr Kim did not knowingly intend to interfere with the plaintiff's contractual rights. It is insufficient that the breach of contract was the mere natural consequence of the defendant's conduct; it is thus not enough for Farm to Fork just to establish that Adamas had breached the Consultancy Agreement through the acts of Mr Kim, its sole shareholder and director (see *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [16]–[18]; *Lim Seong Ong and another v Panshore Engineering Pte Ltd and another*

suit [2023] SGHC 257 at [16], [19]–[22]). I accept that Mr Kim did not think that what he was doing was contrary to the Consultancy Agreement.

240 For the above reasons, I dismiss Farm to Fork's claim against Mr Kim for inducing breach of the Consultancy Agreement.

Relief

241 For the above reasons, I have dismissed all of Farm to Fork's claims against Adamas and Mr Kim. It follows that Farm to Fork is not entitled to any damages, or other relief, on its claims.

242 I go on to consider, however, what relief (if any) I would have awarded Farm to Fork, if it had established liability on any of its claims.

Damages

243 Farm to Fork puts forward 21 heads of damage, of which 19 are in respect of Adamas' alleged breach of non-solicitation obligations (and Mr Kim inducing that) by instigating the Employees to "take medical leave for non-medical reasons – essentially causing them to go on strike", and for instigating Mr Clark to quit.[197] Farm to Fork says that as a result of these two matters, Farm to Fork's Central Kitchen's operations were disrupted to such an extent that Farm to Fork had no choice but to close the Central Kitchen.[198]

244 The remaining two heads of damage cover confidentiality obligations, non-solicitation obligations and removal damages generally: the cost of the Founders detecting and remedying the alleged breaches ("the Founders' time

197 CE at paras 71 and 74.

198 CE at paras 91–92.

costs") and the legal fees relating to the cease-and-desist letter. I will address these later (at [261]–[265]).

Damages due to the departure of the Employees and Mr Clark

245 Ms Kappe and Ms Ana were not involved in the operations of the Central Kitchen. Mr Clark was described by Mr Weins as "a chef-turned-consultant engaged by the Plaintiff to provide a limited scope of work relating to the Central Kitchen".[199]

246 Even if Farm to Fork had proven that the Defendants had asked the Employees to take medical leave for non-medical reasons, that would not apply to Ms Kappe (whose contract had ended as of 1 September 2021), or to Ms Ana, who was already suspended as of 2 September 2021. Of the others, the allegation is limited to just one day: 3 September 2021. Thereafter, the Employees (other than Ms Kappe who was no longer employed) were either suspended (in the case of Ms Ana), or took paid leave but had their access revoked. All these remaining Employees were eventually terminated, or had their contracts not renewed, by Farm to Fork. Even if the Defendants were the cause of any of the Employees being absent without good reason on 3 September 2021, their subsequent absence cannot be blamed on the Defendants.

247 As for Mr Clark, even if the Defendants had asked him to quit, I do not accept that that was the reason for Mr Clark quitting, as I have held (see [192]–[193] above).

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199 JW at para 241.

248 It thus follows that Farm to Fork cannot blame the losses from the Central Kitchen being closed, on the Defendants.

249 Further, I accept Mr Kim's evidence that the closure of the Central Kitchen was a strategy which the Founders had explored and discussed since July 2021.[200] Moreover, in that period the COVID-19 pandemic had a significant impact on Farm to Fork's operations. It was described as a "[s]ignificant event during the financial year" in AFS 2021, necessitating a "workforce reduction to reduce costs".[201] With the closure of the Central Kitchen, the plaintiffs retrenched a total of 47 employees over three rounds of layoffs.[202] In this regard, the letters issued to employees retrenched in the first round of retrenchment on 28 September 2021[203] and third round of retrenchment on 15 November 2021[204] stated (with the victims of the second round of retrenchment being told something similar):[205]

> The purpose of this letter is to confirm the outcome of a recent review by the Company of its operational requirements. Due to the current market and economic conditions, the Company is facing escalating operating expenditure and financial losses which necessitate a reorganization of the Company's operations. As part of the reorganization exercise, the Company has decided to significantly downscale the operation of its Central Kitchen and to decentralise those functions in order to improve the Company's overall performance.

250 What Farm to Fork told the employees was that its central kitchen was being "significantly downscale[d]" as part of a corporate reorganisation to

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200 Transcript, 8 February 2024, 100:28 to 101:14; 2AB at p 254.

201 12KJW at p 430.

202 CE at paras 129–133.

203 3AB at p 177.

204 3AB at p 307.

205 3AB at pp 177, 264 and 307.

decentralise its functions and improve Farm to Fork's overall performance. If that were true, it would go against Farm to Fork's contention in this suit that the Central Kitchen was "integral" to Farm to Fork's operations,[206] and that it was closed only because of what the Defendants had done in relation to the Employees who had allegedly gone on strike as well as Mr Clark.

251 When Mr Edelmann was confronted with the contents of the retrenchment letters, his response was that that was said to justify the retrenchment to the government, and that there was "zero truth" to what Farm to Fork had told the retrenched employees (and by extension the Malaysian government).[207]

252 He acknowledged that Farm to Fork was sending the letters out knowing that they were essentially presenting false information.[208] His excuse was that if Farm to Fork had told the truth, then it would not have been able to carry out the retrenchment or could have fallen afoul of the Malaysian government. Put bluntly, Mr Edelmann's evidence was that Farm to Fork lied to the retrenched employees, and by extension to the Malaysian government, so that it could proceed with the retrenchments (which allowed it to save costs), or to avoid trouble; but he (and Farm to Fork) claimed that the truth is what they were now saying to the court: that the Defendants were the cause of the closure of the Central Kitchen, which resulted in employees having to be terminated. All this is very convenient, and I am not convinced that Farm to Fork had lied to the employees and to the Malaysian government (something not to be done lightly) as Mr Edelmann claims.

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206 CE at para 62.

207 Transcript, 30 January 2024, 95:13 to 97:18.

208 Transcript, 30 January 2024, 95:23–95:28.

253 I consider that Farm to Fork has not proved that closure of the Central Kitchen was a response to the Employees being absent for a day (or a few days) in September 2021 and Mr Clark quitting (as opposed to the implementation of the strategy to close the Central Kitchen and transition to the use of third party suppliers as "Original Equipment Manufacturers" of sorts, and to save costs).

254 Relatedly, I would not have awarded Farm to Fork damages for the other losses it attributes to the Employees' departure allegedly due to instigation by the Defendants, for I have found that is not why the Employees left (see [186]–[189] above).

255 One aspect of these losses is a claim for some RM550,355 (roughly $175,014.24) which Farm to Fork attributes to the departure of Ms Ana. Farm to Fork says that caused its audit to be delayed by 14–15 months, a consultant (one Mr Farid) had to be engaged, KPMG had to be paid for an extended engagement to complete the audit, additional salaries of the finance team were incurred for the completion of the audit, and there was a potential penalty by the Companies Commission of Malaysia.[209]

256 I agree with the Defendants that, besides the Defendants not being to blame for Ms Ana's departure, there are other reasons why Farm to Fork should not be compensated for these alleged losses – I highlight two such reasons here.

257 First, when Farm to Fork sought an extension of time to circulate the AFS 2021 (which should have been ready by March 2022), to 30 June 2022 (the "First EOT Application"), it did not say that the reason for the delay was Ms Ana's departure. Instead, it said (among other things) that it was "experiencing

[209] PCS at paras 319–323.

high turnover of staffs within the Finance department which impacted the audit timelines", and that its business had "been impacted by the [COVID-19] pandemic which caused staff retention to suffer".[210] When asked if the First EOT Application had stated the real reasons for the delay in the audit, Mr Edelmann said it was "a similar situation as the retrenchment letter", Farm to Fork "[did] not want to air…internal company politics" and had to give a "legitimate explanation… to the authorities why there was a delay".[211] In other words, his explanation was that as with the retrenchment letters, Farm to Fork lied to the Malaysian authorities for its own advantage; and the real reason for seeking the extension of time was Ms Ana's departure – for which the Defendants should compensate Farm to Fork. However, Mr Edelmann later agreed that it is "obviously correct that the impact of [COVID-19] caused the delay in the audit".[212] On 4 October 2022, Farm to Fork made a second application for an extension of time (the "Second EOT Application"), stating that "the Auditors of the Company are still facing difficulties and have insufficient time to complete the audit of the financial statements of the Company… due to severe [interruptions] by the [COVID-19] outbreak, government lockdowns and supplier shutdowns which significantly increased the workload to complete the financial audit".[213] As with the First EOT Application, the Second EOT Application did not attribute the delay in the AFS 2021 to Ms Ana's departure. Mr Edelmann agreed that the reasons stated in the Second EOT Application were the reasons why the audit was then delayed.[214] Given the reasons stated in

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210 3AB at pp 359–361.

211 Transcript, 31 January 2024, 13:5–13:15.

212 Transcript, 31 January 2024, 13:25–13:27.

213 CE at pp 117–119.

214 Transcript, 31 January 2024, 16:17–16:23.

the First and Second EOT Applications, I do not accept that the delay in the audit (and associated losses) were due to Ms Ana's departure.

258 Second, Farm to Fork claims the consultancy fees of Mr Farid, whom it says was engaged because of "the departure of [Ms Ana] and other key members of the finance team".[215] If that was why Mr Farid was engaged, it would not just be because of Ms Ana's departure. On the stand, however, Mr Edelmann first said that he was not sure who had left, then conceded that the others who left "left on their own terms".[216] Farm to Fork cannot claim from the Defendants the costs of a consultant hired to replace a group of persons, when the premise of the claim is that the consultant was replacing just Ms Ana. Further, Farm to Fork claims the whole amount of Mr Farid's consultancy fees without giving any credit for Ms Ana's salary (or indeed, the salaries of the others in the finance team who had left).[217] Mr Farid's scope of work also went beyond that of Ms Ana's.[218]

259 Third, Farm to Fork claims RM20,000 as its estimate of the fine that the Companies Commission of Malaysia *may* impose.[219] However, no such fine has been imposed to date.[220] Awarding damages for loss that Farm to Fork has not suffered, and may never suffer, would not be appropriate.

260 Given what I have decided above, it is unnecessary for me to deal with the other reasons advanced by the Defendants as to why Farm to Fork would

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215 CE at paras 169, 170 and 172.

216 Transcript, 31 January 2024, 26:2–26:22.

217 DCS at para 330.

218 3AB at p 341; Transcript, 31 January 2024, 28:23 to 29:1.

219 CE at paras 180–181.

220 Transcript, 31 January 2024, 23:13–28.

not have been able to recover the losses it attributes to the departure of the Employees.

The Founders' Time Costs

261 Farm to Fork claims RM307,800 as the additional cost of work and loss of productivity due to the time spent remedying the Defendants' alleged breaches, reckoned on the basis of the Founders' "time costs".[221] Farm to Fork asserts that the Founders "spent around 15% of their time across 18 months to detect and remedy the [Defendants'] breaches".[222] But there are no records or other documents to support the percentage of 15%, the period of 18 months, or the hourly value of the time claimed. When asked when the 18-month period was, Mr Edelmann said that "it started once this appeal letter to reinstate Kim as the CFO was sent to the shareholders", *ie*, from the date of Ms Ana's email of 2 September 2021, to when the AFS 2021 was submitted, *ie*, 30 June 2023.[223] But that is a period of some 22 months, not 18 months. Further, Mr Edelmann said that Ms Li had spent 75% of her time from 14 September 2021 to 31 March 2022 searching for alternative suppliers[224] (a period of some six and a half months) but how that is to be reconciled with the claim of 15% of time across 18 months is not explained, and Ms Li was not called as a witness.

262 In *Tate & Lyle Food and Distribution Ltd and another v Greater London Council and another* [1982] 1 WLR 149, the court accepted that "additional managerial time was in fact expended" in dealing with remedial measures, but dismissed the claim because no record had been kept "to show the extent to

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221 CE at para 185.

222 CE at para 185.

223 Transcript, 31 January 2024, 38:20 to 39:16.

224 Mr Edelmann's AEIC at p 622; Transcript, 31 January 2024, 40:22–40:24..

which [the plaintiffs'] trading routine was disturbed by the necessity for continual dredging sessions", and the court was "not prepared to advance into an area of pure speculation when it comes to quantum" (at 152D–H).

263 Even if Farm to Fork had established some liability on the part of the Defendants, which the Founders had spent time to address, it would have to prove what loss Farm to Fork suffered as a result. Even if the Founders had spent time addressing matters caused by the Defendants, it does not necessarily follow that Farm to Fork suffered loss as a result – for instance, the additional time spent by the Founders may have had no adverse impact (or no significant adverse impact) on Farm to Fork's business – see, *eg*, *Aerospace Publishing Ltd and another v Thames Water Utilities Ltd* [2007] 3 Costs LR 389 at [86]. Moreover, Farm to Fork did not seek to apportion the damages it was seeking on the basis of time costs between the various claims it had advanced against the Defendants, such that if it succeeded on only one or some of its claims, the court would be able to work out an appropriate figure to award.

264 Thus, from the way Farm to Fork has sought damages on the basis of the Founders' time costs, I would have awarded no damages for the alleged tortious breaches. Even if Farm to Fork had established some liability on the part of the Defendants for contractual breaches, I would have awarded only nominal damages.

Cease-and-desist letter fees

265 Farm to Fork also claims US$1,200 "as legal fees relating to cease-and-desist letter";[225] specifically, for engaging US firm Lowe & Baik APC to issue

[225] PCS at para 324.

the cease-and-desist letter to the Defendants.[226] As Farm to Fork itself recognises, that claim is for legal fees.[227] It should be claimed as part of Farm to Fork's claim for legal costs, and not as damages.

Delivery up

266 One of Farm to Fork's pleaded prayers for relief, was an order for the Defendants to "immediately deliver up and/or destroy all documents, books, manuals, materials, records, correspondence, papers and information… relating to the business or affairs of [Farm to Fork] or its subsidiaries, holding company, or fellow subsidiaries of its holding company… or their customers and business contacts" (the "Delivery Up Prayer").[228]

267 In its closing submissions, however, Farm to Fork did not mention the Delivery Up Prayer; it only mentioned the prayers for damages, an injunction, and equitable damages.

268 As mentioned above (at [226]–[227]), the second injunction order that Farm to Fork obtained was in terms of the Delivery Up Prayer, and pursuant to that, the Defendants delivered up documents on 19 November 2021. Farm to Fork points out that this did not include the "Nicolas Sept 2021 Email Chain", but that now forms part of the court papers (which have been used in an open court trial, without Farm to Fork seeking any confidentiality protection in respect of the court file or the trial).

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226 PCS at paras 324 and 329–330.

227 PCS at para 324.

228 SOC at pp 22–23.

269 In the circumstances, even if Farm to Fork had established some liability against the Defendants in respect of confidentiality or the return of Client Property, I would not have made a delivery up order.

Injunction

270 Farm to Fork pleads two prayers for injunctive relief:[229]

(a) prayer 2 for an order restraining the Defendants from disclosing, using and/or disseminating confidential information (the "Confidentiality Injunction")

(b) prayer 3 for an order restraining the Defendants "for a period of 2 years from 1 September 2021" from breaching the non-solicitation obligations (the "Non-Solicitation Injunction").

271 For the Non-Solicitation Injunction, as the Defendants point out, the period of two years from 1 September 2021 is already past .[230] Farm to Fork recognises this, but in a qualified manner – it "understands [that] any injunction with respect to the Defendants' Non-Solicitation Obligations under Clause 13.1 of the [Consultancy] Agreement would have lapsed on 31 August 2023 if the Court finds that the Agreement was terminated on 1 September 2021".[231] I have indeed found that the Agreement was terminated on 1 September 2021 (see [46] above), and the period of two years from then ended on 1 September 2023. Farm to Fork obtained an interim injunction in terms of the Non-Solicitation Injunction, through both the first and second injunction orders.[232] There is no

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229 SOC at pp 23–24.

230 DCS at para 362.

231 PCS at para 334.

232 JW at pp 260–261 and 271–272.

basis to now grant a final injunction for a period in the past, and accordingly, I would not have granted the Non-Solicitation Injunction.

272 As for the Confidentiality Injunction, Farm to Fork says that the confidentiality obligations under the Agreement were negative covenants, as they required the Defendants to abstain from certain actions; and, as such, the Confidentiality Injunction should be granted. In support of this argument, Farm to Fork relies on *RGA Holdings International Inc v Loh Choon Phing Robin and another* [2017] 2 SLR 997 at [32], *Viking Engineering Pte Ltd v Feen, Bjornar and others* [2022] SGHC 144, at [12]–[13], [16] and [22]).[233]

273 The Defendants say that the proposed Confidentiality Injunction should not be granted as it does not track the wording of the confidentiality obligations, but goes beyond those obligations. In particular:[234]

(a) the proposed Confidentiality Injunction covers not only "disclosing" and "using" but also "disseminating", whereas the confidentiality obligations only mention disclosure and use;

(b) the confidentiality obligations only prohibit disclosures to *third parties*, whereas the proposed Confidentiality Injunction has no such limitation (such that if the Defendants were to communicate with Farm to Fork itself, that might contravene the injunction);

(c) the confidentiality obligations seek to protect Confidential Information that Adamas "creates, develops, receives or obtains in connection with its Engagement", whereas the proposed Confidentiality

233 PCS at paras 335–338.

234 DCS at para 361.

Injunction has no such limitation but would apply to information obtained outside the Engagement as well; and

(d) the confidentiality obligations are subject to exceptions for disclosures authorised by Farm to Fork, or required by law, but the Confidentiality Injunction sought has no such exceptions.

274 I agree with the Defendants that even if some liability were established, any Confidentiality Injunction would need to be appropriately worded so that it accords with the breach(es) to be prevented. In this context, I note that when Farm to Fork sought interim injunctive relief, it only mentioned use and disclosure and not dissemination, and the interim injunctions were worded accordingly. Further, the second injunction order refined the first injunction order by limiting the restraint to "using and/or disclosing *to any third party*" (emphasis added). [235]

Equitable Damages

275 In the alternative, Farm to Fork seeks equitable damages for the Defendants' alleged "misuse" of the confidentiality and/or non-solicitation obligations.[236]

276 In its submissions, however, Farm to Fork simply cites *I-Admin* at [76], which is not about equitable damages.[237] It appears from Farm to Fork's submissions that it is not actually seeking equitable damages, *ie*, damages in

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235 JW at p 272.

236 SOC at para 40(c); PCS at paras 331–333.

237 PCS at paras 332.

lieu of equitable relief, it is simply advancing "equitable damages" as an alternative basis for the same damages it seeks as "damages".[238]

277 I accept the Defendants' submissions that:[239]

(a) an award of equitable damages is only made in exceptional circumstances (see *Jethanand Harkishindas Bhojwani v Lakshmi Prataprai Bhojwani (alias Mrs Lakshmi Jethanand Bhojwani) and others* [2022] 3 SLR 1211 ("*Jethanand*") at [120]); and

(b) an award of equitable damages should not result in double recovery (*Jethanand* at [121]).

278 In *Jethanand*, the confidential information had already been delivered up, and there was a permanent injunction preventing further use of the information. The court declined to grant equitable damages, finding that "no such exceptional situation exists for the grant of equitable damages in lieu of an injunction, not to mention in addition to an injunction (which the plaintiff also [sought])" (*Jethanand* at [121]).

279 The present case is similar, in that the Defendants have already delivered up documents pursuant to the second injunction order, and Farm to Fork also seeks a Confidentiality Injunction and a Non-Solicitation Injunction. In relation to confidentiality, with delivery up and a Confidentiality Injunction, the court would not be declining to grant some equitable relief that it might award equitable damages in lieu of. In relation to non-solicitation, the period of the injunction sought is already past, Farm to Fork obtained interim injunctions in

238 PCS at paras 331–333.

239 DCS at para 353.

respect of that period, and likewise the court would not be declining to grant any equitable relief that it might award equitable damages in lieu of.

280 There is thus no basis for any equitable damages in the present case.

Conclusion

281 For the above reasons, I decide as follows:

(a) Farm to Fork's claims are dismissed; and

(b) Adamas' counterclaims are allowed only in so far as Farm to Fork is to pay Adamas $66,660 and interest thereon at 5.33% per annum from 1 September 2021 to the date of judgment.

282 Unless the parties are able to agree on costs within two weeks of this judgment, they are to file their costs submissions (limited to ten pages, excluding any schedule of disbursements) within a week thereafter.

Andre Maniam
Judge of the High Court

Benedict Eoon (Oon & Bazul LLP) for the plaintiff;
Hannah Lee, Tian Keyun and Tan Hoe Shuen (WongPartnership LLP) for the defendants.