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

[2025] SGHC 13

Suit No 447 of 2021

Between

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

… *Plaintiffs*

And

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

… *Defendants*

GROUNDS OF DECISION

[Confidence — Breach of confidence]
[Contract — Contractual terms]
[Contract — Breach]
[Equity — Fiduciary relationships — When arising]

[Tort — Conspiracy]
[Tort — Inducement of breach of contract]

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

[2025] SGHC 13

General Division of the High Court — Suit No 447 of 2021
Aidan Xu @ Aedit Abdullah J
11, 12, 18–20, 25–28 July, 1–3 August, 2 October 2023, 16 January, 13 August 2024

23 January 2025

Aidan Xu @ Aedit Abdullah J:

Introduction

1 The claims made in this case arose out of the departure of individual employees from companies involved in providing technology solutions primarily for visitor management and entry, *ie*, allowing businesses to control and monitor those entering its premises. While to some extent concerned with terms of the employment contracts, the bulk of the focus at the trial and submissions was on the breach of obligations of confidentiality as to business secrets. These issues were canvassed at length in substantial submissions.

Facts

The parties

2 The first and second plaintiffs were ATT Systems (S'pore) Pte Ltd ("ATT Systems") and ATT Infosoft Pte Ltd ("ATT Infosoft") respectively. ATT Systems' principal business activity was in providing systems integration services. ATT Infosoft, initially a business division of ATT Systems, was spun off from it and incorporated as its wholly-owned subsidiary in or around November 2013. ATT Infosoft specialised in providing intelligent electronic queue management systems ("EQMS"), visitor management systems and payment services solutions.[1]

3 The first to eighth defendants were, respectively, (a) Centricore (S) Pte Ltd ("Centricore"); (b) Faruk Bin Abdul Kather ("Mr Faruk"); (c) Toh Shenglong Louis ("Mr Toh"); (d) Kyaw Htun Win ("Mr Kyaw HW"); (e) Mr Danesh s/o Sudinthan Pillai ("Mr Danesh"); (f) Kyaw Khaing ("Mr Kyaw K"); (g) Mr Aung Thiha Aung ("Mr Aung") and (h) IdGates Pte Ltd ("IdGates").

4 Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung were employees of ATT Systems until their employment contracts were novated to ATT Infosoft in or around 2014.[2] In ATT Infosoft, the defendants held these positions: Mr Faruk was the Deputy Chief Technology Officer and a statutory director and led its business operations, Mr Toh was the Business Development Director and led its sales,[3] Mr Kyaw HW was the head of its Projects department, Mr Danesh was the deputy head of its Maintenance

[1] Plaintiffs' Opening Statement ("POS") at para 10.

[2] POS at para 11.

[3] Plaintiffs' Closing Submissions ("PCS") at paras 470 and 476 and POS at para 30.

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department, and Mr Kyaw K and Mr Aung were software engineers in its Software / Research departments. All three departments were part of ATT Infosoft's business operations.[4]

5 Centricore and IdGates were companies where the individual defendants held various positions, including when they were employed by ATT Infosoft. Centricore's principal business activity was in providing digital Information Technology ("IT") infrastructure services, customised software solutions, gantry / visitor management solutions, customised security solutions and media management solutions.[5] The parties did not dispute that Centricore was a competitor of ATT Infosoft in "IT systems integration for automated visitor management systems ("AVMS"), EQMS and payment kiosk systems ("PKS") utilised by government departments and statutory bodies".[6] Additionally, IdGates provided the installation of building automated systems such as automated turnstiles and side-gates.[7]

Background to the dispute

6 In as early as March 2019, Mr Faruk and Mr Toh planned to leave ATT Infosoft. They discussed starting their own business and signed a tenancy agreement for office space on 3 May 2019,[8] in which Centricore operated.[9] Mr Toh gave Mr Faruk $7,000 for Centricore's rental deposit and start-up

[4] Defendants' Closing Submissions ("DCS") at para 13.

[5] POS at para 12.

[6] Defendants' Opening Statement ("DOS") at para 3.

[7] POS at para 13.

[8] Plaintiffs' Chronology of Principal Events ("PCPE") and Defendants' Chronology of Principal Events ("DCPE").

[9] See Affidavit of Evidence-in-Chief of Tan Chin Tiong, Kenny dated 12 May 2023 (AEIC of Kenny Tan) at pg 1871.

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costs.[10] Mr Faruk drafted detailed business cards for himself, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung.[11]

7 Mr Faruk resigned from ATT Infosoft on 29 July 2019, the first of the mass resignations.[12] In the beginning of August 2019, he was approached to join IdGates.[13] Mr Kyaw HW and Mr Danesh resigned on 16 August 2019. While they were serving their notice period, Centricore was incorporated on 19 August 2019 and they became its directors and sole shareholders.[14] Mr Faruk also drafted a letter of recommendation for Mr Kyaw HW's work pass application using Centricore's letterhead.[15] Mr Faruk became a shareholder of and was appointed as a director of IdGates on 9 September 2019.[16] Mr Kyaw K resigned from ATT Infosoft on 11 September 2019 after IdGates submitted a work pass application for him on 26 August 2019.[17] Mr Faruk helped Mr Kyaw K with the work pass application.[18]

8 Throughout September 2019, Mr Faruk continued its efforts in Centricore and IdGates. He paid for Government Electronic Business ("GeBIZ") applications for the Centricore and IdGates and endorsed IdGates'

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[10] Affidavit of Evidence in Chief of Toh Shenglong Louis dated 12 May 2023 at para 36.

[11] PCPE and PCS at para 363(c).

[12] PCPE.

[13] DCPE.

[14] PCPE and DCPE.

[15] Affidavit of Evidence-in-Chief of Faruk Bin Abdul Kather dated 12 May 2023 at para 150 and Affidavit of Evidence-in-Chief of Kyaw Htun Win dated 12 May 2023 at para 35.

[16] PCPE and DCPE.

[17] DCPE, AEIC of Kenny Tan at pg 1927 and Affidavit of Evidence-in-Chief of Kyaw Khaing dated 12 May 2023 at para 26.

[18] Notes of Evidence ("NEs") dated 1 August 2023 at page 53 lines 15 to 23.

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application for an ME04 license from the Building and Construction Authority.[19]

9 Thereafter, competitive activity became apparent. On 28 September 2019, a client of the plaintiffs claimed that "Faruk new company" had officially sent client quotations for a gantry maintenance project.[20] In the last of the mass resignations, Mr Aung resigned from ATT Infosoft on 30 September 2019 after IdGates submitted a work pass application for him.[21] Mr Faruk helped Mr Aung with the work pass application.[22]

10 On 3 October 2019, Mr Kyaw HW sent documents in a WhatsApp group chat with the plaintiffs' clients, which he deleted immediately. The documents indicated that Mr Kyaw HW and Mr Danesh were appointed as Centricore's directors and that Centricore expected its "first service contract in Jan-Feb 2020 with contract sum of $200,000 and subsequent pipeline of $500,000 in Q2-2020". ATT Infosoft then terminated the employment of Mr Kyaw HW and Mr Danesh on 14 October 2019, Mr Faruk on 16 October 2019, and Mr Toh on 1 November 2019.[23]

11 Subsequently, Mr Toh became a shareholder and a director of IdGates on 11 November 2019. Mr Kyaw K and Mr Aung joined the company on 15 November 2019 and 1 December 2019 respectively and were immediately seconded to Centricore for 24 months.[24]

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[19] PCPE.

[20] PCPE.

[21] Affidavit of Evidence-in-Chief of Aung Thiha Aung dated 12 May 2023 at para 27.

[22] NEs dated 1 August 2023 at page 95 line 1.

[23] PCPE.

[24] PCPE.

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12 Forensic analysis conducted on the ex-employees' devices revealed the following. First, information belonging to the plaintiffs was stored in Mr Faruk's personal Dropbox folder, and the external storage devices ("ESD"s) belonging to Mr Faruk, Mr Toh and Mr Danesh (which were not returned to ATT Infosoft).[25] Second, there was mass deletion activity on Mr Faruk and Mr Kyaw HW's company-issued desktop and laptop in January, August and September 2019, and in January, April and July 2019 respectively. Mr Kyaw HW used data wiping tools on his company-issued laptop a day before he returned it to ATT Infosoft and took deliberate action to hide the deletion activity.[26]

13 On 18 June 2020, Health Promotion Board put out a public tender for the maintenance, support and servicing of an EQMS (the "HPB Tender"). Centricore submitted a bid of $210,253 – about $4,000 less than ATT Infosoft's bid of $214,260. The only other bid was placed by a third party for $412,173.[27] Further, the plaintiffs found that Mr Faruk, while employed by ATT Infosoft, prepared four maintenance proposals under IdGates' name for the maintenance of existing AVMS installed by ATT Infosoft for hospitals such as Sengkang Hospital, KK Women's and Children's Hospital, Khoo Teck Puat Hospital, Yishun Community Hospital and National University Hospital (the "four maintenance proposals").[28]

14 Against this backdrop, the plaintiffs brought the suit against the defendants, alleging that Mr Faruk and Mr Toh instigated the ex-employees to

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[25] PCS at paras 83 and 310.

[26] PCPE.

[27] PCPE.

[28] PCS at paras 290 and 493 and POS at para 27.

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conspire to leave ATT Infosoft *en masse* and set up a competing company (Centricore). In the process, they took confidential information and destroyed data belonging to their former employer. The defendants had IdGates front as an employer "on paper" when they were working in concert to further Centricore's business.[29]

The parties' cases

The plaintiffs' case

15 The plaintiffs' case against the defendants was based on five claims: (a) breach of confidence by Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh and IdGates; (b) breach of their respective employment agreements and obligations by Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung; (c) breach of fiduciary duties by Mr Faruk and Mr Toh; (d) inducement and / or procurement of the breaches of employment agreements by Mr Faruk; and (e) conspiracy by the defendants (or any two or more of them together) to cause loss and damage to the plaintiffs by unlawful means.

Breach of confidence

16 Starting with their claim for breach of confidence, the plaintiffs argued that both wrongful loss and wrongful gain interests had been undermined.[30]

17 The plaintiffs alleged that the following information was confidential: (a) pricing information, such as those for the EQMS and AVMS; (b) client contracts for the supply and maintenance of EQMS; (c) operating manuals

[29] POS at para 4.

[30] PCS at para 36.

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(including source codes)[31] and technical documents for EQMS, AVMS and PKS; (d) client-specific materials; and (e) presentation and training materials for the use of EQMS, AVMS and PKS (collectively, the "Confidential Information").[32] The Confidential Information was not available publicly,[33] and was used, disclosed and / or possessed by Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh and IdGates. Pertinently, Mr Faruk shared his personal Dropbox folder which contained the Confidential Information with Mr Toh and Mr Kyaw HW.[34] Although there was no direct evidence of possession by Mr Danesh, he would have possessed the Confidential Information by virtue of his role as a director and his close working relationships with Mr Faruk and Mr Kyaw HW.[35]

18 Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh and IdGates had an obligation of confidentiality. Mr Faruk worked with the plaintiffs for 19 years and must have known or ought reasonably to have known that the Confidential Information was confidential. Yet, he saved it without the plaintiffs' knowledge or consent and shared it with Mr Toh, Mr Kyaw HW and Mr Danesh, who must have known or ought reasonably to have known the same. Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh's knowledge can be imputed to Centricore and IdGates as they were directors of these entities.[36] That Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh did not have a contractual

[31] PCS at para 94.

[32] PCS at para 80.

[33] PCS at paras 83–111.

[34] PCS at paras 231–235 and 246–266

[35] PCS at para 270.

[36] PCS at at paras 274–294.

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relationship with ATT Systems did not mean that they could not owe it obligations of confidence in equity.[37]

19 Therefore, a breach of confidence could be presumed against Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh and IdGates. The presumption could not be rebutted because the defendants did not have good reason to demonstrate that their conscience was not affected.[38] Mr Faruk, Mr Toh and Mr Kyaw HW's claim that they destroyed their ESDs, and Mr Danesh's claim that he returned his ESD to his supervisor were unbelievable.[39] Mr Kyaw HW's use of data wiping tools showed that he knew he should not have been in possession of the Confidential Information.[40]

20 In the alternative, considering the wrongful gain interest, unauthorised use of the Confidential Information could be proven. The plaintiffs alleged that Mr Faruk used the Confidential Information to prepare the four maintenance proposals, and Mr Toh had likely also done the same. Centricore's misuse of the Confidential Information in submitting a bid for the HPB Tender could be imputed to Mr Kyaw HW and Mr Danesh.[41]

Breach of employment contracts

21 Turning to the plaintiffs' claim for breach of contract, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung breached the clauses reproduced below.

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[37] Plaintiffs' Reply Closing Submissions ("PRCS") at paras 83–85.

[38] PCS at para 8.

[39] PCS at para 311.

[40] PCS at para 312.

[41] PCS at para 9.

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22 Clauses 2.2 and 2.3 (the "Loyalty Obligation") stated that:[42]

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

23 Clause 3 (the "ISO Obligation") stated that employees "shall follow" the "ISO procedure", which included the "Acceptable Use Policy" and the "Information Classification Policy".[43] In turn, clause 6.1 of the Acceptable Use Policy stated that "information assets may be used only for business needs with the purpose of executing organisation-related tasks". Clause 6.3 of the Acceptable Use Policy laid out the prohibited activities in relation to the information assets. Appendix 4 of the Acceptable Use Policy prohibited the "sharing of confidential material, trade secrets, or proprietary information outside of the organisation". Additionally, clause 6.7 of the Information Classification Policy provided that, confidential electronic documents "may be stored only on servers which are controlled by the organisation".[44]

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[42] PCS at para 346.

[43] PCS at para 349.

[44] PCS at paras 387–390.

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24 Clause 12.3 (the "Non-competition Obligation") stated that:[45]

> 12.3 Restrictions. Upon your resignation or termination of employment, within six (6) months after your official last day in the Company, you shall not be employed or engaged by any other person, firm, or company or acquire any interest in any undertaking carrying on business of a similar nature or in competition with the Company. The list of competitors is stated in Annex A. Should you breach the above-said restriction, the company will take legal action accordingly.

25 Lastly, clauses 13.2 and 13.4 (the "Confidentiality Obligation") stated that:[46]

> 13.2 You shall not during, or at any time after the termination of employment with the Company, use for yourself or for others, or disclose or divulge to others including relatives any trade secrets, confidential information or any other data of the Company in violation of this agreement.
>
> […]
>
> 13.4 That upon the termination of your employment with the Company:
>
> 13.4.1 You shall return to the Company all documents belonging to the company, including but not limited to: drawings, blueprints, reports, manuals, correspondence, customer lists, computer software programs, and all other materials and all copies thereof in any way related to the Company's business;
>
> 13.4.2 You agree that you shall not retain copies of any of the foregoing.

(1) The Loyalty Obligation

26 Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh breached the Loyalty Obligation. While he was still employed by ATT Infosoft, Mr Faruk became a shareholder and a director of IdGates and prepared, on its behalf, the

[45] PCS at para 350.

[46] PCS at para 351.

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four maintenance proposals.[47] He also took preparatory steps for Centricore's commencement of its business.[48] In the alternative, he breached his implied duty of good faith and fidelity.[49] Mr Toh also worked for IdGates while he was employed by ATT Infosoft as he was involved in drafting the four maintenance proposals.[50] Additionally, he contributed the $7,000 to Centricore.[51]

27 While employed by ATT Infosoft, Mr Kyaw HW and Mr Danesh incorporated Centricore and became its sole shareholders and directors.[52] They also engaged in work for Centricore, as evidenced by the documents which were accidentally shared on the WhatsApp group chat.[53]

(2) The ISO Obligation

28 Next, Mr Faruk, Mr Toh and Mr Kyaw HW breached the ISO Obligation. Mr Faruk and Mr Toh breached clauses 6.1 and 6.3 and Appendix 4 of the Acceptable Use Policy, and clause 6.7 of the Information Classification Policy. Mr Faruk used his company-issued laptop and desktop to store company data in his personal Dropbox folder,[54] which Mr Toh accessed via his company-issued laptop.[55] In turn, ATT Infosoft's "information assets"

[47] PCS at para 358.

[48] PCS at para 363.

[49] PCS at para 375.

[50] PCS at para 377.

[51] PCS at para 378.

[52] PCS at para 380.

[53] PCS at para 381.

[54] PCS at para 391.

[55] PCS at para 396.

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were used to incorporate and operate a competing business. Mr Faruk also used such assets to prepare the four maintenance proposals for IdGates.[56] Furthermore, Mr Faruk and Mr Toh downloaded Dropbox and used ESDs to store company data without permission.[57] Mr Faruk also shared the Confidential Information with IdGates, who was not part of the organisation.[58]

29 As for Mr Kyaw HW, he breached clauses 6.1 and 6.3 of the Acceptable Use Policy and clause 6.7 of the Information Classification Policy. He received the Confidential Information from Mr Faruk and planned to use it for the company they agreed to set up with the other defendants.[59] He also used ESDs to store company data without permission and downloaded and used data wiping tools on his company-issued laptop.[60]

(3) The Non-competition Obligation

30 Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung also breached the Non-competition Obligation as they were involved in either Centricore or IdGates within six months of departing from ATT Infosoft.[61] Although Centricore and IdGates were not listed under Annex A, clause 12.3 should not be read as stipulating breach only if the companies / entities which the individual defendants joined were listed under Annex A.[62]

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[56] PCS at para 391.

[57] PCS at paras 392 and 397.

[58] PCS at para 393.

[59] PCS at para 400.

[60] PCS at para 401.

[61] PCS at paras 420–434.

[62] PCS at paras 405–419.

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(4) The Confidentiality Obligation

31 Finally, Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh breached the Confidentiality Obligation. Mr Faruk breached clause 13.2 as he had, during and after termination of his employment, disclosed the Confidential Information to unauthorised persons and used it for himself and others.[63] Mr Faruk and Mr Toh breached clause 13.4 as they failed to return all documents belonging to ATT Infosoft and had retained copies of the Confidential Information in their ESDs and Mr Faruk's personal Dropbox folder.[64]

32 Mr Kyaw HW and Mr Danesh, as directors of Centricore, would have used the Confidential Information in breach of clause 13.2 when the latter misused the Confidential Information in deciding on a bid for the HPB Tender.[65] The plaintiffs further alleged that Mr Kyaw HW and Mr Danesh disclosed the Confidential Information to Centricore.[66] Mr Kyaw HW also breached clause 13.4 because he failed to return the Confidential Information stored in his ESDs to ATT Infosoft and used data wiping tools on his company-issued laptop.[67]

Breach of fiduciary duties

33 Next, the plaintiffs submitted that Mr Faruk and Mr Toh breached their fiduciary duties to the plaintiffs by virtue of their positions in Centricore and IdGates. Notably, Mr Faruk was also the Chief Information Security Officer of

[63] PCS at para 439.

[64] PCS at paras 443 and 452.

[65] PCS at 457 and 464.

[66] PCS at paras 457 and 462.

[67] PCS at paras 459 and 460.

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the "ATT Group" of companies, and Mr Toh was the Head of Department of a subsidiary of ATT Systems.[68] They breached their duties by their involvement in Centricore and IdGates. They set up Centricore, intending for its principal business activity to be identical or similar to that of the plaintiffs.[69] They also took preparatory steps for Centricore while still employed by ATT Infosoft.[70] Mr Faruk became a director of IdGates without the plaintiffs' knowledge,[71] and utilised his position in ATT Infosoft to endorse IdGates' GeBIZ applications and its application for an ME04 license.[72] He also prepared the four maintenance proposals to enable IdGates to compete with ATT Infosoft.[73]

Inducement of breach of contract

34 Moreover, Mr Faruk induced Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung's breaches of their employment contracts. Mr Faruk was a director of ATT Infosoft and would have known the existence of the employment contracts and their material terms.[74] He intended to induce the breaches to set up a competing business in a manner detrimental to the plaintiffs' interests.[75] The facts and circumstances gave rise to the inference that Mr Faruk was the mastermind and procured the breaches.[76]

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[68] PCS at paras 470 and 476.

[69] PCS at para 484.

[70] PCS at para 485.

[71] PCS at para 489.

[72] PCS at para 490.

[73] PCS at para 493.

[74] PCS at para 500.

[75] PCS at para 503.

[76] PCS at para 507.

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35 Indeed, their employment contracts were breached, which resulted in losses for the plaintiffs. They were (a) increased labour costs and (b) additional software costs because of the mass resignations; (c) pecuniary losses from having to lower bid prices knowing that Centricore had the Confidential Information and was able to undercut them; (d) liquidated damages imposed by the National University Polyclinics, a contractual party, as ATT Infosoft was unable to meet the contractual deadline due to the mass resignations; and (e) time and costs savings by the defendants from using the plaintiffs' Confidential Information as a springboard (collectively, the "plaintiffs' alleged losses").[77]

Conspiracy by unlawful means

36 Lastly, the plaintiffs submitted that there was a conspiracy by unlawful means. The defendants combined to commit certain acts. Namely, the individual defendants' mass resignations in short succession to set up a competing business (Centricore) and the taking of Confidential Information for Centricore to compete with and cause loss to the plaintiffs. The acts also included IdGates' use of the Confidential Information to compete with the plaintiffs and the utilisation of IdGates to (a) mask the workings of the conspiracy, (b) obtain work passes for Mr Kyaw K and Mr Aung, and (c) circumvent their post-termination employment obligations, including the Non-competition Obligation.[78] These acts were unlawful as they constituted actionable civil wrongs.[79] They were also committed in furtherance of the agreement between the defendants – while Mr Faruk and Mr Toh hatched the initial plan (to compete

[77] PCS at 574 to 586.

[78] PCS at para 515.

[79] PCS at para 571.

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with the plaintiffs), they subsequently included the other defendants in this plan.[80]

37 Further, the defendants intended to cause damage or injury to the plaintiffs. Centricore and IdGates were created to compete in the same sectors and markets, the mass resignations took place quickly and the individual defendants swiftly took up roles at Centricore and / or IdGates. These ex-employees held senior positions and their resignations would have severely disrupted the plaintiffs' business operations. There was also an unauthorised acquisition and deletion of the plaintiffs' sensitive and proprietary data. Finally, the plaintiffs alleged that Mr Kyaw K and Mr Aung had intentionally left bugs in the codes for ATT Infosoft's existing projects.[81] These activities led to the plaintiffs' alleged losses.[82]

The defendants' case

38 The defendants denied the claims and raised the following defences.

Breach of confidence

39 On the breach of confidence, the defendants were of the view that the plaintiffs only pleaded the wrongful gain interest, which was not undermined as there was no unauthorised use of the Confidential Information.[83] The information did not possess the necessary quality of confidence. Mr Faruk shared it with key employees of ATT Infosoft, including Mr Toh, Mr Kyaw HW

[80] PCS at para 518.

[81] PCS at paras 562–567.

[82] PCS at para 577.

[83] DCS at paras 50–51.

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and Mr Danesh for work-related purposes. Further, ATT Infosoft was aware of its staff's use of personal Dropbox folders or ESDs for work and did not object to such use.[84] Moreover, the information shared mostly consisted of low-level project documents drafted by Mr Faruk while he was still employed by ATT Infosoft, and the plaintiffs had a lax attitude in respect of the security of the information.[85]

40 The defendants also denied owing obligations of confidentiality. Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh did not have a contractual relationship with ATT Systems and none of the Confidential Information belonged to ATT Systems. Following *Adinop Co Ltd v Rovithai Ltd* [2019] 2 SLR 808 ("*Adinop*"), the Court of Appeal held that where there was a stipulated contractual duty of confidence, the court would not ordinarily impose additional or more extensive obligations of confidentiality in equity.[86] Further, Centricore could not have owed confidentiality obligations to the plaintiffs as Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh never imparted the Confidential Information to it.[87]

41 Lastly, there was no unauthorised use of the Confidential Information. After leaving ATT Infosoft, Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh did not retain their ESDs and Mr Faruk also deleted the Confidential Information from his personal Dropbox folder. Centricore and IdGates denied accessing the Confidential Information. Centricore also denied misusing the Confidential Information in submitting its bid for the HPB Tender

[84] DOS at para 8(a).

[85] DOS at para 29.

[86] DCS at para 71.

[87] DCS at para 72.

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– it had relied on independent market knowledge, experience and research. Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh claimed that they only relied on their technical skills, experience and know-how in their work.[88]

Breach of employment contracts

42 Next, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung denied breaching their employment contracts. On the Loyalty Obligation, Mr Faruk only took shares and became a director of IdGates on the basis that these would take effect after he left ATT Infosoft. Moreover, Mr Faruk and Mr Toh eventually abandoned their plans to set up Centricore when Mr Faruk found work with IdGates. As for Mr Kyaw HW and Mr Danesh, although they incorporated Centricore while being employed by ATT Infosoft, they only took preparatory steps for the start of its operations which was slated to take place after their departure from ATT Infosoft. The "mere preparatory steps" taken by Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh on behalf of Centricore and IdGates did not amount to actual competitive activity.[89]

43 Mr Faruk, Mr Toh and Mr Kyaw HW denied breaching the ISO Obligation or ISO Policies as the latter was not enforced, and could not have been enforced due to acquiescence, waiver or estoppel.[90] There was knowledge and consent of Mr Faruk, Mr Toh and Mr Kyaw HW's use of the personal Dropbox folder and the ESDs over a period of several years.[91] The Non-competition Obligation was also not breached because the clear language of clause 12.3 only prohibited Mr Faruk, Mr Toh, Mr Kyaw HW,

[88] DOS at para 8(c) to (e).

[89] DOS at para 10.

[90] DOS at para 13.

[91] DCS at paras 55–61.

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Mr Danesh, Mr Kyaw K and Mr Aung from joining specific companies referred to in Annex A, which did not include Centricore and IdGates.[92] Finally, on the Confidentiality Obligation, Mr Faruk, Mr Toh and Mr Kyaw HW repeated their reasons for denying a breach of confidence. In any event, it was a technical breach and ATT Infosoft did not suffer any losses.[93]

Breach of fiduciary duties

44 Next, while Mr Faruk admitted that he owed fiduciary duties to ATT Infosoft, he denied owing these duties to ATT Systems. Moreover, he ceased to owe these duties to ATT Infosoft when he resigned, and the alleged breaches took place after he left ATT Infosoft's employment.[94] Mr Toh denied that he was a fiduciary or that he owed fiduciary duties to the plaintiffs – he had no managerial responsibilities or discretionary powers, and while he participated in management meetings, he played a limited role in the meetings.[95]

Inducement of breach of contract

45 Mr Faruk denied inducing breaches of the employment contracts. Preliminarily, there was no breach. In any event, he did not intend to induce the alleged breaches as the individual defendants had their own reasons for resigning. Namely, ATT Infosoft's human resource management was questionable, the annual bonus incentive was deficient, and the working conditions were unsatisfactory.[96]

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[92] DCS at paras 102 and 103.

[93] DCS at para 124.

[94] DCS at paras 134 and 142.

[95] DCS at para 136.

[96] DOS at para 34.

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Conspiracy by unlawful means

46 On the alleged conspiracy by unlawful means, the defendants disputed the existence of a combination between them. They cited several reasons. Mr Kyaw K and Mr Aung left ATT Infosoft for better working conditions and were unaware of the business cards and the four maintenance proposals.[97] Mr Faruk created the four maintenance proposals on his own accord, without involving the other defendants, and it was a "one-off self-limiting episode".[98] IdGates' employment of Mr Kyaw K and Mr Aung was motivated by commercial reasons.[99] Lastly, Mr Toh returned a part of the sum he contributed to Centricore after Mr Faruk abandoned plans to set it up. He did not help to finance Centricore's share capital.[100] Any acts alleged to be committed were also not unlawful.[101]

47 Further, the defendants did not intend to cause damage to the plaintiffs. On the contrary, they served their notice periods and Mr Faruk even offered to assist in ATT Infosoft's transition to his successor. In any event, no loss was suffered from the conspiracy.[102]

Disputing the plaintiffs' alleged losses and counterclaim against the plaintiffs

48 Finally, the defendants alleged that the plaintiffs' alleged losses were neither suffered by the plaintiff nor caused by the plaintiffs' claims.[103] Mr Faruk,

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[97] DCS at para 180.

[98] DCS at para 169.

[99] DCS at para 176.

[100] DCS at para 178.

[101] DCS at paras 159 and 160.

[102] DCS at para 167.

[103] DCS at paras 182–207.

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Mr Kyaw HW and Mr Danesh also counterclaimed against ATT Infosoft for wrongfully dismissing them from service. Amongst others, they claimed for their unpaid salary, amounts accrued from unused annual leave and unutilised approved time-off.[104]

The decision

49 I was satisfied that the plaintiffs made out their case on most, but not all, of the claims against the defendants.

Analysis

50 The analysis will be primarily on the claims which went against the defendants, the plaintiffs not appealing against those parts of my decision against them.

Breach of confidence

51 The primary claim, at least in terms of both focus and energy, was that for breach of the equitable obligation of confidence.

52 The law on breach of confidence was clarified in *I-Admin (Singapore) Pte Ltd v Hong Ying Ting and others* [2020] 1 SLR 1130 ("*I-Admin*") as protecting different interests of the claimant: not just wrongful gain, as encapsulated by *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 ("*Coco*"), but also wrongful loss. Where wrongful loss is claimed, this may be based on access or possession or acquisition, without use. The requirements for a successful claim for wrongful loss would differ from that for wrongful gain:

[104] DCS at paras 208–216.

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(a) wrongful gain, following the traditional understanding, would be founded on the traditional elements laid out in *Coco*; and

(b) whereas for wrongful loss, the approach is modified – the burden lies on the defendant to show that his conscience is not affected when the confidential information was acquired.

53 The decision in *Shanghai Afute Food and Beverage Management Co Ltd v Tan Swee Meng and others* [2024] 3 SLR 1098 ("*Shanghai Afute Food*") explained the application of the approach in *I-Admin*. In *Shanghai Afute Food*, Dedar Singh Gill J explained:

> 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.

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> (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].

54 Applying *I-Admin* to the present case, the sub-issues that arose were:

(a) whether the plaintiffs' claim captured both wrongful gain and wrongful loss interests;

(b) to whom the obligation of confidentiality was owed;

(c) which materials covered by the obligation of confidentiality and whether the plaintiffs had consented to the defendants' possession or acquisition of the materials; and

(d) whether there was breach by each of the defendants.

The scope of the plaintiffs' claims

55 The defendants argued that the plaintiffs only pursued a breach of confidence claim on the basis of *Coco*, and were thus limited to wrongful gain interest, with the burden on them to make out misuse. The plaintiffs argued that

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they had claimed for the breach of both wrongful gain and wrongful loss interests and were entitled to do so.

56 I am satisfied that the plaintiffs did plead both types of breaches as they had referred, in their statement of claim, to information being imparted in circumstances importing obligations of confidence, and that there was unauthorised acquisition without knowledge or consent.[105] The reference to these aspects was enough to engage the wrongful loss claim and give notice to the defendants or any other reader of the statement of claim that such a claim was being made by the plaintiffs. The pleadings in the present case were, I accepted, sufficient to support the plaintiffs' claim.

57 Both wrongful gain and wrongful loss claims may be put forward in the same case: see *Amber Compounding Pharmacy Pte Ltd and another v Lim Suk Ling Priscilla and others* [2023] SGHC 241. I saw no reason in principle why the two types could not be pursued in the same case. Whether there would be a risk of overlapping remedies is a separate matter, which is readily handled by the courts. I thus accepted that a particular defendant or group of defendants may be pursued for both or either in the same case.

To whom the obligation of confidentiality was owed

58 The defendants argued that the Confidential Information did not belong to ATT Systems and thus no obligation of confidentiality arose in respect of ATT Systems.[106] Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh were not in any contractual relationship with ATT Systems, and following *Adinop*, there would not normally be imposed any greater obligation in equity. The plaintiffs

[105] Statement of Claim at paras 15–17.

[106] DCS at para 84.

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maintained that the obligation was owed to both ATT Systems and ATT Infosoft, even if the defendants did not have any contractual relationship with ATT Systems.

59 I understood the defendants' arguments primarily on the basis of the interaction between equity and contract. I did not think though that their argument could be accepted. The point of the defendants' argument in this regard seems to be premised on the position that contractual obligation of confidence would oust or trump the equitable obligation, citing *Adinop*. As argued though by the plaintiffs, the absence of a contractual relationship, *ie*, the absence of an employment contract, would not oust the equitable obligation. It cannot so exclude the equitable obligation. Furthermore, I did not understand *Adinop* as excluding the equitable obligation where a contract exists between the plaintiff and the defendant: the language of the Court of Appeal decision was concerned with additional or more extensive obligations. To my mind, much would depend on the precise scope of the contract, and where there is a clear bargain made to modify the obligations, it is to the modified obligations that the court will look. That was not the case here – the contractual obligation was in any event broadly worded. In any case, at this point, one was looking only to see what obligations had arisen, not to the extent yet.

60 I also concluded that given the clear nature of the Confidential Information, the obligations of confidentiality were owed to both plaintiffs by the defendants, as they would have been aware of the confidential nature of the documents, even if not employed by the relevant company directly.

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Which materials were covered by the obligation of confidentiality and whether the plaintiffs had consented to the defendants' acquisition or possession of the materials

61 The sub-issues were whether (a) the plaintiffs had to show that each file accessed or kept by the defendants was in fact confidential; (b) there was consent by the plaintiffs to the acquisition or possession of the Confidential Information; and (c) the plaintiffs treated the information as confidential.

(1) Whether each file had to be shown to be confidential

62 It was not necessary to my mind to show that there was a specific link between the information alleged to be confidential and each of the files accessed in Mr Faruk's Dropbox folder and ESD. It was enough in respect of the equitable claim, for the plaintiffs to show that the documents were confidential, and that they were in Mr Faruk's Dropbox folder, and that the other defendants had access to it. The circumstances of the case led readily to the inference that they did access the Confidential Information, and that their consciences were affected, even aside from the presumption under *I-Admin*.

(2) Whether the plaintiffs had consented to access or possession

63 The defendants argued that the plaintiffs had consented to the individual defendants having the Confidential Information, which was done by the individual defendants in the course of their work. The plaintiffs argued that there was no consent: they had not known of Mr Faruk's personal Dropbox folder, and any file sharing and storage on the ESDs. Nor was there any consent to Centricore and IdGates having their information. No good reason existed for the defendants to have access to or possession of the Confidential Information.

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64 I did not accept the defendants' arguments that the materials were with the defendants with consent. Leaving aside any unauthorised possession of or access to the Confidential Information through Mr Faruk's personal Dropbox folder or the ESDs while the individual defendants were employed, they did not have any right to any continued access or possession after they left. Whether any thing should flow from their unauthorised practices while being employed is a question of contractual obligation, particularly as regards the ISO Obligation, considered below.

65 As examined below, in respect of breach, there was unlawful continued possession after the individual defendants in question left employment. I did not accept that they had shown that they had properly deleted the Confidential Information. The onus was on them to ensure and show that the Confidential Information had been discarded then.

(3) Whether the plaintiffs treated the information as confidential

66 The defendants argued that the documents were not confidential. While they did not dispute that the information was publicly available,[107] they argued that the documents lacked the quality of confidence because of the way the plaintiffs actually dealt with them, including lack or low level of control.

67 I did not accept these arguments, preferring those of the plaintiffs and I concluded that the Confidential Information had indeed been covered by the obligation of confidentiality.

68 The requirement of the law, as argued by the plaintiffs, is whether the information is publicly known or accessible: see *Invenpro (M) Sdn Bhd v JCS*

[107] Defendants' Reply Submissions ("DRS") at para 24(a).

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Automation Pte Ltd and anor [2014] 2 SLR 1045 and *Angliss Singapore Pte Ltd v Yee Heng Khay (alias Roger*) [2021] SGHC 168.[108]

69 I accepted that it was not necessary for the plaintiffs to show that each and every document in question was not in the public domain. The plaintiffs cited *Jethanand Harkishindas Bhojwani v Lakshmi Prataprai Bhojwani and Ors* [2022] 3 SLR 1211 for the proposition that it was not necessary to particularise each and every confidential document in a claim for breach of confidence.[109] I accepted that, following that case, which considered the approach in a number of jurisdictions, that it was not necessary for the plaintiffs to particularise to that level of detail. The burden on a claimant would be disproportionate given the sheer volume of data in many cases. It also followed that it was not necessary for the plaintiffs to prove specifically that each and every document was not in the public domain. The burden lay on the plaintiffs to prove the confidential nature of the documents in question, but this can be inferred in a civil claim, from their nature and the circumstances of their use. The plaintiffs had given sufficient evidence that the documents were not publicly known, and that they were intended for internal use, such as the internal markings of the documents as "confidential", "business in confidence" or "commercial in confidence".[110] The documents were intended only for the use by the plaintiffs and their clients.

70 The defendants agreed that the documents in question were not publicly accessible. Had they argued otherwise, I would have rejected their argument. It would also not have been sufficient to argue that it was easy enough to carry out

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[108] PCS at para 82.

[109] PCS at para 81.

[110] See, *eg*, Confidential Bundle of Documents Vol 3, page 871 at No. 1006.

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a comparison of words between the plaintiffs' and defendants' materials. Such similarity may point to copying, but the point of the claim was not copying but use in breach of confidence.

71 However, the defendants did not put forth anything that put into any level of doubt the confidential characteristic of the documents. All these documents which the plaintiffs argued were protected were documents that belonged to the plaintiff. As these were documents which by their nature covered matters which would affect the business of the plaintiffs (particularly by allowing them to compete with others or deal with their own clients), the documents would be by their very description or broad nature, contain confidential information. The court does not operate with blinkers on and would be satisfied of that confidential nature on a balance of probabilities.

72 The fact that some of the documents may have been on the ESDs was not enough either – these would have been a violation on their own right. There was nothing to show that the plaintiffs allowed such use.

73 The absence of any control or safeguarding did not also show that the information was not confidential: the confidentiality would only be lost when the documents became public. I also did not find, as regards the wrongful loss interest, that it had been shown that the defendants' conscience was not affected.

Whether there was breach by each of the defendants

74 In respect of each of the individual defendants pursued for breach of confidence, I found breach though not always to the same extent or on the same basis. No claim of breach of confidence on this scored against Mr Kyaw K and Mr Aung. Claims against Centricore and IdGates were also made out.

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(1) Mr Faruk

75 Mr Faruk, I found, was liable for undermining both wrongful loss and wrongful gain interests. Ultimately, this should mean that wrongful gain interest should be the primary focus at the remedies stage, but the court would be astute to ensure that no double recovery arises.

(A) BREACH BY ACCESS

76 I found that Mr Faruk had accessed the Confidential Information. As was claimed by the plaintiffs, he had various documents stored on his personal Dropbox folder and ESD, which contained the Confidential Information. While Mr Faruk would have had some access to the Confidential Information during his employment, such continued access and possession after he left employment was without the plaintiffs' knowledge and consent.

77 I accepted the plaintiffs' arguments which relied on the contents of Mr Faruk's personal Dropbox folder, which contained multiple files meticulously organised into various folders with names incorporating "Centricore", such as "2A-CentriCore". The plaintiffs claimed that is pointed to Mr Faruk saving the documents for Centricore's benefit. To my mind, at the very least, this did show an intention for the possible use of these documents for Centricore.

78 There were also in particular source codes in that Dropbox folder, which the plaintiffs argued were clearly confidential. While Mr Faruk tried to draw a distinction between different kinds of source codes, the plaintiffs argued that it was immaterial as all source codes were confidential. As the plaintiffs argued, it was significant that Mr Faruk would have had the source codes in his possession since he was not a software programmer. Furthermore, no consent

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had been given by the plaintiffs for him to possess the source codes. The defendants, for their part, argued that the source codes were not for user interface software but only for design files.[111] There was, in any event, no misuse of that information, nor any imparting to others.

79 I accepted that the source codes were confidential. It did not matter for the purposes of breach whether they were for design only or otherwise. It would generally be inferable, unless there was evidence otherwise, that the source codes would not be in the public domain and would be confidential, whatever aspect of an application they may relate to.

80 The defendants argued that Mr Faruk's use of the personal Dropbox folder and ESD was for work purposes, with the knowledge of the plaintiffs. While I was willing to accept this, the evidence was that Mr Faruk continued to retain this information after he left the employment. There was evidence of continued access to the personal Dropbox folder even after the return of his company-issued laptop. This was sufficient evidence in the absence of anything concrete which would rebut access by him, to show that Mr Faruk had continued access to the Confidential Information after employment.

81 The defendants contended that any access by Mr Faruk after he left the employment was to delete the information. I could not accept this contention. The other evidence, considered below, showed that Mr Faruk had used the Confidential Information in preparing materials for his own and Centricore's benefit.

[111] PCS at paras 97–103.

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82 Further applying the modified approach in *I-Admin*, for wrongful loss interest, since the court was only looking at the retention and continued access of confidential information rather than its use, the burden was on the defendants to show that Mr Faruk's conscience was not affected. Their evidence failed to show this.

83 The defendants argued that the documents were created by Mr Faruk in the course of his employment.[112] This did not assist Mr Faruk – the fact that he may have been the actual creator did not take away the fact that the ownership of the documents was with the plaintiffs. Indeed, as Mr Faruk, in arguing against ownership by ATT Systems, had claimed that the documents were created by him in the course of employment by ATT Infosoft, he could not then rely on his creation or authorship to deny the plaintiffs' ownership. I also accepted the argument of the plaintiffs that they had not accepted that all the documents were in fact created by him. It was also, as pointed out by the plaintiffs, not pleaded by the defendants that the documents claimed by ATT Systems were not owned by them but by ATT Infosoft.[113] In any event, the claim was made by both ATT Systems and ATT Infosoft and this attempted segregation of claims could not succeed.

84 Arguments about the application of *Adinop* were considered above. It was not necessary to draw the precise parameters at this stage since the question of quantification of damages still remained to be decided. There would in any event not be double recovery for the same loss. Related companies do not always carefully delineate their respective Intellectual Property rights and materials.

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[112] DCS at para 71(c)(i).

[113] PRCS at para 88.

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(B) BREACH BY USE

85 As for the use of the Confidential Information, I accepted that it was shown that Mr Faruk had used the Confidential Information, primarily by creating documents using it and relying on it for other actions or activities. Namely, there was evidence that he had client-specific materials, including specially designed kiosks for EQMS. Mr Faruk also admitted that he had used information from the plaintiffs in preparing the four maintenance proposals and used the "ATT_Maintenance-Overview" document to create the four maintenance proposals. Information was also copied from various documents to create the "CENTRICORE_Project VO_Overview" document.[114]

86 The defendants argued that the evidence only showed possible access to the Confidential Information, but not use by Mr Faruk for his or Centricore's benefit. There may have been some intention to misuse, but that intention fell short of actual misuse, which would have been required. The plaintiffs countered that the "CENTRICORE_Project VO_Overview" document was, by Mr Faruk's own admission, created by reference to information belonging to ATT Infosoft.[115]

87 I accepted that on the balance of probabilities, it was shown that the "CENTRICORE_Project VO_Overview" document was created on the basis of the Confidential Information. That to my mind, is sufficient use. The plaintiffs relied on Professor Susanna Leong ("Prof Leong")'s proposition in Susanna Leong, *Intellectual Property Law of Singapore* (Academy Publishing, 2013) that any form of use or disclosure would be unauthorised use.[116] Prof Leong's

[114] PCS at paras 330–332.

[115] PRCS at para 102(b) and DCS at para 74(e).

[116] PCS at para 315.

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views were endorsed in *Tempcool Engineering (S) Pte Ltd v Chong Vincent and others* [2015] SGHC 100 ("*Tempcool*"). I must note that both Prof Leong's statement in her textbook and the decision in *Tempcool* were published before *I-Admin*. I was doubtful that Prof Leong's views as expressed in her textbook survived *I-Admin*, which seemingly drew a harder line between access or possession on the one hand and use on the other. None the less, I did find that the referencing of the Confidential Information for the creation of a new document would be sufficient use so as to lead to wrongful gain. The Confidential Information was used to create a new document – a new document is more readily composed if there were a model or example, with information and data, readily at hand. That was at least what happened here. That was also what I understood to underlie Professor Ng-Loy Wee Loon's description of such use as a springboard, in her textbook, Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, 3rd Ed, 2021) (at [41.3.4]). The defendants further argued that *I-Admin* decided that such referencing did not amount to use. I found the contrary: as argued by the plaintiffs, in *I-Admin*, the Court of Appeal did conclude that mere referencing was not sufficient, but that was because the plaintiffs in that case argued that there was actual reference in developing of new materials. Here, there was sufficient evidence that the referencing was made. This was clear in relation to a number of documents, particularly[117]

(a) "CENTRICORE_Salary_N_Expense_Details" was indeed, as argued by the plaintiffs, created by Mr Faruk on the basis of the Confidential Information (of ATT Infosoft);

[117] PRCS at para 102(b).

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(b) "CENTRICORE_ProjMaintenance-Overview" was almost the same as that of a document belonging to ATT Infosoft, "ATT_Maintenance-Overview"; and

(c) "CENTRICORE_Project VO_Overview", was created on the basis of the corresponding document belonging to ATT Infosoft.

88 The evidence as to these specific documents thus showed that there was use of the plaintiffs' confidential materials for the benefit of the defendants.

89 Such use amounted to conduct that was taking and Mr Faruk's use of the Confidential Information meant that he had obtained a wrongful gain. All of this showed that Mr Faruk used the Confidential Information to benefit Centricore.

90 There was also the use of the Confidential Information for the benefit of IdGates in relation to the four maintenance proposals. The evidence, as put forward by the plaintiffs, showed clearly that there was copying of the plaintiffs' materials in these proposals, and in the context of this case, that showed the use of the Confidential Information by Mr Faruk.

91 Such use would, as I noted, also invariably involve unauthorised communication of these materials to both Centricore and IdGates.

(2) Mr Toh, Mr Kyaw HW and Mr Danesh

92 As regards Mr Toh, Mr Kyaw HW and Mr Danesh, I found that that there was no use of the Confidential Information, and the plaintiffs did not appeal on this point. It suffices for me to record in these grounds that I found that there was insufficient evidence of use. What was relied on by the plaintiffs

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fell short of finding such use, and to my mind only showed that there was possession of and access to the Confidential Information without consent.

93 What I did find against these defendants was the access of the Confidential Information, infringing the wrongful loss interest of the plaintiffs. The defendants could not reasonably take issue with the confidential nature of the information nor that they were in possession of it.

94 As was the case with Mr Faruk, the fact that as part of their work for the plaintiffs the defendants who were former employees would have had authorised access, did not excuse them or sufficiently absolve their conscience in terms of continued possession of and access to the Confidential Information subsequently.

95 Their claim that they had deleted the Confidential Information was not sufficiently substantiated. Their conscience was presumed to have been affected; they were unable to bring anything into court to support their position that the Confidential Information was no longer in their possession. None of these defendants could prove their deletion: it would have been expected that they would have had some record or support for deleting the Confidential Information or at least provided some details as to when and how the deletion occurred. However, they did not show any of the foregoing. In addition, there was their involvement with Mr Faruk, and Mr Kyaw HW and Mr Danesh were directors of Centricore. All in all, then, in my assessment, their consciences were not shown to be unaffected.

96 What I had not been persuaded by the plaintiffs concerned disclosure by Mr Kyaw HW and Mr Danesh to Centricore. I found that Mr Faruk did do so but this was not proven against Mr Kyaw K and Mr Danesh; the fact that they

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were directors was not enough. There was only a level of suspicion, and I did not see enough evidence to bring it beyond that.

(A) MR TOH

97 I found that the plaintiffs had proven access to the Confidential Information by Mr Toh in breach of confidence as he had in fact accessed Mr Faruk's personal Dropbox folder on his company-issued laptop. This was founded on the expert report, which showed that Mr Toh accessed documents on the "2B-CentriCore-DRIVE" subfolder. I accepted the evidence of the plaintiffs' forensic expert that there were materials on Mr Toh's ESD that showed sharing by Mr Faruk of his Dropbox folder containing documents developed for Centricore.[118] Such material was confidential, imparted in circumstances impacting Mr Toh's conscience.

(B) MR KYAW HW

98 Mr Kyaw HW was shown to have accessed the same Dropbox folder shared by Mr Faruk, and there was copying of the Confidential Information into his ESDs, supporting such access. Additionally, the activities of Mr Kyaw HW within Centricore, as one of the directors, meant that it was quite unlikely that he did not have at least access to the Confidential Information.

99 It was argued that there was insufficient forensic evidence against deletion by Mr Kyaw HW. This was in response to the plaintiffs' argument that there was deliberate destruction of evidence, and thus implied knowledge of a wrong by Mr Kyaw HW. I did not think deletion of the Confidential Information by Mr Kyaw HW as being material to establishing

[118] PCS at para 232.

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wrongful loss, and did not conclude that any deletion was with a view to frustrating these ongoing proceedings. Nonetheless as regards the wrongful loss, the burden lay on Mr Kyaw HW to show his conscience was not impugned and as noted above, this was not made out.

(C) MR DANESH

100 There was no forensic evidence against Mr Danesh. However, given that he was also a director of Centricore, it was sufficiently probable in the circumstances that he would have had at least access to the Confidential Information. The burden lay on Mr Danesh to show his conscience was not affected.

101 As was the case for Mr Kyaw HW, actual use by Mr Danesh was doubtful, and I was not persuaded that such use had been shown on the balance of probabilities. There has been no appeal on this score.

(3) Centricore

102 The plaintiffs argued that the evidence showed that Mr Faruk had given or imparted the information to Centricore, through Mr Kyaw HW and Mr Danesh, as well as through Mr Faruk's own position as a shadow director.[119]

103 I accepted the plaintiffs' arguments on Confidential Information being imparted to Centricore by Mr Faruk. Mr Faruk had, as found above, wrongly retained the information; he had, on the evidence, shared this information with Centricore, through Mr Kyaw HW and Mr Danesh. In particular, Mr Faruk had sent a link to his personal Dropbox folder to Mr Toh.

[119] PCS at para 325.

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104 The knowledge of Mr Kyaw HW and Mr Danesh meant that such knowledge should be imputed to Centricore as a corporate entity, following *Clearlab SG Pte Ltd v Ting Chong Chai and others* [2015] 1 SLR 163 (at [145]).

105 The plaintiffs relied on Mr Faruk acting as a shadow director, which would be an additional basis to conclude that there was imparting of the Confidential Information to Centricore. However, I did not conclude that it was shown that Mr Faruk was acting as a shadow director, nor that this would be enough for knowledge or possession to be imputed to Centricore.

106 As for Centricore, I was doubtful that the plaintiffs' claim about use of the Confidential Information had been made out. I found that on the evidence there was probably unauthorised possession or obtaining only, which would have only infringed the wrongful loss interest. Again, as this was not appealed by the plaintiffs, I will not go further.

(4) IdGates

107 The plaintiffs argued that IdGates obtained the Confidential Information from Mr Faruk, one of its directors. The Confidential Information was used again through Mr Faruk's actions. The knowledge of Mr Faruk, as well as that of another director, one "Ron", that the information was confidential should be imputed to IdGates.[120] Mr Faruk had used the Confidential Information to prepare the four maintenance proposals. This was misuse by IdGates. In doing so, IdGates saved time and expense, and was able to compete unfairly, leading to the plaintiffs' loss of contract opportunities.

[120] PCS at paras 295–298.

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108 The defendants denied that the Confidential Information was shared or imparted by Mr Faruk with IdGates, or in fact with any unauthorised person. There was in any event no misuse of the Confidential Information; the use of the AVMS images and information did not lead to any detriment. IdGates acted independently and did not owe any obligation of confidence. There was also delay in the commencement of proceedings, which showed that there was no real concern for such alleged breach of confidence.[121]

109 The evidence did, I found, point to the use of the Confidential Information to prepare the four maintenance proposals for the benefit of IdGates. This was through the actions of Mr Faruk, one of its directors. He did make use of the Confidential Information in preparing the four maintenance proposals. In particular, I accepted that the language in the proposals matched that in the plaintiffs' documents. He had also used for these proposals for IdGates, the file "ATT_Maintenance-Overview", *ie*, the plaintiffs' document, as this was the same as that titled "CENTRICORE_Proj-Maintenance-Overview", save for an additional column. There was to my mind no other plausible or reasonable explanation for the similarity except use of the Confidential Information. I accepted the plaintiffs' arguments that other evidence such as the use of templates from the plaintiffs and the information in "ATT_Project_VO_Overview_Breif [*sic*]" showed use as well. This conclusion was in contradistinction to the plaintiffs' claims on other aspects of use by others beyond Mr Faruk, such as the HPB Tender, which the plaintiffs founded use by Centricore on the basis of the close bid price and the similarity of the names of documents.[122] Neither to my mind would be sufficient to establish use on the balance of probabilities.

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[121] DCS at para 66.

[122] See PCS at paras 320 and 326.

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110 Such use as was proven would be actionable, as the concern here was with use, not actual profit. It did not matter that there was no fruitful outcome – that went to quantum instead. I also accepted that the requirement of detriment should be taken broadly and that potential impact on the plaintiffs is sufficient. As was held in *Tempcool Engineering (S) Pte Ltd v Chong Vincent and ors* [2015] SGHC 100, the shifting of goodwill or the creation of a favourable impression in favour of the defendant as against the claimant, will be sufficient. So here, the use of the plaintiffs' information to put forward the four maintenance proposals would be enough to create goodwill in favour of IdGates, which would impact the plaintiffs. That is sufficient detriment.

111 Further, Mr Faruk's use of the Confidential Information sufficed in the circumstances to impute use by IdGates as the former did work for the latter.

112 The fact that the plaintiffs may have pleaded that Centricore had sent in the four maintenance proposals was not to my mind a bar to their successful claim of use by Mr Faruk. There was no misapprehension at the trial that this was what was ultimately the claim, and I accepted that there was in fact no prejudice caused.

Breach of employment contracts

113 The obligations in the employment contracts were largely owed to ATT Infosoft, although I noted that the individual defendants were employed by ATT Systems previously. The defendants argued primarily that the Loyalty Obligation, the ISO Obligation, the Non-competition Obligation and the Confidentiality Obligation were either inapplicable or were not breached.

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The Non-competition Obligation

114 The defendants pointed to Annex A of the employment contracts, which listed just two competitors and which were not Centricore and IdGates. On the face of it, the defendants' arguments that the restriction only applied to the listed companies held some force. The text of the agreement between the parties pointed to a limited list: the restriction in clause 12.3 expressly and only referred to a list of competitors, in Annex A. The list did not include Centricore and IdGates.

115 I accepted the argument of the plaintiffs that clause 12.3 should not be read as stipulating breach only if the companies or entities which the individual defendants joined was listed in Annex A.

116 Contrary to the arguments of the defendants, the clause did not stipulate that the competitors were limited only to the list in Annex A. The text obliged the employee not to be employed or engaged by anyone else carrying on business of a similar nature, or which was in competition with the employer. It was only after this was stipulated that the clause went on to state that the list of competitors was in Annex A. The focus of clause 12.3 was thus on a general obligation, namely not being employed or engaged by any person or entity carrying on business of a similar nature or which was in competition with the plaintiff company. With this in mind, Annex A thus operated as an illustration rather than a comprehensive and exhaustive list. The Non-competition Obligation encapsulated by clause 12.3 should be read as covering any involvement with any person with the prohibited characteristics, even those not covered by the list of competitors in Annex A.

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117 The defendants pointed to my decision in *Solomon Alliance Management Pte Ltd v Pang Chee Kuan* [2019] 4 SLR 577 ("*Solomon*") for the proposition that the courts should favour freedom of trade and that the employees' obligations should be construed on the basis only of what is expressly provided for.[123] The plaintiffs tried to argue that *Solomon* was distinguishable as that case was about an independent contractor's obligations rather than an employee's obligation not to compete.[124] I did not think that *Solomon* was pertinent in the present case: the clause here was for the reasons above, to be interpreted in a broad way; each contract needs to be interpreted on its own, within its own context.

118 The defendants argued that *contra proferentem* applied.[125] The plaintiffs responded that there was no ambiguity in the text, allowing *contra proferentem* to come in, citing various cases including *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corinna* ("*Hewlett-Packard*") [2016] 2 SLR 1083 (at [51] citing *LTT Global Consultants v BMC Academy Pte Ltd* [2011] 3 SLR 903 at [56]). The rule is one of construction in a situation of ambiguity, for which no guidance is given by the context. There was, the plaintiffs argue, no ambiguity here.[126]

119 I accepted that there was no room for the application of the *contra proferentem* rule here. There was no ambiguity. The text was clear in specifying the general position that there was to be no employment or engagement within six months, in any undertaking in a business of a similar nature or in

[123] DCS at para 108.

[124] PCS at paras 405–411.

[125] DCS at para 109.

[126] PRCS at paras 221–223.

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competition. As noted above, the Non-competition Obligation was worded broadly. One limb captured any undertaking of a similar nature, which was expansive enough to cover the activities of Centricore and IdGates. There was nothing in the clause introducing any uncertainty about what competition meant. It was clear that in this context, it would be any activity that would take away from the profit and gains that could be made by the plaintiffs. As the plaintiffs had argued, it was not for the court to create doubt where there was none: *Hewlett-Packard* (at [51]).

120 The defendants also argued that the courts should lean towards an interpretation allowing for the freedom of contract. I was doubtful about such a broad proposition. A contract is a bargain between parties, with each party giving up some freedoms and taking on various obligations. There may be certain limits on how far some freedoms should be bargained away, just as there may be limits on the onerousness of the obligations that are taken on. But I did not think this case involved anything that crossed such limits.

121 Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung were thus each in breach of the Non-competition Obligation as they were engaged with entities within the six months of departing ATT Infosoft, either with Centricore or IdGates.

The Loyalty Obligation

122 The Loyalty Obligation was an obligation not to engage in any competitive business or in any form of activity that produced a conflict of interest with the company.

123 I did not accept the arguments of the defendants that the clauses encapsulating the Non-competition Obligation and the Loyalty Obligation were

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tied to each other, and that the Loyalty Obligation was tied to Annex A. They were separate, though related, obligations. In any event, as discussed above, Annex A was not determinative or exhaustive.

124 The Loyalty Obligation covered a broader range of activities than the Non-competition Obligation, covering both interests in businesses competing with the employer and activities which produced a conflict of interest.

125 The defendants argued that the Loyalty Obligation did not capture preparatory activity. It required that the defendants avoided activities producing a conflict of interest. I did not read the phrase, "produces a conflict of interest" narrowly; it should encompass anything that could realistically cause such conflict. Even acts that may be described as preparatory could still cause a conflict of interest – a person in preparation could have his eye on the possible rewards from his actions, rather than the services due to his employer.

126 The wording of clause 2.3 was capable of capturing such preparatory acts anyway. Clause 2.3 thus included (a) working for a competing business, whether or not there was employment; and (b) being involved in competing businesses by having financial interest in the competing business or the expectation of such.

127 I accepted that there was no general exemption for preparatory acts. *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 ("*Smile Inc*") concerned the implied duty of good faith and fidelity, which has not been expressly endorsed by the appellate courts. But the proposition of law I relied on stands independently of the question of whether the implied duty is recognised under Singapore law. All would depend on the wording of the contractual agreement in question and the facts before the court.

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128 The individual defendants were thus in breach:

(a) Mr Faruk for working for IdGates;

(b) Mr Toh, by contributing money to Centricore; and

(c) Mr Kyaw HW and Mr Danesh by their extensive work for Centricore.

129 I would note that Mr Kyaw K and Mr Aung were not subjected to a claim for breach of the Loyalty Obligation.

The ISO Obligation

130 I noted that clause 3 was broadly worded. It specified that the ISO procedure was to be complied with and did not limit it to the ISO procedure as of a specific date. The intent as gleaned from the language of the clause was that compliance was with whatever the ISO procedure was at any particular time. What that ISO procedure may be would be what was contained in the ISO documents in the common drive, or as handed down by the management through the relevant supervisors. Given this, it did not matter that the clause did not expressly state that the ISO procedures may vary from time to time.

131 The defendants argued that the ISO Obligation only covered the ISO certification process.[127] However, such an interpretation did not give effect to the language of the text of the clause, which did not state that it was limited to the ISO certification process. The text obliged the employee to follow the company's ISO procedures at all times. There was no limitation in the text to ISO procedures for specific areas only; the text was broad in scope. The breadth

[127] DCS at para 60.

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of the clause thus covered the ISO procedures relating to information systems, and thus the information security management systems ("ISMS").

132 The defendants relied on the facts that the employment agreements were before the ISO ISMS policies were implemented and could only thus be concerned with those policies only in place at the time when the contracts were entered into.[128]

133 However, this construction would give the clause too limited a scope – the language of the clause was sufficient to cover the enlargement of the obligations relating to ISO procedures. I would not regard clause 3 as freezing the obligations to those in place at the time of the entry into the contract. Clause 3's language did capture the possibility of expansion, which would be in line with the nature of the ISO processes. They are standards of practice which are a badge of efficiency and competence for companies, and which would conceivably be added to as a company grows. I could not accept as a reasonable construction an obligation that limited the employee to only those standards adopted at the time of contract. Doing so would be contrary to the expectations of employment in this day and age.

134 There was breach of the ISO Obligation, namely to observe the requirement to comply with ISO procedures in the employment contracts, which in turn specified the acceptable use of information and the proper safeguarding and use of information, and where documents should be stored.

135 I found that no waiver or estoppel in relation to this obligation arose vis-à-vis the company. There was insufficient evidence of this. Any mere non-

[128] DRS at para 62.

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enforcement was not sufficient, especially since it appeared that Mr Faruk was the primary person who should have been enforcing the ISO Obligation.

136 Further, the defendants argued that there was knowledge and consent for the use of Mr Faruk's personal Dropbox folder and the defendants' ESDs over a period of several years. I accepted the evidence of the plaintiffs that there was in fact no such knowledge and consent.

137 To establish waiver, the defendants needed to show positively that there was in fact some sort of knowledge of such use on the plaintiffs' Chief Executive Officer ("CEO")'s part. I did not see anything of that nature on the facts. As for CEO's supposed knowledge, this was based on the pervasiveness of such use and the length of time such use occurred. I could not see that this pointed to such knowledge: a CEO may be expected to keep track of almost all things in a company to a broad degree, but whether the CEO fell short in this regard was irrelevant. I could not draw the inference from this that he knew: he may have simply not paid attention to this issue over the years. That was not enough to establish consent and knowledge by the plaintiffs.

138 I thus found that breach was made out in respect of Mr Faruk, Mr Toh and Mr Kyaw HW.

The Confidentiality Obligation

139 The defendants raised similar arguments about the breach of the Confidentiality Obligation as they did in respect of the breach of the equitable obligation of confidence.

140 I found that the content of the Confidentiality Obligation was largely the same as the equitable obligation of confidentiality, even if not in all the details

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of the obligation. "Confidential information" and "trade secrets" as described in clause 13.2 would cover the Confidential Information identified in the equitable obligation.

141 There was breach by Mr Faruk, Mr Toh, Mr Kyaw HW and Mr Danesh, as claimed by the plaintiffs. I accepted the arguments of the plaintiffs that Mr Toh breached clause 13.4 in not returning the Confidential Information, Mr Kyaw HW breached clauses 13.2 and 13.4 in respect of storing the Confidential Information in his ESD and Mr Danesh was in possession of the Confidential Information as well.

Breach of fiduciary duties

142 The plaintiffs claimed that Mr Faruk and Mr Toh breached their fiduciary duties owed to the plaintiffs.

143 I will only touch on this briefly. I found that breach was not made out. Mr Faruk had resigned his directorship, and I could not see how his activities before then would have amounted to breach of fiduciary duties as opposed to other obligations. The burden lay on the plaintiffs to show that there was continued breach by Mr Faruk after his resignation. This they did not discharge on the evidence before me. As for Mr Toh, breach was also difficult to see. He was not a director. While an officer or an employee may, depending on the precise facts, have fiduciary duties to his employer, the plaintiffs did not draw out why these duties should be imposed on Mr Toh through his roles in the plaintiffs.

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Inducement of breach of contract

144 The plaintiffs claimed against Mr Faruk for inducement of breach of contract, alleging that he had induced the individual defendants, *ie*, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung, to breach their various contractual obligations as discussed above. The defendants argued that there was no breach, and that there was no evidence of inducement or procurement of these alleged breaches by Mr Faruk. At the maximum, there was only a breach of the contractual obligations by Mr Faruk.

145 The elements of inducement of breach of contract, as set out in *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 (at [311]) are:

(a) knowledge by the defendant of the existence of the contract;

(b) intention by the defendant to interfere with the plaintiff's contractual rights;

(c) direct procuring or inducement of the breach;

(d) breach of the contract; and

(e) injury.

146 Knowledge of the existence of the contract was not in issue, and the focus of my analysis was on the remaining elements. The actions of Mr Faruk and the other individual defendants led to the inference that, on the balance of probabilities, Mr Faruk did induce their breaches of contract.

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147 Primarily, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung resigned within a short time span of each other. While the defendants argued that their resignations were driven by the conditions of work, *etc*, these would not explain why the resignations took place within a short period of time. Mr Toh, Mr Kyaw HW and Mr Danesh, in particular, were involved in various ways with Centricore: Mr Kyaw HW and Mr Danesh were its directors and Mr Toh gave financial support and signed its tenancy agreement for office space. Although Mr Kyaw K and Mr Aung left ATT Infosoft to join IdGates, they were seconded to Centricore within a very short time. Mr Faruk also assisted Mr Kyaw HW, Mr Kyaw K and Mr Aung with their applications for work passes. All of these gave rise to the inference that the actions of Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung were tied to and in effect obtained or induced by Mr Faruk.

148 Indeed, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung's activities involved, as discussed above, breaches of the Non-competition, Confidentiality and Loyalty Obligations by the individual defendants. From the facts, it was clear that there was coordination and similar activity in quick motion. It was more probable than not that this coordination between Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung must have been triggered by Mr Faruk's inducement, in light of the fact that Mr Faruk was the supervisor of the various defendants, and whom the rest appeared to have deferred to. From the circumstances, it could also be inferred that Mr Faruk had intended to interfere with the plaintiffs' contractual rights against Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung.

149 Evidence of loss was stablished through the expert evidence of the plaintiffs, which pointed to increased costs for the replacement and retention of the existing employees, loss through lower tender prices as they needed to

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account for Centricore's participation, and the loss of tenders. However, no such evidence was adduced in relation to the breaches of the ISO Obligation.

150 Therefore, Mr Faruk was liable for inducing Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung's breaches of their employment contracts, namely, the Non-competition, Confidentiality and Loyalty Obligations.

Conspiracy by unlawful means

151 To succeed in a claim for conspiracy by unlawful means, a plaintiff must show, following *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") (at [112]), that:

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

(b) there was an 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) loss was suffered from the conspiracy.

152 I accepted the argument that per *EFT Holdings,* intention is made out either through injury as means to an end or an end in itself. It was not necessary that the intention to cause loss was the dominant intention.[129]

[129] PCS at para 560.

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153 The plaintiffs' claim was founded on what they stated was a conspiracy in the form of a coordinated plan to set up a competing business and exploit the Confidential Information. Initially, the plan was to set up a competing business, Centricore. There was a coordinated mass resignation as part of this plan. Unlawful acts were committed in furtherance of the conspiracy, namely, acts including the misuse of Confidential Information, which constituted actionable civil wrongs. These civil wrongs were, as discussed above, the breach of confidence, the breach of the employment contracts, inducement of these breaches, and breaches of fiduciary duties. There was an intention to cause loss through the diversion of clients and opportunities from the plaintiffs. IdGates was involved as a corporate vehicle to further the conspiracy. Attribution could be made to Centricore through its respective directors.

154 The defendants denied that there was any conspiracy: it was argued that there was no evidence for any coordination, there were no unlawful acts and there was no intention to cause harm to the plaintiffs.

155 The findings of fact were similar to those for inducement of breach of contract. There were activities that seemed to show some level of coordination and acting in concert, on the balance of probabilities. The inferences to be drawn came from the resignations in quick succession and in a coordinated manner and the fact that the defendants came together in Centricore and IdGates in different ways. There was a combination between Centricore, Mr Faruk, Mr Toh, Mr Kyaw HW, Mr Danesh, Mr Kyaw K and Mr Aung as to the resignations of the individual defendants in the manner they did. Work conditions did not appear to be a sufficient explanation. Among other things, again as above, the inference may be drawn from Mr Faruk helping Mr Kyaw HW, Mr Kyaw K and Mr Aung with work passes, and Mr Kyaw HW and Mr Danesh being helped in relation to Centricore.

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156 I found that there was conspiracy for breaches of the Non-competition and Loyalty Obligations through the actions of the individual defendants and Centricore, and that there was conspiracy for inducement of breach of contract as well. The evidence considered in relation to inducement of breach of contract above pointed to the existence of coordination, and it was inferable, on a balance of probabilities, that there was an agreement between the individual defendants, as well as Centricore and IdGates for actions involving the breaches of contract, and the inducement of these breaches, at least of the Non-competition and Loyalty Obligations.

157 I should note that in respect of conspiracy relating to breaches of contract, it was to my mind not proven that bugs were deliberately left by the defendants as part of a conspiracy. Allegations relating to conspiracy concerning the deletion of materials, and other malicious intention or actions such as the use of bad code, were not made out: no conspiracy in this regard, particularly acting in concert, was inferable.

158 I also did not find conspiracy in relation to the breach of the ISO Obligation. There was insufficient evidence of the individuals acting in concert.

159 I found no conspiracy in relation to the breach of confidence, whether contractual or equitable, except as between Mr Faruk and IdGates. The plaintiffs' case on the unlawful acts in relation to the Confidential Information was, as I understood it, premised primarily on the use of that information. As noted above, I found use only by Mr Faruk, and not the others. In the circumstances, I could not conclude on the evidence that there was any conspiracy as to the Confidential Information involving the individual defendants and Centricore. The fact that the names of the other individual

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defendants may have been in any proposal or document was not enough. On the other hand, I accepted that a conspiracy was established on the facts involving Mr Faruk and IdGates, through attribution of Mr Faruk's actions to IdGates.

160 Lastly, no conspiracy arose as to the fiduciary breaches, since the latter was not made out.

161 I noted that the defendants argued that the plaintiffs had pleaded unlawful conspiracy by all four means, namely breach of confidence, breach of contract, breach of fiduciary obligations, and inducement of breach of contract.[130] The defendants contended that the plaintiffs needed to prove all four to succeed. I rejected that argument: it was clear that the pleading was meant to convey that there was conspiracy to commit such of these unlawful means as happened to be proven. It was not a cause of action founded on four different wrongs taken cumulatively. It could not reasonably be read in any other way.

Counterclaims

162 Mr Faruk, Mr Kyaw HW and Mr Danesh brought counterclaims on the basis of breaches of their employment contract, related primarily to various benefits that were said to be due from ATT Infosoft. However, the counterclaims were not made out given my findings above that these defendants were in breach of their various contractual obligations.

Losses claimed

163 The trial was bifurcated, with damages to be determined. I have concluded on some issues above that losses have indeed been made out. Thus,

[130] DCS at para 156.

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it is open to the plaintiffs in the next phase to pursue the following heads of losses as part of the cause of action in inducement of breach of contract and unlawful conspiracy. In terms of the inducement of breach of contract in relation to the resignations, loss has been made out in the form of increased labour and software costs, as well as the liquidated damages imposed. I did not find inducement of breach of contract or conspiracy involving the other individual defendants through breach of confidence. However, conspiracy was made out in respect of the breach of confidence involving Mr Faruk and IdGates, for which loss was suffered.

164 The other claims and breaches which I have found to have been made out by the plaintiffs do not require proof of loss at this stage.

Aidan Xu
Judge of the High Court

Ang Hsueh Ling Celeste, Pradeep Nair, Lee Jia Wei Spencer and Yiu Kai Tai (Wong & Leow LLC) for the plaintiffs;
Namazie Mirza Mohamed and Chua Boon Beng (Mallal & Namazie) for the defendants.

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