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

[2022] SGHC 2

Suit No 754 of 2020

Between

Gravitas International
Associates Pte Ltd

And

Invictus Group Pte Ltd

JUDGMENT

[Choses in Action] — [Assignment] — [Bare right to litigate] — [Maintenance and champerty]
[Choses in Action] — [Assignment] — [Contracts of employment]
[Choses in Action] — [Assignment] — [Non-assignment clauses] — [Effect]
[Choses in Action] — [Assignment] — [Non-assignment clauses] — [Interpretation]
[Contract] — [Breach]
[Contract] — [Personal contracts] — [Assignability]
[Tort] — [Inducement of breach of contract] — [Contract of service]

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Gravitas International Associates Pte Ltd
v
Invictus Group Pte Ltd

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General Division of the High Court — Suit No 754 of 2020
Lee Seiu Kin J
10–12 August, 8 October 2021

7 January 2022 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 The Plaintiff brings two causes of action against the Defendant. The first is contractual, and stems from a contract, executed on 8 February 2018, for the provision of consultancy services relating to an initial coin offering ("ICO") (the "Contract"). Briefly, ICOs are a means of raising funds by offering to the public, cryptocurrency tokens. In some ways, an ICO is analogous to an initial public offering of shares, and for present purposes, it is adequate to think of such ICO-related consultancy services as being *loosely* comparable to some of the work a capital markets practice team might do, or engage third parties to do.

2 The consultant who provided these services was one Gravitas Holdings Pte Ltd ("GHPL"). The Defendant, Invictus Group Pte Ltd, was the recipient of GHPL's services; it is in the business of providing an e-platform for businesses

to engage in business-to-business transactions. Before going further, however, I must call to attention that GHPL is *not* the Plaintiff in this matter. The Plaintiff, Gravitas *International Associates* Pte Ltd, purports – by virtue of a deed of assignment (the "Deed") – to be the proper plaintiff on the grounds that it is the assignee of all of GHPL's "rights, benefits, interests, claims and titles"[1] under the Contract. I will address the Plaintiff's *locus standi* to bring this claim at [11]–[48] below. For now, I return to the outline of the claims and defences.

3 The Plaintiff's contractual claim, mounted on the basis of the Contract, comprises two parts. First, a claim for unpaid fees for services which it avers has been rendered by GHPL. This allegedly totals US$184,750.[2] Second, a claim for damages which it avers GHPL suffered as a result of the Defendant's repudiatory breach of the Contract. By this claim for damages, the Plaintiff seeks to recover lost profits, *ie*, sums it claims GHPL *would have* earned had the Defendant not committed repudiatory breaches of the Contract.

4 The Plaintiff's second claim is in tort, and lies against the Defendant for its alleged inducement of breach of contract; for this alleged wrong, the Plaintiff prays for an order for damages to be assessed.[3] The breached contract in question was a contract of employment entered between GHPL and one Stefano Virgilli ("Mr Virgilli") (the "Employment Contract"). On the Plaintiff's account, Mr Virgilli was an employee of GHPL and, in that capacity, had performed work on behalf of the Plaintiff for the Defendant pursuant to the Contract. In the course of working with Mr Virgilli, the Plaintiff avers, the Defendant caused him to breach his Employment Contract with GHPL "by

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1 Malcolm Tan Chun Chuen's Affidavit of Evidence-in-Chief ("PAEIC") at p 25.

2 Statement of Claim (17 Aug 2020) ("SOC") at paras 19.1–19.2 and 21.1–21.2.

3 SOC at paras 19.5 and 21.4.

entering into a service or consultancy agreement with [him] sometime in March 2018".[4] As a consequence, Mr Virgilli refused thereafter to work for GHPL.[5]

5 Two pertinent points arise in respect of this action. First, again, by the above-mentioned Deed, the Plaintiff claims to be the assignee of all of GHPL's "rights, benefits, interests, claims and titles" as arising from the Employment Contract.[6] Thus, it also asserts that it is the proper party in this tortious action. Second, the Plaintiff brought a separate suit against Mr Virgilli in respect of disputes stemming from the Employment Contract. Kwek Mean Luck JC has rendered judgment on that matter (see *Gravitas International Associates Pte Ltd v Stefano Virgilli* HC/S 755/2020 (22 July 2021) (General Division of the High Court) ("*Gravitas International v Virgilli*")), and where necessary, I will refer to his decision insofar as it bears on the case before me.

6 The Defendant's responses to these claims are relatively straightforward. In respect of both, the Defendant's overarching case is that the Plaintiff simply is not the proper party. As regards the former, the Defendant avers that the contract between it and GHPL was not validly assigned.[7] For this, it relies on a clause in the Contract which provides that neither it nor GHPL may assign their rights thereunder "without the prior consent" of the other.[8] It is not disputed that GHPL did not even seek such *prior* consent.[9] In relation to the tortious claim, the Defendant simply asserts without particularity that – even if

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4 SOC at para 10.

5 SOC at para 11.

6 PAEIC at p 25.

7 Defence (10 Mar 2021) ("Defence") at paras 4 and 18.

8 PAEIC at pp 40–41, cl 8.3.

9 Notes of Evidence ("NEs") 10 Aug 2021 at p 13, lines 1–6.

the tort is found to have been committed – the loss would have been suffered by GHPL, not the Plaintiff.[10]

7 I turn then to the substantive defences on the facts. As regards the claim for unpaid fees, the Defendant's case is that GHPL did not perform the work the Plaintiff claims it did.[11] This is the starting point of the Defendant's case and the Plaintiff must therefore prove that the work in respect of which it claims unpaid fees as an assignee, was performed. It also advances certain positive defences, but I will address these, if necessary, in due course. This brings me to the defence to the claim in tort for inducing Mr Virgilli's breach of the Employment Contract with GHPL. On this action, the Defendant simply refutes having knowledge of the legal relationship between Mr Virgilli and GHPL.[12]

8 I heard the parties' evidence in August 2021 in support of their respective cases outlined above. They each put forth one factual witness. Malcolm Tan Chun Chuen ("Mr Tan"), who was a director of GHPL during the material period, and who is presently a director of the Plaintiff,[13] gave evidence for the Plaintiff. The Defendant's sole witness, Lam Choong See ("Mr Lam"), is its sole director and chief executive officer.[14] On 24 September and 8 October 2021 respectively, the parties tendered their written closing and reply submissions. I did not hear further oral submissions. After considering all the material put before me, I have decided to dismiss the claims. I now give the reasons for my decision, beginning with the preliminary issue of whether the

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10 Defence at para 13(c).

11 Defence at para 16.

12 Defence at para 13(a).

13 PAEIC at para 1.

14 Lam Choong See's AEIC ("DAEIC") at para 1.

Plaintiff even has standing. Although, as I will explain, the Plaintiff has not satisfied me that it has the requisite standing to bring the two claims it has, in the event I have erred in law, I will nevertheless consider the facts *on the basis* that the Plaintiff has standing. On this alternative, I have found that the Plaintiff's claims also fail on the facts.

Preliminary issue: *Locus standi* of the Plaintiff

9 As stated at [2] and [4] above, in respect of both causes of action brought by the Plaintiff, it purports to have standing to sue the Defendant by virtue of the above-mentioned Deed. This Deed was executed on 24 April 2020, and its key, operative terms are as follows:[15]

> **THIS DEED OF ASSIGNMENT** (the "Deed") is made on the 24th day of April 2020.
>
> BETWEEN
>
> GRAVITAS HOLDINGS (PTE.) LIMITED …
>
> AND
>
> GRAVITAS INTERNATIONAL ASSOCIATES PTE. LTD. …
>
> **WHEREAS**
>
> A. The Assignor is desirous of assigning to the Assignee all rights, benefits, title and interest of all claims, suits and proceedings of the Assignor and all contracts and/or agreements more specifically stated hereinafter upon the terms and conditions herein contained.
>
> **1. ASSIGNMENT**
>
> With effect from the date herein, the Assignor hereby absolutely transfers and assigns to the Assignee, all of its rights, benefits, interests, claims and titles to
>
> **1.1** whether arising directly and indirectly from, in and under:
>
> (a) the Employment Agreement between the Assignor and Stefano Virgilli commencing 23 February 2018 (including collateral contracts of the same, if any);

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15 PAEIC at pp 25–33, cll 1.1 and 1.2.

> (b) the Consultancy/Advisory Agreement between the Assignor and Invictus Group Pte Ltd dated 8 Februar 2018; and
>
> …
>
> **1.2** all choses of action, rights, demands and claims of the Assignor against third parties, including but not limited to, all the counter-parties in the agreements stated in Clause 1.1 above.

10 It is clear from the broad language of cll 1.1 and 1.2 that GHPL intended to assign *everything* it could to the Plaintiff. However, therein lies the difficulty which the Plaintiff faces. Whether GHPL *could* assign the rights which are being enforced in this suit turns not on this Deed, but the terms of the Contract and the Employment Contract, respectively. I therefore address them in turn.

Validity of the assignment of the Contract

The non-assignment clause in this case

11 The Defendant disputes the Plaintiff's standing on the grounds that the Contract contained a qualified non-assignment clause. Clause 8.3 provides:

> ***Neither Party may assign*** any of its rights under this Agreement ***without the prior consent of the other Party***, which shall not be unreasonably withheld; provided. This Agreement shall apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties.
>
> [Emphasis added]

12 I note from the outset that this clause is poorly drafted. It is unclear what was to follow the word "provided" at the end of the first sentence. "Provided" is a conjunction which precedes a qualification of the clause before it. For example, "which shall not be withheld unreasonably; provided *the assigning Party gives at least two weeks' notice of its intention to assign*". Here however, the second sentence does not add any qualification to the first. Therefore, it is

likely that the inclusion of "provided" was simply a typological error. This is the most plausible account of why it even appears in cl 8.3.

13 Clauses which prohibit assignment are common in boilerplate contracts, especially consultancy contracts which involve some degree of personalisation in the services to be rendered thereunder. What likely happened here is that the drafters of the Contract found a boilerplate non-assignment clause, intended to remove *some* qualification to the first sentence, but somehow failed to complete this rather simple task. I invited parties to put forth the original boilerplate clause, but they were unable to assist me.[16] I will therefore approach cl 8.3 as if the word "provided" was not there.

14 However, before examining the consequence of *this* clause in particular, it is necessary to explain the nature of non-assignment clauses generally, how to analyse them, and the potential consequences they may have.

The effect of non-assignment clauses: A matter of interpretation

15 The leading case on this topic is the House of Lords' decision in *Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd and another appeal* [1994] 1 AC 85 ("*Linden Gardens*"). Lord Browne-Wilkinson, who gave the reasoning of the court, accepted that the consequence of a non-assignment clause depends on the construction of the contract (at 104D–105D). In considering the possible constructions, he referred to a case note by Professor Roy Goode on *Helstan Securities Ltd v Hertfordshire County Council* [1978] 3 All ER 262 ("*Helstan Securities*"): "Inalienable Rights?" (1979) 42(5) MLR 553–557. Professor Goode's analysis of the facts of *Helstan Securities* is not relevant for present

[16] NEs 10 Aug 2021 at p 14, line 15 to p 15, line 20.

purposes. What *was* significant was his astute observation that non-assignment clauses are "capable of at least four alternative interpretations" (at 554).

16 First, as a personal undertaking not to assign, the breach of which gives rise to a claim for damages. Second, as precluding, and thus invalidating the assignment of *rights to* performance under the contract. Third, as precluding, and thus invalidating not only the assignment of rights to performance but also any *fruits of* performance. Last, as a condition of the contract, the breach of which is repudiatory. Lord Browne-Wilkinson accepted this classification and added that, although not a possibility considered by Professor Goode, it is hypothetically possible for a non-assignment clause to invalidate the assignment of rights to future performance in a subsisting contract, but not the fruits which have already accrued for performance rendered (at 105). This would fall somewhere between the second and third categories.

17 For completeness, I note that the approach which their Lordships took towards non-assignment clauses in *Linden Gardens* has been accepted in Singapore, though not yet by the Court of Appeal. In *Total English Learning Global Pte Ltd v Kids Counsel Pte Ltd* [2014] SGHC 258 ("*Total English*"), Tay Yong Kwang J (as he then was) remarked, "Although [counsel] urged me to depart from the English position set out in *Linden Gardens v Lenesta*, there was no reason to suggest why the legal reasoning adopted therein would be inapplicable to the local context" (at [64]). In *Arris Solutions, Inc v Asian Broadcasting Network (M) Sdn Bhd* [2017] 4 SLR 1 ("*Arris Solutions*"), after noting that *Linden Gardens* had been applied in *Total English*, Simon Thorley IJ, delivering the decision of the Singapore International Commercial Court, stated the law as follows: "*Linden Gardens* stands for the rule that where there is a contractual prohibition on assignment without prior consent, a purported assignment executed without obtaining such consent will be only effective as

between the assignor and assignee, but will not bind the other contracting party, whose rights and obligations will remain to the assignor" (at [20]). The assignment in question was one between the first and third plaintiff, and the court, having found that the defendant's prior written consent had not been sought for the third plaintiff's assignment to the first plaintiff, entered judgment for the third (see [25] and [44]).

18 The clause in *Arris Solutions* was drafted as follows: "*Neither party shall be entitled to assign*, transfer, and/or subcontract any of its rights and obligations under this Agreement without the prior written consent of the other Party, such consent not to be unnecessarily withheld or delayed" [emphasis added] (at [5]). The phrase "shall not be *entitled*" does seem to preclude assignability at a more fundamental level (*ie*, the second or third of Professor Goode's categories: see [16] above), rather than merely operating, for example, as a personal undertaking not to assign (*ie*, the first of Professor Goode's categories). That being said, I should qualify that I am not expressing a general view that the use of a certain phrase or word will carry a definite legal effect. The rules of contractual interpretation are well-known and very often, a great deal turns on legal and factual context of the case. Indeed, beyond having to determine whether the terms of the non-assignment clause should be understood as a restriction on the very alienability of the chose in action itself, the types of choses in action to which the clause applies must also be determined. For example, the non-assignment clause may only prohibit the assignment of rights to performance; it may do so in respect of both rights to performance as well as rights to accrued fruits; it may even be read as prohibiting the assignment future fruits; and so on.

19 Consider the following example. The non-assignment clause in *Linden Gardens* itself provided that "the employer *shall not* without the written consent

of the contractor assign this contract" [emphasis added] (at 99). It seems that the academic commentators, Ying Khai Liew, *Guest on Assignments* (Sweet & Maxwell, 4th Ed, 2021) ("*Guest*") at para 4-03, Marcus Smith and Nico Leslie, *The Law of Assignments* (OUP, 3rd Ed, 2018) ("*Smith and Leslie*") at para 25.05, and Gregory J Tolhurst, *The Assignment of Contractual Rights* (Hart Publishing, 2nd Ed, 2016) ("*Tolhurst*") at 269–270, would interpret "shall not assign" as a promise or personal undertaking not to assign, rather than a preclusion of the power to assign. From the point of view of the plain meaning of those words, I tend to agree. It seems to me that the phrase "shall not assign" connotes a sense of *obligation*. It does not obviously speak to the character or attributes of the property, *ie*, the chose in action itself. In fact, if one examines the arguments in *Linden Gardens* closely, it will be seen that counsel for *Linden Gardens* (an assignee), John Dyson QC (who would later become Lord Dyson), made a similar submission. He sought to distinguish the phrase "shall not assign" from firmer expressions such as "unassignable" and "non-transferable" (*Linden Gardens* at 90–91), which more clearly went towards the alienability of the chose in action.

20 Yet, the House unanimously agreed with the decision of Lord Browne-Wilkinson, who took the view that, on a *true* construction of the clause, its effect was to prohibit and thus invalidate non-compliant assignments (*Linden Gardens* at 105). The brief facts of the first case in *Linden Garden*, which comprised two appeals, were as follows. The employer company was the lessee of a property. The contractor had been engaged to remove asbestos from these premises. After the works were completed, the employer found more asbestos which should have been removed. Subsequently, the employer assigned its leasehold interest to the plaintiff, and thereafter, brought an action against the contractor for damages. After the commencement of this action, the employer purported to assign to the plaintiff, without seeking the contractor's written consent, its rights

of action in the claim for damages. At first instance, the judge found that the assignment was invalid. In the Court of Appeal, the majority, comprising Nourse LJ and Sir Michael Kerr, overturned this decision (see (1992) 57 Build LR 57). They took the view that the non-assignment clause in question (see [19] above) permitted the assignment of rights to fruits arising from the contract, though it prohibited assignments (without written consent) of the right to require future performance. Thus, since the right of action to sue the contractor was a right to fruits, it could be validly assigned without consent.

21 The House of Lords rejected this distinction, and in arriving at this conclusion, they took considerable notice of the particular contractual context in which the clause appeared. Lord Browne-Wilkinson noted that, in building contracts, claims for the price are often met with cross-claims for defective performance. This being the case, if an assignee receives a right of action for defective performance, but the assignor remains liable for the price (to the contractor), his Lordship queried whether the assignor would still be able to abate payment of the price on the basis of defective performance, or whether the assignee would need to be joined in the proceedings. In light of these questions, he eventually concluded that the parties are unlikely to have intended such a "confused" state of affairs (at 105):

> In the context of a complicated building contract, I find it impossible to construe clause 17 as prohibiting only the assignment of rights to future performance, leaving each party free to assign the fruits of the contract. The reason for including the contractual prohibition viewed from the contractor's point of view must be that the contractor wishes to ensure that he deals, and deals only, with the particular employer with whom he has chosen to enter into a contract. Building contracts are pregnant with disputes: some employers are much more reasonable than others in dealing with such disputes. The disputes frequently arise in the context of the contractor suing for the price and being met by a claim for abatement of the price or cross-claims founded on an allegation that the performance of the contract has been defective. Say that, before the final

> instalment of the price has been paid, the employer has assigned the benefits under the contract to a third party, there being at the time existing rights of action for defective work. On the Court of Appeal's view, those rights of action would have vested in the assignee. Would the original employer be entitled to an abatement of the price, even though the cross-claims would be vested in the assignee? If so, would the assignee be a necessary party to any settlement or litigation of the claims for defective work, thereby requiring the contractor to deal with two parties (one not of his choice) in order to recover the price for the works from the employer? ***I cannot believe that the parties ever intended to permit such a confused position to arise***.
>
> [Emphasis added]

22 I would, with great respect to the English Court of Appeal, agree with his Lordship. The distinction which Nourse LJ and Sir Michael Kerr sought to draw on the uncomplicated terms of the actual non-assignment clause ("shall not… assign *this contract*"), seems to me rather forced. On my part, I would press for a reminder to return to the beginning of Lord Browne-Wilkinson's speech. He stated there that determining the effect of a non-assignment clause is, at its core, a question of construction. It is, as such, important to approach the issue by asking what the parties might objectively have intended by the clause, starting with its text as the "first port of call" (*Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2], where the Court of Appeal reiterated the importance of starting with the text of any contract).

23 I will simply add that this question of interpretation should be a focused one, chiefly directed at asking two successive questions. First, whether the terms of the non-assignment clause suggest that parties intended for the very alienability of the right to be restricted. Second, still referring to the terms of the clause, what type of rights does it appear to capture (*ie*, rights to performance, rights to present or future fruits, or combinations thereof). The formulation of these two questions, in this manner, is nothing novel. It is derived from

Professor Goode's observations on the possible interpretations which can be applied to a non-assignment clause. By breaking the inquiry down into two parts, which in any event, appeared to me to address distinct issues, it is hoped that the question of interpretation is slightly more manageable.

24 Having said the above, I am mindful that the technical complexities in this area of law, *ie*, the assignability of choses in action, make for a rather stark mismatch between the boilerplate reality of contract drafting and the underlying legal principles (as we see in this case: see [11]–[13] above). This will likely entail some difficulty in the search for what parties objectively "intended", and it is somewhat exacerbated by the fact, as I observed at [19]–[20] above, that there is genuine room for disagreement as to the consequence of even the most basic phrases, such as "shall not assign" in *Linden Gardens*. In my view, however, this is not an issue which can or should be resolved by the proposal of a grand conceptual scheme in a single decision. I have, in the paragraphs above, set out a general approach towards answering the question: "does *this* non-assignment clause prohibit *this* assignment". As much turns on the specific text of the clause, the factual background of the case, as well as the relevant contractual context, there is little more that can be said by way of general guidance.

Interpretation of the non-assignment clause in this case

25 With all of the above in mind, in particular, the questions posed at [23] above, there are two parts of cl 8.3 of the Contract (see [11] above) which call for interpretation. First, "Neither Party may assign"; and second, "any of its rights under this Agreement".

26 The phrase "Neither Party may assign" is equivalent to the phrase "The Parties may not assign". Where the parties are all known, there is no difference

between saying all of them "may not" do something, and none of them "may" do that thing. Both carry the same meaning. Hence, as it is less cumbersome, I will interpret the phrase "may not".

27 In my view, "may not" suggests that cl 8.3 operates as a curtailment of the power of the parties to assign. To use the language of my own formulated question at [23] above, the phrase "may not" appears to me to affect the very alienability of the chose in action in question. The requirement of consent thus takes effect as a condition-precedent to a valid assignment. Such a view of the phrase "may not" is also taken by Professor Tolhurst in his text dedicated to the subject: see *Tolhurst* at 270. Admittedly, the phrase "may not" does not convey as strong a prohibition as the non-assignment clauses in certain other cases which have also reached this conclusion (cross-reference *Arris Solutions* at [18] above; also see *Hendry v Chartsearch Ltd* [1998] CLC 1382 ("*Hendry v Chartsearch*") where, like *Arris Solutions*, the phrase "shall not be entitled to assign" was also used in the non-assignment clause). Indeed, it would not be unfair to query the difference between "shall not" – which *Guest*, *Smith and Leslie*, and *Tolhurst* would read as a promise not to assign – and "may not", which as stated, *Tolhurst* suggests likely invalidates an assignment.

28 The answer seems to lie in the linguistic differences between "shall" and "may". When we say one "shall" do something, that is an obligation to act (as I suggested at [19] above); conversely, when one "shall *not*" do something, that is an obligation to abstain. Hence, if a person acts in contravention of a clause expressed in those terms, it would connote a breach of contract. However, when we say one "may" do something, that permits or empowers that individual to perform the act but does not oblige him to do so. By the phrase "may not", we forbid the doing of the act, or deprive him of any power to perform that act. This has connotations of invalidity of the act rather than the breach of an obligation.

This generally intuitive distinction between the meaning of the terms is, in my view, sufficient to explain the difference between "shall not" and "may not", and therefore their differing legal consequences in relation to non-assignment clauses. That said, I am conscious that this distinction cannot be pushed too far. The context of the clause may have a greater effect on the interpretation than the natural meaning of those words, and in light of the outcome in *Linden Gardens*, it is not unarguable to say that when a person "shall not" do something, he is deprived of the power to do that specific act, rather than being under a mere obligation to abstain from doing it.

29 This, however, does not pose a problem to my analysis. Indeed, the fact that the language of "shall not" can quite comfortably accommodate both the concepts of a *duty* as well as a restriction on one's *power* is probably a useful way to reconcile the academic views of the phrase "shall not" with the actual decision in *Linden Gardens* as I set out at [21] above. Furthermore, the force of this explanation seems supported by the fact that such re-characterisation cannot be so easily applied to the phrase "may not". That is, recasting the phrase "may not" as an obligation to abstain seems to attract much greater dissonance between the language and the proposed concept. Obligations in contract are supposed to be, at least generally, sharp and defined; one either *must* or *must not* do a thing. The language of "may" and "may not" can, but does not comfortably encapsulate this. If, for example, in a contract for the sale of goods, I am only able to receive delivery on a specified day, and I contract with the seller for this, it is awkward to achieve this by stating in the contract that the seller "may not" deliver on any day other than my specified day. Conversely, saying he "may" deliver on that day does not create the obligation I wish to impose. Of course, we could say that he "may *only*" make delivery on that day, but the operative obligation is then not created by the word "may" but rather the word "only".

30 I do not mean to say that it is not possible for the language of "may" and "may not" to be recast in this way. My point is that doing so creates disjunction between the usual understanding of the terms and the underlying legal concepts. Thus, just as the difference in academic commentary and the outcome of *Linden Gardens* can be explained by the relative ease with which the phrase "shall not" can be re-characterised as a strict prohibition, I would suggest that the lack of ease in applying the same treatment to the phrase "may not" can be said to be a reasoned explanation of Professor Tolhurst's seemingly intuitive suggestion that, "Provisions stating that a party 'may not' assign probably also fall within [the group of clauses drafted to negate the power to assign]" (*Tolhurst* at 270).

31 I turn then to the second phrase in cl 8.3 requiring interpretation: "any of its rights under this Agreement". In my view, this should include *all* choses in action arising from the Contract. As suggested at [22] above, the first port of call is to look at the language of the provision. Nothing about the phrase "rights under this Agreement" suggest that the parties intended to distinguish between rights of performance, which are irrelevant in this suit, and rights to fruits, which *are* relevant. In fact, to the contrary, the rather poor drafting of cl 8.3 I highlighted at [11]–[12] above indicates that the parties probably did not have such a specific, legally precise intention upon entering the Contract.

32 I therefore find that the legal consequence of non-compliance with the terms of cl 8.3, specifically, failing to seek the "prior consent of the other Party", is that the purported assignment will be invalid. On this basis, I turn to consider GHPL's purported assignment of its "rights, benefits, interests, claims and titles" under the Contract to the Plaintiff.

The effect of failing to seek prior consent as required

33 As stated at [6] above, it is not disputed that no prior consent was sought. In fact, the purported assignment – effected on 24 April 2020 – was only brought to the Defendant's attention on 13 August 2020, by a letter from Malcolm Tan Chambers LLC.[17] It is salient to note that the content of this letter was that of a *notice*; it did not request that the Defendant provide its consent to the assignment.[18] Further, the entity for whom Malcolm Tan Chambers LLC was acting was the Plaintiff,[19] *not* GHPL.

34 Thereafter, on 12 March 2021, Malcolm Tan Chambers LLC sent another letter, though this time to the Defendant's then-counsel, Silvester Legal LLC. The letter requested that the Defendant give consent to the assignment by 17 March 2021, "failing which" – the letter suggests – it would be deemed that such consent is given.[20] No reply was adduced as evidence, so it is unclear if there was any.[21] Finally, on 28 July 2021, the Plaintiff's new solicitors, Magna Law LLC sent a further letter directly to the Defendant, again requesting that they provide consent to the assignment.[22] Again, no reply was adduced.

35 The Plaintiff relies on these letters to make the claim that, even if there were procedural defects in the assignment, they have been cured. The difficulty I have with this submission, is that the letters were all sent *after* the Deed was executed on 24 April 2020. No subsequent deed was re-executed after the letters

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17 DAEIC at p 235.

18 DAEIC at p 235, para 3.

19 DAEIC at p 235, para 1.

20 1PB pp 27–28.

21 NEs 11 Aug 2021 at p 112, line 10 to p 114, line 31.

22 Plaintiff's Bundle of Documents ("1PB") at pp 25–26.

were issued. If that had been the case, it could at least have been argued that the Defendant's consent was sought, but unreasonably refused. It is difficult to say that the Defendant unreasonably refused *prior* consent when such consent had never been requested. Further, the letters were not even sent by GHPL, but the Plaintiff. So, they do nothing to address the issue of whether the *assignor*, GHPL, properly sought the prior consent of the *obligor*, its counterparty in the Contract, the Defendant. This is what cl 8.3 of the Contract requires (see [11] above), and the letters do not demonstrate that this has been satisfied.

36 Given my finding at [32], the letters, however, gives rise to a slightly more difficult question, and one which the English Court of Appeal considered, *obiter*, in *Hendry v Chartsearch*. The non-assignment clause in that case provided: "The Client [Defendants] shall not be entitled to assign, licence or otherwise transfer the benefit of this Agreement whether in whole or in part without the prior written consent of Interface … Interface *shall not be entitled* to assign or otherwise transfer this Agreement in whole or in part or to sub-contract any of obligations hereafter *without the prior written consent of the Client which shall not be unreasonably withheld*" [emphasis added] (at [8]). The essential facts are straightforward: Interface did not seek consent prior to assigning certain rights to the plaintiff, who was alongside his wife, the owner of Interface. The plaintiff proceeded to sue for breach of the purportedly assigned contracts. The plaintiff also alleged that the defendant had induced Interface's employees to break their contracts of employment. On the facts of the case, Evans LJ, delivering the judgment of the court, held that, had the defendant been properly asked, it would have been entitled to reasonably refuse consent to the assignment. So, the case could be disposed of on this basis.

37 However, the court's factual decision aside, it also mooted the following question. Where an assignor does not even ask for consent, contrary to the terms

of a non-assignment clause, may that assignment nevertheless be effective on the grounds that, had the consent of the obligor been sought beforehand, it could not in any event have been reasonably withheld? In light of his assessment of the facts, Evans LJ found it unnecessary to decide the point, and preferred to leave it open (at 1392–1393). He did, however, express inclination towards the view that – if consent could not have been unreasonably withheld – the assignment could be valid notwithstanding the assignor's failure to even seek prior consent. To understand why he was so inclined, we need to examine Millett LJ's observations.

38 Millett LJ took the view that it is irrelevant whether consent could have been unreasonably withheld. In his terms, the matter "is not a proper subject of inquiry" (at 1393). To arrive at this view, he started from the premise that it is settled law that, if the lessor's consent is required for an assignment, failure to obtain such consent is fatal to any assignment attempted by the lessee (at 1394). He cited *Barrow v Isaacs & Son* [1891] 1 QB 417 and *Eastern Telegraph Co Ltd v Dent* [1899] 1 QB 835, and I note that there are many more authorities. For decisions following *Hendry v Chartsearch*, see *Norwich Union Life Insurance Society v Shopmoor Ltd* [1999] 1 WLR 531, *passim*; *Greymouth Gas Kaimiro Ltd v GXL Royalties Ltd* [2011] 1 NZLR 289 at [10], Young J delivering the judgment of the Supreme Court of New Zealand; and *Fulham Partners LLC v National Australia Bank Ltd* [2013] NSWCA 296 ("*Fulham Partners*") at [38], Basten JA giving the delivering the judgment of the Supreme Court of New South Wales.

39 He then goes on to say that, although there are "significant differences" between the assignment of an interest in land, and the benefit of a contract, these differences do not bear on the validity of an assignment which fails to comply with the requirement to seek prior consent. The learned Lord Justice, in

reasoning this assertion, begins with the observation that, where interests in land are concerned, the law finds repugnant and holds void, conditions against the alienation of such interests. Yet, even then, the cases (*eg*, those cited above) have established that where a lessee fails to seek consent to assign, such consent having been covenanted for, it is "no answer" for him to say that no reasonable objection could have been made if consent had been sought (at 1394). Thus, in the case of contractual choses in action, where the law does not even object to stipulations of inalienability, *a fortiori*, a failure to seek consent should be fatal to the assignment. This reasoning essentially builds on that of Lord Browne-Wilkinson in *Linden Gardens*. There, his Lordship held that – unlike interests in land – there is no public policy against restricting the alienability of choses (*Linden Gardens* at 107):

> In the face of this authority, the House is being invited to change the law by holding that such a prohibition is void as contrary to public policy. For myself I can see no good reason for so doing. Nothing was urged in argument as showing that such a prohibition was contrary to the public interest beyond the fact that such prohibition renders the chose in action inalienable. Certainly in the context of rights over land the law does not favour restrictions on alienability. But even in relation to land law a prohibition against the assignment of a lease is valid. We were not referred to any English case in which the courts have had to consider restrictions on the alienation of tangible personal property, probably because there are few cases in which there would be any desire to restrict such alienation. *In* ***the case of real property there is a defined and limited supply of the commodity, and it has been held contrary to public policy to restrict the free market. But no such reason can apply to contractual rights: there is no public need for a market in choses in action***. A party to a building contract, as I have sought to explain, can have a genuine commercial interest in seeking to ensure that he is in contractual relations only with a person whom he has selected as the other party to the contract. In the circumstances, I can see no policy reason why a contractual prohibition on assignment of contractual rights should be held contrary to public policy.
>
> [Emphasis added]

40 Henry LJ took the same position as Millett LJ, though he provided an additional, more straightforward reason in support (at 1394):

> ***The suggestion that the assignor can validly assign in breach of his contract without ever seeking prior*** consent by asserting that, as such consent could not reasonably be refused, so it is unnecessary, ***seems to me to be a recipe to promote uncertainty and speculative litigation***. I prefer the simple certainty that prior consent never applied for is never withheld or refused (whether reasonably or otherwise). The burden of suing should be on the party who asserts that he is not obliged to ask for prior consent as his contract required him to because it could not reasonably be refused.
>
> [Emphasis added]

41 Returning then to Evans LJ's view. He does not cast any doubt on the rule insofar as leases are concerned. However, he suggests that there is no authority which has extended the rule to the assignment of contractual rights, and that it "may be arguable that a debtor cannot object to the validity of an assignment on the ground that he was not asked for his consent, when he could not reasonably have refused it" (at 1392).

42 I can see the intuitive appeal of Evans LJ's suggestion. After all, if the assignment would not have failed had an ostensibly minor procedural step been taken, it seems harsh to deny a plaintiff the standing it needs to bring a claim, particularly if it is meritorious. This harshness may be amplified further in cases where the assignee no longer exists, or is simply disinterested in re-effecting a fresh, compliant assignment. However, I do not think it is permissible to accept these concerns whilst also purporting to follow *Linden Gardens*. If we start from that position, bearing in mind *Total English* and *Arris Solutions* insofar as Singapore law is concerned, it is in my view difficult to assert on one hand that non-assignment clauses (properly interpreted) are effective in invalidating non-compliant assignments, whilst also saying on the other that it is permissible for the court to consider the hypothetical question posed by Evans LJ.

43 In this regard, I think it useful to refer to the paper of Gregory J Tolhurst and JW Carter, "Prohibitions on Assignment: A Choice to be Made" (2014) 73(3) CLJ 405–434 ("*Tolhurst and Carter*"). Here, the learned professors consider the two opposing views which have arisen in this area: (a) the "property view" – *ie*, that encapsulated by the judgment of Lord Browne-Wilkinson in *Linden Gardens*; and (b) the "contract view" – *ie*, that which proposes that contracted prohibitions on assignment, no matter how they are framed, should operate only in the realm of contract (as promises not to assign), and not at the level of property.

44 Preferring the latter view necessarily entails a departure from *Linden Gardens*, for which I am aware there is both judicial and scholarly support. In *First Abu Dhabi Bank PJSC (Formerly National Bank of Abu Dhabi PJSC) v BP Oil International Limited* [2018] EWCA Civ 14 ("*First Abu Dhabi*"), Gloster LJ (with whom Lord Briggs and Patten LJ agreed) expressed that, had she not been constrained by the authority of *Linden Gardens*, she would likely have preferred the contract view (at [28]), citing an article by Professor Goode making the case therefor: "Contractual Prohibitions against Assignment" [2009] LMCLQ 300–318. Indeed, I would also regard the decisions of *Barbados Trust Co Ltd v Bank of Zambia and another* [2007] 2 All ER (Comm) 445 and *Don King Productions Inc v Warren and others* [1998] 2 All ER 608 as decisions which exemplify an unspoken discomfort with the strict, "property view" that *Linden Gardens* applies to non-assignment clauses. In these cases, it was held that a declaration of a trust over a chose in action, in favour of an intended assignee, can escape the effect of a non-assignment clause. Of course, these courts arrived at their decisions by interpreting the prohibitory clause in question. This seems aligned with *Linden Gardens*. However, given that a trust over a chose in action, *mechanically*, operates in the same manner as an equitable assignment (*Smith and Leslie* at para 25.41; though I make no remark

on the far more difficult conceptual difference which has attracted the attention of an entire monograph: see CH Tham, *Understanding the Law of Assignment* (CUP, 2019)), the distinction seems quite vexed. The willingness of the courts in these cases to draw such fine distinctions to, ostensibly, get around the consequences of *Linden Gardens* might warrant at least, closer examination of the Lords' decision, if and when the applicability of *Linden Gardens* goes before the Singapore Court of Appeal.

45 That said, as far as the matter before me is concerned, I – like the judges in *Total English* and *Arris Solutions* – have not been presented with any reason to depart from *Linden Gardens* in favour, *eg*, of *First Abu Dhabi*. Indeed, though *Tolhurst and Carter* argue that the "property view" should be preferred for a range of reasons, their ultimate point, as would be apparent from the title of the article, is that it is "necessary to make a clear informed choice as to the operation of provisions which prohibit assignment. That choice is not a simple one as it goes to the very heart of the law of assignment and personal property" (at 434). Without the benefit of full arguments on the issue, I am not in a position to choose between the "property view", the "contract view", or some other middle-of-the-road approach which Evans LJ's inclination might be said to reflect.

46 The consequence of this, as I alluded to at [42] above, is that I prefer the view of Millett and Henry LJJ in *Hendry v Chartsearch*. This is consistent with *Linden Gardens*, which Evans LJ's does not appear to be. It is worth noting that in *Fulham Partners*, the Supreme Court of New South Wales also took this view. After a brief restatement of *Linden Gardens*, Basten JA suggested that if consent is not even sought, the assignment would be ineffective whether or not it was reasonably or unreasonably withheld (at [38]–[41]). Applying this to the present case, GHPL's purported assignment to the Plaintiff of its rights under

the Contract is plainly invalid as no prior consent was ever sought from the Defendant. The Plaintiff therefore has no standing to bring its contract claim.

Do non-assignment clauses survive termination?

47 This then brings me to a final point which arises because of an argument the Plaintiff makes. In essence, counsel for the Plaintiff argues that cl 8.3 is irrelevant because it does not survive the Contract's termination. In support of this, he relies on cll 3.1 and 6.2 of the Contract which expressly provide that cll 3 and 2, respectively, shall survive termination. There is, however, no clause that preserves cl 8.3.[23]

48 I do not accept this. A consequence of accepting *Linden Gardens* is that the inherent transferability of the chose in action created by the contract is, by the non-assignment clause, *restricted*. Put another way, the terms of the contract do not operate as a bar on the transferability at the level of contract, instead, it is the very proprietary character of the chose in action which is restricted. This is precisely the distinction between the "property view" of non-assignment clauses which is encapsulated by *Linden Gardens* and the "contract view" for which Gloster LJ expressed support in *First Abu Dhabi*. Thus, as it is the inherent proprietary characteristics of the chose in action which restricts transferability, it is not relevant that the Contract has ended or that the non-assignment clause "has not survived".

Validity of the assignment of the Employment Contract

49 As mentioned at [4] above, the Plaintiff asserts standing in respect of its claim against the Defendant for inducing Mr Virgilli's breach of his

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[23] Plaintiff's Written Submissions (24 Sep 2021) ("PWS") at paras 14–16.

Employment Contract. The terms of the Deed assigning the rights under this contract from GHPL to the Plaintiff, are set out at [9] above.

50 It is well-established on the authority of *Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014 that the right to receive services of an employee under a contract of employee is a personal right which cannot validly be assigned without the employee's consent (at 1020 *per* Viscount Simon LC, 1026 *per* Lord Atkin). One need only consult the standard texts to conclude that this position is beyond doubt (see *Tolhurst* at para 6.72; *Smith and Leslie* at para 24.12; *Guest* at para 4-48). I am, of course, mindful that the Plaintiff is not asserting a right to Mr Virgilli's performance of work as an employee. However, as I will explain shortly, the inability of GHPL to assign the right to Mr Virgilli's services as an employee, without his consent, is a crucial point which must be borne in mind.

51 The right of GHPL which the Plaintiff *actually* asserts in the present suit is its right to bring an action for damages against the Defendant, in respect of its alleged inducement of Mr Virgilli's breach of the Employment Contract. The parties' submissions do not even canvass the standing of the Plaintiff to bring this tortious claim. I find this curious given that the Defendant has made much of the Plaintiff's lack of standing to bring its claims under the Contract. It should at least have been noticed that, by bringing this claim in tort, the Plaintiff *may* have been enforcing a bare right to litigate.

52 In any case, the parties' omission does not raise any particular challenges. Although the concepts maintenance and champerty have been described to be "evolving concepts" given their roots in public policy (see, *eg*, *Smith and Leslie* at paras 23.07–23.13), the law as it stands is broadly settled. Since the decision in *Trendtex Trading Corp v Credit Suisse* [1982] AC 679

("*Trendtex*") (also see *Lim Lie Hoa and another v Ong Jane Rebecca* [1997] 1 SLR(R) 775 ("*Lim Lie Hoa*") at [24]–[47], where the Court of Appeal referred to many salient portions of the House of Lords' reasoning with approval), it has been accepted that an assignment of a right of action will not necessarily be struck down as savouring of maintenance or champerty. This depends on whether the assignee can show a "genuine commercial interest" in receiving the right and enforcing it for his benefit. In assessing the existence of such interest, the court looks at the "totality of the transaction" (*Trendtex* at 703 *per* Lord Roskill).

53 Given the lack of a performance interest in the Employment Contract, it is difficult to see what genuine commercial interest the Plaintiff can have in a suit against the Defendant for the tort of *inducing* breach of such contract. It should be apparent from the name of the tort that the wrong which it seeks to remedy, is, primarily, the breach or non-performance of the contract in question. The tort is secondary to this contractual breach. As the House of Lords explained in *OBG Ltd v Allan* [2008] 1 AC 1, liability for inducing another's breach of contract is a form of *secondary* liability ([44] *per* Lord Hoffmann, [189] *per* Lord Nicholls, [254] *per* Lord Walker, [302] *per* Baroness Hale, and [319] *per* Lord Brown; also see *EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 at [76], which similarly adopts this view).

54 Put simply, in the present case, even if it can be found that Mr Virgilli breached the Employment Contract, this is of no concern to and has no impact on the Plaintiff as it is not his employer. There is, as such, no genuine commercial interest which *the Plaintiff* can vindicate by this tortious right of action against the Defendant. I therefore find that this right of action is not assignable because it is a bare right to litigate which savours of champerty.

55 Before I leave this point, however, it is proper for me to mention Kwek JC's decision in *Gravitas International v Virgilli* (see [5] above). The Plaintiff, not GHPL, was also the plaintiff in that case, and it succeeded in establishing certain claims against Mr Virgilli, based on the Employment Contract. The most significant of which were sums Kwek JC found to be due following a novation of the Employment Contract (*Gravitas International v Virgilli* at [36]–[50]). The issue of the Plaintiff's standing was not raised in that case. Even so, there is no inconsistency which this creates; and this is for two key reasons.

56 First, it is not controversial that fruits of a contract of employment, such as wages earned by an employee or conversely, sums due to an employer, are assignable (see *Beckham v Drake* (1849) 2 HLC 579, where the House of Lords held that a sum due to an employee pursuant to his employment contract was validly assigned to and taken over by his trustees in bankruptcy; also see other cases cited by *Smith v Leslie* at para 24.12). This is distinct from the present case, which concerns a right of action in tort, not contract. Historically, the law has tended to view assignments of rights of action in tort as invalid (see, *eg*, *Defries v Milne* [1913] 1 Ch 98 at 109 *per* Farwell LJ). Although such a broad proposition cannot hold in modern law (see, *eg*, *Clerk & Lindsell on Torts* (Michael A Jones gen ed) (Sweet & Maxwell, 23rd Ed, 2020) at paras 5-68–5-70), my analysis at [53]–[54] above shows that the tortious action *in this case* certainly is not one which should push the law further away from history.

57 The second reason requires us to inquire as to the nature of the fruits assigned by GHPL to the Plaintiff: *eg*, actions in debts or damages. As a starting point, I observe that the law has developed in such a way as to treat debts as a kind of property, such that rights of action which need to be exercised in order to vindicate that property, are merely an incident of the property (see, *eg*, *Camdex International Ltd v Bank of Zambia* [1998] QB 22 at 32 and 39 *per*

Hobhouse LJ, 40 *per* Peter Gibson LJ, and 41 *per* Neill LJ; also see *Lim Lie Hoa* at [38] which affirmed this view). The validity of assignment of debts thus rides on the long been established rule that where a right of action attends or is incidental to a transfer of property, an assignment of such right will not savour of maintenance or champerty.

58 With this in mind, it appears to me that the claims the Plaintiff made in *Gravitas International v Virgilli* (at least those on which it succeeded) were of the nature of debts, and not claims for contract damages. This included a salary claim and certain fees owed by Mr Virgilli on the basis of a novated Employment Contract between him and GHPL. Thus, its successful claims in that case, based on the facts found by Kwek JC do not suggest that the Plaintiff had any interest in performance of the Employment Contract (*ie*, in the sense of being entitled to Mr Virgilli's performance of work), so as to alter my analysis at [53]–[54] above. It was merely enforcing a right to the *fruits* of the contract.

The Plaintiff's contractual claim

59 Given my finding at [46] above on the issue of the Plaintiff's *locus standi*, or rather, lack thereof, I dismiss its claim. However, in the event that I have erred on the law, I will consider the Plaintiff's claim on the facts.

Claim for unpaid fees

Key terms of the Contract

60 I have loosely stated the purpose of the Contract at [1] above.

61 With that in mind, the starting point is to note that the Contract did not prescribe a fixed list of services for which the Defendant was paying upfront, and would thus be entitled to receive. Instead, the structure of the Contract was

such that the Defendant agreed to pay an "Engagement Fee" to GHPL, and in exchange, GHPL agreed to make available a suite of services to the Defendant, each service having its own individual, itemised cost. This is evident from cll 2.1 and 2.2 of the Contract which I set out in full below:[24]

> **2. Scope of Service and Fees**
>
> 2.1 In consideration of the [Defendant's] promise to pay the Engagement Fee to [GHPL], [GHPL] agrees to provide advisory services to the [Defendant] in relation to the preparation for capital raising, based on the White Paper and such information reasonably requested for by [GHPL] and provided to [GHPL] by the [Defendant], and such advice shall consist of:
>
> > (a) advisory and assistance to the [Defendant] in raising capital from the Investors, which shall consist of (i) preparing an investment deck, and (ii) advising the [Defendant] on the manner and strategy with which to approach an Investor,
>
> and [GHPL] shall provide the advice referred to in this Clause 2.1 to the [Defendant] no later than 1 week from the execution of this Agreement, or the date of payment by the [Defendant] to [GHPL] for the Engagement Fee, whichever is later, provided that the [Defendant] has provided the information requested by [GHPL] (and in a timely manner).
>
> 2.2 The Engagement Fee payable to [GHPL] by the [Defendant] shall consists of a one-time fee of 1 [Bitcoin] and an additional 10% of the amounts raised through [GHPL's] contacts and shall be paid to [GHPL] within 7 days of the execution of this Agreement. In the event where the [Defendant] achieves its Pre-Sale soft-cap targets, [GHPL] shall then be appointed as an Advisor to the ICO Project, with a remuneration of 0.5% of the total of the Token Sale (including Pre-Sale and Public Sale figures raised collectively).

62 The suite of services which GHPL agreed to provide was as follows:[25]

SERVICE	DESCRIPTION	PRICE (USD)
Business Services		

[24] PAEIC at p 37, cll 2.1 and 2.2.

[25] PAEIC at pp 43–44.

White Paper Writing	Create a whitepaper and infographics based on business	20,000
Business Advisory	Designing a business model that utilizes the blockchain	50,000 (incl. white paper)
Development Services		
Smart Contract Dev	Bitcoin or Ethereum Blockchain	15,500
ICO/Crowdsale Website	Design and Development of a website	7,000
Cryptocurrency Wallet	Design and Development of a Web Wallet	22,500
Android Wallet App	Translation of wallet into Android App	20,000
iOS Wallet App	Translation of wallet into iOS App	20,000
Block Explorer	Administrate your blockchain and manage users	15,000
Marketing Services (USD 100,000 for full Marketing and PR)		
Marketing Strategy	Monthly retainer service, create a marketing calendar	10,000
Social Media Management	Monthly retainer service, management of each account	2,000
Advertising Management	Secure and manage advertising spaces	3,000* (**not inclusive of listing fees*)
Network population	Migrating users into: Telegram, Slack or registration page	0.4/user/platform
Listening on Exchanges	Secure and manage exchanges to list on	5,000* (**not inclusive of listing fees*)

Crypto Advocacy and PR	Monthly retainer service, advocate to local (1 locale) and global crypto community	10,000
Legal and Compliance Services (This Portion Pending Further Discussion)		
Legal Opinion, Compliance	Issue a legal opinion on ICO in Singapore as the ICO Jurisdiction, inclusive up to 20 hours of engaging with Regulators if required	100,000

Fees already paid by the Defendant

63 On 13 February 2018, after the execution of the Contract, the Defendant paid GHPL's nominee S$77,684.70.[26] This sum represented an engagement fee of one Bitcoin (see cll 2.1 and 2.2 at [60] above),[27] then valued at S$11,335.20, and US$50,000, converted to Singapore dollars at a rate of S$1 to US$1.32699.[28] The US$50,000 was paid for "Business" services as listed in the schedule, *ie*, for "White Paper Writing" and "Business Advisory" (see [62] above). This is the only sum the Defendant paid GHPL under the Contract.

Fees being claimed by the Plaintiff for work done

64 The Plaintiff claims now that it is owed US$184,750 for services which have been rendered but not paid for. As stated at [7] above, the Defendant denies that GHPL performed any of the work which the Plaintiff claims it did. The Plaintiff must therefore satisfy me on a balance of probabilities that the works

26 PAEIC at p 70, para 6; DAEIC at para 9, read with pp 43 and 113.

27 PAEIC at p 37, at cl 2.1.

28 DAEIC at p 43.

claimed were actually done, and that the fee being charged is accurate. I consider each of the fees claimed individually.[29]

(1) Android Wallet App: US$20,000

65 The Plaintiff did not adduce *any* evidence demonstrating that they have started development works for an Android Wallet App for the Defendant, much less that they completed such works. Indeed, in submissions, the Plaintiff wrote that it is claiming damages on the expectation measure, "for the items [GHPL] was contracted to do but unable to fulfil due to the Defendant's repudiation".[30] This is *not* the Plaintiff's pleaded case. Its case is that the sum of US$20,000 for the "Android Wallet App" has "yet to be billed".[31] It is clear from this that the Plaintiff is claiming a debt, *ie*, earned but unpaid fees, save that the Defendant was not issued an invoice. By its submissions, the Plaintiff now seems to have conceded that the work was not done. I therefore dismiss this claim.

66 There is no question of any claim in damages as this is not the Plaintiff's pleaded case.

(2) iOS Wallet App: US$20,000

67 There is also no evidence relating to works done for an iOS Wallet App. Further, the Plaintiff's closing arguments in respect of the "Android Wallet App" were also made in respect of this item.[32] Accordingly, I dismiss this claim for the same reasons.

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29 SOC at paras 19.1–19.2, read with 1PB at pp 32–33, para 7.

30 PWS at paras 62–64.

31 SOC at para 19.1(a).

32 PWS at para 64.

(3) Block Explorer: US$15,000

68 Again, the Plaintiff has adduced no evidence that there has been any work done in relation to the administration of the Defendant's blockchain. I dismiss this claim accordingly.

(4) Social media management: US$2,000

69 Mr Tan gave evidence that GHPL had attempted to engage the Defendant to commence its social media marketing campaign. The example he gave, was the basic creation of a Telegram group. This, however, he claims did not lead anywhere as the Defendant dragged its feet.[33] In an email sent by Mr Tan to the Defendant on 14 May 2018, he made comments to a similar effect, but *crucially*, it is noted in this email that as a result of the Defendant's alleged feet dragging, there was "NOTHING to community manage".[34]

70 I am mindful that this item is listed in the Contract as a "Monthly retainer service", however, the commencement of a retainer must still be triggered. If the Defendant was, as Mr Tan's evidence shows, unwilling to even commence social media marketing, I do not find it logical that they would have triggered the start of a retainer just for a member of GHPL's staff to be paid to do no work. There is no other evidence showing *positively* that such retainer was commenced. I therefore dismiss this claim.

(5) Smart Contract Development: US$15,500

71 The key piece of evidence on which the Plaintiff relies to prove work done in respect of this item, are two documents, titled "smart contract matrix"

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33 NEs 10 Aug 2021 at p 70, lines 5–24.

34 PAEIC at p 140.

and "Final token offering table".[35] Mr Tan relied on scanned copies of these documents in his AEIC, signed by the Defendant's representatives, to make the suggestion that there had been "technical work" done by GHPL.[36]

72 I do not accept this. The documents are scarcely technical. They simply list information which Mr Lam explains the Defendant provided to GHPL, which was required for the smart contract development works to commence.[37] I prefer Mr Lam's evidence. On each document, the Defendant's representatives signed their names and wrote "Agreed and approved on 04 May 2018". This supports Mr Lam's account that it was information the *Defendant* provided. It is possible that work was subsequently done by GHPL using this information, but this was not proven to me, and in any case, unlikely given that the Plaintiff's own case is that, on 16 May 2018, it terminated the Contract on the basis of the Defendant's breaches of contract.[38] There is no evidence that GHPL undertook any "Smart Contract Development" works in this short interval between 4 and 16 May 2018. I therefore dismiss this claim.

(6) ICO/Crowdsale Website: US$7,000

73 Whilst giving evidence on the Defendant's inertia in creating a Telegram group (see [69] above), Mr Tan made the following remark: "But because these clients never got out of the preliminary stage, we were not able to go out and sell because the website is not even ready, the white paper is not even ready".[39] This suggests to me that work on the website did not commence, or at the very

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35 PAEIC at pp 136–137.

36 PAEIC at para 33.

37 NEs 12 Aug 2021 at p 25, lines 4 to p 26, line 24.

38 PAEIC at para 5.

39 NEs 10 Aug 2021 at p 70, lines 12–14.

least, was not completed. The Plaintiff adduced no other evidence as to the status of the work done for this website, and so, I dismiss its claim.

(7) Cryptocurrency Wallet (Discounted by 50%): US$11,250

74 Exhibited in Mr Tan's AEIC is an email in which a representative of the Defendant wrote, on 22 April 2018, that the Defendant wishes to "lock in the agreed Token & Wallet works timeline". He then queries, "Why are these taking so long to complete (14 May '18) especially since Satoshi [a developer][40] has already started works since beginning of April '18?".

75 Responding to this, GHPL's representative states, "the timelines he had given previously were only for the ERC20 token creation, the wallet creation and payment gateway integration which we reviewed on Friday are separate timelines that will be completed by the 14th of May, we will share the Excel file later".[41] It is extraordinarily unclear – and Mr Tan's oral evidence sheds no light on this – whether the cryptocurrency wallet was ultimately completed on 14 May 2018. I accept that this email exchange suggests that work had commenced on this item, but as there is a dearth of evidence as regards its status, much less its completion, I dismiss the Plaintiff's claim for the sum of US$11,250.

(8) Marketing Strategy (Pro-rated): US$33,000

76 This item is indicated by the Plaintiff as "pro-rated till 16 May 2018".[42] As the Contract lists this item as a "monthly retainer service", the sum is derived from the date on which the Contract was executed, 8 February 2018. As stated

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40 DAEIC at p 203, "26/03/2018, 10:03".

41 PAEIC at p 123.

42 1PB at p 33.

at [70] above, retainers need to be commenced; the question therefore is whether the Defendant *did* place GHPL on a retainer for this purpose.

77 In cross-examination, counsel for the Defendant, Mr Han, put to Mr Tan that "marketing strategy" works (as well as "Crypto Advocacy and PR": see [83] below) could not have been undertaken because the White Paper and not been completed.[43] In response, Mr Tan vaguely said that "there were a lot of things done, and we had substantial manpower that was involved".[44] As to whether the commencement of the retainer was triggered, he referred to cl 6.1 of the Contract which states, "This Agreement shall commence on the date of execution of this Agreement and shall continue until such time as it is terminated…".[45]

78 I reject the Plaintiff's reliance on cl 6.1. As I explained at [61] above, the Contract was not structured in such a way as to oblige the Defendant to use and pay for all of GHPL's potential services. This is why they paid an engagement fee, of one Bitcoin, which does not go towards the cost of any work done. It is to secure GHPL's role as a potential service provider.

79 I also reject Mr Tan's claim that there would have been any "marketing strategy" work done. His own evidence is that the preparation of a White Paper is one of two key features for a successful ICO, the other being a website.[46] It is on this basis that he said (also at [73] above): "But because these clients never got out of the preliminary stage, we were not able to go out and sell because the website is not even ready, the white paper is not even ready". This obviously

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43 NEs 10 Aug 2021 at p 75, lines 7–26.

44 NEs 10 Aug 2021 at p 76, lines 6–14.

45 PAEIC at p 40, cl 6.1.

46 NEs 10 Aug 2021 at p 52, line 13 to p 53, line 31.

begs the question as to *what* work GHPL could have done if the basic elements required for them to perform any marketing services, were not even complete.

80 On the Defendant's part, if there was nothing by way of "marketing strategy" work which GHPL could logically have done, I do not see any reason for it to have triggered the retainer and incurred unnecessary, additional costs. I accordingly dismiss this claim.

(9) Advertising Management: US$3,000

81 By this work item, GHPL was to "Secure and manage advertising spaces" (see [62] above). Given, as I have stated above, no advertising work seems to have commenced, there would equally be no need for GHPL to have performed work for this item. No evidence was adduced to show otherwise, and I therefore dismiss this claim.

(10) Listing on Exchanges: US$5,000

82 This claim clearly reaches too far. The Defendant's White Paper had not even been completed; I cannot see how GHPL would have commenced works to list the Defendant's yet-to-be-created cryptocurrency tokens, on an exchange. In its pleadings, this sum is listed as an item for which work had been *done*,[47] and this assertion beggars' belief. There is no evidence to show that any such work had been commenced, and I roundly dismiss this claim.

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[47] SOC at paras 14 and 19.2, read with 1PB at p 33.

(11) Crypto Advocacy and PR (Pro-rated): US$33,000

83 This item is indicated by the Plaintiff as "pro-rated till 16 May 2018",[48] and is also listed as a monthly retainer (see [62] above). In the course of trial, it was dealt together with the retainer for "marketing strategy", thus, for the same reasons stated at [77]–[80] above, I dismiss this claim.

Claim for damages

84 Beyond the value of the consultancy services the Plaintiff alleges GHPL rendered to the Defendant pursuant to the Contract, which I have discussed above, the Plaintiff also seeks to recover two categories of damages under the Contract. The first is "damages … in respect of the 0.5% of the Token Sale".[49] The second is, rather comically, pleaded as "damages *to be assessed* in respect of the '2% *Liquidated* Damages'" [emphasis added].[50] I should not need to explain that, *as a premise,* liquidated damages entail the specification of a certain sum to be paid upon breach of contract. By definition, liquidated damages are *not* meant to be assessed. In any case, the Contract did not contain a liquidated damages clause, which counsel for the Plaintiff rightly conceded.[51]

85 As such, I return to the first category. The Plaintiff's claim for damages which represent "0.5% of the Token Sale" stems from cl 2.2 of the Contract, the relevant portion of which provides: "In the event where the [Defendant] achieves its Pre-Sale soft-cap targets, [GHPL] shall then be appointed as an Advisor to the ICO Project, with a remuneration of 0.5% of the total of the

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48 1PB at p 33.

49 SOC at paras 19.3 and 21.3.

50 SOC at paras 19.4 and 21.5.

51 NEs 10 Aug 2021 at p 9, line 26 to p 10, line 20.

Token Sale (including Pre-Sale and Public Sale figures raised collectively)".[52] The phrases "Pre-Sale soft-cap targets" and "Public Sale figures" are not defined. However, from context, they seem to refer to the private and public sale of cryptocurrency tokens which would have taken place had the Defendant successfully launched its ICO and raised the funds it intended.

86 Put simply, the Plaintiff seems to be saying that, had the Defendant not acted in repudiatory breach of the Contract, the Defendant would have achieved its "Pre-Sale soft-cap targets", and GHPL would have been appointed as an "Advisor to the ICO Project". Such appointment would then have allowed GHPL to earn "0.5% of the total of the Token Sale". This was, in effect, a claim for lost profits on the expectation measure. The Defendant's defence in respect of this claim was simply to put the Plaintiff to proof.[53]

87 The Plaintiff's pleaded case in respect of *how* the Defendant committed repudiatory breaches of the Contract is poorly pleaded and extremely vague. It avers that the Defendant committed four repudiatory breaches: (a) entering into a consultancy contract with Mr Virgilli; (b) refusing to cooperate with GHPL; (c) refusing, omitting and/or failing to perform its obligations under the Contract; and (d) non-payment of an invoice.[54] As to (a), although the Defendant accepts that it did enter into a separate consultancy contract with Mr Virgilli,[55] it is not immediately obvious why this was a repudiatory breach. Indeed, as I state at [101] below, the Plaintiff has not adduced any evidence that by entering into this contract, the Defendant induced Mr Virgilli to breach his Employment

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52 PAEIC at p 37, cl 2.2.

53 Defence at para 21.

54 SOC at para 16.

55 DAEIC at para 76.

Contract with GHPL. I have found in respect of (d) that no fees are owing to GHPL. So, this leaves breaches (b) and (c), but the Plaintiff has provided no particulars as to how and to what extent the Defendant failed to cooperate or perform its obligations under the Contract, much less why these failures were *repudiatory* breaches. I accordingly find that there is inadequate basis for me to conclude that the Defendant committed any repudiatory breaches of the Contract.

88 In any event, even if I assume the Defendant committed such breaches, the Plaintiff has not adduced *any* evidence that, had the Contract been performed to completion, the Defendant would have – as cl 2.2 prescribes as a condition – achieved its "Pre-Sale soft-cap targets". To reiterate the burden of proof expected of plaintiffs seeking to recover lost profits, I can do no better than quote Mason CJ and Dawson J in *Commonwealth of Australia v Amann Aviation Pty* (1991) 104 ALR 1 (at 9–10):

> The onus of proving damages sustained lies on a plaintiff and the amount of damages awarded will be commensurate with the plaintiff's expectation, objectively determined, rather than subjectively ascertained. That is to say, a plaintiff must prove, on the balance of probabilities, that his or her expectation of a certain outcome, as a result of performance of the contract, *had a likelihood of attainment rather than being mere expectation.*
>
> [Emphasis added]

89 In the present case, the evidence of the Plaintiff's sole witness, Mr Tan, focused on GHPL's performance of services under the Contract, the Defendant's alleged breach of contract, as well as their alleged inducement of Mr Virgilli's breach of contract. He did not give any evidence which went towards what *would have* happened had the Contract been performed. Absent such evidence, it is pure speculation for the Plaintiff to aver that they would have earned the "0.5% of the total of the Token Sale".

90 For these reasons, even if I had not found the Plaintiff to be lacking *locus standi*, I would have dismissed its claims for damages arising from the Contract.

The defences to the contract claim

91 As mentioned at [7] above, the Defendant goes further in this case than simply putting the Plaintiff to proof of its contractual claim. It advances a positive case, and in this connection, three substantive defences.

92 First, it avers that the work performed by GHPL was of such low quality[56] that GHPL breached certain terms which have been implied into the Contract.[57] Second, it avers that Mr Tan made misrepresentations which induced it to enter into the Contract.[58] Lastly, but most significantly, the Defendant avers that, in light of GHPL's poor work quality, it approached GHPL with doubts about its ability to complete the tasks necessary for the Defendant's planned ICO. As a result, the Defendant and GHPL's representatives (including Mr Virgilli) engaged in a conference call to discuss how to move forward with the Contract. It is the Defendant's case that, during this discussion, it and GHPL agreed that: (a) the Contract would be terminated; (b) any work which had been substantially commenced by GHPL would be completed, alongside other works which were needed for the "orderly cessation of services", but only to the extent of the value of the upfront fees the Defendant had already paid; and (c) all other outstanding services under the Contract, which GHPL had not commenced, was to be performed by Mr Virgilli's company, Queen George Pte Ltd (operating under the trade name "Vox"), pursuant to a new contract.[59]

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56 DAEIC at paras 15–30.

57 Defence at paras 16(a)–(c).

58 Defence at paras 5–6.

59 DAEIC at paras 68–89; Defence at para 4.

93 In light of my findings above that the claims for unpaid fees as well as damages fails, I do not need to consider these alternate defences.

94 I will, however, make an observation about the Defendant's allegation of misrepresentation. In its defence, the Defendant avers that, in the period leading up to 8 February 2018, Mr Tan – then a director of GHPL – made numerous misrepresentations which induced it to enter the Contract. These alleged representations were that: (a) Mr Tan and GHPL were "competent and able to promote investment products and provide investment advice in the matter of ICOs"; (b) that Mr Tan and GHPL were "each knowledgeable, capable and experienced in conducting ICOs"; (c) that Mr Tan had "organised several ICOs, where he had personally raised 50 million United States Dollars for the owners in each of them"; (d) that Mr Tan "was a lawyer of good reputation and character"; and that lastly, (e) that Mr Tan had exaggerated his involvement in a number of ICOs with which he allegedly claimed to have been "intimately involved".[60]

95 On the basis of these representations, the Defendant makes two operative pleadings. First, that the false representations "gives rise to an action in misrepresentation under s 2 of the Misrepresentation Act (Cap 390) and/or fraudulent and negligent misrepresentation for the losses incurred by the Defendant in making the investment".[61] However, no counterclaim was brought by the Defendant. There is nothing in the defence which even attempts to particularise what these losses might be. Thus, save for the factual averment that misrepresentations were made by Mr Tan, I cannot understand what the

60 Defence at paras 6(a)–(e).

61 Defence at para 5.

Defendant sought to achieve with this pleading, and I do not find that anything substantive can be made of it.

96 The second operative pleading which the Defendant makes in respect of the misrepresentations Mr Tan allegedly made is that it has, on this basis, "a right to rescind or terminate the [Contract]".[62] On the case of both parties, the Contract has long been terminated, and as such, seeking "termination" is meaningless. As to rescission, I cannot understand what the Defendant seeks when it says the Contract should be rescinded. If it prays for the remedy of rescission *ab initio*, a proper counterclaim should have been brought as I have stated in the paragraph above. So, once again, nothing can be made of this pleading.

The Plaintiff's tortious claim

97 For the reasons at [53]–[54] above, I found that the right of action against the Defendant for inducing Mr Virgilli's breach of the Employment Contract is, a bare right to litigate which could not have been validly assigned by GHPL to the Plaintiff. Indeed, as I have stated, it savours of champerty. I therefore dismiss the Plaintiff's tortious claim on this basis. That said, as with the Plaintiff's claim in contract, I will alternatively consider this claim on the facts.

98 The elements for the tort of inducement of breach of contract are well-known (see, *eg*, *Clearlab SG Pte Ltd v Ting Chong Chai* [2015] 1 SLR 163 at [285]): (a) the defendant must know of the existence of the contract and intend to procure its breach; (b) there must have been procurement of the breach whether by persuasion, inducement or otherwise; (c) there must in fact have

62 Defence at para 6.

been a breach; and (d) the plaintiff must have suffered damage as a result *of the breach of contract*.

99 The Plaintiff's claim fails roundly on the last element. Its pleaded case is that the Defendant caused Mr Virgilli to "cease and/or refuse" to work for GHPL by entering into a new consultancy agreement with Mr Virgilli's company, Vox. In *Gravitas International v Virgilli*, the Plaintiff averred that Mr Virgilli failed to give the requisite *one-months'* notice pursuant to the Employment Contract. On that basis, one claim in that suit was for S$11,000 representing a month of Mr Virgilli's salary, in lieu of his notice (see *Gravitas International v Virgilli* at [58]). Kwek JC allowed the Plaintiff's claim, finding that Mr Virgilli had failed to give notice of termination (at [60]).

100 Having successfully claimed one months' salary in lieu of notice, there seems to me to be no other loss which GHPL – and by extension, the Plaintiff as its assignee – can recover. It is trite that employees may terminate their contracts of employment, without any cause, so long as requisite notice is served. Given the "minimum legal obligation rule" (see, *eg*, *Wong Sung Boon v Fuji Xerox Singapore Pte Ltd* [2021] SGHC 24 at [120]–[121], citing *Alexander Proudfoot Productivity Services Co S'pore Pte Ltd v Sim Hua Ngee Alvin and another appeal* [1992] 3 SLR(R) 933 at [13]), where an employee fails to give sufficient notice in breach of contract, the quantum of the employer's claim is limited to the salary representing the period of notice which should have been given.

101 The proposition that employees can validly terminate their contracts of employment with sufficient notice is so established, in fact, that there is no need for me to deal with the other factual elements in the alternative. Though, I will make one brief remark in vindication of the Defendant. The Plaintiff adduced

no evidence which showed that the Defendant persuaded, induced, or otherwise procured Mr Virgilli's breach of contract. All the Plaintiff has shown is that the Defendant entered into the new consultancy agreement with Mr Virgilli. There was no evidence showing that Mr Virgilli was prohibited from taking on external work – in fact, the Plaintiff did not even adduce the Employment Contract as evidence before me – nor was there anything showing that the Defendant knew that, by entering into the new consultancy agreement, that Mr Virgilli would even terminate the Employment Contract without notice.

102 Thus, even on the facts, the Plaintiff's tortious claim fails.

Conclusion

103 For the foregoing reasons, I dismiss both the Plaintiff's contractual and tortious claims primarily on the grounds that it lacks *locus standi*. The proper plaintiff is GHPL. In any event, I have nevertheless assessed the evidence in support of the Plaintiff's claims, and I find alternatively that, even if I had erred on the law, the facts do not bear them out.

104 I will hear parties on costs.

Lee Seiu Kin
Judge of the High Court

K V Sudeep Kumar and Airell Ang (Magna Law Corporation) for the plaintiff;
Han Wah Teng and Winston Chui (CTLC Law Corporation) for the defendant.
