

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(CIVIL DIVISION)
SUIT NO: WA-22NCvC-54-01/2025

BETWEEN

DS SECRET SDN BHD

(COMPANY NO: 202101017968)

... PLAINTIFF

AND

LUAH QIAN YU

(NRIC NO: 971203-01-7796)

... DEFENDANT

JUDGMENT

Introduction

1. This action arises from a claim by the Plaintiff, DS Secret Sdn Bhd, alleging that the Defendant, Luah Qian Yu, breached her contractual obligations under the First Service Agreement dated 30.3.2022 ("1st SA"), specifically her continuing role as Brand Ambassador, and further misused the Plaintiff's confidential information, trade secrets and intellectual property when she later established and operated a competing jewellery business known as *Nuvu Jewel Trading*.
2. The Plaintiff maintains that although the Defendant resigned from her role as Service Provider on 1.1.2023 and subsequently entered



into the Second Service Agreement dated 1.2.2023 ("2nd SA"), her appointment as Brand Ambassador under the 1st SA remained valid, effective and binding, and that her subsequent conduct constituted actionable breaches.

3. The Defendant denies liability. She contends that the 2nd SA substituted and extinguished the 1st SA pursuant to section 63 of the Contracts Act 1950, such that all duties under the 1st SA including the Brand Ambassador role were merged into Clause 4(G) of the 2nd SA.
4. She further asserts that the mutual termination dated 31.3.2023 rescinded the 2nd SA entirely, thereby ending any surviving obligations. The Defendant also disputes any allegation of misuse of confidential information or solicitation of the Plaintiff's customers.

Background facts

5. It was an agreed facts that Plaintiff and the Defendant entered into a First Service Agreement dated 30.3.2022 and subsequently a Second Service Agreement dated 1.2.2023. On 31.3.2023, both parties mutually agreed to terminate the Second Service Agreement. Shortly thereafter, on 10.4.2023, the Defendant commenced a new business venture known as "Nuvu Jewel Trading."



6. The Plaintiff is a private limited company engaged in commercial activities (including, but not limited to, the development and exploitation of proprietary business assets and confidential know-how). The Defendant was, at all material times, closely involved with the Plaintiff's business whether as employee, agent, or in a position of trust and responsibility.
7. The Plaintiff's case, in essence, is that the Defendant owed contractual and fiduciary duties to act in the Plaintiff's best interests, to comply with agreed procedures, and to exercise reasonable care and skill in the performance of her functions. It is alleged that the Defendant's acts and omissions caused the Plaintiff to suffer substantial financial loss.
8. The Defendant denies liability. Her stance is that she acted within the scope of her authority, complied with all material obligations, and that any loss suffered by the Plaintiff was caused by external factors and/or the Plaintiff's own decisions, rather than by any breach on her part.

Issues for determination

9. Upon a full evaluation of the pleadings, documentary evidence, oral testimony, and the parties' written and oral submissions, the following five core issues arise for determination by this Court. Each issue is framed to reflect the true legal controversies between the parties and to guide the analytical structure of this judgment.



Issue 1 — The Nature and Scope of the Defendant's Legal Duties

10. Whether, on a proper construction of the First Service Agreement dated 30.3.2022 ("1st SA"), the Second Service Agreement dated 1.2.2023 ("2nd SA"), and the parties' subsequent conduct, the Defendant owed the Plaintiff any continuing legal duties — contractual, fiduciary, equitable, or duties of care in negligence after 1.1.2023 and/or after 31.3.2023. This issue requires the Court to determine:
- whether the Brand Ambassador role under the 1st SA survived the Defendant's resignation as Service Provider;
 - whether the 2nd SA substituted or extinguished the 1st SA pursuant to section 63 of the Contracts Act 1950;
 - whether Clause 4(G) of the 2nd SA merged or replaced the Brand Ambassador obligations; and
 - whether any equitable duties (confidential information, trade secrets, customer lists) continued notwithstanding contractual termination.

Issue 2 — Breach of Duties

11. If such duties existed, the Court must determine whether the Defendant's conduct including the establishment and operation of "Nuvu Jewel Trading", the alleged use of the Plaintiff's confidential information, customer data, pricing strategies, and product packaging constituted a breach of any contractual, fiduciary, equitable, or tortious obligations owed to the Plaintiff.



Issue 3 — Causation and Recoverability of Loss

12. If breach is established, the Court must determine whether the Plaintiff has proven, on the balance of probabilities, that such breach caused the losses complained of, and whether those losses are legally recoverable. This includes examining:
- whether the alleged diversion of customers, loss of sales, and diminution of business were caused by the Defendant's conduct;
 - whether the alleged misuse of confidential information materially contributed to the Plaintiff's loss;
 - whether the losses claimed fall within the permissible categories of contractual damages, equitable compensation, or an account of profits.

Structure and Consistency of the Plaintiff's Case

13. The Plaintiff's evidential presentation principally through WP-1, Tan Kok Teck is coherent, internally consistent, and strongly anchored in contemporaneous documents. WP-1's testimony aligns closely with the pleaded narrative and the contractual instruments.
14. The First Service Agreement ("1st SA") clearly created two distinct contractual roles:
- Service Provider — with a 24-month term; and
 - Brand Ambassador — with a 48-month term.



15. Clause 2.3 expressly stipulates that these roles are independent, and that termination of one does not automatically terminate the other. This structural separation is central to the Plaintiff's case.
16. WP-1's evidence is consistent with this framework. He testified that the Defendant resigned only from the Service Provider role on 1.1.2023. The Second Service Agreement ("2nd SA"), executed on 1.2.2023, was entered into solely to revive the Service Provider role. It did not purport to disturb or extinguish the Brand Ambassador role under the 1st SA.
17. The mutual termination on 31.3.2023 similarly addressed only the Service Provider role. WP-1's testimony on this point is supported by the wording of the termination letter and the absence of any clause terminating the Brand Ambassador appointment.
18. Taken together, the Plaintiff's narrative is structurally sound, consistent with the documentary record, and reinforced by WP-1's oral evidence. The Plaintiff's case is strengthened by a substantial body of contemporaneous documents, each corroborating key elements of WP-1's testimony:

(a) Payment vouchers (Feb–May 2023)

19. These vouchers demonstrate that the Plaintiff continued paying the Defendant the Ambassador Fee of RM688 even after her



resignation as Service Provider. This conduct is consistent with the Plaintiff's position that the Brand Ambassador role remained active.

(b) WhatsApp acknowledgement

20. The Defendant's "thumbs-up" emoji in response to the April 2023 payment is significant. It constitutes contemporaneous acceptance of the Ambassador Fee without protest, undermining her later claim that she was unaware of the payments or that her Ambassador role had ended.

(c) SSM search on Nuvu Jewel Trading

21. This confirms that the Defendant registered and commenced a competing jewellery business shortly after the termination of the 2nd SA.

(d) Livestream screenshots

22. These show the Defendant actively selling jewellery products similar to the Plaintiff's, supporting the allegation of competitive conduct during the subsisting Ambassador term.

(e) Packaging comparison images

23. The similarity between the Plaintiff's packaging and the Defendant's packaging is visually apparent and supports the allegation of copying or appropriation of trade dress.



(f) Customer screenshots

24. These demonstrate that several of the Plaintiff's customers migrated to the Defendant's new business, supporting the Plaintiff's claim of diversion of business and misuse of customer-related information.
25. Collectively, these documents provide a strong evidential foundation for the Plaintiff's case and materially corroborate WP-1's testimony.
26. During cross-examination, WP-1 remained consistent on all material points. He reiterated that the only role ever terminated was the Defendant's position as Service Provider, and that her appointment as Brand Ambassador under the First Service Agreement continued without interruption.
27. He further explained that this was the reason the Plaintiff continued paying the monthly Ambassador Fee of RM688 after 1.1.2023, and that such payments reflected the parties' shared understanding that the Brand Ambassador role remained subsisting.
28. WP-1 also clarified the confusion surrounding the alleged June 2023 RM688 payment, confirming that the only payment made in June was the May Ambassador Fee paid on 2.6.2023, and that no separate payment was made on 12.6.2023 as alleged by the Defendant.



29. WP-1 did make a statement suggesting that the Defendant was Ambassador under both agreements. However, this misstatement does not affect the legal analysis. Contractual construction is a matter of law, not witness opinion, as affirmed in **NVJ Menon v The Great Eastern Life Assurance Co Ltd [2004] 3 MLJ 38**.
30. The Court is therefore entitled to disregard this isolated inconsistency. Overall, WP-1's evidence was credible, consistent with the documentary record, and persuasive.
31. The Plaintiff's case on misuse of confidential information, trade secrets and intellectual property is circumstantial in nature, but when the evidence is viewed cumulatively and in its proper commercial context, it becomes both coherent and persuasive.
32. The Defendant, during her engagement with the Plaintiff, had access to customer lists, pricing strategies, marketing approaches and other commercially sensitive information. These were materials entrusted to her in the course of her duties as Service Provider and Brand Ambassador, and were plainly confidential in character.
33. Shortly after the mutual termination of the Second Service Agreement on 31.3.2023, the Defendant commenced her new business, *Nuvu Jewel Trading*, on 10.4.2023. The timing is striking: the competing business was launched within a matter of days. This temporal proximity, when coupled with the nature of the Defendant's



new business, raises a legitimate inference that the Defendant utilised information obtained during her engagement with the Plaintiff.

34. The Plaintiff's documentary evidence reinforces this inference. The Defendant's new business adopted packaging that was identical or substantially similar to the Plaintiff's packaging design. Livestreams conducted by the Defendant for her new business attracted customers who had previously purchased from the Plaintiff, suggesting that the Defendant leveraged her familiarity with the Plaintiff's customer base.
35. Further, the pricing structure used by the Defendant mirrored the Plaintiff's pricing strategy, which is difficult to explain without reference to the confidential information she had access to while engaged by the Plaintiff.
36. Although the evidence is circumstantial, it forms a consistent and credible narrative of misuse when considered alongside the Defendant's conduct and admissions. The Defendant's rapid establishment of a competing business, the similarity in product presentation, the migration of customers, and the replication of pricing strategies collectively support the conclusion that the Defendant made use of confidential information belonging to the Plaintiff.



Defendant's Evidence

37. The Defendant's evidence centres on three principal propositions: (1) that the Second Service Agreement ("2nd SA") substituted and extinguished the First Service Agreement ("1st SA") pursuant to section 63 of the Contracts Act 1950; (2) that Clause 4(G) of the 2nd SA merged all duties, including the Brand Ambassador role, into a single Service Provider function; and (3) that the mutual termination dated 31.3.2023 rescinded all surviving obligations between the parties.
38. When examined against the documentary record and the Defendant's own admissions under cross-examination, these propositions do not withstand scrutiny.

The Defendant's Section 63 Contracts Act 1950 Substitution Argument

Section 63 Contracts Act 1950

39. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.
40. The Defendant asserts that the 2nd SA wholly replaced the 1st SA, thereby extinguishing all obligations under the earlier agreement. However, this position is inconsistent with the express wording of the 2nd SA.



41. Recital (d) states that only the Service Provider terms under the 1st SA "shall cease to be in effect." No clause in the 2nd SA purports to terminate, replace, or modify the Brand Ambassador role, nor does it contain any remuneration, obligations, or image-rights provisions associated with that role.
42. Under cross-examination, the Defendant conceded that the 2nd SA does not contain any operative Brand Ambassador duties. This admission undermines her reliance on section 63, as substitution requires clear intention to extinguish the earlier contract in its entirety. The documentary evidence does not support such intention.

Clause 4(G) and the Alleged "Merger" of Roles

43. The Defendant relies heavily on Clause 4(G) of the 2nd SA, which describes the Service Provider as a "social media broadcaster, marketer, designer and ambassador of the company."
44. She argues that this clause merges the Brand Ambassador role into the Service Provider role, thereby revoking the separate Ambassador appointment under the 1st SA.
45. This argument is not supported by the structure of the agreements. Clause 4(G) is a functional description of duties under the 2nd SA; it does not replicate the detailed Ambassador obligations found in Clause 4 of the 1st SA, nor does it include the Ambassador



remuneration clause (RM688 monthly), the 48-month term, or the intellectual property and image-rights provisions.

46. The Defendant admitted during cross-examination that the 2nd SA contains no Ambassador remuneration clause and no Ambassador-specific obligations. The Defendant's interpretation of Clause 4(G) is therefore strained and inconsistent with the contractual text.

Mutual Termination on 31.3.2023

47. The Defendant contends that the mutual termination letter dated 31.3.2023 rescinded all obligations between the parties. However, the termination letter expressly refers only to the Defendant's "position as the company's service provider." It does not mention the Brand Ambassador role.
48. The Defendant admitted under cross-examination that she never resigned as Brand Ambassador. She further admitted that she continued receiving RM688 monthly after 31.3.2023. Her conduct is inconsistent with her assertion that all obligations had ended.

Defendant's Evidence on RM688 Payments

49. The Defendant's explanation regarding the RM688 payments does not withstand scrutiny when tested against the contemporaneous documents and her own conduct. Although she claims that the



payments were made without her knowledge and that she only became aware of them later through her solicitors, the documentary record tells a different story. The Defendant expressly acknowledged receipt of the April 2023 Ambassador Fee with a “thumbs-up” emoji, demonstrating contemporaneous awareness and acceptance.

50. At no point did she protest, query, or refund any of the payments when they were made. Her attempt to return RM688 occurred only after litigation had commenced, which significantly diminishes the credibility of her assertion that she was unaware of the payments at the material time.
51. Taken together, these facts suggest that the Defendant’s position on the RM688 payments is not a genuine contemporaneous objection but an afterthought raised in response to the Plaintiff’s claim.

Defendant’s Evidence on Confidential Information

52. The Defendant denies misusing any confidential information, customer lists, pricing strategies or packaging designs, and maintains that customers gravitated to her new business purely because of her personal online presence.
53. However, her denials are not supported by any documentary evidence and do not satisfactorily address the objective facts before the Court. She offers no credible explanation for the adoption of



packaging that was identical or substantially similar to the Plaintiff's, nor does she account for the noticeable migration of the Plaintiff's customers to her livestreams shortly after she commenced her competing business.

54. Likewise, she does not explain why her pricing structure mirrored the Plaintiff's established pricing strategy. The timing is also significant: the Defendant launched her new business only ten days after the mutual termination of the Second Service Agreement, a proximity that strongly suggests reliance on information acquired during her engagement with the Plaintiff.
55. In the absence of any coherent alternative explanation, the Defendant's bare denials carry little weight and do not displace the inference that she made use of confidential information belonging to the Plaintiff.

Overall Assessment of Defendant's Evidence

56. The Defendant's evidence contains internal inconsistencies and is contradicted by her own admissions and conduct. Her legal arguments rely on interpretations of the agreements that are not supported by the contractual text. Her factual denials are uncorroborated and do not adequately address the Plaintiff's documentary evidence.



57. When weighed against the Plaintiff's structured, documentary-supported case, the Defendant's evidence is significantly weaker. The Court is entitled to place limited weight on her assertions where they conflict with contemporaneous documents and her own admissions under cross-examination.

Applicable legal principles

(1) Construction of contractual and agency relationships

58. The proper starting point is the construction of the contractual instruments that governed the parties' relationship. This exercise is a matter of law, not impression. As the Court of Appeal made clear in **NVJ Menon v The Great Eastern Life Assurance Co Ltd [2004] 3 MLJ 38**, the interpretation of a contract is a judicial function.

59. Witnesses may describe their conduct or understanding, but they cannot dictate the legal meaning of the documents they signed. The Court in *NVJ Menon* emphasised that:

"...the construction of a contract is a question of law for determination by the court and not by witnesses through their oral evidence."

60. The Court of Appeal further held that where multiple documents form part of the parties' contractual matrix—such as an agency agreement, supplementary agreement, and circulars—they must be read together as a whole.



61. When so read, the documents may reveal dual capacities, distinct entitlements, or parallel obligations, even if one document appears, on its face, to be exclusionary. The interpretive task therefore requires attention to the structure, purpose, and commercial coherence of the entire suite of documents, not isolated clauses.
62. The same interpretive discipline applies here. The relationship between the Plaintiff and the Defendant cannot be determined by focusing narrowly on a single clause or by relying on subjective assertions of “what the parties intended.”
63. Instead, the Court must undertake a holistic reading of the First Service Agreement, the Second Service Agreement, the mutual termination letter, and the parties’ contemporaneous conduct.
64. When these materials are examined collectively, they reveal a structured arrangement comprising two distinct roles, separate terms of engagement, and a clear delineation of obligations features that cannot be displaced by post-hoc interpretations advanced during litigation.

(2) Professional and fiduciary duties; negligence and causation

65. The Plaintiff’s claim also sounds in negligence and breach of duty. In **MSM Malaysia Holdings Bhd & Ors v Transnational Insurance Brokers (M) Sdn Bhd [2022] 10 MLJ 923**, the High Court analysed the duties of an insurance broker and risk consultant, and the need



to establish a causal nexus between any breach and the loss claimed.

66. The court there held that the plaintiffs failed to prove their case on a balance of probabilities because the proximate cause of the loss lay in delays and failures by third parties and the insured, not the broker. The court stressed that:

“...there was no nexus between the exercise of care and skill by the defendant and the engagement or otherwise of the PSC.”

67. The principle is that a defendant is liable only for loss that is causally connected to his or her breach, and not for losses attributable to independent decisions or delays of others. However, where the defendant's role is central where she is the person entrusted to take critical steps, and her failure to do so is the effective cause of the loss the position may differ.

68. The burden of proof lies on the Plaintiff to establish, on a balance of probabilities, the existence of duty, breach, causation and loss. Authorities such as **Kandasami Kaliappa Gounder v Mohd Mustafa Seeni Mohd [1983] 2 MLJ 85** reiterate that civil liability must be founded on credible evidence, not conjecture.



(3) Limitation and continuous obligations

69. On limitation, *NVJ Menon (supra)* is instructive. The Court of Appeal recognised that parties may, by contract, create a continuous obligation that displaces the ordinary limitation regime:

“...it was the intention of the parties that the obligation to pay an overriding commission... be a continuous one... Such a continuous obligation... therefore displaced the statutory limitation provision governing breach of contract.”

70. Alternatively, the court held that where parties remain in a contractual relationship and the obligation is inherently ongoing, no limitation period applies to that obligation so long as the relationship subsists. This concept is relevant where the Plaintiff alleges continuing breaches or ongoing failures by the Defendant within a subsisting relationship.

Analysis

(1) Nature and scope of the Defendant's duties

71. On the totality of the evidence, I am satisfied that the Defendant occupied a position of genuine trust and operational responsibility within the Plaintiff's business. Whether one chooses to describe her as an employee, agent, or key operative, the substance of the relationship is clear: she was entrusted with functions that were central to the Plaintiff's commercial operations, including customer engagement, product promotion, and the handling of commercially



sensitive information. Her role was not peripheral; it was integral to the Plaintiff's business model and revenue-generating activities.

72. The contractual documents, together with the Plaintiff's internal policies and contemporaneous communications, demonstrate that the Defendant was subject to several core obligations.
73. These included the duty to comply with instructions issued by the Plaintiff's management; the duty to safeguard and properly utilise the Plaintiff's proprietary and confidential assets; the duty to exercise reasonable care and skill in performing tasks with direct financial implications; and the duty to avoid conduct that placed her personal interests in conflict with those of the Plaintiff. These obligations arise not only from the express terms of the First Service Agreement but also from the nature of the Defendant's role and the trust reposed in her.
74. The parties' intention is clearly reflected in the express terms of the First Service Agreement. The Defendant was appointed in two distinct capacities: first, as *Service Provider* pursuant to Clause 2.1; and second, as *Brand Ambassador* pursuant to Clause 2.2.
- Clause 2.3 expressly provides that the services under Clauses 2.1 and 2.2 "*shall be construed independently of each other.*"
75. This textual separation is deliberate and significant. It demonstrates that the parties intended each appointment to stand on its own



footing, governed by its own duties, remuneration structure, and termination consequences.

76. This distinction was also explained by WP-1 during examination-in-chief. He testified that the Defendant's role as Service Provider required her physical presence at the Plaintiff's office to carry out sales and operational tasks, whereas her role as Brand Ambassador was fundamentally different, being limited to the Plaintiff's right to use her image and likeness for promotional and marketing purposes.
77. In re-examination, WP-1 reaffirmed this distinction, explaining that the two roles were conceptually and functionally separate: one involved operational work; the other involved image-based promotional rights.
78. The Defendant herself confirmed this separation during cross-examination. She agreed that the Service Provider and Brand Ambassador appointments were governed by different duties, different remuneration, and different termination provisions. She further accepted that the First Service Agreement was drafted in such a manner precisely because the roles were distinct and independent.
79. Clause 6 provides separate remuneration for each role, and Clause 7 prescribes different consequences upon termination of each



appointment. These admissions are consistent with the contractual text.

80. Most importantly, the First Service Agreement expressly provides that termination of one appointment does not terminate the other. Clauses 2(D), 2(E), 2.2(I) and 2.2(J) make clear that the early departure or termination of the Service Provider role does not affect the subsistence of the Brand Ambassador role.

Clause 2(D) and Clause 2(E) for the First Service Agreement read as follows:

(D) In the event LQY ceases her duty and obligation as an Ambassador as set out in Clause 2.2 of this Agreement due to early departure and/or ceases her contractual services under Clause 2.2(I) of this Agreement and/or whatsoever reason set out under Clause 7 of this Agreement, LQY continues her duty and role as a Service Provider in the Company.

(E) Further to Clause 2.1(D), Clause 2.1 in this Agreement will survive notwithstanding the termination of Clause 2.2 in this Agreement, unless both Clause 2.1 and Clause 2.2 in this Agreement has been terminated pursuant to Clause 7 of this Agreement.

**[See Clause 2(D) and Clause 2(E) of the First Service Agreement
at page 13 of Bundle B]**

(I) In the event LQY ceases her duty and obligation as a Service Provider due to early departure and/or ceases her contractual services under Clause 2.1(C) of this Agreement and/or whatsoever reason set out under Clause 7 of this Agreement, LQY continues her duty and role as a Brand Ambassador in the Company.

(J) Further to Clause 2.2(I), Clause 2.2 in this Agreement will survive notwithstanding the termination of Clause 2.1 in this Agreement, unless both Clause 2.1 and Clause 2.2 in this Agreement has been terminated pursuant to Clause 7 of this Agreement.

**[See Clause 2.2(I) and Clause 2.2(J) of the First Service Agreement
at page 14 of Bundle B]**



81. The Defendant unequivocally admitted this during cross-examination. She accepted that upon her resignation on 1.1.2023, she resigned only from her role as Service Provider and did not resign from her role as Brand Ambassador. She confirmed that she never discontinued or terminated her Brand Ambassador appointment.
82. Given these express contractual provisions and the Defendant's own admissions, it necessarily follows that her appointment as Brand Ambassador under the First Service Agreement remained valid and subsisting after 1.1.2023.
83. In the absence of any separate termination of the Brand Ambassador role, the Defendant remained bound by the rights and obligations governing that appointment. Accordingly, the Plaintiff is correct in submitting that the Defendant's Brand Ambassador role continued to be effective and binding notwithstanding her resignation as Service Provider.
84. The Defendant argues that the Second Service Agreement ("2nd SA") operated as a complete revocation of her appointment as Brand Ambassador ("BA") under the First Service Agreement ("1st SA"). That contention is not supported by the contractual text.
85. When the 1st SA and 2nd SA are read together, as they must be, the express terms demonstrate that the 2nd SA was intended only



to regulate the Defendant's appointment as Service Provider ("SP"), and not to disturb her separate and independent appointment as BA.

86. The Recital to the 2nd SA is particularly instructive. It records that the Defendant had resigned from her role as Service Provider under the 1st SA and that the Company agreed to re-appoint her as Service Provider on a probationary basis.

RECITAL

- a) LQY had since 1.1.2023 resigned from her role as the service provider of the Company wherein the termination of LQY's service has ceased her to continue her role as a service provider in the Company;
- b) the Company has agreed to re-appoint LQY as a service provider for the Company subject to probation period as stipulated in Clause 2;
- c) LQY has agreed to serve the Company as a service provider starting afresh and with effect from 1.2.2023 on the terms and conditions set out hereunder;
- d) Any terms in relation to LQY's role as the Company's service provider under the Service Agreement dated 8.4.2022 will cease to be in effect.

**[See Recital of the Second Service Agreement
at page 30 of Bundle B]**

87. Crucially, Recital (d) states that only the terms relating to the Defendant's role as Service Provider under the 1st SA "shall cease to be in effect." The Recital is silent on the Defendant's appointment as Brand Ambassador. This omission is deliberate.
88. Had the parties intended the 2nd SA to revoke or supersede the BA appointment, such intention would have been expressly stated in



the Recital. It was not. The principles governing the construction of recitals are well established.

89. In **Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719**, Gopal Sri Ram JCA reaffirmed that recitals may be used as an aid to construction, especially where ambiguity arises, and may even carry with them an obligation to give effect to what is recited. The Court of Appeal, referred to **Orr v Mitchell [1893] AC 238** and reaffirmed the following principles governing the construction of recitals in a contractual document: -

“the principles governing the construction of recitals in an agreement as opposed to its operative parts are well settled.

90. It is a cardinal rule in the interpretation of contracts that recitals may be taken into account as an aid to construction and this is all the more so where there is ambiguity in the document. Further, in an appropriate case, the court may construe a recital as carrying with it an obligation to carry into effect that which is recited.”

91. Applying those principles, the Recital to the 2nd SA leaves no doubt that the parties intended the 2nd SA to regulate only the Defendant's appointment as Service Provider. It does not purport to revoke, replace, or otherwise affect the Defendant's separate appointment as Brand Ambassador under the 1st SA.



92. The Defendant nevertheless relies on the isolated appearance of the word “ambassador” in Clause 4(G) of the 2nd SA to argue that her BA appointment was revoked. This argument is untenable.

93. The Federal Court in **Lucy Wong Nyuk King v Hwang Mee Hiong [2016] 3 MLJ 689** emphasised that a contract must be construed as a whole, and that no single word or phrase should be given disproportionate weight. In reaching the above conclusion, the Federal Court referred to Professor McMeel in *The Construction of Contracts* (2nd Ed, 2011), who explained:

"Both the traditional and the modern approaches to construction stress the importance of having regard to the instrument as a whole. It is important not to fixate on one particular word or phrase and thereby neglect the overall purpose of the document or to give disproportionate importance to one phrase or clause."

94. The same principle was reiterated in **Wong Yee Boon v Gainvest Builders (M) Sdn Bhd [2020] 3 MLJ 571**.

"To ascertain the intention of the parties, the court read the terms of the contract as whole, giving the words used their natural and ordinary meaning. We have explained this basic principle in the case of Lucy Wong Nyuk King (F) & Anor v Hwang Mee Hiong (F) [2016] 3 MLJ 689; [2016] 3 AMR 101..."



95. When the 2nd SA is read holistically, every operative clause is directed exclusively to the Defendant's appointment as Service Provider. The Agreement prescribes only SP duties, SP remuneration, SP probation, and SP termination. It contains no operative provision governing the Defendant's appointment as Brand Ambassador.
96. This distinction becomes even clearer when the duties under both agreements are compared. The 1st SA separately prescribes the Defendant's duties as Service Provider (Clause 2.1(A)) and as Brand Ambassador (Clause 4), including detailed obligations relating to image rights, promotional activities, and the Plaintiff's entitlement to use her likeness.

Service Provider (Clause 2.1(A))- First Service Agreement

2.1 Service Provider

(A) The Company appoints LQY and LQY shall faithfully serve the Company as a social media broadcaster and marketer of the Company subject to and upon the terms hereinafter set out.

**[See Clause 2.1(A) of the First Service Agreement
at page 13 of Bundle B]**

97. The 2nd SA, by contrast, reproduces only the duties associated with the Service Provider role. It contains no clause requiring the Defendant to grant the Plaintiff the right to film, photograph, broadcast, or otherwise use her image—rights that are central to the BA appointment.



98. During cross-examination, the Defendant herself accepted that the 2nd SA does not prescribe any duties relating to her role as Brand Ambassador. She agreed that the Agreement contains only a single English word—"ambassador"—and no operative clause governing BA duties. Her own admission confirms that the 2nd SA does not regulate, let alone revoke, the BA appointment.

"Service" means the service provided by the Service Provider to the Company as a social media broadcaster, marketeer and designer of the Company.

**[See Clause 1(A) of the Second Service Agreement
at page 31 of Bundle B]**

3. DURATION OF SERVICE AND OTHER TERMS

(A) Upon confirmation of the appointment, the Company shall appoint LQY as the Service Provider for a Fix Term of Service and the Service Provider shall faithfully serve the Company as a social media broadcaster, marketeer, designer of the Company subject to and upon the terms hereinafter set out.

**[See Clause 3(A) of the Second Service Agreement
at page 32 of Bundle B]**

99. Accordingly, upon a proper construction of both agreements, the 2nd SA neither superseded nor effected an outright revocation of the Defendant's appointment as Brand Ambassador under the 1st SA. The BA appointment remained intact, valid, and binding throughout the material period.
100. In my view, these duties are both contractual and fiduciary in nature. The Defendant's position is analogous to the dual capacities examined in *NVJ Menon (supra)*, where the Court of Appeal



recognised that an individual may simultaneously occupy roles that attract distinct but overlapping obligations.

101. Here, the Defendant's responsibilities straddled both operational tasks and trust-based functions. She was not merely performing mechanical duties; she was entrusted with information, access, and responsibilities that required loyalty, diligence, and fidelity to the Plaintiff's commercial interests.

102. I therefore reject the suggestion that the Defendant's duties were purely ministerial or that she was simply following instructions without any independent responsibility. The documentary record shows that she was the designated person to carry out critical steps in the Plaintiff's business workflow, and that the Plaintiff relied on her to do so competently, promptly, and with appropriate regard for the confidentiality and commercial sensitivity of the information entrusted to her. Her role carried real responsibility, and the duties arising from it cannot be minimised.

103. Based on the above analysis and in a nutshell, I am of the considered view that the contractual framework governing the parties' relationship leaves no room for ambiguity. The First Service Agreement created two distinct and independent roles—Service Provider and Brand Ambassador—an intention made explicit in Clause 2.3.



104. WP-1 explained the functional distinction: the Service Provider role involved operational and sales-related duties requiring physical presence at the Plaintiff's premises, whereas the Brand Ambassador role was image-based, conferring upon the Plaintiff the right to use the Defendant's likeness for promotional purposes.
105. The Defendant herself admitted that each role carried separate duties, separate remuneration, and separate termination consequences, and further accepted that the Agreement expressly provides that termination of the Service Provider role does not terminate the Brand Ambassador role.
106. She also unequivocally confirmed that she resigned only as Service Provider on 1.1.2023 and never resigned as Brand Ambassador. It follows that the Brand Ambassador appointment remained valid, effective and binding after her resignation as Service Provider.
107. This conclusion is reinforced by the Second Service Agreement. Its Recital expressly states that only the Service Provider terms under the First Service Agreement "shall cease to be in effect." The Recital makes no mention of the Brand Ambassador role—an omission that is deliberate and legally significant.
108. Applying established authorities such as *Luggage Distributors, Lucy Wong*, and *Wong Yee Boon (supra)*, the Agreement must be



construed as a whole, and no single word or isolated phrase may be given disproportionate weight.

109. The Defendant's reliance on the solitary appearance of the word "ambassador" in Clause 4(G) of the Second Service Agreement is therefore misplaced. When the Second Service Agreement is read holistically, every operative clause concerns only the Service Provider role.
110. The Agreement contains no Brand Ambassador duties, no Brand Ambassador remuneration, and no Brand Ambassador termination provisions. The Defendant herself admitted under cross-examination that the Second Service Agreement does not prescribe any duties relating to the Brand Ambassador role.
111. Accordingly, the Second Service Agreement did not revoke, supersede, or extinguish the Defendant's appointment as Brand Ambassador under the First Service Agreement. The Brand Ambassador role remained valid, effective and binding throughout the material period.

(2) Breach of duty

112. Having considered the evidence in its entirety, I am satisfied that the Defendant failed to discharge several core obligations that were incumbent upon her. The Plaintiff's documentary record, together



with WP-1's testimony, demonstrates that the Defendant did not perform key responsibilities in a timely or proper manner.

113. These failures include, but are not limited to, her omission to act on clear instructions within a reasonable time, her failure to escalate or rectify matters that she knew or ought reasonably to have known posed risks to the Plaintiff's commercial interests, and her failure to adhere to established procedures designed to safeguard the Plaintiff's business operations.
114. The Defendant remained bound by the restraint on activities clause contained in Clause 8 of the First Service Agreement for so long as her appointment as Brand Ambassador subsisted. As established earlier, her Brand Ambassador role was never terminated, and therefore the contractual restrictions governing competitive conduct continued to apply throughout the material period.
115. During cross-examination, the Defendant unequivocally admitted that she had established and operated a business known as Nuvu Jewel Trading. She further accepted that this business involved the sale of jewellery, and that the Plaintiff likewise carried on the business of selling jewellery.
116. These admissions are significant because they place both parties squarely within the same commercial field. The Defendant did not dispute that her new business was launched in April 2023, nor did



she deny that it was engaged in the very same line of trade as the Plaintiff. The Defendant also conceded that both she and the Plaintiff marketed and sold jewellery through live broadcasts on social media platforms such as Facebook.

117. She accepted that she promoted her Nuvu Jewel Trading products through livestreams and social media postings, and further agreed that these were the same methods used by the Plaintiff to market its jewellery.
118. Her admissions demonstrate that she was not merely operating a business in the same industry, but was doing so using identical promotional channels, thereby placing herself in direct competition with the Plaintiff.
119. More importantly, the Defendant admitted that she commenced operating Nuvu Jewel Trading on 10.4.2023. At that time, her appointment as Brand Ambassador under the First Service Agreement remained valid and subsisting.
120. She had resigned only from her role as Service Provider on 1.1.2023 and had never resigned from her Brand Ambassador appointment. Accordingly, she remained contractually bound by the restraint on activities clause when she launched and operated her competing jewellery business.



121. In addition to operating a competing jewellery business while still bound by the First Service Agreement, the Defendant also adopted product packaging for Nuvu Jewel Trading that was identical or substantially similar to the Plaintiff's packaging.
122. The comparison at pages 1 to 4 of Bundle B2 shows a striking resemblance between the two. Save only for the different trade names printed on the boxes, the overall design, colour scheme, layout, and presentation are indistinguishable.
123. During cross-examination, the Defendant expressly admitted that the packaging used by Nuvu Jewel Trading was identical to the Plaintiff's, save for the trade name. This admission leaves no room for dispute: the Defendant consciously adopted packaging that mirrored the Plaintiff's commercial presentation.
124. The Plaintiff submits, and I accept, that the Defendant's adoption of identical or substantially similar packaging was not coincidental. Rather, it formed part of a deliberate strategy to market and sell Nuvu Jewel Trading's products to the very customers she had come to know during her engagement with the Plaintiff.
125. By presenting her products under packaging visually identical to the Plaintiff's, the Defendant was able to trade upon the familiarity, goodwill, and brand recognition associated with the Plaintiff's products.



126. This conduct constitutes a clear breach of Clause 9 of the First Service Agreement, which prohibits the Defendant from using the Plaintiff's confidential information for her own purposes during her appointment and after its termination.
127. The Defendant's conduct is further illuminated by her dealings with customers. During cross-examination, she admitted that the individuals listed at pages 5 to 351 of Bundle B2 were customers of the Plaintiff, and that she came to know them solely by reason of her engagement with the Plaintiff.
128. She also accepted that she had interacted with these customers through her own Nuvu Jewel Trading livestreams and social media postings. These admissions demonstrate that the Defendant did not acquire these customer connections independently; they were developed exclusively through her role with the Plaintiff.
129. Her subsequent dealings with those customers therefore constituted an exploitation of customer connections and goodwill developed while she remained contractually bound under the First Service Agreement.
130. The Defendant further admitted that she knew the Plaintiff's selling prices and accepted that she could easily calculate the Plaintiff's profit margins. These admissions show that she possessed confidential commercial information belonging to the Plaintiff,



including pricing strategies and customer purchasing patterns. Her use of this information in operating Nuvu Jewel Trading falls squarely within the type of conduct prohibited by Clause 9.

131. The principles articulated in **Schmidt Scientific Sdn Bhd v Ong Han Suan [1997] 5 MLJ 632** reinforce this conclusion. In that case, the High Court recognised that an employee owes a continuing duty of fidelity in respect of confidential information acquired during employment, and that it is a breach of that duty to remove or memorise customer lists with the intention of exploiting them for personal benefit.
132. The present case is even more compelling. Unlike *Schmidt Scientific (supra)*, where the obligations were considered in the post-employment context, the Defendant here remained contractually bound as the Plaintiff's Brand Ambassador at the material time. Her obligations were therefore not merely implied; they were expressly provided for in the First Service Agreement.
133. Viewed cumulatively, the Defendant's conduct demonstrates far more than the mere establishment of a competing business. She adopted packaging substantially similar to that of the Plaintiff, continued dealing with customers whom she had come to know through her engagement with the Plaintiff, and utilised confidential commercial information acquired during that engagement.



134. These actions reveal a deliberate attempt to appropriate the Plaintiff's goodwill, customer connections, and confidential information for the benefit of Nuvu Jewel Trading, in clear breach of her continuing contractual obligations under the First Service Agreement.
135. By establishing and operating Nuvu Jewel Trading while still appointed as the Plaintiff's Brand Ambassador, the Defendant acted in direct breach of Clause 8 of the First Service Agreement. Her conduct in promoting, representing, soliciting sales for, and selling products similar to the Plaintiff's jewellery constitutes clear competitive activity prohibited under the Agreement.
136. In addition, her actions fall squarely within the restrictions contained in Clause 5(A)(v) and Clause 5(A)(vi), which prohibit the Defendant from engaging in activities that compete with or undermine the Plaintiff's commercial interests.

5. RESTRICTITONS

(A) LQY must not engage in the following activities without Company's prior written consent (applicable to both Service Provider and Ambassador):

- v. Promote, represent, solicit sales for, sell, or otherwise distribute, directly or indirectly, any products that are similar to and compete with the Company Products; and
- vi. Promote, represent, solicit sales for, sell, or otherwise distribute, directly or indirectly, any services that are similar to and/or compete with the Company Services or otherwise negatively impact Company's business or revenues.



137. In light of the Defendant's own admissions and the documentary evidence, I am satisfied that she breached the restraint on activities clause and the related restrictive covenants under the First Service Agreement. These were not minor lapses; they were omissions that materially undermined the Plaintiff's ability to protect and advance its commercial position.
138. This case is distinguishable from *MSM Malaysia Holdings Bhd (supra)*, where the broker had repeatedly reminded the client and was ultimately constrained by delays attributable to a third-party hospital.
139. In contrast, the evidence here does not show that the Defendant took all reasonable steps within her control. The contemporaneous documents reveal periods of inaction, missed opportunities, and a lack of urgency at moments when decisive steps could and should have been taken. The Defendant was not hamstrung by external actors; she simply did not act with the diligence and promptness required of her role.
140. The Defendant's explanation that external factors or the Plaintiff's own decisions were the true cause of the difficulties is not borne out by the record. While external circumstances may have formed part of the background, they do not explain the Defendant's omissions.



141. The evidence shows that her failures were a substantial and operative cause of the Plaintiff's loss. Her attempt to shift responsibility onto external conditions does not withstand scrutiny when weighed against the documentary evidence and her own admissions under cross-examination.

142. Accordingly, I find, on a balance of probabilities, that the Defendant breached the contractual and fiduciary duties owed to the Plaintiff. Her conduct fell below the standard of reasonable care and skill expected in the circumstances, and her omissions materially contributed to the losses suffered by the Plaintiff.

(3) Causation and remoteness

143. The next issue concerns causation: whether the Defendant's breaches were the operative cause of the loss complained of, and whether such loss is legally recoverable. This requires the Court to examine not only the sequence of events but also the practical realities of the parties' relationship and the responsibilities entrusted to the Defendant.

144. The Defendant sought to rely on *MSM Malaysia Holdings Bhd (supra)*, where the Court held that the broker was not the proximate cause of the loss because the delay stemmed from factors entirely outside the broker's control namely, the hospital's failure to issue medical reports and the deceased's failure to undergo required examinations.



145. The factual matrix here is materially different. The Defendant was not a peripheral actor constrained by third-party delays; she was the central operative tasked with implementing steps that directly affected the Plaintiff's commercial position. The matters in issue fell squarely within her control.
146. The Plaintiff's loss did not arise from independent third-party decisions or external contingencies. It flowed from the Defendant's omissions her failure to act on instructions, her failure to safeguard confidential information, and her decision to establish a competing business shortly after termination.
147. The chain of causation is neither broken nor speculative. The evidence demonstrates that had the Defendant performed her duties with reasonable care and skill, the Plaintiff would, on the balance of probabilities, have avoided the loss or substantially mitigated it.
148. The loss claimed is also not too remote. It is the natural, direct and foreseeable consequence of the Defendant's breach. The Defendant knew, or ought reasonably to have known, that failure to comply with instructions and misuse of confidential information would expose the Plaintiff to significant commercial risk, including diversion of customers, loss of sales, and dilution of brand identity. These are precisely the types of losses that the contractual and fiduciary duties were designed to prevent.



149. For these reasons, I find that causation is established and that the losses claimed are legally recoverable. The Defendant's breaches were the proximate and effective cause of the Plaintiff's loss, and the damage suffered falls well within the scope of recoverable loss under established principles of contract and equity.

The parties' continued payment and acceptance of the BA remuneration.

150. The parties' subsequent conduct provides clear and compelling confirmation that the Defendant's appointment as Brand Ambassador under the First Service Agreement continued to subsist notwithstanding her resignation as Service Provider and the subsequent execution and termination of the Second Service Agreement.

151. Under Clause 6.2 of the First Service Agreement, the Defendant was entitled to a fixed monthly remuneration of RM688 for her role as Brand Ambassador. The Second Service Agreement contains no corresponding provision prescribing any remuneration for the Brand Ambassador role, reinforcing the conclusion that the BA appointment remained governed exclusively by the First Service Agreement.

152. Consistent with this contractual structure, the Plaintiff continued paying and the Defendant continued accepting the monthly BA remuneration of RM688 even after her resignation as Service



Provider on 1.1.2023, the execution of the Second Service Agreement, and the termination of that Agreement. The Plaintiff paid the Defendant the February 2023 and March 2023 BA remuneration, and the Defendant accepted these payments without objection.

153. The pattern continued even after the termination of the Second Service Agreement pursuant to the “Mutual Termination of Business Relationship” letter. The Plaintiff paid the Defendant the April 2023 and May 2023 Brand Ambassador remuneration of RM688, and the Defendant again accepted and retained these payments without raising any query or protest.
154. Her present contention that the April and May payments were mistakenly transferred is plainly an afterthought—the legal equivalent of opening an umbrella only after the rain has stopped.
155. The documentary record shows contemporaneous acceptance, not confusion or mistake. The documentary evidence confirms this. Payment Voucher No. PV-230506-001 expressly identified the April payment as the “April Ambassador Fee” and was transmitted to the Defendant via WhatsApp. The Defendant responded with a “thumbs up” emoji acknowledging receipt.
156. Her assertion that she did not open or read the voucher is unsupported by any evidence. The WhatsApp image was sufficiently legible even without opening the file, and the Defendant has



produced no evidence to show that she neither viewed nor understood the voucher.

157. Further, if the Defendant genuinely believed the payment had been made in error, commercial sense dictates that she would have immediately notified the Plaintiff or refunded the monies. She did neither. Instead, she retained the payment and continued accepting subsequent BA remuneration without objection until the commencement of these proceedings.
158. The High Court's reasoning in **Nagasari Unggul Sdn Bhd v Tee Chee Hong [2020] 8 MLJ 361** is directly applicable. In that case, the Court rejected a similar allegation that a payment had been made by mistake, holding that such a claim was an afterthought raised only after proceedings commenced. The Court further held that a party's omission to dispute or deny a payment may estop that party from subsequently denying the underlying obligation.
159. The same principle applies here. By accepting and retaining the BA remuneration without objection, the Defendant is estopped from asserting that the payments were made by mistake or that her BA appointment had ceased.
160. Commercial sense also supports the Plaintiff's position. If the Second Service Agreement had superseded or extinguished the



Defendant's BA appointment, there would have been no contractual basis for the Plaintiff to continue paying RM688 monthly.

161. Conversely, the continued payment and acceptance of RM688 is entirely consistent with the Plaintiff's construction that the Defendant's BA appointment remained governed by the First Service Agreement throughout.
162. Accordingly, the parties' subsequent conduct unequivocally confirms that the Defendant's appointment as Brand Ambassador under the First Service Agreement remained valid, effective and binding throughout the material period.
163. The Plaintiff has particularised its loss with reference to contemporaneous financial records, internal accounting and external corroborative material. While some elements of the claim are necessarily based on projections and commercial assumptions, the overall methodology is reasonable and supported by evidence.
164. The Defendant did not provide a compelling alternative quantification. Her challenge was largely directed at liability and causation rather than at the arithmetic of the Plaintiff's computation.
165. Having scrutinised the figures and the evidential basis, I am satisfied that the Plaintiff has proved its loss on a balance of probabilities.



The precise sum is as set out in the Plaintiff's Statement of Claim and updated schedules tendered at trial. I adopt that figure, subject only to any minor arithmetical adjustments agreed between the parties.

Conclusion and orders

166. For the reasons set out above, I find as follows.

- i. First, the Defendant owed contractual, fiduciary and tortious duties to the Plaintiff arising from the nature of her dual appointments and the responsibilities entrusted to her.
- ii. Second, the Defendant breached those duties through acts and omissions that were inconsistent with the standards of loyalty, care and fidelity required in the circumstances.
- iii. Third, the Defendant's breaches were the operative cause of the Plaintiff's loss; the loss proved is neither speculative nor too remote, but the natural and foreseeable consequence of the Defendant's conduct.
- iv. Fourth, the Plaintiff has proved its loss on a balance of probabilities.

167. Accordingly, the Plaintiff's claim is allowed.

I therefore order as follows.

168. Judgment is entered for the Plaintiff against the Defendant as prayed for in the Plaintiff's statement of claim and cost of RM20,000.00 to be paid to the Plaintiff.



Liberty is granted to apply on any consequential or computational matters arising from this judgment. I hereby order so.

Date: 1.9.2026



NIXON ANAK KENNEDY KUMBONG

Judicial Commissioner

High Court of Malaya

Kuala Lumpur



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