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

[2023] SGHC 34

Suit No 854 of 2020 (consolidated with Suit No 771 of 2020)

Between

Shanghai Afute Food and
Beverage Management Co Ltd

… *Plaintiff*

And

(1) Tan Swee Meng
(2) Stay Victory Industries Pte Ltd
(3) Famous 5 Holdings Pte Ltd

… *Defendants*

Counterclaim of First Defendant

Between

Tan Swee Meng

… *Plaintiff in Counterclaim*

And

(1) Lee Eng Tat
(2) Ho Pei Jia Anna

… *Defendants in Counterclaim*

JUDGMENT

[Contract — Breach]
[Contract — Termination]
[Confidence — Breach of confidence]
[Tort — Conspiracy — Conspiracy by unlawful means]
[Tort — Misrepresentation — Fraud and deceit]
[Intellectual Property — Trade marks and trade names — Passing off — Goodwill]

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v
Tan Swee Meng and others

[2023] SGHC 34

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Dedar Singh Gill J
13, 14, 18–21 January, 4 March 2022

15 February 2023 Judgment reserved.

Dedar Singh Gill J:

Introduction

1 This suit concerns disputes over a franchise agreement. It was consolidated with Suit No 771 of 2020 ("Suit 771"). The counterclaims in the present suit are the claims in Suit 771, which was commenced by one of the defendants.

Background

The parties

2 The plaintiff is a company incorporated in Shanghai and its primary business is the sale of food and beverages. It claims to be the sole proprietor of the "After Coffee" trade mark. The mark is used in connection with the sale of

fruit- and vegetable-infused coffee by the plaintiff and its franchisees.[1] From on or about 19 December 2019, the shareholders of the plaintiff and their respective holdings are: (a) the first defendant, Mr Tan Swee Meng ("Mr Tan") (33%); (b) Ms Ho Pei Jia Anna ("Ms Anna Ho") (6%); and (c) Mr Lee Eng Tat ("Mr Lee") (61%). Mr Lee is otherwise known as "Addy".

3 Mr Tan is a Singapore citizen and a businessman. Mr Tan is also known as "Bill". Mr Tan is involved in the defendant companies in the present suit. His involvement is elaborated on below (see [4]–[6]). Mr Pong Chen Yih ("Mr Pong") is a business associate of Mr Tan.[2]

4 The second defendant is Stay Victory Industries Pte Ltd ("Stay Victory"), a company incorporated in Singapore on 12 November 2019. Stay Victory is no longer in operation,[3] but there is no evidence before the court on whether it has been formally wound up. The principal activity undertaken by Stay Victory was the operation of cafes and coffee houses. The directors of Stay Victory were Mr Tan and Ms Anna Ho.[4] The shares of Stay Victory were held by the following shareholders in these proportions: (a) Mr Tan (55%); (b) Coffee Cupital Pte Ltd ("Coffee Cupital") (30%); and (c) Ms Anna Tay Hwee Tiang ("Ms Anna Tay"), who is the wife of Mr Tan (15%).

5 Coffee Cupital is a company incorporated in Singapore on 14 January 2020, and its primary business activity is operating as a holding company. The

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1 Mr Lee Eng Tat's AEIC dd 10 January 2022 at paras 23–25.

2 Mr Pong Chen Yih's AEIC dd 16 December 2021 at para 2.

3 Transcript (13 January 2022) at 10:29.

4 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 7.

directors of Coffee Cupital are Mr Tan and Mr Lee.[5] The shares of Coffee Cupital are held in the following manner: (a) Mr Tan (25%); (b) Mr Lee (61%); (c) Ms Anna Tay (8%); and Ms Anna Ho (6%).[6]

6 The third defendant is Famous 5 Holdings Pte Ltd ("Famous 5"), a company incorporated in Singapore on 23 July 2020. Famous 5 was the holding company of Umbrella Ventures Pte Ltd ("Umbrella Ventures").[7] At all material times, Mr Tan was the sole director and shareholder of Famous 5.[8] Umbrella Ventures was a Singapore-incorporated holding company (incorporated on 25 February 2020), which was wholly owned by Famous 5. From 2 June 2021 to 1 September 2021, Mr Tan and Ms Anna Tay were the directors of Umbrella Ventures. It subsequently went into liquidation on 21 September 2021 (see [14] below).

7 Stay Victory and Famous 5 did not enter an appearance in these proceedings.[9]

Facts

8 Sometime on or about 2 October 2019, Ms Anna Ho met Mr Tan and informed him that Mr Lee was looking for franchisees for his coffee-beverage

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5 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 6; Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 14.

6 Mr Tan Swee Meng's AEIC dd 16 December 2021 at paras 6, 9 and 10; Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 10.

7 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 8.

8 *Ibid*.

9 *Ibid*.

business, under the trade mark "After Coffee" (the "Intended Business").[10] Mr Tan met Mr Lee on 8 October 2019 (the "8 October Meeting"). The meeting was facilitated and attended by Ms Anna Ho.[11]

9 During the 8 October Meeting, Mr Lee explained the concept of the fruit- and vegetable-infused coffee and provided an outline of the proposed master franchisee proposal to Mr Tan.[12] On 9 October 2019, Mr Tan met with Ms Anna Ho at Suntec City and expressed interest in the opportunity.[13] It is agreed that Ms Anna Ho communicated to Mr Tan that there were a number of interested parties.[14] On Ms Anna Ho's suggestion, Mr Tan issued a cheque to Mr Lee for the sum of $5,000 on 16 October 2019 as a deposit for the Intended Business.[15]

10 Subsequently, Mr Tan and his wife (*ie*, Ms Anna Tay) travelled to Shanghai, People's Republic of China, to meet with Mr Lee, Ms Anna Ho, Mr Gu Tianchi ("Mr Gu"), Mr Ma Wenguo ("Mr Ma") and Mr Xu Rong ("Mr Xu") on 6 November 2019.[16] Mr Gu is an award-winning mixologist who

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10 Mr Tan Swee Meng's AEIC dd 16 December 2021 at paras 9 and 14; Mr Lee's AEIC dd 10 January 2022 at para 34.

11 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 15; Mr Lee's AEIC dd 10 January 2022 at para 34.

12 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 15; Mr Lee's AEIC dd 10 January 2022 at para 35.

13 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 16.

14 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 16; Ms Anna Ho's AEIC dd 19 November 2021 at para 35.

15 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 17; Ms Anna Ho's AEIC dd 19 November 2021 at para 36; Mr Lee's AEIC dd 10 January 2022 at para 37.

16 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 19; Ms Anna Ho's AEIC dd 19 November 2021 at para 40; Mr Lee's AEIC dd 10 January 2022 at para 40

was in the employ of the plaintiff.[17] Mr Ma is the general manager of the plaintiff[18] and Mr Xu is the deputy director of the plaintiff.[19] At the meeting, Mr Tan sampled the fruit- and vegetable-infused coffee. On the same day, Mr Lee, on behalf of the plaintiff, executed with the first defendant a master franchise agreement for Singapore titled the "After Coffee Agent Cooperation Agreement" (the "Master Franchise Agreement").[20]

11 The pertinent portions of the Master Franchise Agreement are reproduced below:

(a) The preamble reads, "[i]n order to work jointly on the development of the after coffee brand, both parties had agreed [*sic*] to the following terms of the agreement: …".

(b) Clause 1: "Content: [Mr Tan and/or the company which was to be incorporated by Mr Tan] will become an agent of the after coffee brand established by [the plaintiff]".

(c) Clause 3:

> 1. agent fees: 1.6million Chinese yuan (including 10 sets of standard store equipment, equipment …
>
> [Mr Tan and/or the company which was to be incorporated by Mr Tan] is authorize [*sic*] to use and operate the after coffee

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17 Mr Gu Tianchi's AEIC dd 27 December 2021 at paras 1 and 3.

18 Mr Ma Wenguo's AEIC dd 27 December 2021 at para 1.

19 Mr Xu Rong's AEIC dd 27 December 2021 at para 1.

20 AB at p 354; Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 21; Ms Anna Ho's AEIC dd 19 November 2021 at para 42; Mr Lee's AEIC dd 10 January 2022 at para 41.

> brand in the specified region [*ie*, Singapore] for the duration of this agreement.

(d) Clause 4: "[Mr Tan and/or the company which was to be incorporated by Mr Tan] should register an independent company (*ie*, a listed company with the Registry of Companies ("ROC")."

(e) Clause 5 provides for the plaintiff's responsibilities and reads as follows:

> [The plaintiff's] Responsibilities:
>
> (1) to provide permanent product technical support
>
> (2) to provide product production standards
>
> (3) [Mr Tan and/or the company which was to be incorporated by Mr Tan] if necessary, may ask [the plaintiff] to provide operational personnel assistance, [Mr Tan and/or the company which was to be incorporated by Mr Tan] agrees to pay for the wages & necessary expenses incurred
>
> (4) responsible for training the core technical team
>
> (5) to provide the overall design of the store and decoration design
>
> (6) to provide operations manual and information
>
> (7) to provide [Mr Tan and/or the company which was to be incorporated by Mr Tan] training which includes: 1 day of professional training and 7 days of shop training. [The plaintiff] will provide training venue and raw materials whilst [Mr Tan and/or the company which was to be incorporated by Mr Tan] will send representatives to [the plaintiff's] designated training site for training. The Training includes brand concept and staff code, product production, ingredient handling and preservation, job responsibilities, warehouse management, beverage production training, shop opening and closing process training. Store operations, marketing and personnel management after opening.
>
> (8) in order to ensure the unified standardization of the brand, [Mr Tan and/or the company which was to be incorporated by Mr Tan] must use the materials and

> packaging provided by [the plaintiff] (reference to the contract schedule: 001-2 10)
>
> (9) in order to support [Mr Tan and/or the company which was to be incorporated by Mr Tan] agent in the marketing promotion 6 months before the opening of its 1st shop, [the Plaintiff] will give 200 cups of product raw materials and product packaging support at no cost

(f) Clause 6 provides for Mr Tan's responsibilities and reads as follows:

> [Mr Tan and/or the company which was to be incorporated by Mr Tan's] Responsibilities
>
> (1) must use the after coffee trademark logo during the contract period when engaging business in the Food & Beverage industry,
>
> (2) franchise shop decoration must follow the guideline and approved by [the plaintiff] in writing before it can commence business.
>
> (3) must follow and implement the unified price set by [the plaintiff]. In the event that price adjustments are require [*sic*], [the plaintiff's] approval is required in writing.
>
> (4) follow the location, scale, quantity and duration as specified in this agreement for franchisee recruitment
>
> (5) do not reveal or sell the brand and trade secrets of [the plaintiff] to any other individual or company
>
> (6) actively support [the plaintiff] in unified brand advertising & marketing promotions
>
> (7) strictly adhere to payment terms to [the plaintiff]
>
> (8) nature of this agreement is for the recruitment of franchisee only
>
> (9) when placing order for the main raw materials mentioned in this agreement, [Mr Tan and/or the company which was to be incorporated by Mr Tan] will do it in writing 15 days in advance, transfer the purchase amount to the bank account designated by [the plaintiff] for confirmation

…

(g) Clause 10 reads as follows:

> … during the course of this agreement, [Mr Tan and/or the company which was to be incorporated by Mr Tan] agree not to enter into the same industry and business with [the plaintiff]; or else [the plaintiff] will seek compensation based on agent fees (Clause 3,3) from [Mr Tan and/or the company which was to be incorporated by Mr Tan].

(h) Clause 12 reads as follows:

> [Mr Tan and/or the company which was to be incorporated by Mr Tan] has the right to terminate this agreement at any time. However, if this is not agreeable to [the plaintiff], [the plaintiff] reserved [*sic*] the right not to refund any payments made.

12 The parties' accounts of the surrounding details of the signing of the Master Franchise Agreement and what transpired subsequently differ materially. In so far as they are relevant to the claim and counterclaim, these factual disputes will be resolved in my analysis below. At the present juncture, it suffices for me set out the main differences in their accounts.

(a) Signing of the Master Franchise Agreement: The parties dispute the circumstances under which the Master Franchise Agreement was signed. The version of events proffered by Mr Tan is that there was an agreement between Mr Lee and himself that Mr Tan could be substituted and replaced by a new company which was to be incorporated in Singapore as party to the Master Franchise Agreement.[21] Mr Tan attests to the fact that there was already an understanding between parties that the Master Franchise Agreement be signed by a Singapore-incorporated

[21] Mr Tan Swee Meng's AEIC dd 16 December 2021 at paras 20–21.

company.[22] On the other hand, the plaintiff's version of events, through Mr Lee, is that the agreement was for Mr Tan to incorporate a company to operate the Intended Business in Singapore pursuant to cl 4 of the Master Franchise Agreement.[23]

(b) Events after the Master Franchise Agreement was signed:

(i) According to the plaintiff, Mr Tan incorporated Stay Victory to be used as the corporate vehicle to operate the Intended Business in Singapore pursuant to cl 4 of the Master Franchise Agreement (see [(a)] above).[24] Thereafter, it was agreed that Mr Tan would become a shareholder of the plaintiff by providing a capital injection of RMB5m to it for more outlets to be opened in China.[25] Mr Lee and Ms Anna Ho would receive a minority share in Stay Victory to give them an indirect stake in the Intended Business through Coffee Cupital (the "Alleged Business Reorganisation Agreement").[26] By 19 December 2019, Mr Tan had become a shareholder of the plaintiff. Even after Mr Tan became a shareholder of the plaintiff, he remained a master franchisee. Parties continued to focus their efforts on establishing the Intended Business in Singapore between December 2019 and June 2020.[27] On or about December 2019,

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22 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 22.

23 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 42.

24 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 43.

25 Mr Lee Eng Tat's AEIC dd 10 January 2022 at paras 44 and 64; Exhibit "LET-1": Mr Lee Eng Tat's AEIC dd 10 January 2022 at p 157.

26 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 64.

27 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 67.

Mr Tan paid the sum of $303,500 to the plaintiff through Mr Lee (which together with the $5,000 already paid, comprised the Singapore dollar equivalent of the RMB1.6m agent fees under the Master Franchise Agreement).[28] In furtherance of the Master Franchise Agreement, the plaintiff disseminated to Mr Tan and Stay Victory confidential information and "trade secrets" of the plaintiff, including the recipes, standards and designs, branding, store design and layout, staff training and store operations.[29] On 23 December 2019, Mr Tan (on behalf of Stay Victory) signed a letter of offer to take a lease at Vivocity for a period of three years for operation of the Intended Business (the "Vivocity Initial Lease").[30] To facilitate the success of establishing the Intended Business in Singapore, Mr Lee granted an interview to a magazine to promote the opening of the outlet at Vivocity in May 2020 and helped to secure rental rebates for June and July 2020 on behalf of Stay Victory.[31] The plaintiff's position is that it had been under the continuing impression that the store at Vivocity was to be part of the Intended Business.

(ii) Contrastingly, Mr Tan claims that he had suggested that the Master Franchise Agreement be terminated and replaced with a joint venture approximately two weeks after it was signed, and that the proposal was accepted by Mr Lee and Ms Anna Ho

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28 Statement of Claim (Amendment No. 2) ("SOC") at para 18.

29 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 94.

30 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 76.

31 Mr Lee Eng Tat's AEIC dd 10 January 2022 at paras 78 and 80.

(the "Alleged Joint Venture Agreement").[32] In respect of the $303,500 which was handed to Mr Lee on or about December 2019, Mr Tan avers that the sum was not paid pursuant to the Master Franchise Agreement.[33] Under the Alleged Joint Venture Agreement, Stay Victory would be a joint venture company between Coffee Cupital and Mr Tan rather than the franchisee under the Master Franchise Agreement.[34] Later, Mr Tan alleges that he was in discussion with Mr Lee about a shareholders' agreement sometime in April 2020 (the "Draft Shareholders' Agreement"). Based on Mr Lee's representation that he had lent RMB3m to the plaintiff (the "RMB3m Representation"), Mr Tan agreed to lend RMB5m to the plaintiff.[35] Subsequently, Mr Tan asked Mr Lee for proof of his RMB3m expenditure on the plaintiff and its business but was eventually informed that there were no such supporting documents.[36] On or about 7 July 2020, Mr Tan called for a meeting with Mr Lee, Ms Anna Ho and Mr Pong (the "7 July Meeting"), where Mr Tan confronted Mr Lee about the alleged RMB3m loan and Mr Lee alleged that the Master Franchise Agreement continued to be valid and binding on parties.[37] Following the breakdown in their working relationship, it is Mr Tan's evidence that Stay Victory had no

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32 Mr Tan Swee Meng's AEIC dd 16 December 2021 at paras 27 and 28.

33 Defence and Counterclaim (Amendment No. 1) ("DCC") at para 17.

34 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 30.

35 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 32.

36 Mr Tan Swee Meng's AEIC dd 16 December 2021 at paras 92–94.

37 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 97.

> choice but to commence operations with a beverage business under the "Beyond Coffee" mark (the "Alleged Competing Business") to mitigate the losses already incurred and the potential loss if Stay Victory had to break the Vivocity Initial Lease.[38]

13 It is undisputed that Stay Victory was incorporated on 12 November 2019 for the purpose of operating the Intended Business in Singapore.[39] Similarly, there is no contention that the Alleged Competing Business commenced operations at Vivocity (the "Vivocity Store") on or around 23 July 2020. The Alleged Competing Business sold beverages with a combination of fruits and coffee.

14 On 27 July 2020, the "entire business" of Stay Victory (*ie*, its assets and liabilities, including the right to operate the Intended Business) was transferred to Umbrella Ventures for a nominal sum of $1 pursuant to a sale and purchase agreement, which was backdated to 1 July 2020 (the "Sale and Purchase Agreement").[40] The defendants also commenced the operation of a second store as part of the Alleged Competing Business at Bukit Batok on or about 20 February 2021 (the "Bukit Batok Store", collectively with the Vivocity Store, the "Stores"). Eventually, on 21 September 2021, owing to poor business and mounting debts, Umbrella Ventures went into liquidation and the Vivocity Store ceased operations on the same date.[41]

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38 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 101.

39 SOC at para 17(d); DCC at para 16(4).

40 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 101; pp 431–443.

41 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 103.

15 The table below summarises the chronology of key events and documents:

Date	Event	Source
8 October 2019	First meeting between Mr Tan, Mr Lee and Ms Anna Ho	Undisputed
6 November 2019	Master Franchise Agreement was signed	Undisputed
About two weeks after the Master Franchise Agreement was signed	Purported termination of the Master Franchise Agreement and the commencement of the Alleged Joint Venture Agreement	Mr Tan
Late November or early December 2019	Alleged Business Reorganisation Agreement	Plaintiff
19 December 2019	Mr Tan became a shareholder of the plaintiff	Undisputed
23 December 2019	Signing of the Vivocity Initial Lease	Undisputed
March – May 2020	Alleged marketing efforts by Mr Lee	Plaintiff
6 April 2020	Mr Lee visited the office of Mr Tan's solicitors, purportedly to discuss the Draft Shareholders' Agreement	Mr Tan
7 July 2020	Meeting at which Mr Tan allegedly told Mr Lee and Ms Anna Ho that he no longer wished to be part of the Intended Business	Plaintiff

23 July 2020	Commencement of operations at the Vivocity Store of the Alleged Competing Business	Undisputed
27 July 2020	Sale and Purchase Agreement entered into between Stay Victory and Umbrella Ventures	Mr Tan
20 February 2021	Commencement of operations at the Bukit Batok Store of the Alleged Competing Business	Undisputed
21 September 2021	Liquidation of Umbrella Ventures and closure of the Stores	Undisputed

Procedural history

16 The suit commenced on 7 September 2020. It suffices for present purposes to set out the relevant interlocutory matters preceding the main trial.

17 On 23 October 2020, the plaintiff obtained, *inter alia*, an interlocutory injunction prohibiting Mr Tan and Stay Victory from "using the [p]laintiff's recipes in any of the drinks sold by [Mr Tan and Stay Victory] until the trial of this action or further order by [this Court]" and an "injunction to restrain [Mr Tan and Stay Victory] as well as their employees, servants, agents, associates, nominees, proxies, successors, assigns, or affiliates or any of them or otherwise howsoever from using the [p]laintiff's [c]onfidential [i]nformation [*ie*, the Alleged Confidential Information (see [19]–[20] below)] or any part thereof for any purpose" (the "Injunctions").[42]

18 On 23 April 2021, the High Court found that Mr Tan and Stay Victory had disobeyed the Injunctions and were in contempt of court for using the

42 HC/ORC 6114/2020.

plaintiff's recipes, which constituted confidential information of the plaintiff, for various beverages sold at the Stores (see *Shanghai Afute Food and Beverage Management Co Ltd v Mr Tan Swee Meng and another* [2021] SGHC 149). Justice Chan Seng Onn imposed a fine of $30,000 (in default, five weeks' imprisonment) on Mr Tan. Mr Tan and Stay Victory were also ordered to immediately cease the use of the plaintiff's recipes in the beverages sold at the Stores. The decision was appealed in CA/CA 23/2021. The defendants withdrew the appeal on 17 January 2022.

The plaintiff's claim

Breach of confidence

19 The plaintiff claims that in the course of discussions and preparations to execute the Intended Business in Singapore, confidential and proprietary information, as well as trade secrets of the plaintiff were imparted to Mr Tan and Stay Victory, being:[43]

(a) menu and beverage names for the fruit- and vegetable-infused beverages planned for sale by the Intended Business (the "Beverages");

(b) recipes of and types of ingredients used in the Beverages;

(c) pricing of each product, including but not limited to the cost price of the ingredients and packaging used for the Beverages;

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[43] SOC at para 23.

(d) operating processes and procedures, including but not limited to the beverage-making process and the procedure to manage the Intended Business;

(e) sales and marketing including but not limited to branding, collateral, marketing guides, strategies and activities of the Intended Business;

(f) design, layout, and look and feel of stores which are part of the Intended Business, in particular, the Vivocity Store – specifically, the stores were to feature a wall mural with a robot holding onto a beverage labelled "After Coffee";

(g) product design and branding; and

(h) brand concept and staff code product production, ingredient handling and preservation, job responsibilities, warehouse management, beverage production training, shop opening and closing process training, store operations, marketing and personnel management after opening.

20 For the purposes of this judgment, I will adopt the shorthand of "Alleged Confidential Information" to refer to the information listed at [19] above.

21 According to the plaintiff, the Alleged Confidential Information was created by the plaintiff for the sole use of the various franchisees of its business in Singapore, Malaysia and elsewhere.[44] This included the Intended Business. The plaintiff alleges that the information was confidential because it had been shared with Mr Tan and Stay Victory pursuant to the Master Franchise

[44] SOC at para 24.

Agreement and under circumstances which imported an obligation of confidentiality.[45]

22 However, to the unhappiness of the plaintiff, the Alleged Competing Business sold beverages similar to those sold by the Intended Business and adopted a get-up and look and feel similar to the Intended Business. In alleging that there was a breach of confidence, the plaintiff emphasises the following similarities between features of the Alleged Competing Business and the Intended Business:[46]

(a) The beverages on the menus of the Alleged Competing Business and the Intended Business were strikingly similar. For example, one of the beverages on the menu of the Intended Business, which was part of the Alleged Confidential Information imparted to Mr Tan and Stay Victory, incorporated three key ingredients: cherry tomato, seaweed and coffee. The menu of the Alleged Competing Business featured a beverage that incorporated the same three key ingredients.

(b) The recipes of the beverages sold by the Alleged Competing Business were substantially similar, if not identical, to the recipes of the Beverages that were developed and curated for the Intended Business.

(c) The design, layout, and look and feel of the Vivocity Store were substantially similar, if not identical, to the design, layout and look and feel of the planned store of the Intended Business. In particular, the wall

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45 SOC at para 32; Plaintiff and Defendants in Counterclaim's Closing Submissions ("PCS") at para 97.

46 SOC at para 30.

murals, signage and slogan adopted by the Stores were identical to the stores under the Intended Business:

(i) The Vivocity Store featured the same or similar wall mural with a robot holding onto a beverage.

(ii) The Stores adopted a tagline that was identical to that of the Intended Business. The tagline "Life Begins After Coffee" was developed for the planned use by the Intended Business as a play on the mark "After Coffee" to suggest the positive effects of the beverages sold by the Intended Business.

(d) The website of the Alleged Competing Business utilised the same layout that was designed for the Intended Business. In particular, the placement of photographs on the website, and the description of products on the website, were identical to those used in the marketing of the Intended Business.

(e) The Facebook and Instagram pages of the Intended Business were amended by changing the mark associated with them from "After Coffee" to "Beyond Coffee" without authorisation. This was to promote the Alleged Competing Business.

23 The primary case mounted by the plaintiff is as follows: Mr Tan and Stay Victory "misused the [Alleged] Confidential Information as a springboard to unlawfully gain a headstart in establishing and operating the 'Beyond Coffee' business [*ie*, the Alleged Competing Business] in Singapore".[47] The plaintiff argues that Mr Tan and Stay Victory could not have developed, produced,

47 SOC at para 34.

launched or marketed the Alleged Competing Business without the use of the Alleged Confidential Information as there was an extremely high degree of similarity between the Alleged Competing Business and the Intended Business, in particular in respect of the menu, recipes, design, layout and look and feel of the store, website and social media pages. It highlights the implausibility of Mr Tan and Stay Victory setting up the Stores in an exceedingly short time without harnessing the Alleged Confidential Information.

24 The alternative case pleaded by the plaintiff is: Mr Tan and/or Stay Victory "allowed the [Alleged] Confidential Information to be misused to unlawfully gain a headstart in setting up and operating the 'Beyond Coffee' business [*ie*, the Alleged Competing Business] in Singapore".[48]

25 The plaintiff cites two bases for the obligation of confidentiality. First, cl 6(5) of the Master Franchise Agreement (see [11(f)] above).[49] Second, there exists a general obligation, at common law or in equity, to ensure that the Alleged Confidential Information remained confidential.[50] The plaintiff avers that it has suffered damage from the breach of duty of confidentiality on the parts of Mr Tan and Stay Victory.[51]

26 I pause here to make a preliminary comment on the manner in which the plaintiff has framed its main and alternative cases. From the plain wording of its pleaded case at [23] and [24] above, it is apparent that the plaintiff, in its pleadings, adopts the language from "springboard" relief. In breach of

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48 SOC at para 34.

49 SOC at para 27(a).

50 SOC at para 27(c).

51 SOC at para 35.

confidence claims, the "springboard" doctrine is a branch of law where a person who has obtained information in confidence is not allowed to use it as a springboard for activities detrimental to the person who made the confidential information nor use the information to obtain an unfair head start: *BAFCO Singapore Pte Ltd v Lee Tze Seng and others* [2020] SGHC 281 at [11] and *Pacific Prime Insurance Brokers Singapore Pte Ltd and another v Lee Suet Fern and others* [2022] SGHC 86 at [15]; *PH Hydraulics & Engineering Pte Ltd v Intrepid Offshore Construction Pte Ltd and another* [2012] 4 SLR 36 at [57]–[58]. However, this language is entirely absent from the plaintiff's closing submissions, and there is no attempt to clarify the legal significance of using nomenclature pertaining to the "springboard" doctrine. It is therefore unclear what the plaintiff intends by using language specific to the "springboard" doctrine. I surmise that such a characterisation corresponds to the plaintiff's factual narrative that the Alleged Competing Business is a newcomer to the fruit- and vegetable-infused beverage business, and it had received an unfair advantage by virtue of the plaintiff's Alleged Confidential Information.

27 In their defence, the defendants argue that Mr Tan fell out with Mr Lee and Ms Anna Ho since or around July 2020 and thereafter took steps to distance himself from the Intended Business.[52] Such steps included the introduction of new drinks on the menu of the Alleged Competing Business, such as "Iced Lava Latte" and "Brown Rice Coffee". They contend that the wall mural with a robot holding onto a beverage was commissioned by Stay Victory and constitutes its intellectual property. Further, the defendants submit that the tagline "Life Begins After Coffee" was not developed by the plaintiff nor used by the Intended Business. The defendants further aver that the tagline is frequently

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[52] DCC at para 31.

used in the public domain. Moreover, they point to the website of the Intended Business (see [22(e)] above) being no longer operational. Consequently, the defendants deny the breach and the alleged damages flowing from it.[53]

Passing off

28 The plaintiff claims that Mr Tan and Stay Victory "passed off and/or attempted to pass off and/or enabled, assisted, caused or procured others (including but not limited to their representatives or employees) to pass off 'Beyond Coffee' [mark] as being the same as [the] 'After Coffee' [mark], or associated with, [the plaintiff] and/or [Mr Lee]".[54]

29 It takes the position that the plaintiff enjoyed substantial goodwill and reputation associated with the "After Coffee" mark, as a result of the boldness and novelty of the Intended Business, and its association with Mr Lee and Mr Gu. The plaintiff argues that even prior to the planned launch of the Intended Business at Vivocity in or about May 2020, "as a result of [Mr Lee's] reputation and his association with 'After Coffee' … [and] promotional efforts, the [plaintiff's] 'After Coffee' brand already enjoyed substantial goodwill and reputation".[55]

30 Further, Mr Tan and Stay Victory, "whether by themselves or jointly with others", misrepresented to the public at large that the "Beyond Coffee" mark is, or is associated with, the "After Coffee" mark, the plaintiff or Mr Lee.[56]

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53 *Ibid*.

54 SOC at para 42.

55 SOC at paras 37–38.

56 SOC at para 39.

31 Flowing from the above at [30], the plaintiff alleges that actual confusion was caused or, alternatively, there existed a likelihood of confusion.[57] The plaintiff advances the following as evidence of confusion (or the likelihood of confusion):[58]

(a) Friends of Mr Lee were mistaken and patronised the Alleged Competing Business, thinking it was the Intended Business.

(b) The representative of the landlord of the Vivocity Store was under the impression that the Alleged Competing Business continued to be the same as the Intended Business and/or continued to be associated with the plaintiff and Mr Lee and that the only difference in the Vivocity Store related to the change in the associated mark.

(c) On or about 6 September 2020, a fan of Mr Lee asked him if the Vivocity Store belonged to the Intended Business.

(d) Mr Tan and Stay Victory failed to take any steps to ensure that the public did not mistake the Alleged Competing Business for the Intended Business and/or incorrectly associate it with Mr Lee.

32 In their defence, the defendants submit that the Intended Business did not enjoy substantial goodwill and reputation in either Shanghai or Singapore.[59] Similarly, it is their submission that Mr Gu does not have goodwill and reputation in Singapore. The social media engagement posts by Mr Gu, Mr Lee and a celebrity news anchor of Channel News Asia, Ms Glenda Chong, were

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57 SOC at para 40.

58 SOC at para 40.

59 DCC at para 35.

limited in their reach. Further and in the alternative, the defendants aver that even if the Intended Business is found to enjoy substantial goodwill and reputation, they do not accrue to the Intended Business solely as Mr Tan and Stay Victory contributed significantly to their development.[60]

33 In this connection, the defendants deny that they committed any act calculated to deceive or likely to deceive members of the public that the Alleged Competing Business was or was associated with the Intended Business, the plaintiff or Mr Lee.[61] Moreover, the plaintiff has not shown that there was actual confusion or the likelihood of confusion – the defendants argue that the anecdotal evidence provided by Mr Lee's acquaintances did not suffice to establish the confusion.[62]

Breach of the Master Franchise Agreement

34 The plaintiff brings a claim against Mr Tan and Stay Victory for breach of the Master Franchise Agreement.[63] Based on its Statement of Claim ("SOC"), the plaintiff raises, *inter alia*, the following terms and breaches:

(a) Pursuant to cl 6(5) of the Master Franchise Agreement, Mr Tan was not to reveal the Alleged Confidential Information to any other individual or company.[64] However, on or about 23 July 2020, unbeknownst to the plaintiff or Mr Lee, Stay Victory commenced the Alleged Competing Business with the "Beyond Coffee" mark,

60 DCC at para 36.

61 DCC at para 37.

62 DCC at para 39.

63 SOC at para 44D.

64 SOC at paras 17(f) and 27(a).

beverages and store design and layout which were similar to that of the Intended Business. The plaintiff asserts that this evinces Mr Tan and Stay Victory's misuse of the Alleged Confidential Information, and the circumstances of the Master Franchise Agreement imported an obligation on Mr Tan and Stay Victory to maintain the confidentiality of the Alleged Confidential Information.[65] Further, in accordance with the Sale and Purchase Agreement between Stay Victory and Umbrella Ventures, Umbrella Ventures came to own the Vivocity Store which operated using the Alleged Confidential Information. Umbrella Ventures also opened and owned the Bukit Batok Store from about February 2021 to April 2021, which operated using the Alleged Confidential Information. The plaintiff considers this to be in breach of cl 6(5) of the Master Franchise Agreement.[66]

(b) Further, Mr Tan was not to enter into a business in the same industry as the Intended Business in Singapore.[67] While it was not specifically pleaded which clause was breached and how it was breached, the plaintiff refers broadly to the events that transpired as grounds evincing breaches (see [13]–[14] above). It would appear that this term is in cl 10 of the Master Franchise Agreement (see [11(g)] above).

35 It is the defendants' case in their Defence and Counterclaim (Amendment No 2) ("Defence and Counterclaim") that the Master Franchise Agreement was terminated in or around 12 or 13 November 2019, and the

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65 SOC at paras 32 and 34.

66 SOC at paras 44C and 44D.

67 SOC at para 17(h).

Vivocity Store did not operate by utilising the Alleged Confidential Information.[68] Subsequently, in their Further and Better Particulars dated 10 November 2020, Mr Tan stated that the agreement to terminate the Master Franchise Agreement occurred on 14 November 2019.

Unlawful means conspiracy

36 Finally, the plaintiff seeks redress for the conspiracy of the defendants together with Umbrella Ventures "to wrongfully and with intent to injure … and/or to cause loss to [the plaintiff] by unlawful means … by setting up and operating the [Alleged Competing Business] … as [the Intended Business] for their benefit, [with Mr Tan and Stay Victory] acting in breach of the Master Franchise Agreement".[69]

37 The defendants refute the allegation in the following ways:[70]

(a) The circumstances indicate that there was no intention to injure and/or cause loss to the plaintiff by unlawful means.

(i) In July 2020, Mr Tan continued to pursue the "business venture" with Mr Lee and Ms Anna Ho in good faith.[71] To recapitulate, Mr Tan alleges that he agreed to lend RMB5m to the plaintiff on the basis that Mr Lee represented that he had lent RMB3m to the plaintiff (see [12(b)(ii)] above). Further to this account, he claims that he offered to continue with the joint

68 DCC at para 42D.

69 SOC at para 44E.

70 DCC at para 42F.

71 DCC at para CC14.

venture on the assumption that Mr Lee had lent RMB1.5m to the plaintiff (*ie*, half of the amount in the RMB3m Representation). Mr Tan stated that he would lend RMB2.5m (*ie*, half of the RMB5m he agreed to lend on the RMB3m Representation) to Coffee Cupital, the plaintiff, or to both Coffee Cupital and the plaintiff.[72] However, Mr Lee rejected the offer and insisted that Mr Tan continue to inject monies up to RMB5m.[73] As a result of this disagreement, Mr Tan informed Mr Lee and Ms Anna Ho that he was no longer prepared to proceed with the joint venture and the Intended Business.[74]

(ii) Given that Ms Anna Ho could not find someone to take over the lease of the Vivocity Initial Lease and that all parties were under the express, if not implied, agreement that Mr Lee and Ms Anna Ho wished to take no further part in the business and operations of Stay Victory, the defendants argue that the plaintiff cannot in good faith aver that their intention was to cause harm to the plaintiff.

(b) The information subject to the Injunction above at [17] was not of a confidential nature.

(c) Mr Tan avers that he has gained nothing from the alleged unlawful conspiracy.

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72 DCC at para CC14.

73 DCC at para CC15.

74 DCC at para CC16.

Remedies sought

38 Based on the foregoing alleged incursions, the plaintiff seeks the following remedies:

(a) An injunction restraining the defendants and related persons from operating the Vivocity Store, any other store that is part of the Alleged Competing Business in Singapore, or any other store under any other name or brand that adopts menus, recipes, designs, layout, or look and feel identical or similar to the Intended Business.[75]

(b) For the breach of confidence claim:

(i) an injunction to restrain the defendants and related persons from using the Alleged Confidential Information or any part thereof for any purpose;

(ii) an order for the delivery or destruction upon oath of all printed or written matter or documents containing the Alleged Confidential Information; and

(iii) an inquiry as to damages/equitable damages for Mr Tan and Stay Victory's breach of confidence and, if so found, an order for payment of such damages/equitable damages to the plaintiff.[76]

(c) For the passing off claim:

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75 SOC at para 51(1).

76 SOC at para 51(3), (4) and (5).

(i) an order that the defendants take down the Instagram and Facebook pages of the Alleged Competing Business, which are accessible to the public in Singapore; and

(ii) an inquiry as to damages for passing off, and if so found, an order for payment of such damages to the plaintiff.[77]

(d) In the alternative to [(b)(iii)] and [(c)(ii)], an account of profits by some or all of the defendants of all sales made by the Alleged Competing Business since the commencement of its operations in or about July 2020, and an order for payment of the sums found to be due from the defendants to the plaintiff on the account.[78]

(e) Damages for breach of the Master Franchise Agreement.

(f) Damages for conspiracy by unlawful means.

(g) The sum of $17,224.30 or all sums incurred for the storage of the equipment and materials paid for by Mr Tan and supplied by the plaintiff pursuant to the Master Franchise Agreement.

(h) Costs, interest and such further or other orders or relief as the Court deems fit.

39 For the remedy sought by the plaintiff at [38(a)] above, there is no pleaded basis for it in the SOC.

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77 SOC at para 51(4A) and (4B).

78 SOC at para 51(6).

The defendants' counterclaim

40 Given that the defendants' counterclaim rests on an account which substantially differs from the plaintiff's narrative, I set out Mr Tan's account below.

The defendants' version

41 On his account, Mr Tan informed Ms Anna Ho that he no longer wished to proceed with the Master Franchise Agreement on or about 12, 13 or 14 November 2019 (see [35] above). Instead, he wished to proceed with the business venture by being an investor and shareholder of the company that would own the Intended Business. Mr Tan's proposal was in principle agreed upon and accepted by Mr Lee and Ms Anna Ho.[79] The key details of the proposal were as follows:

(a) A new corporate structure where a new Singapore company would be incorporated to hold and own the Intended Business (the "Holding Company") and where the plaintiff would become a wholly owned subsidiary of the Holding Company.

(b) The Holding Company would hold a minority shareholding in Stay Victory.

(c) Each of them, Mr Tan, Mr Lee, Ms Anna Ho and the then-shareholders of the plaintiff, would become shareholders of the Holding Company.

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[79] DCC at para CC5.

(d) Mr Tan would be an investor and shareholder of the Holding Company which would own the Intended Business.

42 In response, Mr Lee allegedly informed and represented to Mr Tan that he had lent RMB3m to the plaintiff to create and develop its business. Based on this representation, Mr Tan informed Mr Lee that he would be willing to lend RMB5m to the Holding Company, the plaintiff or both the Holding Company and the plaintiff.

43 These terms (see [41] above) were replicated in a step-by-step plan of execution (the "Steps Plan") and circulated among all the parties through the messaging application "Wechat".[80] The Steps Plan was agreed to and accepted by Mr Lee and Ms Anna Ho.

44 Subsequently, the parties further discussed and agreed on the shareholding structure of the Holding Company, *ie*, Coffee Cupital (see [5] above). Mr Tan travelled to Shanghai in December 2019 and signed documents to become a shareholder of the plaintiff to signify his interest and fulfil the agreement that the shareholders of the plaintiff would later become shareholders of the Holding Company with the plaintiff as its wholly owned subsidiary.[81]

45 Following that, Mr Pong prepared a term sheet titled "TERMS FOR THE RESTRUCTURING OF [AFTER COFFEE CHINA] (THE "COMPANY") ITS PROPOSED HOLDING COMPANY" on the basis of the Alleged Joint Venture Agreement and the shareholding structure of the Holding Company (*ie*, Coffee Cupital) (the "Term Sheet"). The Term Sheet was

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80 DCC at para CC5A; Tan Swee Meng's AEIC at para 38, pp 89 – 98.

81 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 44.

forwarded to Mr Lee and Ms Anna Ho on 11 December 2019 over the WeChat chat group titled "Sg after coffee holding (4)".[82]

46 In or around early 2020, Mr Tan instructed his lawyers to prepare the Draft Shareholders' Agreement based on the terms developed through the Steps Plan and Term Sheet (see [12(b)(ii)] above).

47 Further or in the alternative, the defendants aver that an oral contract binding on all parties was created by virtue of the events set out in [42]–[44].

48 Pursuant to the Alleged Joint Venture Agreement, Mr Tan did the following:

(a) He made payments amounting to $308,880 to Mr Lee for expenses incurred by the plaintiff in December 2019.[83] Additionally, Mr Tan paid $1,716.38 or its equivalent in RMB to Mr Lee for the purported purchase of "coffee equipment", "food materials" and "packaging materials and others". Following these payments, Mr Tan made further payments into Mr Lee's bank account in Singapore ($198,603.28) and to a third party ($11,426.50) on the understanding that the monies were part of Mr Tan's loan of RMB5m per the Alleged Joint Venture Agreement, and incurred costs for the incorporation of Coffee Cupital and preparation of the Draft Shareholders' Agreement.[84] Thus, Mr Tan contributed and paid the total sum of $509,199.66 to Mr Lee and $11,426.50 to one "Deng Zhaohui" ("Mr Deng") as part of and pursuant

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82 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 45.

83 DCC at para CC8.

84 DCC at para CC10.

to his agreement to lend RMB5m to the Holding Company, the plaintiff or both the Holding Company and the plaintiff (see [12(b)(ii)] and [42] above). Mr Deng is a "forwarder" who forwards monies received from Mr Tan and Stay Victory to Mr Lee.[85]

(b) Mr Tan also took steps to set up the Intended Business in Singapore and incurred costs for, *inter alia*, the lease, renovation of the store, legal fees, and website.

49 In early February 2020, Mr Tan requested for copies of supporting documents which evidence Mr Lee's loan and expenditure of RMB3m in the development of the plaintiff and its business. Mr Lee acceded to his request. However, no documents were furnished despite Mr Tan's insistence from February to June 2020. In June 2020, Mr Lee informed Mr Tan that there were no supporting documents to show his investment of RMB3m. This showed Mr Tan that there was no such loan provided or expenditure incurred by Mr Lee. Notwithstanding this, Mr Tan continued to pursue the business venture with Mr Lee and Ms Anna Ho on the assumption that Mr Lee loaned RMB1.5m to the plaintiff, and Mr Tan would lend RMB2.5m to the plaintiff (see [37(a)(i)] above). Mr Lee insisted that Mr Tan continue to inject monies up to the sum of RMB5m. This disagreement led to Mr Tan informing Mr Lee and Ms Anna Ho that he was no longer prepared to proceed with the joint venture and the Intended Business. As a result, Mr Tan, Mr Pong, Mr Lee and Ms Anna Ho met in or around July 2020 to discuss the manner and method of dealing with the corporate structures which were incorporated pursuant to the Alleged Joint Venture Agreement.

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[85] Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 61.

50 Having summarised the defendants' narrative, I proceed to set out briefly the counterclaims brought.

Misrepresentation

51 The defendants aver that Mr Lee knowingly made a false representation that he had lent RMB3m to the plaintiff (*ie*, the RMB3m Representation).[86] Further or in the alternative, Mr Lee made the RMB3m Representation recklessly, without caring whether it was true or false. The defendants plead that Ms Anna Ho was either aware that Mr Lee did not in fact lend RMB3m or she was reckless as to whether this representation was true or false.

52 Further, the defendants contend that Mr Lee and Ms Anna Ho were aware that it was on the reliance of the RMB3 Representation that Mr Tan offered to lend RMB5m to the plaintiff and made payments to Mr Lee directly and through Mr Deng. Mr Lee and Ms Anna Ho made or caused to be made the RMB3m Representation in order to induce Mr Tan to invest in and lend money to the Holding Company, the plaintiff or both the Holding Company and the plaintiff. It is therefore the defendants' case that as a result of the misrepresentations made by Mr Lee and Ms Anna Ho, Mr Tan was induced into the following:[87]

(a) agreeing to lend RMB5m to the Holding Company (*ie*, Coffee Cupital), the plaintiff, or both the Holding Company and the plaintiff;

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86 DCC at para CC17.

87 DCC at paras CC5(9)–(10).

(b) lending $509,199.66 to Mr Lee directly and $11,426.50 through Mr Deng;

(c) incurring additional costs to incorporate the Holding Company and Stay Victory and legal costs of $12,000 to prepare the Draft Shareholders' Agreement in relation to Coffee Cupital;

(d) incurring storage costs at $3,800 per month for six months and other miscellaneous expenses in the storage of defective coffee making and other machines Mr Lee and Ms Anna Ho transported to Singapore in anticipation of setting up the Intended Business; and

(e) taking steps to set up the Intended Business in Singapore, which incurred costs and expenditure.

Unlawful means conspiracy

53 The defendants plead that, further and/or in the alternative, Mr Lee and Ms Anna Ho unlawfully conspired with the dominant purpose of deceiving and misleading Mr Tan into believing that Mr Lee had "lent and spent RMB3m to develop the [plaintiff's business], when, in fact, no such monies were lent, thereby injuring [Mr Tan] by unlawful means".[88]

Unjust enrichment of Mr Lee and Ms Anna Ho by the receipt of $520,626.16

54 It is also argued by the defendants that, further and/or in the alternative, as a result of the misrepresentations made and the fraudulent deception

[88] DCC at para CC23.

perpetrated by Mr Lee and Ms Anna Ho, they have been unjustly enriched by the receipt of sums totalling $520,626.16 from Mr Tan.

Mitigation of damages

55 Mr Tan further avers that the following matters are of assistance in the mitigation of damages:[89]

(a) Mr Tan spent substantial time, effort and money to create the Alleged Competing Business to utilise the space leased at Vivocity for the length of three years.

(b) Mr Tan engaged a new mixologist in Singapore to create new drinks and recipes different from those utilised in the Intended Business, which cost approximately $30,000.

(c) Mr Tan hired a new social manager to manage the social media of the Alleged Competing Business, including Instagram and Facebook, which cost approximately $24,000.

(d) Mr Tan created a new website for the Alleged Competing Business.

(e) The entire business of Stay Victory (inclusive of its lease obligations and liabilities) was transferred to Umbrella Ventures in or around July 2020 for a nominal fee of $1.00.

89 DCC at para CC26.

Remedies sought

56 Mr Tan claims as follows:[90]

(a) the sum of $520,626.16 paid to Mr Lee – the basis for the remedy sought is the misrepresentation claim, the unjust enrichment claim and that these were monies had and received by Mr Lee and Ms Anna Ho to the use of Mr Tan;[91]

(b) the sum of $290,338.21 for the expenses incurred by Mr Tan for taking steps to set up the Intended Business in Singapore – this flows from the misrepresentation claim;[92]

(c) alternatively, damages to be assessed;[93]

(d) an order that Mr Lee is liable to account to Mr Tan for $509,199.61 he allegedly received on behalf of the plaintiff;[94]

(e) interest;

(f) costs; and

(g) such other relief or order as the Court deems just to make.

57 Mr Tan claims that the sum of $520,626.16 consists of the transfers he made to Mr Lee directly (S$509,199.66) and indirectly (S$11,426.50). This is elaborated on below at [142].

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90 DCC at paras (A) to (E); Mr Tan Swee Meng's AEIC dd 16 December 2021 para 128.

91 DCC at para (A); Set Down Bundle ("SDB") at p 99.

92 DCC at para (A1); SDB at p 99.

93 DCC at para (B); SDB at p 99.

94 DCC at para (B1); SDB at p 99.

Issues

58 For the plaintiff's claim, the following issues arise:

(a) Whether there was a breach of the Master Franchise Agreement.

(i) Whether the Master Franchise Agreement was made.

(ii) Whether the Master Franchise Agreement was terminated on 12, 13 or 14 December 2019.

(iii) If the Master Franchise Agreement was valid and subsisting at the time of the alleged breaches by Mr Tan and/or Stay Victory, whether their conduct was in breach of the terms of the Master Franchise Agreement.

(b) Whether there was a breach of confidence.

(i) The appropriate test for establishing the claim of breach of confidence.

(ii) Whether the Alleged Confidential Information has the necessary quality of confidence.

(iii) Whether the Alleged Confidential Information was imparted in circumstances importing an obligation of confidence.

(iv) Whether there was an unauthorised use of the Alleged Confidential Information to the plaintiff's detriment.

(c) Whether there was passing off by the use of the "Beyond Coffee" mark.

(i) Whether there was goodwill in the Intended Business (*ie*, the goodwill requirement).

(ii) Whether there was a misrepresentation in that the Alleged Competing Business was held out to be, or to be connected with, the Intended Business, thereby giving rise to confusion or the likelihood of confusion (*ie*, the misrepresentation requirement).

(iii) Whether there was damage or a likelihood of damage as a result.

(d) Whether there was unlawful means conspiracy between the defendants with intent to cause loss to the plaintiff.

(e) Whether the defendants are liable to cover the costs of storing equipment returned to the plaintiff in the sum of $17,224.30.

59 As for Mr Tan's counterclaim, the following issues will be dealt with:

(a) Whether the Mr Lee and Ms Anna Ho made or caused to be made the RMB3m Representation to induce Mr Tan's loan of RMB5m.

(b) Whether Mr Lee and Ms Anna Ho unlawfully conspired to deceive and mislead Mr Tan into believing that Mr Lee spent RMB3m on the plaintiff.

(c) Whether Mr Lee and Ms Anna Ho were unjustly enriched by the sum of $520,626.16 from Mr Tan.

(d) Whether Mr Tan's conduct is of assistance in the mitigation of damages.

My decision

Claim 1: Whether there was a breach of the Master Franchise Agreement

60 I deal first with the plaintiff's claim founded on breach of contract (*ie*, the breach of the Master Franchise Agreement).

Whether the Master Franchise Agreement was made

61 It is trite law that the inquiry into the formation of a contract is an objective one. In *China Coal Solution (Singapore) Pte Ltd v Avra Commodities Pte Ltd* [2020] 2 SLR 984, the Court of Appeal held as follows (at [26]):

(a) The court looks at the parties' objective intentions as disclosed by their correspondence and interactions and in the light of the relevant background against which the contract has allegedly been made.

(b) This includes the industry the parties are in, the character of the documents allegedly containing the contract as well as the course of dealings between the parties. In order to conduct the objective assessment, the whole course of the parties' negotiations, both before and after the alleged date of contracting, must be considered.

(c) Finally, even if the parties have reached agreement on all the terms of the proposed contract, they may nevertheless intend that the contract shall not become binding until some further condition, like the execution of a formal document, has been fulfilled.

62 I do not understand there to be any serious contention relating to the formation of the Master Franchise Agreement. As set out above at [10], in their pleaded cases, parties do not disagree that the Master Franchise Agreement was signed and that they had intended to create legal relations between themselves to accord Mr Tan and/or Stay Victory the exclusive rights to operate the "After Coffee" franchise in Singapore. However, Mr Tan avers in his affidavit of evidence-in-chief ("AEIC") that the Master Franchise Agreement was "not yet effective as Stay Victory had not signed a fresh agreement with [the plaintiff] as agreed".[95]

63 I address the belated objection from Mr Tan in [62] briefly before moving to the formation of the Master Franchise Agreement. First, Mr Tan has not provided particulars of his claim that the Master Franchise Agreement was not yet effective because Stay Victory had not signed "a fresh agreement" with the plaintiff. It is not apparent what "a fresh agreement" entails, and nothing in the Master Franchise Agreement suggests a further agreement between Stay Victory and the plaintiff was required for the Master Franchise Agreement to come into effect. Second, this is inconsistent with his Defence and Counterclaim, where Mr Tan's pleaded case was that he signed the Master Franchise Agreement in his own name on the understanding that he would be substituted and replaced by Stay Victory on its incorporation.[96] I place no weight on this claim, which appears to be an afterthought on the part of Mr Tan.

64 In my view, the Master Franchise Agreement constituted a binding contract entered into by Mr Tan and the plaintiff (through its representative, Mr

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95 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 25.

96 DCC at para CC3(5).

Lee). The objective circumstances surrounding the Master Franchise Agreement indicate that the parties intended to create contractual obligations between themselves for the plaintiff to confer on Mr Tan (and Stay Victory) the right to operate the "After Coffee" franchise in Singapore. Between the 8 October Meeting and the signing of the Master Franchise Agreement, Mr Tan took steps to affirm the arrangement by transferring $5,000 as a deposit to Ms Anna Ho,[97] and sent her a WhatsApp message a day prior to the signing, expressing that "[the] deal is firm".[98] While parties differ on the precise events surrounding the signing of the Master Franchise Agreement, their conduct evinced their recognition of the contract because there was no dispute that Mr Tan had become the exclusive franchisee of the plaintiff's business in Singapore. Further, the defendants accept the existence of the Master Franchise Agreement on their own case. It is on the recognition that there was a subsisting Master Franchise Agreement that Mr Tan allegedly proposed the joint venture with Mr Lee and Ms Anna Ho (*ie*, the Alleged Joint Venture Agreement). Thus, the Master Franchise Agreement was validly formed.

Whether the Master Franchise Agreement was terminated on or about 12, 13 or 14 November 2019

65 Moving next to whether the Master Franchise Agreement was subsequently terminated, I consider the various factual accounts proffered by the plaintiff and the defendants. To recapitulate, the defendants allege that the Master Franchise Agreement had been terminated on or about 12, 13 or 14 November 2019 and was superseded by the Alleged Joint Venture Agreement. Conversely, the plaintiff argues that the Master Franchise

97 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 37.

98 Agreed Bundle of Documents ("AB") at p 274.

Agreement was valid and subsisting, and the defendants' conduct was in breach of its terms.

66 The narrative presented by the defendants is summarised earlier in my judgment (see [41]–[49] above). In its submissions, the plaintiff characterises the issue as whether parties agreed to terminate the Master Franchise Agreement.[99] Implicit in its submission is the assumption that the Master Franchise Agreement could only be terminated mutually and not unilaterally. The plaintiff did not set out the basis for this assumption, but it likely mounted this case in response to the defendants' case that the Master Franchise Agreement was mutually terminated.

67 It is well-established that "if a termination clause is *clearly* drafted, its *literal* language ought to *accurately reflect the intentions of the parties* [emphasis in original]": *Fu Yuan Foodstuff Manufacturer Pte Ltd v Methodist Welfare Services* [2009] 3 SLR(R) 925 ("*Fu Yuan Foodstuff*") at [31]. The Court of Appeal held further at [36] that:

> [E]ach termination clause must be analysed by reference to the precise language utilised by the parties in the context in which they entered into the contract, bearing in mind the fact that the ultimate aim of the court is to give effect to the intentions of the parties as embodied within the wording of the termination clause in question.

The first port-of-call in any contractual claim is the text of the contract itself.

68 Clause 12 of the Master Franchise Agreement sets out Mr Tan's right of termination (see [11(h)] above). The words and meaning of cl 12 are clear and unambiguous. The gist of the clause is that Mr Tan held the right to terminate

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99 PCS at para 46.

the Master Franchise Agreement at any time, but the plaintiff reserved the right not to refund any payments made if it was not agreeable to the termination. Therefore, the unequivocal interpretation of cl 12 is that Mr Tan was allowed to unilaterally terminate the Master Franchise Agreement, with the caveat that there would be no refunds on payments made if the plaintiff disagreed. However, given that the defence run by Mr Tan is that parties had mutually agreed to terminate the Master Franchise Agreement on or around 14 November 2019, my analysis will converge on mutual termination.

69 The question is whether Mr Tan provided notice of termination to the plaintiff, or its representative, Mr Lee, and whether the plaintiff accepted the notice. Mr Tan alleges that he gave verbal notice of his intention to terminate the Master Franchise Agreement. As Mr Lee was not in Singapore on 12 and 13 November 2019, it would not have been possible for him to have been informed or have acceded to the termination of the Master Franchise Agreement in an in-person meeting.[100] I focus on the events surrounding 14 November 2019 instead. Mr Tan attests to meeting with Ms Anna Tay, Mr Lee, and Ms Anna Ho at CM-PB at Dempsey Road on or around 14 November 2019 (the "Dempsey Meeting").[101] It was at this meeting that Mr Tan allegedly expressed his intention to terminate the Master Franchise Agreement and proceed with the Intended Business as a joint venture instead.[102] Mr Tan relies on the WhatsApp messages between Ms Anna Ho and himself on 13 November 2019 to show that

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100 Transcript (19 January 2022) at 11:27–32 and 12:1.

101 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 27.

102 Transcript (19 January 2022) at 13:24.

parties intended to pursue a joint venture which superseded the Master Franchise Agreement:[103]

> 11/13/19, 9:55 AM - Ms Anna Ho: Last night Mr Lee called me and ask if the cheque of rmb1.6m is ready? …
>
> 11/13/19, 10:07 AM - Bill: He need money huh ?
>
> 11/13/19, 10:11 AM - Bill: We hv a few things to settle first mah. First we need to hv a bank account. Our JV & loan agreement to e co then will flow out to him la. I target we can officially sign off by month.
>
> 11/13/19, 10:11 AM - Ms Anna Ho: He said he paid for all d equipment n all that's why that day he had to change more rmb

Although the defendants rely on the extract to show that RMB1.6m would be paid in accordance with the joint venture rather than the Master Franchise Agreement, it does not take their case very far. Pursuant to cl 3(1) of the Master Franchise Agreement (see [11(c)] above), Mr Tan needed to pay "agent fees" of RMB1.6m upon signing the agreement. It is not clear from the text messages alone what the RMB1.6m was payable for – the mere fact that a "JV & loan agreement" would be sent to Mr Lee is not sufficient to show that he had provided notice to rescind the Master Franchise Agreement, or that parties had agreed to rescind the Master Franchise Agreement mutually. There is no further context to the WhatsApp exchange in messages between Mr Tan and Mr Lee, and it was not possible for Mr Tan to have met Mr Lee prior to the 14 November 2019 meeting. Thus, it is more likely that the mention of the RMB1.6m payment was in accordance with cl 3(1) of the Master Franchise Agreement.

70 There is no dispute that Coffee Cupital was set up as a holding company and held 30% of shares in Stay Victory. The shareholding arrangement of

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103 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 28.

Coffee Cupital was as follows (a) Mr Tan (25%); (b) Mr Lee (61%); (c) Ms Anna Tay (8%); and Ms Anna Ho (6%) (see [4]–[5] above). However, parties disagree on the circumstances under which Coffee Cupital was set up.

71 Based on the plaintiff's account, Mr Tan was keen on being a shareholder of the plaintiff and Coffee Cupital was intended to allow Mr Lee and Ms Anna Ho to have a stake in the success of the Singapore franchise.[104] This was the Alleged Business Reorganisation Agreement. The investors of the plaintiff and Mr Lee agreed to the Alleged Business Reorganisation Agreement because Mr Tan would have a direct interest in bringing the Intended Business success as a shareholder of the plaintiff and the risks of Mr Tan's investment in Stay Victory would be mitigated if Mr Lee and Ms Anna Ho had a stake in the Singapore franchise.[105] It was also in furtherance of a plan to turn the plaintiff into a publicly listed company.[106]

72 According to the defendants, Mr Tan proposed the joint venture as he wanted to be a business owner. It was under these terms that the new corporate structure for the plaintiff and its business was set in motion. After the Dempsey Meeting, Mr Lee, Ms Anna Ho, Mr Pong and Mr Tan met at Ristorante Da Valentino at Turf Club Road on 15 November 2019 (the "Valentino Meeting"). At the Valentino Meeting, Mr Pong presented the possible shareholding structure of the Holding Company (*ie*, Coffee Cupital). The agreement from Mr Lee and Ms Anna Ho purportedly occurred later on 16 November 2019 at

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104 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 64.

105 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 64 and 65.

106 Ms Anna Ho's AEIC dd 19 November 2021 at paras 52–53.

HeyTea Clarke Quay (the "Clarke Quay Meeting").[107] At the Clarke Quay Meeting, Mr Lee and Ms Anna Ho allegedly agreed on the following: (a) Coffee Cupital would hold and own 100% of the plaintiff; (b) Coffee Cupital would hold and own a 30% share of Stay Victory; and (c) the shareholding arrangement within Coffee Cupital (as set out above at [4] and [70]).[108] With Stay Victory, it was agreed between Mr Lee, Ms Anna Ho and Mr Tan that the Master Franchise Agreement would be terminated and Stay Victory would be a joint venture company between Coffee Cupital and Mr Tan in shareholding proportions of 30:70. The defendants rely on WhatsApp chat messages between Ms Anna Ho and Mr Tan between 16–21 November 2019, of which the relevant sections are replicated below:[109]

> 11/16/19, 5:35 PM - Bill: U hv to be comfortable wif e new structure. If not then better voice out ur concern tomorrow k
>
> 11/16/19, 5:37 PM - Bill: E danger of any business partnership. If e starting not right. Co will never be successful.
>
> 11/16/19, 5:42 PM - Ms Anna Ho: Ok noted. Thanks
>
> 11/16/19, 10:21 AM - Ms Anna Ho: Can meet 3pm today. U let me know where ya. .
>
> 11/18/19, 10:23 AM - Bill: Is there a necessary to meet ?
>
> 11/18/19, 10:23 AM - Ms Anna Ho: U said to meet today?
>
> 11/18/19, 10:25 AM - Bill: Haha… if there isn't anything to discuss then don't need la. Wait for e consulant to come back

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107 Transcript (19 January 2022) at 14:26–30.

108 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 32; Transcript (19 January 2022) at 14:26–30.

109 Mr Tan Swee Meng's AEIC dd 16 December 2021, TSM-1, Tab 6, p 83; Tab 8 pp 85-86.

wif their term sheet & [Mr Lee] documents then we can do e necessary arrangements

11/18/19, 10:27 AM – Ms Anna Ho: Ok can. Btw for viewing of units so will wait for cbre sise to give listing? Or I still write to landlords of malls?

11/18/19, 10:30 AM–- Bill: Wait for [Mr Lee] side to furnish his doc so e consultant can incorporate e co. Now got other shareholder. I cant decide.

…

11/21/19, 3:04 PM - Ms Anna Ho: Anyway just spoken to Mr Lee n told him that uu ask him settle his partners 1st. He said that he ardy spoken to [Mr Gu] n [Mr Ma] last night n [Mr Gu] says that he is main shareholder n he has all rights to be decision maker so dun need to ask them. [Mr Gu] wants to work with u so he said [Mr Lee] can make all decisions. [Mr Gu] is willing to cut his own shares of 5% to put back in co. *[Mr Lee] feels like he likes to work with u as u can bring him to list d co n also he dun want to lose d sg market as he wants sg as his main partner in AC, not just a Shanghai brand.* No point to open China n then Sg later open cos impact of brand will only be in china n not international. Also sg may no longer hold name as market leader. [Mr Gu] did highlight that HeyTea is market leader for cheese tea so if u go online they always write about the market leaders. *[Mr Lee] suggest that both of u include [Mr Gu] to open new co n AC brand n trademark to be own by new co. Accounts wise also be easier with new co set up*, He also said every trems as discussed earlier w John n CY they *agreeable including the China holding to park under sg holding.* He only request you to drop abit % so that he can give back [Mr Gu] some shares as a[Mr Gu] is very important in d co. He sincerely wants to work together w u, John n CY as he see great potential that all of u

> can bring AC not just to list but also to become a international brand.
>
> 2 things he need u to agree :
>
> 1) dont drop him n never bring him to list also dont dilute his shares until he left nothing
>
> 2) China side will find ABCD series of investors n want you to agree.
>
> He wants this brand to be a good brand so he will definitely overlook everything in China and all matters you just need to settle with him. The rest not in the picture.
>
> 11/21/19, 3:07 PM - Bill: I'll hv a discussion wif John/CY. Will revert soonest.
>
> [emphasis in italics]

Subsequently, parties met at Sheraton Towers to discuss the Steps Plan, which was to consider how to structure or form a wholly foreign-owned company in China (the "Sheraton Meeting").[110]

73 Having considered their respective accounts and the WhatsApp messages, I am of the view that the Master Franchise Agreement was not terminated on or about 14 November 2019. The evidence provided by Mr Tan poses great difficulty for it lacks consistency and is not to the point. In his AEIC, Mr Tan claimed that the agreement to terminate the Master Franchise Agreeement occurred at the Dempsey Meeting.[111] However, under cross-examination, Mr Tan then shifted to say that the agreement between parties only occurred at the Clarke Quay Meeting. When confronted with this difference, Mr Tan could only explain that the Dempsey Meeting was where "in-principle

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110 Transcript (19 January 2022) at 15:5–9.

111 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 28.

approval" was provided by Mr Lee and Ms Anna Ho.[112] He did not articulate how the "in-principle approval" differed from agreement *simpliciter*, not least because it is an entirely artificial distinction. Mr Tan later claimed that the Clarke Quay Meeting was when Mr Lee and Ms Anna Ho agreed to his proposed corporate structure.[113] Aside from the inconsistency in Mr Tan's account of when Mr Lee and Ms Anna Ho agreed to the new corporate structure (and termination of the Master Franchise Agreement), the WhatsApp messages adduced by Mr Tan do not assist. On a close reading of the messages, the 16 November 2019 exchange between Mr Tan and Ms Anna Ho (see [72] above) related to the "new structure" that likely referred to the new corporate structure referred to in the parties' accounts (see [41] and [71] above). Ms Anna Ho avers that even though she had never expressed any interest in becoming a shareholder of the plaintiff, Mr Tan informed her that she "would have a share in the 'After Coffee franchise'" earlier that day prior to the 16 November 2018 exchange.[114] However, there is no mention of termination of the Master Franchise Agreement (*ie*, the change in status of Mr Tan and Stay Victory as a franchisee of the "After Coffee" business) in the exchange. The message of 21 November 2019 at 3.04pm (see [72] above) suggests that the plaintiff would be agreeable to being under the Holding Company (*ie*, Coffee Cupital) such that the "After Coffee" trade mark would be owned by the Holding Company. Yet this message from Ms Anna Ho provides little as evidence of the alleged mutual termination of the Master Franchise Agreement. While the message conveys the positive attitudes held by the representatives of the plaintiff (including Mr Lee) on listing their company and the new corporate structure, there is a noticeable

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112 Transcript (19 January 2022) at 18:2–9.

113 Transcript (19 January 2022) at 19:2–8.

114 Ms Anna Ho's AEIC dd 19 November 2021 at paras 63-64.

absence of any discussion on the purported termination of the Master Franchise Agreement or their plans for the Intended Business. To assume that the proposed new corporate structures between the plaintiff and the defendants translated to the termination of the Master Franchise Agreement is overly reductive. After all, the reshuffling of the corporate structure bears no practical effect on the Master Franchise Agreement, particularly since Coffee Cupital never became the holding company of the plaintiff (who is the alleged sole proprietor of the "After Coffee" mark and its related information).

74 That said, while certain changes were made to the corporate structure following the meetings (*eg*, Mr Tan became shareholder of the plaintiff and Coffee Cupital was incorporated), the Alleged Joint Venture Agreement was never concluded. On Mr Tan's evidence, the Alleged Joint Venture Agreement never started because nothing was ever signed.[115] However, he maintained that the Alleged Joint Venture Agreement existed as an "in-principle joint venture agreement" that started sometime in April 2020.[116] Considering the evidence in its totality, I find that there was no agreement by Mr Lee and Ms Anna Ho to participate in a joint venture with Mr Tan – at best, they discussed the *possibility* of a joint venture. Consequently, there is no evidence (whether direct or circumstantial) that the Master Franchise Agreement was terminated because parties opted to proceed on the basis of a joint venture. Rather, it appeared that parties agreed to the Alleged Business Reorganisation Agreement, where Mr Tan would gain some stake in the plaintiff, and Mr Lee and Ms Anna Ho would gain some stake in the Intended Business.

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115 Transcript (19 January 2022) at 24:2–10.

116 Transcript (19 January 2022) at 24:13–16.

75 Further, the conduct of Mr Tan and Stay Victory indicates that parties operated under the Master Franchise Agreement. Mr Tan argues that his actions have far exceeded the obligations of a mere franchisee because of his payments to the plaintiff. These payments have been characterised by Mr Tan as part of a "loan" of RMB5m to the plaintiff. However, this is not borne out by the evidence. As argued by the plaintiff, the monies went towards expenses in preparation for the commencement of the Intended Business.[117] Mr Ma provided a breakdown of the monies the plaintiff received from Mr Tan and Stay Victory and how they were utilised pursuant to the Master Franchise Agreement.[118] The payments effected by Mr Tan are consistent with the Master Franchise Agreement and do not necessarily support the defendants' account that they formed part of the RMB5m loan following the termination of the Master Franchise Agreement. The various documents prepared by Mr Tan or his lawyers, such as the Steps Plan, Terms Sheet, and the Draft Shareholders' Agreement, show a proposed tiered corporate structure: the Holding Company (*ie*, Coffee Cupital) would wholly own the plaintiff, which in turn would hold a Chinese-incorporated operations company. The Holding Company (*ie*, Coffee Cupital) and Mr Tan would then be shareholders of the joint venture company (*ie*, Stay Victory). While these documents evidence Mr Tan's proposal of the joint venture partnership, it was never formally concluded. Crucially, while the contents of these documents detail a proposed restructuring plan for the plaintiff's business, there was no indication that parties terminated the Master Franchise Agreement.

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117 PCS at para 211 and Annex A.

118 Mr Ma Wenguo's AEIC dd 27 December 2021 at paras 31–32 and pp 183–185.

76 As for Mr Pong's evidence that he learnt from Mr Tan that the Master Franchise Agreement had been "torn up",[119] I place little weight on it because he was not directly privy to the alleged termination of the Master Franchise Agreement. The fact that he claims that his belief was propped up by the Valentino Meeting and the Sheraton Meeting where the bulk of the discussion centred around a new corporate structure for the plaintiff's business (including its franchise in Singapore, the Intended Business) is not to the point – there is nothing extraordinary about the meetings centring around the new corporate structure if parties were considering either the defendants' Alleged Joint Venture Agreement (see [12(b)(ii)] above) or the plaintiff's Alleged Business Reorganisation Agreement (see [12(b)(i)] above).

Whether the defendants' conduct was in breach of the Master Franchise Agreement

77 The plaintiff claims that the defendants' conduct occasioned the breach of cll 6(5) and 10 of the Master Franchise Agreement (see [34] above).

78 To determine whether the alleged acts by the defendants were in breach of the Master Franchise Agreement, as pleaded by the plaintiff, it would be crucial to first interpret the terms of the contract. The principles of contractual interpretation are trite.

79 Where there is a contractual document, the terms are *prima facie* to be identified by reference to the document itself: *The Law of Contract in Singapore vol 1* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2022) ("*Law of Contract*") at paras 06.003 and 06.025. Next, the meaning of the terms should

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119 Transcript (21 January 2022) at 10:1.

be ascertained by the process of construction or interpretation: *Law of Contract* at para 06.050. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [131], the Court of Appeal accepted a number of "canons and techniques of contractual interpretation". Two such canons are particularly pertinent to the present case:

> …
>
> ***The objective principle***
>
> Secondly, the objective principle is therefore critical in defining the approach the courts will take. They are concerned usually with the expressed intentions of a person, not his or her actual intentions. The standpoint adopted is that of a reasonable reader. [See in this regard the earlier discussion at [125]–[127] above].
>
> …
>
> ***Business purpose***
>
> Fifthly, within this framework due consideration is given to the commercial purpose of the transaction or provision. The courts have regard to the overall purpose of the parties with respect to a particular transaction, or more narrowly the reason why a particular obligation was undertaken.
>
> …

These considerations will contour the approach to interpreting the Master Franchise Agreement.

80 I turn now to consider the relevant clauses in the Master Franchise Agreement.

(1) Clause 6(5)

81 Pursuant to cl 6(5) of the Master Franchise Agreement, Mr Tan and Stay Victory were prohibited from revealing or selling "the brand and trade secrets of [the plaintiff] to any other individual or company".

82 I deal first with the meaning of "trade secrets" in cl 6(5).

83 The plaintiff has conducted its case on the basis that reference to "trade secrets" is equivalent to "confidential information". The defendants have noted the distinction in their Defence and Counterclaim (Amendment No. 1) and deny that the Alleged Confidential Information constitutes trade secrets.[120]

84 In my view, there is a distinction between confidential information and trade secrets. Outside of the restraint of trade doctrine in the employment context, there is no discussion on the definition of trade secrets in the general context of breach of confidence claims in Singapore. In the United Kingdom, trade secrets are defined in Regulation 2, Trade Secrets (Enforcement, etc.) Regulations 2018 (SI No. 2018/597) as:

> …information which (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question, (b) has commercial value because it is secret, and (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret…

I find the definition to be of assistance in identifying information that qualifies as trade secrets in the context of breach of confidence. However, as parties have

120 DCC at para 28.

not made any substantive submissions on the distinction between trade secrets and confidential information, I am constrained against making any further comments on the differences in the nomenclature. In any case, there is no contention between parties that trade secrets form a species of confidential information. The same has been recognised by the English courts in the context of breach of confidence claims: *Vestergaard Frandsen A/S (now called MVF 3 ApS) and others v Bestnet Europe Ltd and others* [2013] UKSC 31 [23]; *Weiss Technik UK Ltd and other companies v Davies and others* [2022] EWHC 2773 (Ch) at [119]. On the facts of this case, however, there is no practical implication flowing from assessing whether the various categories of Alleged Confidential Information amount to either confidential information or trade secrets. As I find later in this judgment (see [88]–[96] below), only the recipes fall within the scope of the plaintiff's confidential information and trade secrets.

85 On the plain wording of cl 6(5) of the Master Franchise Agreement, it is clear that the provision operates to protect the plaintiff's legitimate interest in its "trade secrets". That certain confidential information may qualify as trade secrets does not necessarily lead to the interpretation of the express words "trade secret" in cl 6(5) as equivalent to "confidential information". Given that the Master Franchise Agreement subsisted at the time of the backdated sale of Stay Victory to Umbrella Ventures on 1 July 2020, this obligation of confidentiality for the plaintiff's trade secrets applied.

86 On the facts, the sale of the "entire business" of Stay Victory to Umbrella Ventures corresponded to the sale of the "trade secrets" of the plaintiff. These "trade secrets" of the plaintiff had been imparted to Stay Victory pursuant to the Master Franchise Agreement (see [14] above). This also amounted to the revelation of the plaintiff's "trade secrets" to Umbrella

Ventures, which is evinced by the use of the recipes and ingredient lists of the plaintiff by the Alleged Competing Business. In summary, I find that the recipes of the Beverages for the Intended Business (the second category of information in the Alleged Confidential Information (see [19] above)) were the "trade secrets" of the plaintiff which Stay Victory was authorised to utilise towards the Intended Business.

87 I turn now to consider whether each category of information in the Alleged Confidential Information comprised trade secrets falling within the protection of cl 6(5) of the Master Franchise Agreement (see [88]–[96] below).

(A) CATEGORY 1: MENU AND BEVERAGE NAMES

88 To recapitulate, the Intended Business was envisaged as a business selling the plaintiff's coffee beverages infused with vegetable or fruit bases.

89 In general, menu and beverage names cannot amount to trade secrets because information within the public domain cannot be said to be confidential. However, in the limited time where the menu and beverage names have not been disclosed to the public, such information may be considered trade secrets until their disclosure. In the present situation, there is no proof of the alleged misuse of the menu and beverage names for the Intended Business, as the menu and beverage names for the Alleged Competing Business were distinct (see Annex E). Although Mr Tan agreed under cross-examination that the menu and beverage names of the Alleged Competing Business were *similar* to that of the Intended Business, this did not advance the plaintiff's case because the menu and beverage names of the Intended Business and the Alleged Competing Business were dissimilar on their face.

(B) CATEGORY 2: RECIPES OF AND TYPES OF INGREDIENTS FOR USE IN THE INTENDED BUSINESS

90 As for the recipes and ingredient lists for each beverage carried by the Intended Business, the information described in this category clearly falls within trade secrets of the plaintiff. These consist of unique formulations of the various beverages to be sold by the Intended Business and form the fundamental commercial edge over and above other businesses in the food and beverage industry. There are a total of 31 unique recipes which were shared by the plaintiff with the defendants. The recipes specify the ingredients and precise ratios of each ingredient for each beverage, and without a doubt form part of the trade secrets of the plaintiff. In addition to these specifications, the plaintiff also provided instructions on *how* to combine the ingredients in the specified proportions for each beverage. Such information is also separable from other information which Mr Tan and Stay Victory could disclose. Category 2 therefore falls within the ambit of cl 6(5).

91 The breach of cl 6(5) by the revelation and sale of the plaintiff's recipes to Umbrella Ventures is evidenced by the compelling similarity between the plaintiff's recipes and the recipes of the Alleged Competing Business. For ease of comparison, I set out four sets of recipes to illustrate the similarity between the plaintiff's recipe and the recipe adopted by the Alleged Competing Business (see Annex E).[121]

92 A quick sample comparison between the recipes used by the Alleged Competing Business against the recipes provided by the plaintiff for the Intended Business reveals that they are nearly identical. The only difference

[121] AB at pp 570–622 and 623.

between the corresponding recipes for similar flavour profiles is the replacement of [redacted] with [redacted] as the drink sweetener. For the [redacted] beverage (see [91] above), the recipe used by the Alleged Competing Business describes the foam-based ingredient as [redacted] and the plaintiff's version terms it [redacted]. However, they appear to refer to the same ingredient. The minor difference appears to be a weak attempt to mask the similarity in the recipes of the beverages sold by the Alleged Competing Business with the plaintiff's recipes of the Beverages for the Intended Business. This evinces Mr Tan and Stay Victory's unauthorised sale and revelation of the plaintiff's recipes to Umbrella Ventures for use in the Alleged Competing Business.

93 Mr Tan's defence in respect of the similarity of the recipes used in the beverages of the Alleged Competing Business is that he had himself modified the recipes of the Beverages for the Intended Business before the Alleged Competing Business started operations and had engaged another mixologist to "create new drinks and recipes" in November 2020.[122] The defendants suggest that this absolves Mr Tan from responsibility for any similarity between the recipes used in the Alleged Competing Business and the Intended Business. I am unpersuaded by this. It is neither here nor there to assert that minor variations to the plaintiff's recipes were made before they were used by the Alleged Competing Business. Seen in the light of the similarities in the recipes intended for use in the Intended Business and the recipes used in the Alleged Competing Business, the fact that another mixologist was employed to create recipes for the Alleged Competing Business is not helpful. Moreover, that Mr Tan employed a new mixologist is an assertion that is called into question. Although Mr Tan alleges that $30,000 was paid to the new mixologist for the purported

122 Mr Tan Swee Meng's AEIC dd 16 December 2021 at para 101(a) and (c).

"new drinks and recipes", there is no evidence of this payment. This is odd, especially as this forms part of the counterclaim for expenses towards the launching of the Intended Business in Singapore (see [56(b)] above). For contrast, Mr Tan provided a copy of the payment confirmation from his registration of the "Beyond Coffee" mark.

94 I find that the recipes and ingredient lists amount to "trade secrets" under cl 6(5), and the compelling similarity between the plaintiff's recipes and the recipes of the Alleged Competing Business forms palpable evidence of the breach of cl 6(5).

(C) CATEGORIES 3 TO 5, 7 AND 8: PRICING, OPERATING PROCESSES AND PROCEDURES, SALES AND MARKETING, PRODUCT DESIGN AND BRANDING AND MISCELLANEOUS

95 With the categories of pricing information, operating processes and procedures, sales and marketing, product design and branding and miscellaneous, the plaintiff has not made clear what it is precisely to which the information refers. The absence of clarity on what information falls within these categories of information prevents me from engaging in any analysis on whether it falls within the plaintiff's arsenal of trade secrets. Such ambiguity plagues the plaintiff's claim on breach of confidence as well (see [106]–[107] below).

(D) CATEGORY 6: DESIGN, LAYOUT, AND LOOK AND FEEL OF THE STORES AS PART OF THE INTENDED BUSINESS

96 The plaintiff considers the design, layout, and look and feel of the stores as part of the Intended Business to be part of its trade secrets. I repeat my comment at [89] above in that generally, the design, layout and look and feel of a store is unlikely to constitute trade secrets because they would be information in the public domain. In the present case, such information for the Intended

Business lost its confidential nature once it was released in the public domain as part of the pre-business marketing efforts for the Intended Business. The plaintiff's own advertising efforts have revealed such information to the public (specifically, the readers of the magazine "8 Days"). On 30 May 2020, the magazine "8 Days" published an article on "After Coffee", which included a mock-up of the store layout and a photo of the robot wall mural at the planned store at Vivocity.[123] These depicted the slogan of the Intended Business, "life begins after coffee" situated above the counter of the store.[124] Relevant photographs in the "8 Days" article are reproduced below:[125]

Figure 1 Mock-up of the planned store at Vivocity

123 Mr Lee Eng Tat's AEIC dd 10 January 2022, Exhibit LET-2, Tab D, p 336.

124 Mr Lee Eng Tat's AEIC dd 10 January 2022, Exhibit LET-2, Tab D, p 338.

125 Mr Lee Eng Tat's AEIC dd 10 January 2022 at pp 336 and 338.

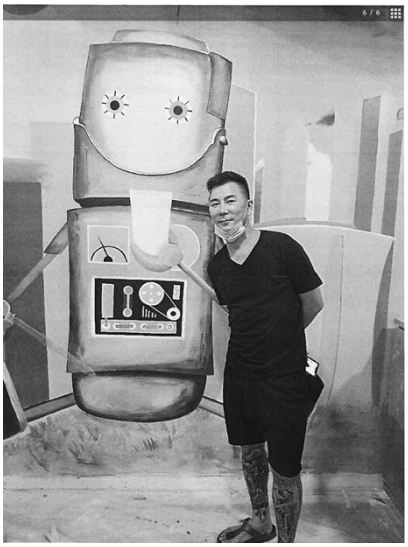

Figure 2 Photograph of Mr Lee in front of the robot mural of the planned store of the Intended Business

With this intentional disclosure, it appears to me that the plaintiff itself acknowledges that this category of information is not a trade secret *per se*. Thus, the information in category 6 cannot constitute trade secrets and will not be subject to the protection of cl 6(5).

(2) Clause 10

97 The plaintiff claims that Mr Tan and Stay Victory have breached cl 10 of the Master Franchise Agreement by entering the same industry and business as the plaintiff with the commencement of the Alleged Competing Business. A key aspect of the clause is the preceding circumstances in which the prohibition applies, which is "during the course of this agreement" (see [11(g)] above). This pre-condition demonstrates the scope of cl 10's applicability.

98 I rejected the defendants' case that the Master Franchise Agreement was terminated on 12, 13 or 14 December 2019 (see [65]–[76] above). On the plaintiff's case, Mr Tan informed Mr Lee and Ms Anna Ho that he no longer

wished to be part of the Intended Business only at the 7 July Meeting. As a result, the Master Franchise Agreement ceased by unilateral termination on 7 July 2020 on the plaintiff's account (subject to the plaintiff's right not to refund any payments made per cl 12 of the Master Franchise Agreement). Given that the commencement of the operations of the Vivocity Store was on 23 July 2020, a time after the termination of the Master Franchise Agreement, the entrance of the Alleged Competing Business did not breach cl 10.

Claim 2: Whether there was a breach of confidence

99 The plaintiff mounts its breach of confidence claim on the basis of cl 6(5) of the Master Franchise Agreement and/or on the ground of a general obligation of confidentiality in common law or equity. Given my finding on the breach of cl 6(5) of the Master Franchise Agreement (*ie*, the prohibition against the sale and disclosure of the plaintiff's trade secrets), the plaintiff is not entitled to more damages under this alternative cause of action due to the rule against double recovery (see *Golden Season Pte Ltd and others v Kairos Singapore Holdings Pte Ltd and another* [2015] 2 SLR 751 at [160]). That said, the manner in which the plaintiff has pleaded its case leads me to consider the merits of the breach of confidence claim – the plaintiff only sought the injunction on the use of the Alleged Confidential Information and the order to deliver up any material containing the Alleged Confidential Information as part of the remedies for the breach of confidence claim.

100 I summarise the law on breach of confidence. In *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 ("*I-Admin*") at [64], the Court of Appeal extended the law on breach of confidence. In summary, the following bifurcated approach is applied to establish an action for the breach of the equitable obligation of confidence:

(a) First, determine which interest the action for breach of confidence seeks to protect:

(i) wrongful gain interest, where the defendant has made unauthorised use or disclosure of confidential information and thereby gained a benefit; or

(ii) wrongful loss interest, where the plaintiff is seeking protection for the confidentiality of the information *per se*, which is loss suffered so long as a defendant's conscience has been impacted in the breach of the obligation of confidentiality.

(b) If the wrongful gain interest is at stake, the traditional approach in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 ("*Coco*") applies: *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280 ("*Lim Oon Kuin*") at [39] and [41]. The *Coco* test requires the plaintiff to establish the following:

(i) That the information in question has the necessary quality of confidence about it.

(ii) The information must have been imparted in circumstances importing an obligation of confidence.

(iii) There must be an unauthorised use of the information, and in appropriate cases, this use must be to the detriment of the party who originally communicated it.

(c) If the wrongful loss interest applies, the test is the modified approach promulgated under *I-Admin*.

> (i) If the plaintiff proves [(b)(i)]–[(b)(ii)] (*ie*, the relevant information had the necessary quality of confidence and it was imparted in circumstances importing an obligation of confidence), it is presumed that the conscience of the defendant has been impinged (*I-Admin* at [61]). The presumption may be rebutted if the defendant adduces proof that his conscience was not affected in the circumstances in which the plaintiff's wrongful loss interest had been harmed or undermined. The burden that shifts to the defendant at the third limb of the modified test is a *legal* burden, not an evidential one: *Lim Oon Kuin* at [40].

101 The rationale for the development of the modified approach in *I-Admin* was articulated in *Lim Oon Kuin*. The Court of Appeal explained that the law did not adequately safeguard the wrongful loss interest or offer recourse where this was affected prior to *I-Admin* as the traditional approach focused on the requirement of unauthorised use and detriment (*ie*, wrongful gain interest): *Lim Oon Kuin* at [37].

102 Suffice to say that the present state of the law on the breach of confidence renders the precise interest affected critical to the plaintiff's case. Depending on which alleged interest is breached, the prescribed approach to analysing whether there was in fact a breach of confidence differs. This foreshadows my discussion later. The plaintiff in the present case does not appear to be apprised of the clarification in *Lim Oon Kuin* even though the trial proceedings for the present claim commenced after the Court of Appeal had handed down its decision in that case. This is evident from the way the plaintiff has framed its pleadings and submissions.

103 In the present case, the plaintiff merely relies on the *I-Admin* modified approach in its closing submissions,[126] with no explanation proffered for its preference for this approach. Its pleadings are silent on the nature of the interest relied on in its claim for breach of confidence. The correct approach is first to determine whether the defendant's actions were an incursion to the wrongful gain interest or the wrongful loss interest, before applying the traditional approach or the modified approach respectively (see [100] above).

The nature of the interest protected

104 In my view, the relevant interest in the present situation is the wrongful gain interest. This is the classic scenario where the defendant makes unauthorised use or disclosure of confidential information, and by so doing, gains a benefit. In the plaintiff's pleaded case, the Alleged Confidential Information was provided to further the arrangement pursuant to the Master Franchise Agreement. The defendants subsequently used the information in the Alleged Competing Business without the plaintiff's knowledge and consent, thereby deriving a pecuniary benefit. The Court of Appeal explicitly endorsed the following observation made in Ng-Loy Wee Loon *SC*, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, 3rd Ed, 2021) ("*Ng-Loy*") at paras 41.3.10–41.3.11 (*Lim Oon Kuin* at [41]):

> It is also *likely that the Court of Appeal intended to further limit the application of the 'modified approach' to cases involving unauthorised acquisition of the confidential information*, that is, the 'taker' cases. This conjecture is based on the fact that the court placed a fair amount of emphasis on the defendants' acquisition (via [the former employees]) of the confidential information without the plaintiff's knowledge, and more generally, how technology had made it much easier for a person

126 PCS at para 88.

> to access and download confidential information without consent.
>
> [emphasis added]

On the facts, the acquisition of the Alleged Confidential Information was overtly facilitated in accordance with the Master Franchise Agreement between the plaintiff on the one hand, and Mr Tan and Stay Victory on the other. This is similar to the situation presented in *LVM Law Chambers LLC v Wan Hoe Keet and another and another matter* [2020] 1 SLR 1083 ("*LVM Law Chambers*"), where the defendant received confidential information in the course of his employment as a lawyer for the counterparty in a prior dispute against the plaintiffs. In *LVM Law Chambers*, the Court of Appeal required proof of misuse of the confidential information by the plaintiff (*ie*, the traditional approach). The applicable test is therefore the traditional approach in *Coco*.

Whether the Alleged Confidential Information has the necessary quality of confidence

105 The identification of information as bearing the necessary quality of confidence is no straightforward task. Such information must not be "common or public knowledge": *LVM Law Chambers* at [16]. The confidential information the plaintiff seeks an injunction for must be precisely scoped: *I-Admin* at [43]; *LVM Law Chambers* at [18].

106 From my analysis above (see [95]), it is apparent that for the information in categories 3–5, 7 and 8, the plaintiff has not provided sufficient detail and specificity for the information to be classified as confidential. For the information in category 1, there is no evidence of its misuse by Mr Tan and Stay

Victory. Category 6 is information disclosed to the public and therefore cannot constitute the plaintiff's confidential information.

107 I digress at this juncture to stress the critical importance of pleading with sufficient particularity the information that forms the subject matter of a claim grounded in breach of confidence. In the present context, this means that the *precise information* within the categories of the Alleged Confidential Information needs to be identified. I find it apposite to endorse the commentary provided in *Ng-Loy*, which states as follows (at paras 39.3.1 and 39.3.2):

> A plaintiff in an action for breach of confidence must identify with clarity and sufficient precision the particular information which he claims is confidential. So important is this requirement for specificity that it has been recognised as a distinct element that must be satisfied in the cause of action. *Failure to comply with this requirement is fatal to the plaintiff's action.*
>
> The requirement for specificity flows from the need for certainty as to what act is being sought to be restrained. *Without knowing what it is that the plaintiff claims is confidential, it is also difficult, if not impossible, to determine if the defendant is in fact using that particular information.* Further, the requirement for specificity ensures that the plaintiff is not hiding behind broad and general claims when he has nothing really confidential to protect. The concern here is that the plaintiff may be using the law of confidence to curb fair competition. If the plaintiff fears that disclosure of his confidential information in the legal proceedings would destroy the confidentiality of the information, the court can make the necessary orders to ensure that the confidential information is not seen by anyone other than the judge and/or expert witnesses.
>
> [emphasis added]

108 It is solely the information in category 2, being the recipes and ingredients used in the Beverages meant for sale by the Intended Business, that carries an inherent quality of confidence. The recipes and the ingredient lists contain information, which would cause the plaintiff detriment if it was to be

released, and they constitute confidential information by any industry standard. The disclosure of this information was only between the plaintiff and the defendants, pursuant to the franchisor–franchisee relationship arising from the Master Franchise Agreement. It may be inferred from the circumstances that the information was well-guarded and revealed only for the specific purpose of facilitating the franchise. Thus, the category 2 information bears the quality of confidence.

Whether the Alleged Confidential Information was imparted in circumstances importing an obligation of confidence

109 The relationship between the plaintiff and Mr Tan and Stay Victory is relevant – they were in a contractual relationship to facilitate cooperation and the commencement of the Intended Business in Singapore. It is well-settled that such an obligation of confidence may arise by way of a contractual relationship, in which the contract contains express or implied terms which prohibit the defendant from using or disclosing the confidential information: *Writers Studio Pte Ltd v Chin Kwok Yung* [2022] SGHC 205 at [125]; *Total English Learning Global Pte Ltd and another v Kids Counsel Pte Ltd and another suit* [2014] SGHC 258 at [82]; *Invenpro (M) Sdn Bhd v JCS Automation Pte Ltd and another* [2014] 2 SLR 1045 at [155]–[158]. Clause 6(5) of the Master Franchise Agreement is an express term prohibiting the disclosure of the confidential information by Mr Tan and Stay Victory. Further, there was no dispute as to the close commercial relationship shared by parties initially. In such a situation, it was necessary to facilitate open communication, and the plaintiff harboured the willingness to share documents and information pertaining to the Intended Business. Information in category 2 was imparted to Mr Tan and Stay Victory under circumstances in which parties were preparing for the franchise – this clearly imports an obligation of confidence.

Whether there was an unauthorised use of the Alleged Confidential Information to the plaintiff's detriment

110 The final limb requires the plaintiff to establish the misuse of the Alleged Confidential Information. On whether it is necessary to establish that it has caused detriment, case law appears to indicate it is context-specific: *Vestwin Trading Pte Ltd v Obegi Melissa and others* [2006] 3 SLR(R) 573 (at [69]–[75]). The plaintiff suing for breach of confidence is required to prove the existence of a 'causal connection' between the plaintiff's confidential information and the defendant's information as embodied in some manifestation of its use (*Ng-Loy* at para 41.1.2). Having analysed the manner of the breach of cl 6(5) by the sale and disclosure of the category 2 information (see [90]–[92] above), I will not repeat the same analysis here. I have also found that the defendants used the recipes and ingredient lists disclosed to them in confidence in the Alleged Competing Business. There was scant attempt to mask the direct importation of the plaintiff's recipes and list of ingredients of beverages, which were disclosed as part of the Master Franchise Agreement, to the recipes utilised by the Alleged Competing Business.

111 For completeness, I address the detriment suffered by the plaintiff as a result of the disclosure of the category 2 information (*ie*, the recipes and the ingredient lists). The plaintiff claims that it sustained losses because it was deprived of the opportunity to operate the Vivocity Store and generate revenue. I agree. This satisfies the requirement of detriment.

112 I conclude that the breach of confidence claim is established.

Claim 3: Whether there was passing off by the use of the "Beyond Coffee" mark

113 As elaborated at [28]–[31] above, the plaintiff claims that Mr Tan and Stay Victory "passed off and/or attempted to pass off and/or enabled, assisted, caused or procured others (including but not limited to their representatives or employees) to pass off [the] 'Beyond Coffee' [mark] as being the same as [the] 'After Coffee' [mark], or associated with, [the plaintiff] and/or [Mr Lee]". The logos associated with "After Coffee" and "Beyond Coffee" are reproduced below:

Figure 3 Image of the logo associated with the "After Coffee" mark

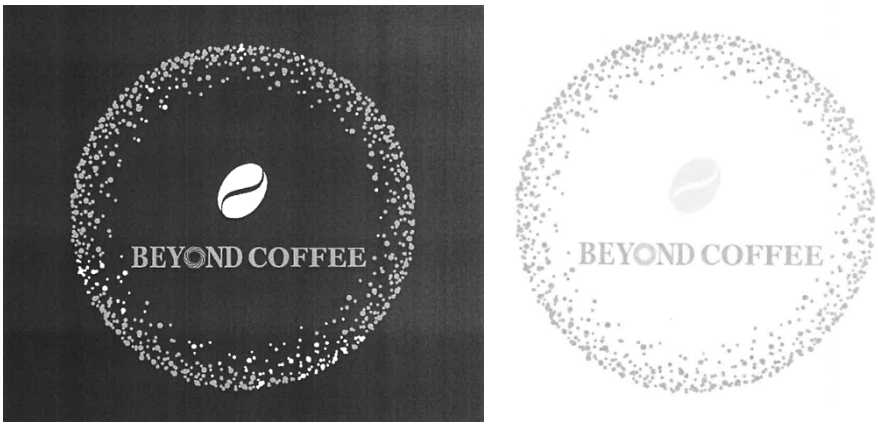

Figure 4 Image of the logo associated with the "Beyond Coffee" mark

114 At the outset, I observe that the plaintiff's case on passing off lacks precision. Its pleaded position is that the defendants passed off or attempted to pass off and/or in some way assisted to pass off the "Beyond Coffee" mark as being the same as the "After Coffee" mark, *or* associated with the plaintiff *and/or* Mr Lee (see [28] above).

115 Before I proceed to the analysis proper, I set out briefly the law on the tort of passing off.

116 To establish an action under the tort of passing off, the claimant must prove the following (see *Tuitiongenius Pte Ltd v Toh Yew Keat* [2021] 1 SLR 231 ("*Tuitiongenius*") at [81]; *Novelty Pte Ltd v Amanresorts Ltd and another* [2009] 3 SLR(R) 216 ("*Amanresorts*") at [37]):

(a) The existence of goodwill in its business. Goodwill in a passing off action is not concerned specifically with the mark used by the trader. Rather, it is concerned with the *trader's business as a whole*: *Tuitiongenius* at [83]; *Singsung Pte Ltd v LG 26 Electronics Pte Ltd (trading as L S Electrical Trading)* [2016] 4 SLR 86 ("*Singsung*") at [32]–[34].

(b) The misrepresentation that the defendant's business was held out to be, or to be connected with, the plaintiff's business, thereby giving rise to confusion or the likelihood of confusion: *Tuitiongenius* at [88]. In this connection, the threshold question is whether the plaintiff's goodwill is sufficiently associated with the mark (*ie*, distinctiveness). The classic form of misrepresentation is the false representation by the defendant that his goods or services emanate from the plaintiff or an entity that is connected to or associated with the plaintiff: *The Singapore*

Professional Golfers' Association v Chen Eng Waye and others [2013] 2 SLR 495 ("*Singapore Professional Golfers' Association*") at [20] and [42].

(c) Damage occasioned or is likely to be occasioned to the plaintiff's goodwill from the misrepresentation: *Tuitiongenius* at [101].

The goodwill requirement

117 The plaintiff relies on the following to satisfy the goodwill requirement:[127]

(a) Mr Lee granted an interview to local magazine "8 Days", where the article promoted several products in the Intended Business (see [12(b)(i)]).

(b) Mr Lee promoted the Intended Business on his own Instagram page, which has more than 26,000 followers, and his Facebook page, which garnered more than 7,800 likes, and on the "After Coffee" Instagram and Facebook accounts (see Annex A).

(c) A celebrity news anchor, Ms Glenda Chong, was invited to taste the beverages offered by "After Coffee" and subsequently posted a photo on her Instagram account (see Annex B).

(d) Other social media sites such as Eatbook.sg and Mothership.sg mentioned "After Coffee" in their articles and promoted "After Coffee" as a brand which sells coffee-infused beverages (see Annex C).

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127 PCS at paras 121–123.

(e) Mr Lee engaged in word-of-mouth publicity amongst the show-business and celebrity circles in Singapore.

(f) The involvement of celebrity mixologist Mr Gu in the creation of recipes for the Beverages in the Intended Business. In his AEIC, Mr Lee included an article published by the Chinese newspaper, "Shin Min Daily" on 5 August 2019, which reported that Mr Lee "recruited celebrity bartender [and coffee expert] Gu Tianchi [*ie*, Mr Gu] at a seven figure price" and that Mr Lee intended to open beverage stores in China (see Annex D).[128]

118 The Intended Business never commenced its operations in Singapore. It is undisputed that the marketing activities in [117] were therefore pre-business marketing activities. It is trite that the plaintiff must show that the goodwill attached to a business in the jurisdiction concerned: *CDL Hotels International Ltd v Pontiac Marina Pte Ltd* [1998] 1 SLR(R) 975 ("*CDL Hotels*") at [46]; *Singapore Professional Golfers' Association* at [22]; *Singsung* at [34]; *Tuitiongenius* at [81]. Thus, I consider the activities in [117] to constitute pre-business activities. Pre-business activities can generate goodwill sufficient for a case in passing off: *CDL Hotels* at [58]. Whether pre-trading activity suffices in generating goodwill is a question of fact and depends on the nature and intensity of the activity in question: *Staywell Hospitality Group Pty Ltd v Starwood Hotels & Resorts Worldwide, Inc and another and another appeal* [2014] 1 SLR 911 ("*Staywell*") at [140].

119 I am not persuaded that the plaintiff has generated sufficient goodwill by virtue of its pre-business activities in [117]. Preliminarily, I observe that the

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128 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 20 and pp 224–226.

publicity efforts undertaken by Mr Lee to raise the profile of the Intended Business among his social media followers (see [117(b)] above and Annex A) relate to a franchise in Paradigm Mall, Malaysia. I emphasise the importance of generating custom specific to the relevant jurisdiction (*ie*, Singapore). As such, it is difficult to conceive of Mr Lee attracting any *local* custom.

120 I move now to the other advertising efforts the plaintiff relies on to establish goodwill in its business. While steps taken to advertise the business in the local market are considered a relevant factor in determining goodwill, it does not suffice to merely show that these marketing efforts were undertaken. As the Court of Appeal outlined in *Staywell* at [145], the ultimate question is whether the activity has generated an attractive force that will bring in custom when the business eventually materialises.

121 There was no sustained effort to generate pre-trading goodwill. Although the plaintiff relies on the three articles published in "8 Days", Eatbook.sg and Mothership.sg respectively, it is difficult to see how these articles provide sufficient marketing traction to generate pre-trading goodwill. As for Ms Glenda Chong's posts on Instagram, while there is evidence of the number of followers associated with her Instagram account, there is no evidence as to the engagement rate of the publicity posts relating to the Intended Business. In order to prove that the activity generated an attractive force that will bring in custom, the plaintiff also relies on certain anecdotal evidence. The plaintiff emphasises that its marketing efforts have led to: (a) the landlord of the Vivocity Store operating under the belief that the storefront would be used for the Intended Business; (b) one "Peter Lau" visiting the Vivocity Store to render his support for, in his impression, the Intended Business; and (c) one of Mr Lee's fans contacting him through Facebook with a photo of the Vivocity Store

asking if it belonged to him.[129] None of these individuals have sworn or affirmed on affidavit these alleged facts. Although the anecdotal evidence is admissible as these narratives were told to Mr Lee, it only goes towards the fact that Mr Lee was informed of these facts – it does not go towards the veracity of the accounts themselves. Moreover, these sparse and independent accounts are inadequate as proof that the marketing efforts generated an attractive force that would bring in custom.

122 The plaintiff has also made no attempt to clarify whether the news coverage by "Shin Min Daily" (see [117(f)] above) which reported on the fact that Mr Lee engaged Mr Gu to create coffee recipes for him translated to goodwill generated in connection with the Intended Business. The article alludes to Mr Lee employing Mr Gu to make beverages for his "food and beverage" business in China, but it makes no mention of Mr Lee engaging Mr Gu in relation to recipes for the Intended Business in Singapore. In fact, the article was published long prior to the signing of the Master Franchise Agreement. This undermines the plaintiff's case that it managed to rally anticipatory demand for the Intended Business. Therefore, the plaintiff has not proven that the Intended Business attracted goodwill of the nature and significance required to fulfil the requirement in an action of passing off.

123 Given the analysis of the requirement of goodwill, there is no need to consider the misrepresentation and damage requirements. The claim on the ground of passing off therefore fails.

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129 PCS at paras 124–126.

Claim 4: Whether the defendants conspired by unlawful means to cause loss to the plaintiff

124 The plaintiff claims that Mr Tan and Stay Victory have entered into conspiracy to cause damage to the plaintiff by unlawful means.

125 The requirements to establish a cause of action in unlawful conspiracy are as follows: (a) there existed a combination of two or more persons to do certain acts; (b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts; (c) the acts were unlawful; (d) the acts were performed in furtherance of the agreement; and (e) the plaintiff suffered a loss as a result of the conspiracy: *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") at [112]; *Simgood Pte Ltd v MLC Barging Pte Ltd and others* [2016] SGCA 46 at [13]. There is no contention that this cause of action can be established against companies and their controlling directors: *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2008] 1 SLR(R) 80 at [17] and [22].

126 To prove this cause of action, the plaintiff relies, *inter alia*, on the fact that Mr Tan and Stay Victory entered into the Sale and Purchase Agreement (the "Transaction"). As I have found above at [85]–[86], Mr Tan and Stay Victory were in breach of cl 6(5) of the Master Franchise Agreement by entering into the Transaction. The contractual breach may satisfy the requirement of an unlawful act: *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 at [52].

127 The circumstances under which the Transaction was entered into indicate that Mr Tan and Stay Victory held the intention to cause loss to the plaintiff. No evidence was tendered in respect of a notice of a shareholder's

resolution held to decide whether to approve the execution of the Sale and Purchase Agreement. Further, the alleged notice of resolution sent to Coffee Cupital on 16 July 2020 did not meet the 14-day notice requirement in Stay Victory's constitution, as the Sale and Purchase Agreement was concluded on 23 July 2020. Mr Tan proffered no reasons for these discrepancies.[130] The alleged notice of resolution was sent *after* the 7 July Meeting where Mr Lee and Ms Anna Ho reminded Mr Tan of his and Stay Victory's obligations under the Master Franchise Agreement. On the plaintiff's case, Mr Tan indicated his intention to exit the Master Franchise Agreement at the 7 July Meeting. According to Mr Tan's account of the 7 July Meeting, he was surprised that the Master Franchise Agreement was still effective, given that parties had earlier agreed to terminate it in favour of a joint venture. By either version of events, that Mr Tan swiftly entered into the Sale and Purchase Agreement to sell the "entire business" of Stay Victory to Umbrella Ventures without following the procedural safeguards in the company constitution suggests that he was seeking to proceed with the Alleged Competing Business without hindrance from the plaintiff or its representative (*ie*, Mr Lee). The Transaction undermined the plaintiff's interest as franchisor of the Intended Business. It is also telling that Mr Tan backdated the Sale and Purchase Agreement to a date prior to the opening of the Vivocity Store and the 7 July Meeting. Although knowledge of a probable or certain outcome does not necessarily mean that there is intention to cause that outcome, the requisite intention can nevertheless be inferred from such knowledge (*EFT Holdings* at [101]). Given Mr Tan and Stay Victory's entry into the Sale and Purchase Agreement (which was backdated) and Mr Tan's knowledge that the plaintiff's interest would be affected, I find strong

130 Transcript (20 January 2022) at 19:10–21.

support for the inference that Mr Tan deliberately intended to deprive the plaintiff of its interest as franchisor of the Intended Business.

128 In his defence, Mr Tan argues that he had only entered into the Transaction and commenced the Alleged Competing Business in order to avoid further losses accruing from the Vivocity Initial Lease. I do not think this defence exculpates him. The requisite intention to injure the plaintiff in the tort of unlawful means conspiracy need not be the dominant nor final purpose: Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 15.064, citing *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637. Indeed, as the Court of Appeal held in *EFT Holdings* (at [101]), the injury to the plaintiff may be either an end in itself or a means to an end. In *Yeo Boong Hua and ors v Turf Club Auto Emporium Pte Ltd and ors* [2018] 3 SLR 806 at [32], Justice Woo held that the defendant's intention to benefit himself and his co-conspirators did not detract from the finding of requisite intention to injure the plaintiffs. Similarly, Mr Tan's purported intention to salvage the financial loss from the failed franchise did not exclude his intention to cause injury to the plaintiff.

129 I turn next to determine whether the plaintiff has shown proof of damage as part of the action of unlawful means conspiracy. Proof of damage must be established before the tort becomes actionable: *Sandz Solutions (Singapore) Pte Ltd and others v Strategic Worldwide Assets Ltd and others* [2014] 3 SLR 562 at [100].

130 The plaintiff postulates that the requirement of loss caused to the plaintiff is fulfilled by the loss of opportunity to open more franchise stores from the Intended Business in Singapore as well as the loss of profits from the store

which would have opened in place of the Vivocity Store.[131] The loss of profits fulfils the loss requirement for unlawful means conspiracy: *Von Roll Asia Pte Ltd v Goh Boon Gay and others* [2018] 4 SLR 1053 ("*Von Roll*") at [65]. In *Von Roll*, the sale of imitation products by the defendants was found to unjustly deprive the plaintiff of profits that would otherwise have accrued to it had its own genuine products been sold to these customers instead. In the present case, I accept that the sale of beverages of the Alleged Competing Business at the Vivocity Store deprived the plaintiff of profits from the store of the Intended Business, which would have opened in place of the Vivocity Store, suffices as proof of loss.

131 As for the loss of opportunity to open more franchise stores under the Intended Business in Singapore, I do not regard these losses as proof of damage as they relate to mere speculation on the future development of the Intended Business. Beyond the concrete plans to commence operations at the Vivocity Store, there were no other plans in the pipeline to expand the Intended Business elsewhere in Singapore. Thus, I reject the plaintiff's reliance on the loss of an opportunity to open other stores in Singapore as a ground of loss in its unlawful conspiracy claim.

Claim 5: Whether the defendants are liable to cover the costs of storing equipment returned to the plaintiff in the sum of $17,224.30

132 The plaintiff seeks to recover $17,224.30 in storage fees for the equipment the defendants returned to it following Mr Tan's demand to remove "5 defective machines" from his premises on or around 17 July 2020.[132] Mr Tan

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131 PCS at para 171.

132 SOC at para 48.

sent a chaser on 4 September 2020 where he gave final notice for the collection of the machines, failing which he would dispose or deal with them in any way he saw fit.[133] On 6 October 2020, Ms Anna Ho collected the five "defective machines" on behalf of the plaintiff.[134] Although this is specifically pleaded as one of the remedies sought by the plaintiff, the plaintiff has not canvassed any related material or arguments before me. This was not explored with the witnesses either. As such, it remains unclear on what basis the plaintiff seeks this recovery. I therefore make no award on these damages.

133 Having considered the merits of the plaintiff's claims, I turn now to Mr Tan's counterclaims.

Counterclaim 1: Whether Mr Lee and Ms Anna Ho made or caused to be made the RMB3m Representation to induce Mr Tan's alleged loan of RMB5m

134 Mr Tan asserts that Mr Lee and Ms Anna Ho knowingly made a false representation (*ie*, the RMB3m Representation) to induce Mr Tan to extend loans to the plaintiff through Mr Lee and Mr Deng; in the alternative, Mr Tan pleads that Mr Lee and Ms Anna Ho made the RMB3m Representation recklessly, without caring whether it was true or false (the "Fraudulent Misrepresentation Counterclaim"). Mr Tan alleges that Mr Lee first made the RMB3m Representation (*ie*, Mr Lee had lent RMB3m to the plaintiff) at the Clarke Quay Meeting.[135] I have set out the details pertaining to the Fraudulent Misrepresentation Counterclaim at [51]–[52] above.

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133 SOC at para 49.

134 SOC at para 50.

135 Transcript (19 January 2022) at 15:14–16.

135 The requirements to establish an action for fraudulent misrepresentation are well-established. First, the representee must show that the representor made a false representation. Second, the representee must demonstrate that the representor knew the statement was untrue or lacked belief in its truth and intended the representee to act in reliance on that statement. Third, the representee understood the alleged misrepresentation and acted in reliance on it: *Wishing Star Ltd v Jurong Town Corp* [2008] 2 SLR(R) 909 at [16]. It must be emphasised at the outset the relatively high standard of proof which must be satisfied by the representee (*ie*, Mr Tan) before a fraudulent misrepresentation can be established successfully against the representor (*ie*, Mr Lee and/or Ms Anna Ho) because it imports the idea of dishonesty: *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Wee Chiaw Sek Anna*") at [30].

136 I move to deal with the allegation of fraudulent misrepresentation as it arises in the present case. As a preliminary point, the Fraudulent Misrepresentation Counterclaim against Ms Anna Ho necessarily fails as Mr Tan conceded at trial that she did not make, nor cause to make, the RMB3m Representation to him.[136] I will therefore only deal with the misrepresentation in so far as it relates to Mr Lee.

137 The plaintiff concentrates its objection to the Fraudulent Misrepresentation Counterclaim by alleging that Mr Tan, by his own evidence, took the position that the loan of RMB5m would only be extended if Mr Lee was able to provide documents in support of the RMB3m Representation.[137] In

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136 Transcript (19 January 2022) at 19:30–32.

137 PCS at para 177.

this regard, the plaintiff suggests that Mr Tan had not actually paid any monies towards this purported loan because Mr Lee did not furnish documents to show that he had contributed RMB3m to the plaintiff. However, the underlying portion of Mr Tan's cross-examination referred to by the plaintiff does not support such a reading. When Mr Tan was questioned by counsel for the plaintiff on whether his payment of $303,880 to Mr Lee was pursuant to the loan of RMB5m, he replied as follows:[138]

> Correct, but my loan – my obligation only comes in if they have a proof of fund that they actually put in the 3 million, which eventually didn't came [*sic*] through. They can't prove the 3 million RMB –

Reading his evidence in context, it seems that Mr Tan's evidence explained why, in his view, his delivery of $303,880 pursuant to his obligations under the RMB5m loan which he extended was induced by the RMB3m Representation. Accordingly, I do not see this testimony as contradicting his case in the Fraudulent Misrepresentation Counterclaim.

138 I consider first whether the RMB3m Representation was false. Besides a bare assertion by Mr Tan that the absence of documentation produced by Mr Lee during the January to June 2020 period must mean that the RMB3m Representation was untrue, Mr Tan produced no positive evidence or reasons to show that the RMB3m Representation lacked veracity. The plaintiff relies on a table detailing the breakdown of the amount contributed by Mr Lee to its business for the year 2019.[139] Based on the table, Mr Lee contributed RMB3.2m between April to October 2019. The entries indicating the costs incurred for various items relating to the plaintiff were linked to the associated serial

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138 Transcript (19 January 2022) at 59: 25–27.

139 PCS at para 182; Mr Lee Eng Tat's AEIC dd 10 January 2022 at pp 790–791.

numbers of the cheques Mr Lee allegedly made to reimburse or fund the expenses in the plaintiff's business. The serial numbers were indicated for most of the recorded expenses funded by Mr Lee. Additionally, the plaintiff furnished Mr Lee's ICBC debit card records for the period of 3 July 2019 to 30 May 2020.[140] Mr Lee avers that all purchases made from April 2019 onwards were made for the plaintiff and its business.[141] As Mr Lee admitted, the documentation backing his RMB3m expense for the plaintiff is not entirely organised. Mr Lee explained that this was so because there was no practice of issuing invoices or receipts in China unless specifically requested for, and he had not kept good records of his expenses towards the plaintiff's business because he never intended to be reimbursed for them.[142] I consider Mr Lee's account plausible. Contrarily, Mr Tan has not responded to the plaintiff's documentation nor shown how the RMB3m Representation was false. On review of the evidence before me, I find that Mr Tan has not discharged his burden of proof to show that the RMB3m Representation was false.

139 Given that the Fraudulent Misrepresentation Counterclaim fails on the first requirement, I do not need to address the rest of the requirements. I dismiss the Fraudulent Misrepresentation Counterclaim.

Counterclaim 2: Whether Mr Lee and Ms Anna Ho unlawfully conspired to deceive and mislead Mr Tan into believing that Mr Lee lent and spent RMB3m to the plaintiff

140 Mr Tan counterclaims that Mr Lee and Ms Anna Ho unlawfully conspired with the dominant purpose of deceiving and misleading Mr Tan into

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140 Mr Lee Eng Tat's AEIC dd 10 January 2022 at pp 822–847

141 Mr Lee Eng Tat's AEIC dd 10 January 2022 at para 120.

142 Mr Lee Eng Tat's AEIC dd 10 January 2022 at paras 128–132.

believing that Mr Lee had lent and spent RMB3m to develop the plaintiff's business when no such monies were lent, thereby injuring Mr Tan by unlawful means. The elements of an action of conspiracy by unlawful means are set out above (see [125]).

141 I disallow this counterclaim. My finding that there was no fraudulent misrepresentation at [139] consequentially means that there is no unlawful act on which this cause of action rests.

Counterclaim 3: Whether Mr Lee and Ms Anna Ho were unjustly enriched by the sum of $520,626.16 from Mr Tan

142 Mr Tan alleges that as a result of the misrepresentations made and fraudulent deception perpetrated by Mr Lee, he has been unjustly enriched by the receipt of sums totalling $520,626.16 from him. In the Defence and Counterclaim, Mr Tan pleads the sum of $520,626.16 as consisting of $509,199.66 and $11,426.50 paid to Mr Lee and Ms Anna Ho.[143] The pleadings are drafted less than satisfactorily – it is apparent from Mr Tan's affidavit of evidence-in-chief that the transfers were made to Mr Lee ($509,199.66) and Mr Deng ($11,426.50).[144] However, no evidence has been adduced to show the monies transferred to Mr Deng were eventually paid to Mr Lee. Given this, I consider only the sum of $509,199.66. It is not disputed between parties that the sum of $509,199.66 was paid to Mr Lee between 16 October 2019 and 14 May 2020. The only contention lies in the purpose for which the sum was transferred – the plaintiff alleges that the monies were received by Mr Lee in his capacity

143 DCC at para CC25; SDB at p 97.

144 Mr Tan Swee Meng's AEIC at para 129.

as representative of the plaintiff[145] and the payments went towards the Intended Business, while the defendants argue that the monies were paid as part of the RMB5m loan extended by Mr Tan. In other words, the plaintiff's submission is that the monies paid by Mr Tan and Stay Victory were spent on the Intended Business pursuant to the Master Franchise Agreement, including the RMB1.6m in "agent fees" (cl 3 of the Master Franchise Agreement).[146]

143 A claim in unjust enrichment requires (a) the enrichment of the defendant, (b) at the expense of the plaintiff, and (c) circumstances which make the enrichment unjust (*Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 at [45]). In order for the claim to succeed, the Court of Appeal stated in *Wee Chiaw Sek Anna* at [130] that a recognised unjust factor, not merely a general notion of unconscionability or unjustness, must be proven.

144 Mr Tan has not pleaded any specific unjust factor. This poses a non-*de minimis* difficulty in his claim of unjust enrichment. The general proposition is that the function of pleadings is to give fair notice of the case to meet and to define the issues for which the court adjudicates to resolve the matters in dispute between the parties: *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 at [61]. The pleadings "delineate the parameters of the case and shape the course of the trial": *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 ("*Day, Ashley Francis*") at [56]; *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [36]. In my view, the fact that the very basis of the unjust enrichment

145 PCS at para 221.

146 PCS at paras 179 and 199.

claim is not pleaded is a central defect that renders the pleading groundless. This *omission* is distinct from the situation where the pleading is *vague* (see *Day, Ashley Francis* at [58]–[59]).

145 In the event that I am wrong on the effect of the defective pleading, I consider and dismiss the unjust enrichment claim on its merits as well.

146 First, the monies paid by Mr Tan to Mr Lee were for the benefit of the plaintiff and the development of the Intended Business pursuant to the Master Franchise Agreement. Although Mr Tan claims that a sum of these monies was paid to Mr Lee for the plaintiff on the false RMB3m Representation, there is no basis for this – I have previously set out my reasons for dismissing the claims of fraudulent misrepresentation and conspiracy by unlawful means (see [139] and [141] above). Further, the evidence shows on a balance of probabilities that Mr Tan's payments to Mr Lee were made pursuant to the contractual obligation to pay "agent fees" of RMB1.6m (approximately $308,880), which includes payment for ten sets of "standard store equipment" upon his signing of the Master Franchise Agreement, and towards his other obligations as a franchisee. The remaining sum of approximately $200,000 was paid pursuant to the Master Franchise Agreement. The plaintiff submitted evidence from its accountant Mr Ma, which summarised the various payments and reason for the payments towards the Intended Business: (a) the $5,000 deposit (see [9] above); and (b) $198,603.28 for raw materials of the Beverages to be sold by the Intended Business, renovations of the intended store at Vivocity and personnel wages per cll 3(2) and 5(3) of the Master Franchise Agreement.[147]

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147 Mr Ma Wenguo's AEIC dd 27 December 2021 at pp 183–185; PCS at paras 211 and 212.

147 Second, although Mr Tan has not pleaded any specific unjust factor, the plaintiff infers that the basis of the unjust enrichment claim is the total failure of consideration. To establish the unjust factor of total failure of consideration, the plaintiff must show that there is no valid contract between the parties, the defendant is no longer ready and willing to perform the contract, the basis for the enrichment was shared by the parties and failure of consideration is total: Tang Hang Wu, *Principles of the Law of Restitution in Singapore* (Academy Publishing, 2019) at para 06.021. The fact that the last payment provided by Mr Tan to Mr Lee was on 14 May 2020, which was before the date of the termination of the Master Franchise Agreement on 7 July 2020, means that there remained a valid contract between Mr Tan and the plaintiff (with Mr Lee acting as its agent) throughout the entire duration of these payments. Thus, the unjust factor of total failure of consideration is, in any event, not successfully established by Mr Tan.

148 I therefore conclude that the unjust enrichment claim fails.

Counterclaim 4: Whether Mr Tan's conduct is of assistance in the mitigation of damages

149 Finally, Mr Tan seeks recognition that his efforts in utilising the Vivocity Initial Lease and building the Alleged Competing Business mitigated against damages. It is not clear what legal principle Mr Tan relies on in seeking this order. The principles relating to mitigation of damages deal with the duty of an aggrieved party to mitigate the loss consequent on the defaulting party's breach, and an aggrieved party cannot recover damages for any loss which it could have avoided but failed to avoid due to its own unreasonable action or inaction: *Ong Han Ling and another v American International Assurance Co Ltd and others* [2018] 5 SLR 549 at [188]. For the sake of dealing expeditiously

with this matter, I assume for the sake of argument that Mr Tan intended to rely on his conduct as outlined in [55] to show that he was entitled to the full extent of damages because he had taken all reasonable steps to mitigate the damage occasioned by the fraudulent misrepresentation or unlawful means conspiracy. As this was predicated on the success of the claims of fraudulent misrepresentation and conspiracy by unlawful means, it is not necessary to make any pronouncement on this averment.

Remedies granted

150 For the breach of cl 6(5) of the Master Franchise Agreement, I grant the plaintiff's prayer as sought for an inquiry as to damages for Mr Tan and Stay Victory's breach of cl 6(5) of the Master Franchise Agreement.

151 As for the breach of confidence claim, I am of the view that an injunction should be granted against Mr Tan to restrain him from using the plaintiff's recipes and the ingredient lists (*ie*, category 2 of the Alleged Confidential Information) for any purpose until such a time when the information loses its confidential nature, currency or value. I note that parties have not submitted on the duration of the injunction, nor have they tendered evidence on this in the trial. The scope of the injunction ordered has therefore been defined as being contingent on the characteristics of the information it seeks to prevent the use of. For the following reasons, I do not find it necessary to grant a permanent injunction against Stay Victory and Famous 5. Stay Victory (*ie*, the second defendant) and Umbrella Ventures are no longer in operation. Famous 5 (*ie*, the third defendant) is the holding company of Umbrella Ventures (see [6] above). In other words, the Alleged Competing Business is no longer in existence and poses no threat to the use of the recipes and ingredient lists. There is

consequently no practical benefit to imposing such an injunction on Stay Victory and Famous 5.

152 Further, on the breach of confidence claim, I order the delivery of any printed or written matter or documents containing the plaintiff's recipes and the ingredient lists (*I-Admin* at [70]; *Clearlab SG Pte Ltd v Ting Chong Chai and others* [2015] 1 SLR 163 at [332]). Given that I have already allowed an inquiry as to damages for the breach of cl 6(5) of the Master Franchise Agreement, I make no further order for the breach of confidence claim.

153 For the tort of unlawful conspiracy, I grant an inquiry as to the loss of profits from the Intended Business for the period of 23 July 2020 (*ie*, the commencement of the operations of the Vivocity Store) to 21 September 2021 (*ie*, the liquidation of Umbrella Ventures and closure of the Stores).

Conclusion

154 Accordingly, I find that the plaintiff succeeds on the following claims:

(a) the breach of cl 6(5) of the Master Franchise Agreement;

(b) the breach of confidence by the sale and disclosure of the recipes and ingredient lists of the plaintiff to Umbrella Ventures (which was wholly owned by Famous 5); and

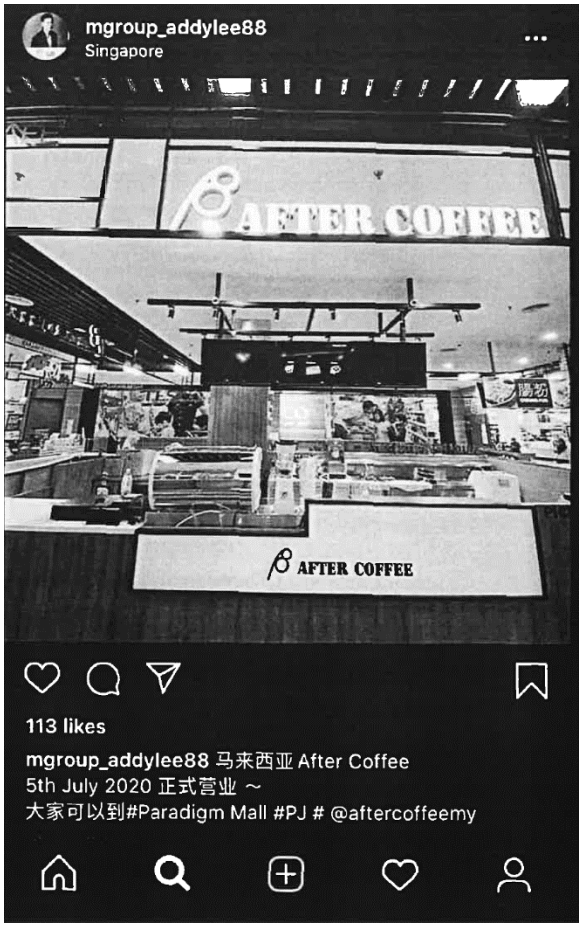
(c) the actionable tort of conspiracy by unlawful means, against the defendants.

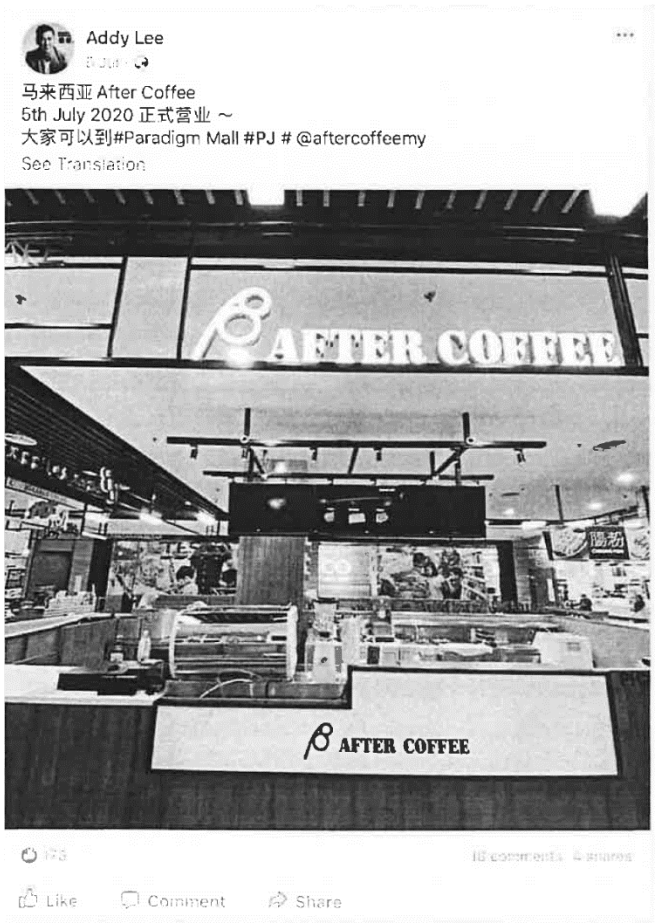
155 I will hear parties on costs separately.

Dedar Singh Gill
Judge of the High Court

Chia Jin Chong Daniel, Nicole Thong Wen Teng and Tan Ei Leen (Coleman Street Chambers LLC) for the plaintiff and defendants in counterclaim;
Tan Swee Meng, first defendant and plaintiff in counterclaim appearing in person;
Second and third defendants absent and unrepresented.

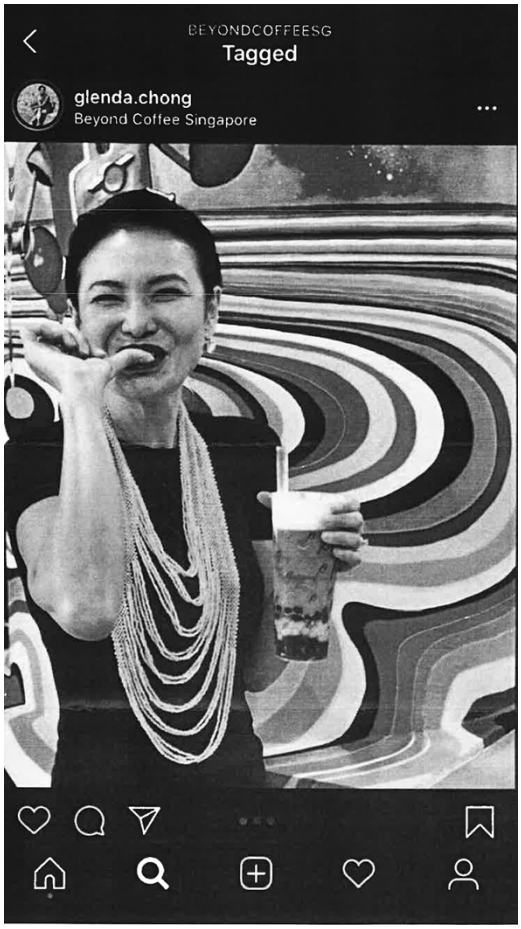
Annex A:[148]





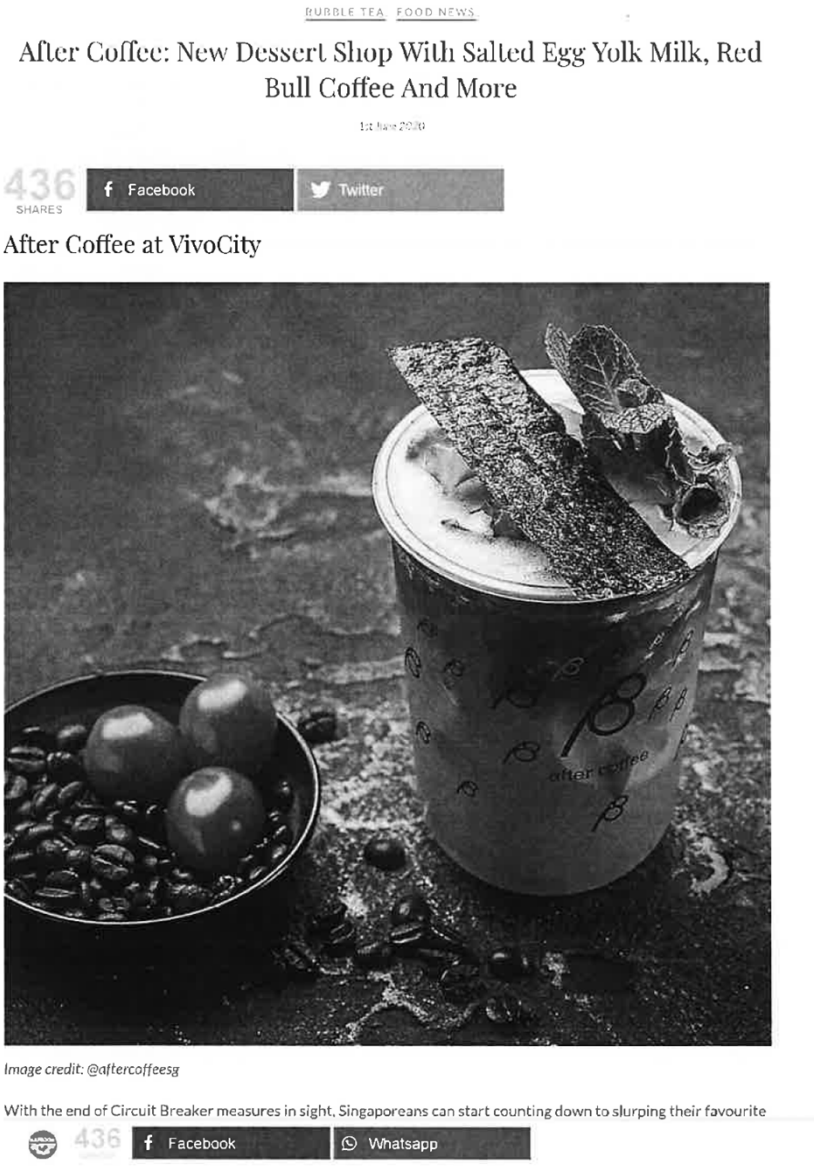
148 Mr Lee Eng Tat's AEIC dd 10 January 2022 at pp 140–141.

Annex B:[149]



149 Mr Lee Eng Tat's AEIC dd 10 January 2022 p 1164.

Annex C:



BUBBLE TEA FOOD NEWS

After Coffee: New Dessert Shop With Salted Egg Yolk Milk, Red Bull Coffee And More

1st June 2020

436 SHARES Facebook Twitter

After Coffee at VivoCity

Image credit: @aftercoffeesg

With the end of Circuit Breaker measures in sight, Singaporeans can start counting down to slurping their favourite

436 Facebook Whatsapp

Excerpt from eatbook.sg[150]

150 Mr Lee Eng Tat's AEIC dd 10 January 2022 at p 342.

Annex D:

Shin Min Daily

Monday, August 5, 2019

Addy Lee recruited celebrity bartender at a seven figure price

Reported by Tang Jie

Local celebrity hairdresser Addy Lee recently recruited celebrity bartender Gu Tianchi at a seven figure price.

Gu Tianchi was the overall champion of the International Bartender World Championships, participated "Interactive Sunday", "I'm Going to the Spring Festival Gala" and other large programs at China Central Television (CCTV), and is active in the Chinese entertainment circle.

The day before yesterday (August 3), Gu Tianchi and Addy Lee were interviewed by Shin Min Daily in Nanjing and revealed that they had made cocktails for famous celebrities such as Yao Chen at different celebrity fashion parties. Gu Tianchi said: "Bartending is like Chinese physician taking pulse. After understanding each person's different taste patterns and preferences, they can produce the most suitable taste."

Why did you sign a contract with Addy Lee? Gu Tianchi said: "Our cooperation is an improvement in many aspects to me, and cross-industry cooperation will bring surprises."

Gu Tianchi used wine to describe him and Addy Lee: "I am vodka, because it is colourless, tasteless, clean and pure; he is Negroni, which is very fun."

Gu Tianchi used to work in Na Ying's bar in Beijing: "I see her husband Meng Tong more often, and he mainly manages the bar." How about Na Ying's personality? He said: "Very generous, with many friends. She will also bring Faye Wong to the bar to drink." How about Na Ying and Faye Wong's drinking capacity and etiquette? Gu Tianchi smiled and said, "All are good!"

However, he admired Ge You's drinking etiquette most: "He just sits there quietly and drink one cup by one cup, he doesn't overdo it and is very restrained."

Addy Lee revealed that after recruiting Gu Tianchi, he has arranged a series of development plans: "I will help him take jobs aggressively, the goal is to earn seven figures within five years, and then continue to cooperate." Would you consider coming to Singapore to develop? Gu Tianchi said: "There will definitely be a chance to come to Singapore, I look forward to it very much."

Expert in coffee, spills coffee preferences of celebrities

In addition to bartending, Gu Tianchi is also a coffee expert and knows the coffee preferences of many celebrities well.

He said: "Most celebrities still like American coffee. Wilber Pan especially loves black coffee; Deng Ziqi likes latte; Li Zhiting likes lychee-flavoured coffee."

He also mentioned: "Celebrity beauties such as Zhou Xun, Yang Mi, Ruby Lin, Ni Ni, Liu Tao, Gao Yuanyuan, have a Parisian coffee complex in particular."

Addy Lee hope to opens 300 beverage stores in China

Addy Lee is currently moving part of his business overseas. In addition to investing in hair salons, he will also enter the food and beverage industry.

Annex E: [redacted]