Published on e-First 2 August 2023

Case Note

A SHIFTING BREACH OF CONFIDENCE ACTION IN SINGAPORE

Lim Oon Kuin v Rajah & Tann Singapore LLP [2022] 2 SLR 280

In *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280, the Singapore Court of Appeal clarified that its previous decision in *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 was not meant to be a massive rehaul of the breach of confidence action in Singapore. This case note raises some interesting questions that may require clarification in a future decision. In particular, it will be argued that the effect of *Lim Oon Kuin v Rajah & Tann LLP* is that there are now three formulations of the breach of confidence action in Singapore, and some solutions to these unanswered questions will be proffered.

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I. Introduction

1 Traditionally, a claim in breach of confidence is established through three elements: (i) that the information is confidential in nature; (ii) that the information was imparted in circumstances of confidence; and (iii) that the information had been used without authorisation and to the detriment of the plaintiff.[2] Two years ago, the third element was modified by the landmark decision of *I-Admin (Singapore) Pte Ltd v Hong Ying Ting*[3] ("*I-Admin*"). Specifically, once the first two requirements were satisfied, a breach of confidence action would be presumed.[4]

1 The author thanks Professor Saw Cheng Lim, Chan Zheng Wen Samuel and Chai Wen Min for their helpful comments on an earlier draft of this case note. All opinions and errors are the author's own.
2 *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41.
3 [2020] 1 SLR 1130.
4 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [61].

The *I-Admin* decision was a talking point for various commentators.[5] It has been argued, for instance, that *I-Admin* proffered an approach that stood uncomfortably alongside another conception of the breach of confidence action in *LVM Law Chambers LLC v Wan Hoe Keet*[6] ("*LVM Law Chambers*"), a decision released three days before *I-Admin*.[7]

2 In *Lim Oon Kuin v Rajah & Tann Singapore LLP*[8] ("*Lim Oon Kuin*"), the Singapore Court of Appeal ("SGCA") sought to clarify the position taken in both *I-Admin* and *LVM Law Chambers*. In particular, the SGCA found that the *I-Admin* approach was solely intended to cover cases where the plaintiff's wrongful loss interest is alleged to be harmed. This note will first summarise the facts and decision of *Lim Oon Kuin* before examining the decision, and will conclude by highlighting some remaining questions for further consideration.

II. Facts and decision

3 The facts are as follows. The appellants, members of the Lim family, were management figures in two related companies.[9] One of these companies engaged the respondent law firm, Rajah & Tann Singapore LLP ("R&T"), to advise on certain issues arising from the company's insolvency.[10] The appellants argued that they provided the respondent with confidential information relating to the Lim family and their companies and sought an injunction to protect the confidentiality of such information and documents.[11]

4 The SGCA first set out the applicable test(s) for breach of confidence, beginning with *LVM Law Chambers*.[12] In that case, it was held that the starting point for breach of confidence was laid down in *Coco v AN Clark (Engineers) Ltd* ("*Coco v AN Clark*"), albeit modified to suit the precise issue in *LVM Law Chambers*.[13] *LVM Law Chambers* thus laid down three requirements (the "*LVM Law Chambers* approach"):

5 Saw Cheng Lim, Chan Zheng Wen Samuel & Chai Wen Min, "Revisiting the Law of Confidence in Singapore and a Proposal for a New Tort of Misuse of Private Information" (2020) 32 SAcLJ 891; Benjamin Wong & David Tan, "A Modern Approach to Breach of Confidence based on an Obligation of Conscience" (2020) 136 LQR 548.

6 [2020] 1 SLR 1083.

7 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [33].

8 [2022] 2 SLR 280.

9 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [4].

10 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [6].

11 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [17].

12 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [35].

13 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [35(a)].

(a) the information must have the necessary quality of confidence about it; (b) that information must have been received by the lawyer (or law firm) concerned in circumstances importing an obligation of confidence; and (c) there is a *real and sensible possibility* of the information being misused.[14]

5 The SGCA then turned to *I-Admin*, recounting the observation that the equity-based action for breach of confidence protects two interests.[15] The first is the wrongful gain interest, which prevents defendants from making unauthorised use or disclosure of confidential information and thereby gaining a benefit.[16] The second, the wrongful loss interest, is engaged where the plaintiff is seeking protection for the confidentiality of the information *per se*.[17] This loss occurs as long as the defendant's conscience has been impacted in the breach of the obligation of confidentiality.[18]

6 It was noted that prior to *I-Admin*, the law did not adequately protect the wrongful loss interest.[19] As such, *I-Admin* set out a modified approach (the "*I-Admin* approach"). Upon the satisfaction of the first two requirements in *Coco v AN Clark*, an action in breach of confidence would be presumed.[20] This presumption could be displaced where: (a) the defendant came across the information by accident; (b) was unaware of its confidential nature; or (c) believed there to be a strong public interest in disclosing it.[21] Ultimately, the defendant would bear the burden of proving that its conscience was unaffected.[22]

7 The critical difference between the *I-Admin* approach and the *LVM Law Chambers* approach was the shifting of the burden onto the defendant at the third stage.[23] Under the *I-Admin* approach, it is the *defendant* who has to show that its conscience had not been affected, because it is the defendant who is comparatively better positioned to account for suspected wrongdoing. *I-Admin* made this modification to protect the plaintiff's wrongful *loss* interest.

14 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [35].
15 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [36].
16 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [36(a)].
17 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [36(b)].
18 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [36(b)].
19 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [37].
20 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [61].
21 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [61].
22 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [61].
23 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [38].

8 Three important observations were then made. First, the SGCA clarified that *I-Admin* was never intended to turn the law on breach of confidence on its head by replacing the traditional *Coco v AN Clark* approach.[24] The *I-Admin* approach was instead intended to specifically fill the lacuna in the law in so far as protecting the wrongful *loss* interest was concerned. As such, for cases involving alleged harm to the plaintiff's "wrongful gain interest", the "traditional approach" should be applied.

9 Second, under the *I-Admin* approach, the burden that rests on the defendant is a *legal* burden and not an evidential one.[25] Once the two limbs under the *I-Admin* approach are satisfied, the conscience of the defendant is presumed to have been impinged. An evidential burden would have been insufficient to protect the plaintiff's interest in its confidential information.[26]

10 Third, the SGCA endorsed the observations made by Professor Ng-Loy Wee Loon[27] in her textbook titled *Law of Intellectual Property of Singapore*.[28] In essence, the *I-Admin* approach was intended to be limited to the unauthorised acquisition of confidential information, or the "taking" cases.[29] This was inferred from the fact that, in *I-Admin*, the SGCA had emphasised the defendant's acquisition of confidential information without the plaintiff's knowledge and how confidential information has become much easier to access and download without consent.[30] Further, Prof Ng-Loy noted that three days before the issuance of *I-Admin*, *LVM Law Chambers* made clear that the burden of proving the third requirement (that there be a serious and reasonable possibility of misuse) fell squarely on the plaintiffs.[31]

11 Turning to the facts of the present appeal, the SGCA noted that since these proceedings were at the interlocutory stage, the Lims were only required to show a claim of confidence which was not "obviously" factually or legally unsustainable.[32] On the first requirement (that the information be confidential in nature), the Lims pointed to certain documents and information which related to R&T's advising

24 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [39].
25 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [40].
26 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [40].
27 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [41].
28 Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, 3rd Ed, 2021) ch 41, at para 41.3.9.
29 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [41].
30 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [41].
31 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [41].
32 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [43].

on the restructuring of companies.[33] The SGCA found that these items strongly possessed the requisite quality of confidence, fulfilling the first requirement of the breach of confidence action.[34]

12 The second requirement (that the information was received in circumstances importing an obligation of confidence) seemed fulfilled as well. This was because the Lims and R&T shared a long-standing client–solicitor relationship which naturally meant that they reposed trust in one another that had been grown over the years.[35] In these circumstances, this meant that the parties shared a relationship with open communication and a willingness to share confidential information.[36]

13 On the third and final limb, the SGCA noted that it remained open for the Lims to adopt either the *I-Admin* approach or the *LVM Law Chambers* approach.[37] Nevertheless, the SGCA considered that *prima facie* the circumstances in which the information was imparted imposed an obligation of confidence in relation to the Lims.[38] The SGCA ultimately left open whether R&T was to be restrained on this basis.[39]

III. Observations

A. *Confining* I-Admin (Singapore) Pte Ltd v Hong Ying Ting *to wrongful loss cases*

14 A few observations on *Lim Oon Kuin* may be made. Foremost, by clarifying that the *I-Admin* approach was meant to apply only to wrongful loss interest cases (or "surreptitious taking" cases), *Lim Oon Kuin* has cleared up certain points of confusion that arose from the passage of *I-Admin*. While later decisions (post-*I-Admin*) have not always drawn this intended effect of *I-Admin* explicitly,[40] the SGCA has now confirmed that *I-Admin* was not meant to be a massive overhaul

33 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [46].
34 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [47].
35 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [47].
36 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [47].
37 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [53].
38 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [53].
39 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [55].
40 See, for instance: *Macs Associates Pte Ltd v Siew Kang Yoke* [2021] SGHC 210 at [14]; *Angliss Singapore Pte Ltd v Yee Heng Khay* [2021] SGHC 168 at [38]; and *Jethanand Harkishindas Bhojwani v Lakshmi Prataprai Bhojwani* [2022] 3 SLR 1211 at [11]–[12].

of the breach of confidence action.[41] *Lim Oon Kuin* has now helpfully reversed any confusion to this effect and is therefore welcome authority for future breach of confidence cases in Singapore.

15 Moving on, it is submitted that confining the *I-Admin* approach to wrongful *loss* interest cases is apposite. Indeed, as noted in *I-Admin*, where it is not proven that the defendant has directly profited from its use of confidential information, this does not detract from the fact that it might have knowingly acquired and circulated such information without consent. As the breach of confidence action has its roots in the realm of equitable obligations,[42] defendants should not be allowed to escape liability simply due to plaintiffs being on the "evidential back-foot".[43] The imposition of a presumption mechanism to hold defendants accountable is therefore sound considering how defendants are often better positioned to explain away any alleged wrongdoing in "wrongful loss" cases. This is especially so, because the surreptitious acquisition of information is likely to be clandestine in nature.

16 However, a presumption mechanism may prove problematic where wrongful gain interest cases are concerned. As observed elsewhere, a plaintiff who initiates a breach of confidence action need only show that the "information in question has the necessary quality of confidence about it" and that it has been "imparted in circumstances importing an obligation of confidence" before being able to enjoy the operation of the presumption mechanism.[44] This would be irrespective of whether the defendant had "surreptitiously" taken such information. However, where the harm alleged is to the plaintiff's wrongful gain interest, there

41 The suggestion, however, to distinguish between the factual matrices between *I-Admin* and *LVM Law Chambers* is not a new one. In *Uday Mehra v L Capital Asia Advisors* [2022] 5 SLR 113 at [252], Vinodh Coomaraswamy J noted:

> One way of reconciling the division of opinion in *LVM* and *I-Admin* is by noting that in *LVM*, X was a law firm and first acquired the confidential information in the course of representing Y's *opponent* in litigation *against* Y. Y therefore knew full well that X was acquiring the information when X first acquired it. And Y's consent to that acquisition was irrelevant because Y had no contractual or other nexus to X. In *I-Admin*, on the other hand, X first acquired the confidential information surreptitiously, without Y's knowledge and without Y's consent. And X did so in a situation where X was an employee of Y, thereby establishing the necessary nexus between them to make both Y's knowledge and Y's consent relevant. [emphasis in original]

42 As noted by Megarry J in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 at 45: "Accordingly, what I have to consider is the pure equitable doctrine of confidence, unaffected by contract."

43 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [62].

44 Saw Cheng Lim, Chan Zheng Wen Samuel & Chai Wen Min, "Revisiting the Law of Confidence in Singapore and a Proposal for a New Tort of Misuse of Private Information" (2020) 32 SAcLJ 891 at para 55.

will likely already be evidence of the defendant's misuse or disclosure of the information. If there were not, a claim under the traditional breach of confidence action would inevitably fail, as the third requirement has always demanded that there "*must have been* some unauthorised use"[45] [emphasis added] of the information. In these circumstances, a presumption would practically establish the very thing that the plaintiff would need to show in the first place. Permitting as much may perhaps have tilted the balance of equities too far in the plaintiff's favour.[46] By confining the *I-Admin* approach to wrongful loss cases, *Lim Oon Kuin* has affirmed (and indeed maintained) a levelled playing field for both plaintiffs and defendants in wrongful gain interest cases.

B. Wrongful loss interest versus *"taking" cases?*

17 This note now turns to address certain questions that arise from *Lim Oon Kuin*. Our discussion begins with this question: in what circumstances does the *I-Admin* approach apply? To recall, *Lim Oon Kuin* clarified that the *I-Admin* approach was intended to protect the wrongful loss interest,[47] and that it was devised by the Court of Appeal to *specifically* deal with cases involving alleged harm to the plaintiff's wrongful interest.[48] However, this holding appears qualified later in the judgment. The SGCA had also endorsed Prof Ng-Loy's view that the *I-Admin* approach had intended to "*further* limit" [emphasis added] its presumption mechanism to just the "taking" cases.[49]

18 One may take two possible interpretations of the above. The first is that the *I-Admin* approach may apply outside of the "taking" cases, so long as the plaintiff's wrongful loss interest is compromised. As defined in *I-Admin*, the wrongful loss interest is harmed where the defendant's conscience has been impacted in the breach of the obligation of confidentiality.[50] Defined as such, it is unlikely that there is an exact one-to-one correspondence between situations where the wrongful loss interest is harmed and "taking" cases - the two concepts may be invoked in different, and perhaps separate, circumstances. Hence, at least conceptually, there is still room for the *I-Admin* approach to apply outside of the "taking" cases.

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45 *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 at 47.

46 Saw Cheng Lim, Chan Zheng Wen Samuel & Chai Wen Min, "Revisiting the Law of Confidence in Singapore and a Proposal for a New Tort of Misuse of Private Information" (2020) 32 SAcLJ 891 at para 55.

47 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [39].

48 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [39].

49 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [41].

50 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [40].

19 The second, and likelier, interpretation is that the *I-Admin* approach applies *only* to the "taking" cases. That much is clear on account of the recent decision of *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami*,[51] which was decided after *Lim Oon Kuin*. In that case, Phillip Jeyaretnam J held as follows:[52]

> A modified approach is now adopted in respect of the third element … namely that where confidential information has been accessed or acquired without a plaintiff's knowledge or consent … It is *only* where the acquisition of confidential information is unauthorised that the shift in the burden of proof is triggered.

If the *I-Admin* approach applies to just the "taking" cases, two observations can be made. The first is that the wrongful loss interest may take on lesser significance in the overall *analysis* in future cases. If we assume that the wrongful loss interest and the "taking" cases are not one and the same, and if the *I-Admin* approach only applies in "taking" cases, then a heavier focus will be placed on the defendant's "taking" aspect of things. What constitutes "taking" or unauthorised acquisition might therefore take on growing importance in future cases.

20 Even so, we know that the wrongful loss interest is a legitimate objective of the law.[53] Abandoning the concept entirely would prove too much. It is suggested that one way to resolve this is to adopt the interpretation that the "taking" cases are but *one* way in which the wrongful loss interest may be compromised. What falls outside of these "taking" cases and yet at the same time engages the wrongful loss interest, however, will have to be explored in a later decision.

21 We turn to our second observation. If the *I-Admin* approach only applies to "taking" cases, this might be seen as sitting uncomfortably within the second requirement of the traditional *Coco v AN Clark* approach, that is, that the information has been *imparted* in circumstances importing an obligation of confidence. To recall, the *I-Admin* approach was formulated to "preserve" the first two requirements in *Coco v AN Clark*.[54] If the facts of *Coco v AN Clark* are of any indication, the term "imparted" as used by Megarry J, connotes the *voluntary* passing of information as between two persons. So understood, if the second *Coco v AN Clark* requirement is to be "preserved" it should not encompass the unauthorised *taking* of information which *I-Admin* has sought to address.

51 *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami* [2022] 5 SLR 805.
52 *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami* [2022] 5 SLR 805 at [37].
53 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [39].
54 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [37].

22 This apparent inconsistency may be resolved in one of two ways. First, the courts may construe this notion of "unauthorised taking" as an *exception* to the second requirement. In other words, the second requirement of *Coco v AN Clark* may be satisfied *even if* the information were not imparted in circumstances importing an obligation of confidence, where there was an unauthorised taking of information on the part of the defendant. This way, the second *Coco v AN Clark* requirement would be preserved, whilst accommodating the "taking" aspect under the *I-Admin* approach.

23 Second, it is open for courts to tweak the second *Coco v AN Clark* requirement within the *I-Admin* approach to better reflect that it is confined to the "taking" cases. In other words, the author suggests that a revisited *I-Admin* approach could read:

> Preserving the first requirement in *Coco v AN Clark*, a court should consider whether the information in question "has the necessary quality of confidence about it", and if it "has been acquired by the defendant in an unauthorised manner". Upon the satisfaction of these prerequisites, an action for breach of confidence is presumed.

C. Three formulations of the breach of confidence action in Singapore?

24 Moving on, the SGCA had endorsed Prof Ng-Loy's observations[55] that for cases involving alleged harm to the plaintiff's wrongful gain interest, the "traditional approach" should apply.[56] We digress briefly to provide some context.

25 In her textbook, Prof Ng-Loy had defined the "traditional approach" in the following two terms: "where it is the plaintiff who bears the burden of proving actual misuse *or* a 'serious and reasonable possibility' of misuse"[57] [emphasis added]. One notices here that the former refers to the third requirement under the *Coco v AN Clark* approach, whilst the latter refers to the *LVM Law Chambers* approach. If that is so, the SGCA's endorsement of Prof Ng-Loy's observations means that, outside of "taking" cases, *either* the *Coco v AN Clark* approach or the *LVM Law Chambers* approach may apply to breach of confidence actions.

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55 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [39].

56 Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, 3rd Ed, 2021) ch 41, at para 41.3.9.

57 Ng-Loy Wee Loon, *Law of Intellectual Property of Singapore* (Sweet & Maxwell, 3rd Ed, 2021) ch 41, at para 41.3.9.

26 The upshot of the preceding is that there are now *three* possible approaches to establishing a breach of confidence action in Singapore:

(a) the *I-Admin* approach for cases involving unauthorised acquisition of the confidential information or the "taking" cases;

(b) the "traditional" three-step approach in *Coco v AN Clark* where harm is caused to the plaintiff's wrongful gain interest; and

(c) the *LVM Law Chambers* approach where a breach of confidence action is mounted in the context of retaining a lawyer or law firm to act for a particular party (*ie*, the "lawyering" cases).

27 If correct, three observations can be made. First, establishing the precise factual matrix now represents an additional (and preliminary) question that parties must address before turning to their substantive claims in confidence. Given the doctrinal and evidential differences across the three approaches, it therefore becomes incumbent on both courts and parties to pinpoint which approach ought to apply in each case.

28 The need to identify as much is illustrated in *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami*. In that case, the plaintiff pointed towards instances of alleged misuse of confidential information to argue that it was a "taking" case.[58] This argument was rejected by the High Court. It was noted that "taking" cases involved the unauthorised *acquisition* of information and not unauthorised *use*.[59] Hence, an employee who acquires knowledge through the course of his or her work in a company has not received such information in an unauthorised manner.[60]

29 Naturally, since plaintiffs stand to benefit from the presumption within the *I-Admin* approach, they are likely to prefer pleading their claim as a wrongful loss interest case. However, plaintiffs should not be permitted to guise their claims in a manner just to avail themselves of an advantageous approach. Indeed, it would be somewhat odd for the elements for a breach of confidence action to depend solely on the particularisation of the plaintiff's pleading of the matter. It would therefore be prudent to scrutinise the plaintiff's claim and to precisely identify the true substance of their action.[61]

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58 *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami* [2022] 5 SLR 805 at [56].

59 *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami* [2022] 5 SLR 805 at [56].

60 *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami* [2022] 5 SLR 805 at [56].

61 One might add that this understanding is also consistent with the general principle that it is incumbent on the plaintiffs to particularise the information that is alleged to be protected by the law of confidence: See *QB Net Co Ltd v Earnson Management (S) Pte Ltd* [2007] 1 SLR(R) 1 at [68], citing *Amway Corporation v Eurway International Ltd* [1974] RPC 82.

30 Indeed, the SGCA noted that it remained open for the Lim family to adopt *either* the *I-Admin* approach or the *LVM Law Chambers* approach.[62] This observation ought not to be confused as laying down a rule that the plaintiff may decide which approach should apply. It bears reminding that *Lim Oon Kuin* was decided at the interlocutory stage, and all that the Lims were required to do was to put forward a claim of confidence which was not obviously factually or legally unsustainable.[63] The SGCA's comment should thus be taken to mean that, once (or if) the matter goes to trial, the proper approach to be adopted is a matter that needs to be argued upon by both parties. However, one may surmise that on the facts of *Lim Oon Kuin*, it being a "lawyering" case, the *LVM Law Chambers* approach should apply.

31 Second, another problem that may arise is what should be done where "lawyering" cases involve an alleged harm to the plaintiff's wrongful gain interest, or if it were a "taking" case as well. This observation is not a novel one.[64] As noted by Jonathan Muk, the wrongful loss analysis was potentially applicable to the facts of *LVM Law Chambers*, as it was arguable that LVM Law Chambers LLC should come under an "obligation of conscience" to respect the confidence of the relevant information and not merely refrain from causing detriment to the plaintiff. In these circumstances, which approach ought to apply?

32 One possible solution is to split the approaches based on the circumstances in which the information is alleged to have been received by the defendant law firm (or lawyer). Where the confidential information is alleged to have been passed to the defendant law firm pursuant to a pre-existing client–solicitor relationship, and the plaintiff wishes to restrain the defendant law firm from using such information, the approach in *LVM Law Chambers* ought to apply.[65] If, however, the defendant is alleged to have made unauthorised use or disclosure of the information, thereby gaining some benefit and causing detriment to the plaintiff, the *Coco v AN Clark* approach should apply. This is because the *Coco v AN Clark* approach was primarily formulated to protect a plaintiff's interest in preventing the wrongful *gain* or *profit* from its confidential information.[66] The fact that the defendant law firm is acting or used to act for the plaintiff should not be strictly relevant if it wrongfully *benefited* from its use of information to the detriment of the plaintiff. Finally,

62 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [53].
63 *Lim Oon Kuin v Rajah & Tann Singapore LLP* [2022] 2 SLR 280 at [43].
64 Jonathan Muk Chen Yeen, "Here We Go Again: Acting Against the Same Defendants Twice? – *LVM Law Chambers LLC v Wan Hoe Keet* [2020] 1 SLR 1083" [2020] SAL Prac 13 at paras 20–21.
65 *Uday Mehra v L Capital Asia Advisors* [2022] 5 SLR 113 at [252].
66 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [50].

and one hopes this will not eventuate, where the defendant law firm is alleged to have "surreptitiously taken" information from the plaintiff, the approach in *I-Admin* should apply. This is because the *I-Admin* approach was created specifically to fill the lacuna where plaintiffs could not point to any evidence of misuse yet suffer the legitimate harm of having their confidential information taken from them.[67] The *I-Admin* approach would therefore assuage some of the evidentiary obstacles inherent in "surreptitious taking" cases. In the final analysis, the question of which approach should apply should be answered in a fact-sensitive manner. The respective interests and objectives that each approach aims to protect should be carefully examined to decide which approach should apply.

33 Third, and finally, while one may see the availability of three different approaches as being a source of uncertainty, it bears recalling that the three requirements in *Coco v AN Clark* should not be viewed as immutable requirements. As noted by Saini J in the English High Court decision of *The Chief Constable of Kent Police v Taylor*,[68] the three elements in *Coco v AN Clark* "as originally formulated some time ago, are flexible as is shown by the case law".[69] Thus, adaptations and modifications to the test are to be welcomed, especially in an era where information has increasingly become easy to proliferate.[70] Indeed, having available different approaches (with varying standards or requirements) to suit different circumstances would better allow courts to reach just outcomes. Ultimately, given that the law of confidence has its genesis in the law of equitable obligations, it is well-founded that courts should have a diverse set of approaches to navigate breach of confidence actions to achieve practical justice.[71]

IV. Conclusion

34 In today's day and age, where information is more easily proliferated, it is imperative that the law of confidence reacts accordingly. Although the SGCA's decision in *Lim Oon Kuin* has no doubt brought welcome clarity to the breach of confidence action in Singapore, this note has highlighted some potential questions that may require determination

67 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [55].
68 [2022] EWHC 737 (QB).
69 *Chief Constable of Kent Police v Taylor* [2022] EWHC 737 (QB) at [53].
70 *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130 at [55].
71 As noted by Briggs LJ extra-judicially, equity provides for a toolkit of flexible remedies to achieve practical justice beyond the realm of damages and money – equity adds a dimension of humanity into the law, and that black letter law compliance may be insufficient at times: see Debby Lim & Jonathan Muk, "Equitable Remedies in Commercial Litigation" *Singapore Law Blog* (8 April 2015) <https://singaporelawblog.sg/blog/article/102> (accessed 1 March 2023).

in the future. It will therefore be interesting to see how a future decision explicates and delineates what are now the three approaches to the confidence action in Singapore.
