

## CLAIMS FOR BREACH OF CONFIDENCE ACTIONS CLARIFIED

1. In a recent case of *Amber Compounding Pharmacy Pte Ltd and another v Lim Suk Ling Priscilla and others* [2023] SGHC 241, the Singapore High Court clarified the scope of remedies available in a claim for breach of confidence. It held that a plaintiff is entitled to plead and claim that both its wrongful gain interest and wrongful loss interest have been infringed by the defendant.

### KEY FACTS OF THE CASE

2. The 1<sup>st</sup> plaintiff is a company that specialises in the compounding of medical and pharmaceutical products. The 2<sup>nd</sup> plaintiff provides support services to the 1<sup>st</sup> plaintiff. The defendants were a compounding company, the former employees of the 1<sup>st</sup> plaintiff and the husband of the 1<sup>st</sup> defendant.
3. The 1<sup>st</sup> and 2<sup>nd</sup> defendants admitted to unauthorised copying and breach of confidence in relation to the plaintiff's confidential information, and to the unauthorised receipt, access and use of the same.
4. Following the admission, the plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> defendants were scheduled to proceed with a trial for the assessment of damages.
5. In the course of trial preparation, parties disagreed on whether the plaintiffs were entitled to claim for both the wrongful gain interest and wrongful loss interest and filed an application for the issue to be decided ahead of trial.

### THE LAW

6. In Singapore, breach of confidence claims are guided by two distinct interests. First, the "wrongful gain interest", which refers to the plaintiff's interest in preventing wrongful gain or profit from its confidential information. Second, the "wrongful loss interest", which refers to the plaintiff's interest in avoiding a wrongful loss; it protects the confidentiality of the information *per se*. A wrongful loss is suffered when the defendant's conscience is impacted in a breach of the obligation of confidentiality.
7. Different analytical frameworks apply depending on whether the plaintiff makes a claim under its wrongful gain interest or wrongful loss interest.
8. Further, there is a difference in available remedies. Where there is an infringement on the plaintiff's wrongful gain interest, the law provides a "formidable armoury" of remedies, including monetary remedies. Where the plaintiff's wrongful loss interest is infringed upon, the court may order equitable damages to be paid. This may be based upon, for

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example, a “quantifiable impression” of the value of the confidential information, taking into account the time and costs saved by the defendant if it did not refer to the confidential information.

## COURTS’ CLARIFICATION AND ITS EFFECTS

9. As mentioned, the High Court held that a plaintiff is entitled to plead and claim that both its wrongful gain interest and wrongful loss interest have been infringed by the defendant. The effect is that the court may both draw from the “formidable armoury” and award equitable damages, as appropriate. Further, parties would need to take care to plead with specificity on whether they are replying on the basis of the wrongful gain or wrongful loss interest. If a party frames its pleadings based only on the requirements of one of the analytical frameworks, it is likely that it would be precluded on relying on the other.
10. Finally, the issue of whether a plaintiff is entitled to claim for both the wrongful gain and wrongful loss interest for the same document (as opposed to within the same suit) remains open.
11. Please do not hesitate to contact us if you have any queries relating to this development in law or require any advice on matters relating to online criminal offences or legal issues arising from the use of the internet.

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