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NOTES OF EVIDENCE

CANDLE CONSULTING PTE. LTD. & 2 ORS
v
RICE MEDIA PTE. LTD. & 2 ORS

DC/DC 1231/2021
DC/SUM 3112/2022

Monday 3 July 2023
In Chambers (Video Conference)
Before me

Allen Ng
Deputy Registrar

DC Suit No. 1231 of 2021
DC SUM No. 3112 of 2022

Between

1. CANDLE CONSULTING PTE. LTD.
(Singapore UEN No. [redacted]
2. VENDSHARE PTE. LTD.
(Singapore UEN No. [redacted]
3. NG KAI HOE RAYMOND (WU QIHAO)
(NRIC No. [redacted]

...Plaintiffs

And

1. RICE MEDIA PTE. LTD.
(Singapore UEN No. [redacted]
2. MARK TAN ZHENG YI
(NRIC No. [redacted]
3. Ko-Cheng Wu
(Canada Passport No. [redacted]

...Defendants

A Coram: Deputy Registrar Allen Ng ("Ct")

Ms Tan Kaye Lyne, Marissa [Edmond Pereira Law Corporation] – 1st, 2nd and 3rd Plaintiffs' counsel ("CC")

Ms Loo Yinglin Bestlyn [Providence Law Asia LLC] - 1st, 2nd and 3rd Defendants' counsel ("DC")

B **3 July 2023**

Start: 2:30pm

Ct: Unauthorised audio/visual recording of the proceedings is strictly prohibited.

C I have read both affidavits. Any further submissions you want to make?

DC: Response affidavit is just denials. They just say that the evidence is immaterial. They mention that Soh could not have

D obtained other docs that the Plaintiff ("**Pf**") has disclosed. Evidence whether properly / improperly obtained is still admissible.

Note that that the Pf offered another witness. My clients do not know who this person is. Can see from the tone of this affidavit that this is another ex-staff. We will have to start from scratch.

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Ct: Why are the docs stated at [5](e) and (f) are relevant? Could you explain that to me?

DC: These documents relate to the Pf's fundraising for the present suit. Understand that it is a source of dispute between the

A parties. Not relevant to the present defamation. But might want to pursue in xx if we do go for trial.

PC: Nothing further to add on this matter.
My client's affidavit is clear.
[15] and the last para of my client's affidavit: My clients gave a list of existing and ex staff. In the event that the Defendant ("**Df**") wants to reach out to them, they can.

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Ct: You say that 5(c) is not relevant. Why? The sting is scam—so wouldn't how the monies are used be relevant?

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PC: After the sourcing of the coffee machines, etc, then it is up to the company to spend. They have tried to explain where the main forms of money are coming from.
Any other money after that is up to the company to spend it.

D DC: I am not entirely sure that what the PC is suggesting is correct. From what I understand from the scheme—supposed to collect money from vending machine. Then it is profit sharing. Split equally amongst the franchisees. That is why it is relevant how the money is spent. Improper deductions, accounting, and that resulted in less monies being paid out. That would be a problem. The defamatory statement would be made out.

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PC: [Reads [7] of my client's affidavit]
It is not an investment scheme. Not that the franchisees make a payment. They make a payment for certain duties that the Pf have to provide. So I guess that is why the suit came about, Pf

A has a position that it is a franchise model, not investment. Franchisees say that they were promised payouts. But the Pf's position is that the payouts are from the revenue from the vending machines.

Nothing further.

B DC: She said that profits must be paid out.

PC: I was just reading from my client's affidavit.

Ct: On your earlier point, wouldn't how the Pf used the money still be relevant? If nothing else—whether they complied with their C contractual obligations?

PC: Yes, that is my client's point. For this suit, they have provided P&L statements, all the monies, how they have been spent. Tax invoices, etc. But for discovery application they are willing to D disclose.

DC: I think to be fair, there are more documents. Learned Friend agreed to that. There are correspondence between Soh and the Pf that we do not have. They said that they are willing to provide. Need to take instructions on further categories.

E But we think that how the Pf spent the money is relevant. Do not think it is accurate that they were willing to disclose despite relevance.

They are past the point of arguing whether it is relevant or not relevant

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Ct: My point is whether based on the documents at hand, the Df can determine how the Pfs have spent monies collected from the franchisees?

DC: Need to do special forensic—they provided bank statements. That is one place to start. We will need to compare against P&L. Further analysis is needed. Cannot confirm.

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Extensive tracing exercise needed. All reflected in respective P&L.

Ct: Same question but for [5(d)]? Any missing documents?

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DC: We have enough on this point in particular.

Ct: What about the Pf's point that a number of classes of documents can be obtained from other sources?

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DC: Each rep would be different. Audio recordings would not be something we have.

Will need to collect more on other franchisees—but would be hearsay if they do not want to be witnesses.

Ct: Do you know which franchisees these relate to?

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DC: We know of one, but do not know how to get into contact with him.

Ct: Same question but for category of doc [5(a)] of your client's affidavit

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DC: I do not know – for those franchisees that Df have not contacted. I would not know what evidence they have. All I can say for the deceased is that he worked for P3's wife. Nothing to do with the Venshare's matter. It was for the Healing the Divide. Do not know what other further documents

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that they will be requesting for.
Client's position is that they have provided full discovery.
They can be cross-examined on the documents, but will need to take further instructions on other classes of docs.

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Ct: [5(g)] is very broad. I can't tell from the description if it is relevant or not.

DC: I was trying to put down exactly what Soh had said he would compile for us. Not that we are seeking discovery based on this description.

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Do not want to go so far as to represent what these documents may be,

Ct: So you do not know the nature of the text messages?

DC: Yes, apart from the fact that it is between the staff of the Pfs.

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Ct: Remind me again how Mr Soh knows about this.

DC: He is a franchisee. Purchased 3 machines.

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He was an active participant of the official group chat. He was one of their supporters. So he was a fairly well known participant, not like the other franchisees.
Had his own internal correspondence with the Pfs. Esp the wife of the P3. Separate group chat with several staff of the pf.

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Ct: [To PC]: Agree? Disagree?

PC: Only the last part—whether he has group chats with the staff—I do not know whether this is true.
But what DC said about purchasing vending machines, etc is fine.

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But what my clients instruct is that if we look at [5] of my client's affidavit, Soh was assisting P3's wife on healing the divide. So do not know if there really was a chat on that. My instructions are that when they met, it was to discuss what went on with the healing the divide. That is their position on Soh.

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Ct: Testimony and a hearsay exception—Say Pf complied with everything by 25 Jan 2023. Wouldn't you be in the same position?

DC: Say it is granted, might have been able to take a statement from

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him. But essentially in the same position. Still no witness to appear in trial. That is a prejudice as well.

Ct: Do you know why he passed on?

DC: No.

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Ct: Anything else that either party want to add?

Both: No

[standdown]

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Ct: Should prejudice be assessed from 25 Jan 2023 (date of second hearing before me) or 20 June 2022 (date that the matter was effectively struck out)?

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PC: Later date because of the fact that the orders were given for them to comply. If they had complied, we would not be here today. No 5-6 hearings. So should be that date

DC: Earlier date.

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This particular application stems from the fact that there was a failure to comply with the unless order which is much earlier. The reason this application is taken out is not confined to events after Jan 2023. Prejudice is that

They acted on the basis that they can act with the action struck out.

Summons taken a lot of their time..

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Ct: [To PC] Why not 30 June 2022? Trial could have concluded before he passed on in Mar 2023. That is about 8 months.

A PC: Accept that matter could have been resolved in 8 months in a normal case.

But this would not have been the case in this action. It would not be a one off discovery even if Pf complied at that point of time. Dfs are still potentially looking for more docs from my client.

B Do not think that we would have obtained a trial date by then. Should not be the earlier date. Clients did not comply then. Have now.

So the correct date should be Jan 2023.

C DC: Nothing further.

Ct: Thank you for your submissions. Having considered the same, I will dismiss the Plaintiff's application. These are the brief grounds of my decision. I shall elaborate on it in due course:

D **Introduction: Procedural matters**

1. I start with a summary of the salient facts. This action was commenced by the Plaintiffs for an alleged defamation by the Defendants. On 24 June 2022, an unless order was granted against the Plaintiffs. They were ordered to disclose 6 categories of documents by 29 June 2022, failing which their SOC would be struck out and judgment entered in the Defendants' favour without further application or order ("**Unless Order**").

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2. The Plaintiffs failed to comply with the Unless Order. As such, their action against the Defendants were struck out with effect from 30 June 2022. The judgment striking out their case (the "**Judgment**") was extracted on 15 August 2022.

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3. One and a half months later, on 30 September 2022, the Plaintiffs applied to set aside the Judgment through DC/SUM 3112/2022 ("**SUM 3112**").

4. I first heard SUM 3112 on 30 December 2022. In that hearing, I accepted the

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Defendants' submissions that:

a. First, the Plaintiffs' application was defective. They had only prayed for the Judgment to be set aside. However, the proper procedure is for them

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to apply also for an extension of time to comply with the Unless Order. Otherwise, there would be no reason to set aside the Judgment.

b. Second, the Plaintiffs had not established that their breach of the Unless

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Order was not intentional and not contumelious.

c. Third, the Plaintiffs still have not complied with the Unless Order as of the hearing before me on 30 December 2022. Indeed, as I observed on 30 December 2022, there were clear gaps in the documents disclosed by

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the Plaintiffs and it was surprising to me that these missing documents had not been disclosed in the Plaintiffs' affidavit.

5. Notwithstanding, I observed that the Court must be proportionate when considering whether to enforce an unless order or not, and by extension whether the Judgment should be set aside. I observed also that the Defendant would still be able to prosecute its Defence assuming Plaintiffs disclosed all of the missing documents.

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6. As such, I allowed the Plaintiffs' oral application to amend SUM 3112 to rectify their defective prayer. I ordered the Plaintiff to file a further affidavit disclosing all the outstanding documents within a week, and cautioned that they should not be surprised if I dismiss their application if there is still non-compliance.

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7. For completeness, I also noted that the Plaintiffs had not been paying the costs orders made by the Court. As such, I set as a condition to my setting aside the Judgment, that the Plaintiff pays all outstanding costs orders and to place a sum of S$9,000 with their solicitors for the costs of SUM 3112.

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8. A number of hearings took place between the first hearing on 30 December 2022 and today, 27 June 2023. I do not propose to detail what happened in each and every one of those hearings. It suffices to state for now that the Plaintiffs did

A not fully comply with the unless order by the second hearing on 25 January 2023, or the third hearing on 23 March 2023. Indeed, even at the fourth hearing on 19 April 2023 there was still one missing reference. It was only at the fifth hearing on 28 April 2023 that the Unless Order was fully complied with. However, by then, matters had evolved. The Defendants had learnt about the passing of the late Mr Soh and were asking that I dismiss the Plaintiffs' application.

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9. This brings me to the Defendants' submission that I dismiss the Plaintiffs' application and to leave the action struck out.

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Whether the application should be dismissed

Key consideration

D 10. I start with the Defendant's submission that there are cases where the Courts have struck out cases because of the respondents' cavalier approach to discovery. I accept that. However, I do not think that the point can be applied with full force at present moment. I had already taken that point into account in the hearing of 30 December 2022, and had decided to give the Plaintiffs a further chance. I do not think it is appropriate to revisit that decision today. After all, the Plaintiffs have, albeit slowly, complied with the unless order as of today. It would not be correct for me to retract a chance which I gave unless there is good reason.

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11. Thus, all things being equal, I would have allowed their application. The question to me, is whether things have changed such that I should not.

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The passing of Mr Soh

12. This brings me to the passing of the Defendant's witness, Mr Soh. In late April 2023, the Defendants learned through a Facebook post dated 18 March 2023 that Mr Soh had passed away on 9 March 2023.[1] Defendant's counsel informed me of this during the hearing of 28 April 2023.

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13. As I understood it, the late Mr Soh was a witness who was previously very close to the Plaintiffs. The Defendants' counsel submitted that this gave him a unique vantage point as to how the Plaintiffs conducted their business. Accordingly, this also made him privy to alleged fraudulent misrepresentations which the Plaintiffs made to their franchisees.

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14. The fact that the late Mr Soh was once close to the Plaintiffs was not disputed by the Plaintiffs in the hearing before me. However, the Plaintiffs disputed that Mr Soh would know about the details relating to the Plaintiffs' business. According to the Plaintiffs, Mr Soh was not an employee. The Plaintiffs also

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[1] Mark Tan's Affidavit dated 19 May 2023 at [12]

A disagreed that he would be a credible witness—accordingly, he had initially supported them, but only changed sides after their relationship soured.

15. In my view, the late Mr Soh was a relevant witness. The Plaintiff's case is in defamation and Mr Soh's evidence would go to the Defendant's defence of justification. This was a point that was not seriously contested before me. The question, however, was whether passing of Mr Soh meant that a fair trial cannot proceed or that the prejudice that the Defendants suffered was so severe that I should dismiss the Plaintiffs' application, and leave the matter struck out.

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The alleged prejudice

16. As a preliminary point, the Defendants' counsel very fairly accepted that the passing of Mr Soh did not doom her clients' case. However, she maintained that it prejudiced the Defendants materially for two reasons:

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a. First, Mr Soh was compiling documents to support the Defendants' case. He had not provided these documents to the Defendants before his passing.

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b. Second, Mr Soh would have given testimony in the Defendants' favour. And he could not now.

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17. The Defendants also say that they would not have suffered these prejudices but for the Plaintiffs' breaches. If the Plaintiffs' case had not been struck out, they would have maintained contact with Mr Soh and could have obtained the documents, and his evidence. However, because the Plaintiffs' case was struck out, they did not maintain contact with Mr Soh or attempt to reach out until it was too late.

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18. In my view, the Defendants had basis to submit that the prejudice they suffered were caused by the Plaintiffs. In particular, I agree that it is entirely reasonable for the Defendants to cease contact with their witnesses after the matter was struck out. I would also add that the fact Mr Soh passed away in the course of the hearings before me does not assist the Plaintiffs. The parties are in this position because the Plaintiffs did not comply with the unless order or at the very latest my directions in December 2022. If they had the Defendants might have been able to obtain whatever documents / statements they needed from Mr Soh. As such, the Plaintiffs have only themselves to blame if I dismiss this application because of the Mr Soh's passing.

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19. I turn to consider whether the prejudice suffered by the Defendants due to Mr Soh's passing was truly as great as the Defendants paint it out to be.

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Discovery: categories of documents sought

20. I start with the discovery point—i.e. that the late Mr Soh was collating numerous documents and that they can no longer obtain the same from him.

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21. As a starting point, I would have been prepared to find that the Defendants have suffered grave prejudice assuming they can identify relevant and material documents that would only have been obtained through the late Mr Soh or the Plaintiffs. Indeed, as of now, they can no longer obtain these documents from the late Mr Soh. And in my view, there was very little reason to be optimistic about the Plaintiffs' attitude toward their discovery obligations.

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22. I say this because of the way that the Plaintiffs have conducted themselves before me, which I thought revealed a lot about their attitude towards court orders. As noted above, despite being warned that their application stood at risk of being dismissed with the effect that their action would remain struck out, the Plaintiffs took four further hearings to rectify their breaches of the Unless Order. Furthermore, the Plaintiffs had failed to adhere to the deadlines I gave for their filing of affidavits on more than one occasion. Instead, there was more than one occasion where they would file their affidavits shortly before the hearing dates. For instance,

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a. On 30 December 2022, I directed the Plaintiffs to file an affidavit by 6 January 2023 to disclose all outstanding documents. They filed that affidavit one day late in partial compliance with my directions. A second affidavit was filed on 10 January 2023. And even then, the second affidavit did not cure all of the non-compliance with the Unless Order.

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b. On 25 January 2023, I had directed the Plaintiffs to file an affidavit by 8 March 2023 to address their non-compliance. The affidavit was only filed on 22 March 2023, one day before the hearing on 23 March 2023.

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c. On 28 April 2023, the Defendants' counsel informed that they had learnt about the passing of Mr Soh. Accordingly, I directed them to file an affidavit in support by 19 May 2023 and for the Plaintiffs to respond three weeks later on 9 June 2023. The Defendants complied with my timelines, but the Plaintiffs did not. They only filed their affidavit on 21 June 2023 at 11:19pm just ahead of the hearing on 23 June 2023.

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23. If this is Plaintiffs' attitude when it is seeking the Court's indulgence to set aside a judgment striking out their action, there is little reason to be optimistic about their attitude moving forward. Indeed, I am particularly concerned that the Defendants would not be able to ensure that they secure full disclosure of the

A documents even they succeed in a specific discovery application. They can no longer turn to Mr Soh for help.

24. It is against this lens that I examine the classes of documents that the Defendants say that Mr Soh was compiling for them. Seven categories of documents were identified:[2]

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a. Audio recordings, emails and text messages that would prove that the Plaintiffs had "misrepresented the outlook" and "business performance" of the Vendshare scheme to franchisees;

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b. Audio recordings and text messages that would prove that he and/or other franchisees had been threatened with defamation lawsuits whenever they questioned the 3rd Plaintiff's management of the Vendshare scheme;

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c. Evidence as to how the Plaintiffs had allegedly spent the monies collected from franchisees of the Vendshare scheme;

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[2] Mark Tan's Affidavit dated 26 June 2023 at [5]

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d. Evidence (in an unspecified format) that the Plaintiffs had collected deposits for vending machines that were never installed at their promised locations;

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e. Evidence (in an unspecified format) that the 3rd Plaintiff had been fundraising from existing franchisees to pay for the Plaintiffs' legal fees for the Suit;

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f. Evidence that the 3rd Plaintiff had informed existing franchisees that they would be "rewarded" from the fruits of the litigation, which he referred to as "litigation income"; and

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g. Text messages from an internal Telegram group chat with staff of the Plaintiffs.

Discovery: relevance of documents sought

25. I start my analysis by considering the relevance / materiality of these documents.

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In my view, there are classes of documents were not relevant material.

a. First, the documents relating to the Plaintiffs' fundraising from franchisees for the present suit and how these franchisees would be rewarded (i.e. e and f above) are not relevant or material to the Plaintiffs'

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defamation claim or the Defendants' defence to the same. The Defendants' counsel accepted as much, but claimed that the Defendants would want to use these documents to cross examine the Plaintiffs' witnesses. With respect, it is not immediately clear why this would be helpful to the trial judge insofar as the defence of justification is concerned. To the extent that the Defendants are seeking to rely on these documents to impugn the character / credibility of the Plaintiffs' witnesses, I do not think that this is a sufficient basis to leave the suit struck out.

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b. It was also not immediately apparent how the text messages from an internal telegram group chat with the Plaintiff's staff (i.e. g above) is relevant. The description of this class of document is too broad, and gives no indication as to what the contents of these chats would be. On the Defendants' best case, these text messages would relate to how the Plaintiffs conducted their business and how it is a scam. However, this is a point I was not prepared to assume especially if, as the Defendants' counsel submitted, Mr Soh did not state what the nature of these documents is. Indeed, the Defendants themselves were not prepared to put this on affidavit.

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26. I was however, of the view that the documents (i.e. a-d) are relevant and material. This I thought is clear from the pleadings. The Plaintiffs have sued the Defendants for defamation following an article they posted. They allege that the natural and ordinary meaning of the article is that, amongst other things:[3]

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a. the Plaintiffs operates and/or manages a scam business and/or a fraudulent scheme;

b. the 2nd and/or 3rd Plaintiffs have published lies to the general public and/or have intentionally made misrepresentations about their business;

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c. the 3rd Plaintiff has collected monies under a fraudulent scheme;

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d. the 2nd Plaintiff earned revenue from vending machines which they did not pay out to franchisees;

e. the 3rd Plaintiff has cheated, lied to and/or deceived the franchisees by collecting more money from them and installing fewer vending machines then he was supposed to.

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[3] SOC at [11]

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And these documents go to the alleged misrepresentations made to the franchisees and how the Plaintiff's business was conducted.

Discovery: prejudice suffered

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27. I turn to consider whether the Defendants' ability to obtain these documents. Now I appreciate that the Defendants might be able to get some of these documents from other franchisees. These would include the correspondence that the Plaintiffs allegedly exchanged with franchisees (i.e. a and b above) assuming the Defendants knew who they were. In this respect, I was of the view that the

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prejudice suffered by the Defendants would not be too great. I note in particular the following:

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a. First, the article that the Plaintiff takes issue with states that "for the better part of last year, the group has been diligently documenting evidence, voice recordings, and speaking to other franchisees to collect their testimonies".[4]

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b. Further, the Defendants' Mr Tan further referred to their extensive communications with numerous franchisees.

[4] SOC [10]; Defence at [4]

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28. However, the rest of these categories (i.e. c and d) could only be obtained either from the late Mr Soh or the Plaintiffs. And in my view, I was not convinced that the Defendant would be able to get these documents from the Plaintiffs even assuming they succeeded in a specific discovery application. That said, the

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evidence before me was not sufficient to find that the Defendants would be prejudiced if I allowed the application:

a. In respect of the "evidence as to how the Plaintiffs had allegedly spent the monies collected from franchisees of the Vendshare scheme" (i.e. c

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above), the Defendants' counsel informed that they are unable to ascertain if they have obtained sufficient documents on the point, that a forensic exercise would be required for the same, and that further instructions are needed. This, I think, is an insufficient for me to dismiss

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the application. It is not even clear that the documents received on the Plaintiff's expenditure is incomplete at this stage.

b. As for the "evidence that the Plaintiffs had collected deposits for

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vending machines that were never installed at their promised locations", DC informed that they have sufficient documents on the point.

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Witness testimony: Inability of Mr Soh to give evidence

29. I turn finally to the prejudice that the Defendants suffer because they can no longer call Mr Soh as their witness.

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30. Now, I note that the parties have differing views as to how relevant/material Mr Soh is. I am however prepared to accept for present that Mr Soh would be a relevant and material witness. Now, I note that Mr Soh was not an employee of the Plaintiffs. However, he was a franchisee, it is not disputed that he was close to the Plaintiffs. This would give some basis for the Defendants' assertion that

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he was in a unique vantage point as to how the Plaintiffs' conducted their business.

31. Regardless of what the trial judge may have found of Mr Soh's evidence, the

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Defendants should have had the opportunity to have him give evidence on their behalf. However, this is no longer possible.

32. Indeed, this action was struck out with effect 30 June 2022 because of the

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Plaintiffs' failure to comply with the unless order. That is approximately 8 months before the late Mr Soh passed on. This is certainly sufficient time for the parties to draft the necessary AEICs, set down for trial and for the trial to be concluded. At the very least, the late Mr Soh could have completed and affirmed his AEIC.

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33. Presently, however, this can no longer be done. The most that the Defendants can do is to rely on the meeting minutes between their solicitors and the late Mr Soh. This meeting, as I understand it took only 1.5 hours. It would certainly not be as detailed as an AEIC. Further, relying on this meeting minutes would place the Defendants in a distinct disadvantage. Their solicitors may have to discharge themselves as they may are potential witnesses.

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34. I note that the Plaintiff's submission that this matter might not have completed because the Defendants would have sought further discovery. However, I was not prepared to rely on this point. The Plaintiffs' counsel accepted that ordinarily trial would have been completed in 8 months. And I do not think that the evidence before me leads to the to the conclusion that I should find otherwise because the Defendants will make (multiple) discovery applications.

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Conclusion

35. As such, I will dismiss the Plaintiffs' application. The judgment striking out the Plaintiffs' claim dated 15 August 2022 is to stand.

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Can I hear parties on costs?

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DC: Indemnity costs—there is some distinction. They were high court matters. This is a state court matter. Not seeking indemnity costs today.

Asking for S$25k all in. Our own professional fees is S$45k for this summons. That is why I am asking for this figure.

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Disbursements of S$300.

PC: I would say S$15k. But leave to the Court.

For the past few hearings, there have been 5 hearings. From what I said earlier, when client produced a doc, Df say it is not

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enough. That is why this matter kept dragging. Fault is on Pf as well. So costs shld be payable.

But S$25k is too high. S$15k-S$17 is more appropriate.

Ct: This 45k— what is it for?

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DC: That is based on time entries. Had to review the new documents

We also written several affidavits.

Wrote subs.

Apart from amount want to request that the order include a date given the disclosure of the Pf's financial statements. Ask for

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3 weeks.

PC: Leave to the Court. I think that clients will need time to prepare the money. I think there is at least 9k. This money has not been moved at all.

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Ct: I will fix costs at S$18k plus reasonable disbursements to be paid by the Pf to the Df. 24 July 2023.

I am prepared to include the date because costs orders are usually intended to be paid forthwith. Thus, the 3 weeks does not prejudice the Pf.

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In coming to this S$18k figure, I have considered the number of hearing before me (including their length), the number of affidavits filed, and the fact that the DC had to review a fair number of documents. The Df should be compensated for that.

End: 5:00pm

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DEPUTY REGISTRAR
STATE COURTS
SINGAPORE

Sd: Allen Ng
Deputy Registrar

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