The Stansfield Group Pte Ltd (trading as Stansfield College and another *v* Consumers' Association of Singapore and another
[2011] SGHC 122

Case Number : Suit No 743 of 2007

Decision Date : 18 May 2011

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Gregory Vijayendran, Prakash Pillai, Sheik Umar, Sheela Kumari Devi and Charmaine Neo (Rajah & Tann LLP) for the plaintiffs; Cavinder Bull SC and Woo Shu Yan (Drew & Napier LLC) for the first defendant; Lok Vi Ming SC and Koh Kia Jeng (Rodyk & Davidson LLP) for the second defendant.

Parties : The Stansfield Group Pte Ltd (trading as Stansfield College and another — Consumers' Association of Singapore and another

Contract

18 May 2011 Judgment reserved.

Judith Prakash J:

Introduction

1 The first plaintiff is The Stansfield Group Pte Ltd. Until 3 January 2007, the first plaintiff was the owner of two private educational organisations ("PEOs"), *viz* Stansfield College ("Stansfield") and Singapore Institute of Commerce ("SIC"), which offered tertiary education to local and foreign students. On 3 January 2007, the first plaintiff transferred SIC to the second plaintiff, SIC College of Business and Technology Pte Ltd. On 5 April 2008, the first plaintiff transferred Stansfield to one of its subsidiary companies, Stansfield College Group Pte Ltd. I will hereafter sometimes refer to Stansfield and SIC collectively as "the schools".

2 The first defendant, Consumers' Association of Singapore ("CASE"), is a society registered with the Registry of Societies. Its principal aim is the protection of the interests of consumers.

3 The second defendant is NTUC Income Insurance Co-operative Limited ("Income"). It is a co-operative society registered with the Registry of Co-operative Societies and is in the insurance business.

4 The plaintiffs have made claims against both defendants in tort and contract. As against CASE, their claim is for the following:

(a) a declaration that the Notices of Suspension of Case Trust Membership dated 20 November 2006 issued by CASE to the schools were unlawful and void;

(b) the sum of $107,523.84 as special damages; and

(c) damages to be assessed.

As against Income, their claim is for the same amount of $107,523.84 as special damages and also for damages to be assessed.

The facts

General background

5 One of CASE's functions is to administer various accreditation schemes with the objective of encouraging businesses in the service and retail industries in Singapore to be more consumer-friendly and to adopt fair business practices. One such accreditation scheme is directed at the private education business and is known as CaseTrust for Education.

6 CaseTrust for Education was developed as part of the "Education Excellence Framework" launched by the Economic Development Board in September 2004 which was aimed at developing Singapore as a world class education hub. One important purpose of the Education Excellence Framework was to ensure that the welfare of foreign students in Singapore was protected so as to attract them to Singapore. From 1 September 2005, all PEOs in Singapore that wished to enrol foreign students had to possess a valid CaseTrust for Education membership. To ensure that this requirement was met, from that date, the Immigration and Checkpoints Authority ("ICA") did not issue student passes to foreign students who enrolled in PEOs that were not members of CaseTrust for Education.

7 One of the key requirements for a PEO that wishes to acquire membership in CaseTrust for Education is that it has in place arrangements that satisfy the Student Protection Scheme (the "Scheme"). The Scheme was devised to protect foreign students against losing their tuition fees paid to a PEO by reason of the insolvency or premature closure of such PEO. There are two methods of protecting student fees under the Scheme. PEOs participating in the Scheme must either:

(a) deposit no less than 70% of each foreign student's tuition fees in an escrow arrangement with a participating bank ("the escrow option"); or

(b) take out an insurance policy from a participating insurer to provide each foreign student with insurance coverage for no less than 70% of the tuition fees paid by the student ("the insurance option").

8 At all material times, Income participated in the Scheme by providing insurance cover under the insurance option. It was the only insurer in Singapore to do so.

9 The first plaintiff decided to choose for the insurance option. It applied to Income for cover in late 2004. At the time of application, the first plaintiff provided Income with its audited financial statements and other information. Income then commissioned Dun & Bradstreet (Singapore) Pte Ltd ("Dun & Bradstreet") to perform financial due diligence on the first plaintiff to determine its financial stability and assess the commercial risks of insuring Stansfield's and SIC's students. In late November 2004, the first plaintiff's financial condition was found to be fair. On 1 December 2004, Income issued two separate master insurance policies, one for each of Stansfield and SIC, *viz* policies number 1000000021 and 1000000022 (each an "SPS policy"). The aggregate maximum insurable limit under these policies was initially $5m. It was later increased to $8m based partly on the security of two banker's guarantees which the first plaintiff provided to Income.

10 Sometime in 2005, the schools applied for membership in CaseTrust for Education and were assessed by CASE's independent assessors to determine their eligibility. During the assessment, both schools were required to furnish evidence of their participation in the Scheme. They did so by

providing CASE with copies of the SPS policies. On 25 August 2005, Stansfield became an accredited member of CaseTrust for Education and SIC acquired the same status the next day.

Documentation relating to CaseTrust for Education

11 Various agreements and documents were presented to me as governing the relationship between CASE (as the administrator of CaseTrust for Education) and the schools (as member PEOs of CaseTrust for Education).

12 First, there is The Code of Practice for CaseTrust Members ("the Code of Practice"). This is a generic code that sets out the good business practices expected of members of CaseTrust. It applies generally to CaseTrust members across all industries and is not specifically designed for members of CaseTrust for Education. It does not contain any specific reference to CaseTrust for Education or the Scheme. Clause 10 of the Code of Practice sets out the sanctions that may be imposed by CASE in the event that a PEO breaches the Code or other terms and conditions of membership:

> 10 SANCTIONS FOR BREACH OF THIS CODE
>
> 10.1 Where CaseTrust becomes aware that a breach of this code or other terms and conditions of membership has taken place, CaseTrust will provide an opportunity for the member to answer the allegations.
>
> 10.2 If CaseTrust concludes after its independent investigation that a breach of this code has occurred, it may impose such penalties as may be specified or as may be appropriate in the circumstance, including but not limited to warnings, fines and/or expulsion or a combination of such. Expulsion if required, may be brought to the public's attention through the media and will involve the immediate withdrawal of all the rights and privileges of a member. In this regard members will render full co-operation to the CaseTrust Secretariat in its investigation including access to information related to its investigation through documents and interviews with staff.

13 Second, a CaseTrust Information and Application Kit ("the Info-Kit") was sent to the schools in 2005 when they were applying for membership in CaseTrust. The Info-Kit was also available on CASE's website. It provides general information, forms and checklists on CaseTrust for Education and sets out the terms and conditions governing membership. It also sets out the criteria that any PEO has to meet if it wishes to become an accredited member of CaseTrust for Education.

14 The Info-Kit explains the importance of the Scheme to CaseTrust for Education. It states (at para 9 of Chapter 2) that a PEO that achieves CaseTrust for Education will have in place the Scheme to protect the student's tuition fees in the event that the PEO is unable to continue operations due to adverse situations such as insolvency. The two methods of protection prescribed by the Scheme are set out in para 12 of Chapter 3 and the insurance option is explained at para 16 as follows:

> The Student Tuition Fee Insurance indemnifies students for their tuition fees paid in advance to the PEO for the following events:
>
> a. When circumstances listed in Paragraph 11 occur [*ie* the PEO cannot continue operations due to insolvency or regulatory closure], or
>
> b. Upon death or total permanent disability of the student.

15 The Info-Kit states that a PEO must enter into an escrow arrangement or an insurance agreement under the Scheme in order to qualify for membership of CaseTrust for Education. Under "C. Practices and Systems" criterion C15 of the Info-Kit states:

> **Student Protect Scheme**
>
> C15. The PEO must have a Student Protection Scheme in the form of a Student Tuition Fee Account (Escrow) (Refer to **Annex B** for Master Escrow Agreement that PEOs and students would have to comply with) or a Student Tuition Fee Insurance (Refer to **Annex C** for Master Insurance Policy that PEOs would have to comply with and students would need to be signed up and be insured).

Criterion C15 appears as part of a checklist intended to facilitate assessment of PEOs who are applying for accreditation. The applicant PEO has to indicate in a box next to criterion C15 whether or not it has a Student Tuition Fee Account (Escrow) endorsed by CASE or whether it has a Student Tuition Fee Insurance endorsed by CASE.

16 The Info-Kit explains to PEOs the consequences of a breach of the terms and conditions of membership. Chapter 7 of the Info-Kit states, *inter alia*:

> 44. Members are required to maintain the CaseTrust standards as stated, among other things, in the Assessment Criteria provided. The criteria may be revised from time to time and the Members must be so bound by such.
>
> 47. In order to uphold the standards, which may be updated from time to time, set by CaseTrust, all members shall adhere to the Code of Practice and abide by penalties imposed upon breach/infringement of the Code of Practice.
>
> 49. The Applicant has been made aware of the CaseTrust Department's empowerment to deal with breach/ infringement of the Code of Practice. Members who commit a breach/infringement shall be imposed a fine, be suspended, expelled or blacklisted, either singly or jointly, depending on the severity of the offence, or by any other appropriate means.

17 Third, on 10 January 2005, CASE entered into an agreement ("the CASE-PEO agreement") with each of the schools. The preamble of each CASE-PEO agreement provided as follows:

> Whereas:
>
> (A) In order for a private educational organisation to gain CaseTrust for Education, such organisation has to satisfy the requirements of a Student Protection Scheme as defined herein.
>
> (B) The PEO acknowledges that it is operating the school(s) named [Stansfield/SIC] at ...
>
> (C) The PEO is desirous of satisfying the requirements of the Student Protection Scheme on the terms and subject to the conditions set out in this Agreement.

18 Clauses 2.1(a) and (f) of the CASE-PEO agreement dealt with the Scheme in the following terms:

2. PEO Obligations

2.1 The PEO hereby agrees with, undertakes and warrants, to CASE that the PEO will:

a) satisfy the requirements of the Student Protection Scheme by ensuring that not less than 70% if the Course Fees with respect to each Student are protected by either

(i) acceding to the Master Escrow Agreement in the manner provided there; or

(ii) taking out an insurance coverage from NTUC Income Insurance Co-operative Limited or such insurance company as may have been approved by CASE from time to time for the purpose of the Student Protection Scheme, and on terms and conditions substantially in the form of the Master Insurance Policy.

b) entering into a Student Contract with the Student.

...

f) complying with such other requirements or conditions as may be stipulated by CASE and/or the relevant authorities from time to time with respect to the Student Protection Scheme.

19 The "Student Contract" referred to in the CASE-PEO agreement is defined in cl 1.1 thereof as being a "standard student contract duly approved by CASE made or to be made between a Student and the PEO relating to his/her course of studies with the PEO". In cll 3.1 and 3.2 of each standard student contract, the PEO undertakes to the student that it has in place a scheme (*ie* either the escrow option or the insurance option) for the student's protection and that it will procure insurance coverage for the student in accordance with the framework of the Scheme.

Documentation and procedure relating to the insurance scheme

20 On 9 September 2004, Income entered into a Master Insurance Agreement with CASE under which it agreed to provide insurance facilities in respect of the Scheme to qualified PEOs who had applied for such insurance. Clause 2.6 of this agreement gave Income absolute discretion to, at any time, decline insurance cover to any PEO and/or any student as well as to impose loading or other conditions in respect of any insurance policy granted to PEOs under the insurance scheme.

21 As stated above, Income issued two SPS policies to the first plaintiff in December 2004. Under SPS policy number 1000000021, which was in respect of the first plaintiff trading as Stansfield, the maximum insurable limit was $2m in the aggregate, and under SPS policy number 1000000022, which was in respect of the first plaintiff trading as SIC, the maximum insurable limit was $1.5m in the aggregate. Apart from the difference in insurable limits, the terms of both SPS policies were identical. Each policy stated that in consideration of the payment of the premium prescribed by Income for each insured student, it would provide the benefits stated in the policy for the insured students subject to the maximum limits of liability prescribed in the individual Certificate of Student Insurance issued to each insured student covered by the policy.

22 Under the Terms and Conditions of each SPS policy, the term "Maximum Insurable Limit" was defined as meaning the sum (as revised by Income from time to time) stated in the Schedule to the SPS policy to be the maximum insurable limit for that policy in respect of all insured students covered or to be covered under the policy from time to time. Conditions 6 and 7 of the SPS policies are

important. They provide:

6. MAXIMUM INSURABLE LIMIT

6.1 ...

6.2 The Maximum Insurable Limit shall be utilised as follows. Upon a new applicant for insurance cover being accepted as an insured Student under this Policy, the total Limits of Liability (defined in Clauses 4.1(a), 4.2(a) and 4.3(a) of this Policy) applicable to that new insured Student shall be deducted from the Maximum Insurable Limit, and the remaining balance shall be the amount of Maximum Insurable Limit available to cover future new applicants for insurance cover under this Policy.

6.3 We shall have the right at any time and at our absolute discretion to:

(i) review the Maximum Insurable Limit; and

(ii) increase or decrease the Maximum Insurable Limit, or withdraw the available balance of Maximum Insurable Limit for new applications for insurance cover, with immediate effect by giving written notice to the PEO.

6.4 The PEO shall, at our request, provide us with such documents, records and information that we may require for the purpose of reviewing the Maximum Insurable Limit.

7. RIGHT TO DECLINE COVER

We shall have the right to accept or reject, without having to provide reasons therefor, any application by any person to be covered as an Insured Student under this Policy. Without limiting the generality of the foregoing, we shall be entitled to decline insurance cover under this Policy to new applicants in any one or more of the following events:

(i) the then applicable Maximum Insurable Limit prescribed for this Policy has been reached; or

(ii) the applicant is not eligible to apply for insurance cover under this Policy, pursuant to Clause 2.2 of this Policy.

9. CANCELLATION

9.1 The PEO may cancel this Policy at any time by giving us at least 30 days' prior written notice. We will advise you of the effective date of cancellation of this Policy.

9.2 We may cancel this Policy at any time by giving the PEO at least 30 days' prior written notice.

23 The SPS policies stated that the administration agency for the insurance services provided by Income would be a company called Aegis Insurance Service Pte Ltd ("Aegis"). Aegis was given the job of handling all administration matters arising in the operation and management of student protection policies.

24 The schools were required by Income to submit an individual insurance application for each student they wished to protect under the SPS policies. Each insurance application had to contain the

relevant particulars of the individual student applicant including his passport details, course of study and tuition fees. Insurance applications were done online via Income's online insurance application system using login IDs and passwords issued to the schools. The online insurance application system was the only way that Stansfield and SIC could apply for insurance cover for their students. At the time an application was keyed-in, the system would generate details of the premium payable in respect of such application.

25 So long as the Maximum Insurable Limit for a school had not been reached, when that school made an insurance application via the online application system, the application would be transmitted to Aegis. Aegis would then proceed to generate the necessary documents. No further instructions would be received from Income as to whether the application had been accepted or not. The documents that would be generated were:

(a) a letter of insurance confirmation for ICA;

(b) an individual Certificate of Student Insurance for the student applicant; and

(c) a debit note in respect of the application for insurance.

These documents would be released to the plaintiffs by Aegis upon collection of the premium payable. A staff member from the schools would, ordinarily, attend at the offices of Aegis to make payment by way of cheque and collect the relevant documents. It bears repeating that once an online application had been properly keyed into the system and the application was within the Maximum Insurable Limit, it was automatically accepted.

The parties and their representatives

26 At all material times, one Mr Kannappan s/o Karuppan Chettiar ("Mr Chettiar") was a director and the chairman of both the plaintiffs. His wife, Ms Cenobia Majella, was a co-director of the plaintiffs. In November 2005, as the first plaintiff was expanding its business, Mr Chettiar recruited Mr Ken Yeo Poh Siah ("Mr Yeo") and Dr Joseph Pious ("Dr Pious") to join the key management team. Between November 2005 and December 2006, Mr Yeo was the Group Registrar responsible for the administration of student matters, records and operations. Dr Pious was employed as the Chief Executive Officer of the first plaintiff.

27 In January 2006, Mr Yeo established a new department in the first plaintiff called the "Student Pass Office". This office was responsible for handling and administering the student pass applications of students from both schools. The office had two dedicated employees: one each in Stansfield (Clari in January 2000) and SIC (Julie, in January 2006). Clari and Julie were replaced by Vernice and Nura sometime in April or May 2006 and these employees were in turn replaced by Farida and Noraini sometime in August 2006.

28 The department in CASE responsible for the administration of the CaseTrust scheme is the CaseTrust Secretariat. Within that department, the head of CaseTrust for Education was a Ms Shennon Khong. At the material time, Shennon Khong was assisted by Ms Angela Lee ("Ms Lee"), an executive who reported to her on all matters relating to CaseTrust for Education. Ms Lee's duties included processing applications and renewals of CaseTrust membership, conducting due diligence checks on CaseTrust applicants and members and dealing with queries relating to CaseTrust. One of her responsibilities was to periodically check with the banks and Income on the number of students protected by an escrow or insurance arrangement, and also to check with the ICA on the number of student passes issued to determine whether there were any discrepancies in the figures.

29 At the material time, Mr Seah Seng Choon ("Mr Seah") was the executive director of CASE. He, however, was out of the office travelling during much of the period in 2006 when the events that this case is concerned with occurred. At that time, Shennon Khong was away on maternity leave. Therefore, Ms Lee, who covered most of Ms Khong's day-to-day duties, handled the interactions with the plaintiffs and Income on behalf of CASE. She sought advice and guidance from Thevanathan Pillay ("Mr Pillay") who held the post of Assistant Director (Legal). Mr Pillay was the legal adviser to the CaseTrust Secretarial and advised it on all legal matters relating to CaseTrust. In Mr Seah's absence, he was also responsible for disciplinary matters.

30 The person in Income who was involved in the events leading to this action was Mr Teo Chin Poh Terence ("Mr Teo"). At the material time, he was the Head of the Property and Casualty Department of Income. He was in charge of the management of the two SPS policies entered into between the plaintiffs and Income. In this connection, he was in close and regular contact with Mr Tay Kong Suan Richard, a director of Aegis.

Events leading to the suspension of the schools' CaseTrust membership

31 Around the end of September 2006 while reviewing all student records, the plaintiffs identified 23 international students, all of whom seemed to have been issued with valid student passes without any corresponding application or payment for insurance having been made to Income. On or about 6 October 2006, Mr Yeo, having received confirmation that those students did not have insurance cover, instructed his staff to make the necessary applications for such insurance cover. On 14 October 2006, the first plaintiff sent Income 23 insurance applications accompanied by two cheques in payment of the premiums for the same. On 10 November 2006, however, Aegis wrote to the first plaintiff stating that there were no records of outstanding bills relating to those cheques. It returned the cheques under cover of the said letter and reminded the first plaintiff that correspondence and documents in respect applications under the SPS policies had to be sent via Aegis and not directly to Income.

32 This episode was peculiar because neither school had reached its Maximum Insurable Limit and therefore if the applications had been made properly, they should have been accepted and the premiums would have been due to Income. At the time the plaintiffs attempted to make the applications, the online application system had not been altered in any way and was available to the plaintiffs. It would therefore appear (and the evidence seems to support) that the reason for this rejection was that the plaintiffs' staff had not keyed in the applications correctly when using the online application system so that the applications had not been received by Income or Aegis and Aegis had not generated the usual documents in respect thereof. That was why there was no record of any amount being due from the plaintiffs. Further, the plaintiffs had not followed the usual procedure in that they had not attended at Aegis' office with their cheques to hand over the same in exchange for the confirmation letters for ICA and the Certificates of Insurance for the students. Instead, they had sent the cheques directly to Income accompanied by print-outs of the applications that they had tried to make for their various students.

33 On 16 October 2006, Ms Lee received a telephone call from an officer of the Singapore Tourism Board ("STB") who informed her that there was some market talk regarding Stansfield's and SIC's financial status. At Ms Lee's request, this call was followed the same day by an e-mail from the STB which was copied to various other agencies as well and stated, *inter alia*:

> ... we have some market intelligence that SIC/Stansfield are in trouble.
>
> There's market talk that the group has been badly burnt in their investment overseas and would

be seeking court order to declare themselves as bankrupt. If it's true, the fallout would be tremendous as it's a SQC PEO and from our website status, the two institutions have more than 700 international student registered.

...

Shortly thereafter, Ms Lee received another e-mail from the STB which asked:

Is it possible for CASE to check with the banks (on escrow default) and/or NTUC Income on whether they can commence a financial health check on the school as part of their regular insurance process.

Was told that the SPS providers can give us good tell-tale signs of the PEO's financial status and whether they are likely to pull through.

34 Ms Lee was concerned about potential problems relating to the plaintiffs' CaseTrust membership and decided to commence an investigation into the plaintiffs' compliance with the Scheme. This investigation involved checking with both Income and ICA on the number of insurance policies purchased by the plaintiffs and the number of student passes that had been issued. On 19 October 2006, Ms Lee sent an e-mail to Mr Teo informing Income that CASE was investigating SIC and Stansfield and wanted certain information from Income including the number of insurance policies applied for by both schools over the preceding eight months, whether the premiums of all students had been fully paid and how the students would be protected in the event that the schools were to close down.

35 On 20 October 2006, Mr Teo responded by, *inter alia*, asking Ms Lee about the nature of CASE's investigation. Ms Lee's e-mail in reply sent out the same morning stated:

Thanks for the reply.

As there was a tip off that both the schools may be closing down soon due to losses incurred during their investments in India, we need more concrete evidence to substantiate the rumors [*sic*] are true.

CaseTrust, together with those governing agencies are highly concerned at this stage. All being stakeholders, we need to be prepared for the worst, especially when both the schools are classified as SQC-PEO.

In any case, we looking [*sic*] forward to receiving the requested information, and would appreciate if you could revert with further comments on the above soon. Thanks!

36 Mr Teo then checked and discovered that Stansfield had not made any online insurance applications for eight months (from March 2006 to October 2006) whilst SIC had not done so for the six months between May 2006 and October 2006. This was unusual in view of the size and scale of the plaintiffs' organisation. Further, the total value of the policies issued to the schools' students was below the Maximum Insurable Limits. At that time, the Maximum Insurable Limits of the SPS policies totalled $6m and the value of the actual policies issued totalled $711,660. This left a further sum of $5,288,340 available for utilisation by the schools.

37 Mr Teo explained to the court that upon ascertaining the above information, he had the following concerns:

(a) that there was a genuine possibility that the plaintiffs might be in financial distress which could expose Income to considerable financial risk;

(b) Income did not have sufficient information at that stage to manage its risk exposure with respect to the SPS policies; and

(c) CASE was investigating the plaintiffs and he believed that Income should not take any action which might alert plaintiffs to those investigations and potentially compromise the same.

Mr Teo then decided that the best way forward would be to freeze all new insurance applications from the plaintiffs pending CASE's investigation.

38 At about 10pm on 20 October 2006, Mr Teo sent an e-mail to CASE stating that Income had not received any new applications from Stansfield or SIC for more than six months. The e-mail went on to state:

> In view of the current investigations by CASETRUST, we will suspend with immediate effect our bond facility to SIC and its affiliated schools till further notice from you.

A copy of the e-mail was sent to Aegis.

39 According to Mr Teo, the suspension referred to in his e-mail was the freezing of all new applications for insurance cover under the Scheme by the plaintiffs. This was effected by resetting the plaintiffs' login password to Income's online insurance application system. This resetting was effected on 23 October 2006. Income did not inform the plaintiffs of what it had done. It should also be noted here that Ms Lee's position was that when she read Mr Teo's e-mail informing her about the suspension of the "bond facility" she did not understand that he meant that Income was suspending its insurance facilities to the plaintiffs.

40 In the meantime, on 19 October 2006, Ms Lee had also asked the ICA to inform her of the number of student passes issued to students of Stansfield and SIC over the previous six months. On 26 October 2006, she was given the "stock figures" for the schools and on 3 November 2006, the ICA provided the "flow figures" (*ie* the number of new student passes issued during the period). Having received this information from ICA, she proceeded to compare it with the information given to her by Income. Ms Lee then discovered that there were substantial discrepancies between the number of insurance policies applied for by the schools and the number of student passes issued by the ICA. During the period between April 2006 and September 2006, the ICA had issued 229 student passes to students in Stansfield and 297 passes to students in SIC. During the same period, the plaintiffs had not applied for any policies for Stansfield students and had only applied for 47 policies for SIC students. This meant that 229 Stansfield students and 250 SIC students were, apparently, not covered by any insurance policy under the Scheme during the period.

41 On or about 9 November 2006, the plaintiffs made several attempts to access Income's online insurance application system. The plaintiffs attempted to follow up with Income and, according to Mr Yeo, were informed that the telephone operator was not aware of the Scheme.

42 On 14 November 2006, CASE wrote to Stansfield and SIC informing them of the discrepancies it had found and asking for an explanation to be given on or before 23 November 2006. It should be noted that these letters ("14 November letters") were sent by post. The letter to Stansfield was put to the attention of Mr Chettiar. It informed Stansfield that between April and September 2006, 229 student passes had been issued and no insurance applications had been submitted and therefore

there was a total shortfall of 229. It further stated:

> Under the Students' Protection Scheme (SPS), the total number of SPS' [*sic*] accounts opened under your school should exceed the total number of valid student passes.
>
> In view of the above, kindly let us have your comments on the shortfall of the total number of SPS' [*sic*] accounts by no later than **23 November 2006** .
>
> We look forward to your earliest reply. Thank you.

The letter to SIC was put to the attention of Mr Yeo and, apart from the difference in figures (the total shortfall being 250), the wording was identical.

43 On 17 November 2006, CASE sent Income copies of the 14 November letters. Mr Teo, having read these letters, found that it was clear to him that the plaintiffs had failed to insure all of their international students. He said that this was a great concern to him. It was one thing not to purchase any insurance over a period of time, it was another thing to enrol students but omit to purchase insurance policies to cover them. This would nullify the protection intended to be provided by the Scheme. Mr Teo found the information particularly worrying because it gave credit to the tip-off that the plaintiffs might be in financial distress. In his view, there were important questions on the plaintiffs' financial condition which needed to be answered so that Income could assess its options. The possible options were:

> (a) to choose to reduce the Maximum Insurable Limits of the SPS policies;
>
> (b) to require them to provide more security to maintain the current Maximum Insurable Limits of the SPS policies; or
>
> (c) to terminate the SPS policies altogether.

44 Mr Teo informed the court that he did not wish to take any of the above steps without investigation and he therefore decided to continue the freezing of the insurance facilities in respect of new applications until the conclusion of CASE's investigation or until Income's questions on the state of the plaintiffs' finances could be fully answered. He considered that since CASE had now asked the plaintiffs for an explanation for the discrepancies, Income could proceed to give the plaintiffs notice of this freezing action as such notice would no longer threaten or compromise CASE's investigation. Consequently, on 17 November 2006, Mr Teo sent an e-mail to Aegis instructing them to proceed to notify the plaintiffs of the freezing of the insurance facilities. He sent a copy of this e-mail to CASE to inform it of Income's decision.

45 CASE received Mr Teo's e-mail at 6.16pm on 17 November 2006. That was a Friday. Ms Lee immediately informed Mr Pillay about the suspension of the insurance facilities. They agreed with each other that this was a serious matter as the suspension of the plaintiffs' insurance facilities meant that newly enrolled students and current students without insurance coverage could not be protected under the Scheme. However, they decided to postpone making any decision as to what should be done until after the weekend.

46 On the morning of Monday, 20 November 2006, Ms Lee and Mr Pillay resumed their discussion on the plaintiffs. According to Ms Lee's testimony, they agreed that this was an urgent situation which necessitated CASE responding promptly with appropriate measures. They also decided that in order to safeguard the interests of the students, unless the plaintiffs' insurance facilities were restored by

Income by the end of that day, the schools' membership in CaseTrust for Education would be suspended as an interim measure pending resolution of the matter. They agreed that CASE could no longer afford to give the schools until 23 November 2006 to explain the discrepancies as a change in circumstances had taken place on 17 November 2006, *ie*, the schools no longer had any valid insurance facilities under the Scheme.

47 That same morning, Mr Tay of Aegis sent an e-mail addressed to Mr Chettiar and Ms Majella at their respective e-mail addresses and copied to Mr Teo and two other employees of Aegis. The e-mail was sent out at 9.38am and the subject heading was "SIC – Notification of Suspension of SPS Facility". The e-mail read:

> Dear Mr Chettiar
>
> NTUC Income has been informed by CASE that there is an ongoing investigation on the Stansfield Group of schools.
>
> For this reason, please be informed that NTUC Income's insurance facility for all your schools under the Student Protection Scheme will be suspended with immediate effect until further notice.
>
> If you have any query regarding this matter, please contact us.

At that time, Mr Chettiar and Ms Majella were in India. Mr Chettiar testified that he did not see the e-mail until about 12.30pm Indian time or about 3pm Singapore time. He then instructed Ms Majella to forward the e-mail to Mr Yeo, Dr Pious and another senior employee of the plaintiffs, Mr Ramel Ang ("Mr Ang"), and she did so at 3.11pm Singapore time.

48 I must now relate what happened as between the plaintiffs and CASE on 20 November 2006. The parties have rather different accounts of what occurred and I will deal with this separately.

The plaintiffs' version

49 The plaintiffs' position is that although the 14 November letters were received in their offices on 18 November 2006 (Saturday), Mr Yeo did not see the letter addressed to SIC until the morning of 20 November 2006. It is not clear when Dr Pious read the letter addressed to Stansfield as he did not testify. In any event, Mr Yeo's evidence was that the first he knew of the discrepancies was when he read the 14 November letter to SIC on that Monday morning.

50 Mr Yeo said that when he came across the letter, he was a bit taken aback by it. Until then, he had been under the impression that there were only 23 students who had been issued student visas without the required insurance policies. He was perturbed to find out that in fact 250 students were not covered and he immediately telephoned Ms Lee to seek further clarification on the 14 November letter. This was at about 10am.

51 During the telephone conversation, Ms Lee informed Mr Yeo that CASE had sent Stansfield a similar letter seeking an explanation of the discrepancy between the number of student passes issued and the number of students protected by insurance policies. Mr Yeo then informed Ms Lee of SIC's unsuccessful attempts to access Income's online insurance application system and that Income had recently returned two cheque payments for two batches of insurance applications. Upon concluding the conversation, Mr Yeo had the impression that CASE was only seeking clarification of the discrepancies that it had found. As the 14 November letter had only requested "clarification" and the

plaintiffs had been given till 23 November 2006 to respond, Mr Yeo says he thought that the matter was "merely one of routine clarification".

52 At about 3pm on 20 November 2006, Mr Yeo received a telephone call from Ms Majella who told him about Aegis' e-mail of the same day. Shortly thereafter, Mr Chettiar himself called. Mr Yeo confirmed that he had not received the Aegis e-mail himself and informed Mr Chettiar of the 14 November letter to SIC and of the problems the plaintiffs' staff had encountered with logging on to the online insurance application system.

53 Later, Mr Yeo met with Mr Ang and Dr Pious to discuss the developments and decide on what steps to take. He then confirmed that Stansfield had also received the 14 November letter. At about 3.45pm that afternoon, the three employees spoke to Mr Chettiar and told him about the 14 November letters. Mr Chettiar instructed them to prepare and provide a written response to CASE by the end of the same day, notwithstanding that the letters had fixed 23 November 2006 as the deadline. Mr Chettiar gave them various instructions as to what the response should contain.

54 At about 4pm, Mr Yeo telephoned Ms Lee again. He informed her of the e-mail from Aegis telling the plaintiffs of the suspension by Income. Mr Yeo had called Ms Lee to seek CASE's assistance in getting Income to lift its suspension and he therefore requested such assistance from her and explained that the plaintiffs would rectify the discrepancies between the number of issued student passes and the number of student insurance policies immediately after the suspension by Income had been lifted. He emphasised that without the lifting of such suspension, the plaintiffs would not be able to make good the discrepancies. Ms Lee responded that CASE's query and Income's suspension were two separate matters and that the plaintiffs had to deal directly with Income. Mr Yeo informed Ms Lee that he would deliver the plaintiffs' response to CASE by 6pm. During this conversation, Ms Lee did not at any time mention the possibility of CASE suspending the schools' membership of CaseTrust.

55 Later that evening, Mr Yeo made a third telephone call to Ms Lee. His purpose was to ask for directions to CASE's office as well as to inform her that he would be a little late. By the time he arrived at CASE's office, the offices were locked and all lights were turned off. There were no staff members around. He then telephoned Ms Lee to let her know that he was outside the office and she met him at the entrance. Mr Yeo handed the plaintiffs' written response to her. This was at about 6.15pm. Without opening the envelop or reading the response, Ms Lee immediately handed two letters to Mr Yeo and requested him to acknowledge receipt of the same. The letters were addressed to the schools and when Mr Yeo opened them he discovered that they were Notices of Suspension of CaseTrust membership. Mr Yeo left CASE's office within five minutes of arriving there.

56 The letter that Mr Yeo handed to Ms Lee was on the letterhead of the first plaintiff and was signed by Dr Pious. It read as follows:

> **DISCREPANCIES FOUND BETWEEN NUMBER OF ISSUED PASSES AND NUMBER OF STUDENTS PROTECTED BY INSURANCE FROM APRIL 2006 TO SEPTEMBER 2006**
>
> Your letters dated 14 November 2006 sent to Stansfield College and the Singapore Institute of Commerce refers, please. We received them on 18 November 2006.
>
> Thank you for highlighting the discrepancy. We apologise for the oversight. It was due [*sic*] a mix of factors – internal restructuring, staff turnover, new staff who were not familiar with student pass procedures and the migration of the student database to a new computer system.
>
> As the ICA had approved the student passes, new staff did not follow up with the insurance

applications, as they assumed it had been already done.

During the migration of the database, several cases were identified in October 2006 and attempts were made to submit their insurance applications and make payment. However, the payment cheques were returned on 10 November 2006. More recently, further attempts were made to submit more applications but staff were unable to access the system due to log-in failures.

We are treating this matter seriously and undertake to submit all outstanding applications with [*sic*] the next week.

It would be noted that nowhere in this letter did the first plaintiff contest CASE's findings or its figures. There was no challenge to the assertions that Stansfield had not insured 229 students and SIC had not insured 250 students.

CASE's version

57 Ms Lee confirmed that at about 10am on 20 November 2006, Mr Yeo telephoned her regarding the 14 November letters. She said that during the conversation, she informed Mr Yeo that CASE had only just found out that Income had suspended the plaintiffs' facilities under the Scheme on 17 November 2006, and accordingly, the plaintiffs failed to satisfy a fundamental and key criterion of CaseTrust for Education. Mr Yeo confirmed to her that the plaintiffs' insurance facilities had indeed been suspended by Income. Ms Lee then informed Mr Yeo that unless Income restored its facilities immediately, CASE would suspend the schools' membership in CaseTrust by that same day. She then gave Mr Yeo an opportunity to explain the plaintiffs' position.

58 Mr Yeo told Ms Lee that the reason for the discrepancy was that a number of the schools' foreign students were not protected by any insurance coverage. He explained that this was due to an administrative oversight on the part of the plaintiffs, which was caused by the plaintiffs' staff turnover and internal restructuring. He also kept apologising for the oversight. Mr Yeo also informed her that the schools had attempted to submit a few applications for insurance coverage to Income on 10 November 2006, but these had been rejected. Ms Lee said that Income had not made an issue of the rejection of applications and, in any event, this did not change the fact that Income had decided to suspend the plaintiffs' insurance facilities.

59 Ms Lee informed Mr Yeo that his explanation was not satisfactory to CASE as more than 400 of the schools' students had not been covered by insurance for a period of six months and Income had now suspended the plaintiffs' insurance facilities. She also explained that any suspension of the schools' CaseTrust membership in the present situation was not a sanction but only an interim measure to protect the students' interests and to enable the plaintiffs to remedy the deficiency and restore their insurance facilities. She then told Mr Yeo that if the plaintiffs wished to submit written submissions, they had to do so by 4pm that day. Before ending the conversation, Ms Lee reminded Mr Yeo that unless Income restored the plaintiffs' student protection facilities, CASE would suspend the schools' memberships in CaseTrust by the end of that day.

60 As Income had not restored the plaintiffs' insurance facilities at about 3pm on 20 November 2006, the Notices of Suspension were prepared. The Notices of Suspension were signed by Mr Pillay and he asked Ms Lee to hand them to Mr Yeo later that day if by that time the plaintiffs' insurance facilities still had not been restored by Income.

61 At about 4pm, Mr Yeo called Ms Lee again. During their brief conversation, Mr Yeo said he would be late in providing her with the plaintiffs' written explanation. Ms Lee informed him that the plaintiffs

had until 6pm to provide the explanation as CASE's office would close at that time.

62 At about 6pm Mr Yeo arrived at CASE's office. He handed Ms Lee a copy of the plaintiffs' letter of explanation. She asked him whether the contents of the letter were the same as his explanation to her during the morning telephone conversation. He confirmed that was so. Ms Lee informed Mr Yeo that since the plaintiffs' insurance facilities had not been restored by Income, CASE would be suspending the plaintiffs' membership. Mr Yeo said that he understood and added that the plaintiffs would revert to CASE soon on how they would remedy the situation. Ms Lee then handed Mr Yeo the Notices of Suspension. She proceeded to read the plaintiffs' letter in front of Mr Yeo and found that the contents of the letter reflected the oral explanation given to her earlier. As Mr Yeo had nothing further to add, he left CASE's office at about 6.15pm.

63 The Notices of Suspension were in identical terms. They read as follows:

> It has come to our notice that your company has breached the principles of good business practice. As such, your CaseTrust membership is suspended with immediate effect.
>
> In view of this notice, you are required to comply with the following:
>
> (a) immediately cease all use of the CaseTrust logo;
>
> (b) immediately remove the CaseTrust decal from all stores; and
>
> (c) do all such other acts and things and execute all such documents as CASE shall require in relation to the CaseTrust logo.
>
> Please be informed that continued usage of the CaseTrust logo after receipt of this notice constitutes unauthorized usage of a registered trademark. The CaseTrust Secretariat shall review and keep you updated on the status of your membership within **fourteen (14) days** of this letter.
>
> Should you require any clarification, please do not hesitate to contact Ms Shennon Khong, Head (CaseTrust) at DID: 6461 1815 or Email: shennon@case.org.sg. Meanwhile, all our rights are reserved.

Events after 20 November 2006

64 On 23 November 2006, the suspension of the schools from CaseTrust for Education was published on CASE's website. In the meantime, the plaintiffs had been gathering detailed information on the discrepancies and investigating what had caused the administrative lapse. By 24 November 2006, the plaintiffs had managed to identify the students who had valid student passes but lacked the necessary insurance coverage. On 1 December 2006, the plaintiffs submitted a list of these students to Ms Lee.

65 By way of two identical letters dated 28 November 2006, Stansfield and SIC formally responded to CASE's Notices of Suspension. These letters stated that CASE had not informed the PEOs what "good business practice" they had breached and stated that if the breach referred to the discrepancies found between the number of issued student passes and the number of students protected by insurance from April to November 2006, the schools had clarified and given an explanation on this in their letters of 28 November 2006. The letters went on to state:

> Please be informed that we have already rectified any errors that you have identified to us and as such it would be improper to suspend our membership. We wish to also highlight that NTUC Income is not able to allow us to enter the system to update the records as a result of the suspension of our membership.
>
> We wish to humbly point out that you have not given us reasonable notice of suspension nor given us any proper or valid reasons in accordance with the rules of natural justice.

66 On receipt of these letters, Ms Lee contacted Mr Teo to find out whether Income had restored the plaintiffs' insurance facilities. She was told that it had not. CASE then sent a letter to each of Stansfield and SIC which stated that there had been no rectification and specified 4 December 2006 as the deadline for them to make good their default. This letter also said that the schools' CaseTrust status had been suspended because there had been a breach of criterion C15 which stated that the Scheme had to be in place for a PEO who recruited foreign students. Further, the shortfall was a deemed breach of the standard student contract.

67 Income, in the meantime, was in the process of evaluating whether to continue underwriting Stansfield and SIC under the Scheme. On 5 December 2006, the plaintiffs' audited accounts were submitted to Income. The next day, Mr Teo informed Mr Chettiar that Income had to be satisfied that the schools continued "to satisfy [its] underwriting criteria upon which this facility was first made available" and that Income would review its position and revert to Stansfield and SIC in due course.

68 On 7 December 2006, the news of the suspensions was reported on the front page of The Straits Times. Mr Chettiar held an urgent meeting with his key management personnel and subsequently drafted a letter entitled "Clarification" which was to be distributed to all staff, students and other stakeholders. In this letter, Mr Chettiar attempted to dispel any rumours regarding the plaintiffs' solvency and emphasised that the plaintiffs were in a solid financial position. Mr Chettiar sent an e-mail to the Ministry of Education and other government authorities enclosing this letter because he wanted to quash any rumours regarding the solvency of the plaintiffs.

69 On 10 December 2006, Mr Seah of CASE telephoned Dr Pious and Mr Teo and proposed a meeting at CASE's office to resolve the outstanding issues between the parties so that Income would restore the schools' insurance facilities and cover the 479 students who were uninsured. This meeting was held on 12 December 2006 and was attended by representatives from CASE (Mr Seah, Ms Lee and one Mr Loi), Income (Mr Teo), Aegis (Mr Tay) and the plaintiffs (Dr Pious, Mr Yeo, Mr Ang and one Andrew Koo). At the meeting, the plaintiffs agreed to make immediate payment of premiums to Income, and in return, Income agreed to restore the plaintiffs' insurance facilities under the Scheme, insure the plaintiffs' students who were not protected by insurance and train the plaintiffs' staff on the online application procedures. Income had by this time received a report from Dunn & Bradstreet which stated that it found the plaintiffs' financial condition as shown in the accounts to be "fair" and their credit risk to be "average".

70 Income lifted the suspension of the Scheme insurance facilities granted to the plaintiffs shortly after the meeting. The plaintiffs' Maximum Insurable Limits were, however, reduced from $6m to an aggregate of $4m. Insurance cover for the uninsured students was issued with retrospective effect on 13 December 2006. On the same day, CASE lifted its suspension of the schools' membership in CaseTrust for Education. CASE notified the plaintiffs of this action by fax and by post and also removed the names of both Stansfield and SIC from the list of suspended schools on CASE's website.

Adverse consequences of the suspension

71 The plaintiffs allege that they suffered adverse consequences by reason of the suspension of their membership in CaseTrust and the unavailability of the insurance facilities. They particularised these adverse consequences in their statement of claim. At this stage, it is only necessary for me to give a summary of the allegations. These are that:

(a) between in or about November 2006 and February 2007, several students who had enrolled in courses with the schools had applied to withdraw from their respective courses and had requested that the tuition fees that they had paid to the plaintiffs be refunded; and

(b) the plaintiffs suffered a loss of commercial reputation and goodwill in Singapore and internationally due to the adverse publicity in relation to CASE's suspension of the plaintiffs from their CaseTrust membership.

In respect of sub-para (a) above, the plaintiffs seek to recover the refunded tuition fees and in respect of sub-para (b) above, the plaintiffs ask for damages to be assessed in respect of the loss of commercial reputation and goodwill.

The plaintiffs' claim against CASE

72 The plaintiffs set up their claim against CASE in two ways. The first way relates to the breach of contractual duties that CASE allegedly owed the plaintiffs directly. In relation to this cause of action, in the statement of claim the plaintiffs aver that:

(a) It is a necessary implied term of the CASE-PEO agreement and the Code of Practice that CASE would, *inter alia*, comply strictly with the terms of the CASE-PEO agreement and the Code of Practice when exercising its jurisdiction and powers to make decisions affecting the rights and interests of PEOs and would not exercise any powers over the plaintiffs which were in excess of CASE's powers and jurisdiction (para 10.1). The suspension of the CaseTrust membership breached the implied term pleaded at para 10.1 in that it was *ultra vires* CASE's rights and powers under the CASE-PEO agreement and the Code of Practice. These documents do not provide CASE with the power to suspend the plaintiffs' CaseTrust membership making the suspension unlawful and void.

(b) Further or alternatively (para 13), the suspension was in breach of cl 10.1 and/or cl 10.2 of the Code of Practice because:

(i) CASE failed to give either of the schools an opportunity to answer the allegation; and

(ii) CASE failed to carry out any independent investigation into the schools alleged breaches of the Code.

(c) It is an implied term of the CASE-PEO agreement and the Code of Practice that (para 10.2) CASE would exercise its powers pursuant to the CASE-PEO agreement and/or the Code of Practice in a reasonable manner, and (para 10.3) CASE would not act in an arbitrary or capricious manner in its dealing with its members including the plaintiffs. CASE breached the foregoing implied terms because the suspension was unreasonable in the circumstances of the case or was arbitrary or was capricious (para 14).

(d) It is implied term of the CASE-PEO agreement and the Code of Practice that (para 10.4) CASE would give the plaintiffs notice of any charge preferred against them before calling upon them to answer the same and (para 10.5) CASE would comply with accepted principles of natural

justice and would afford to the plaintiffs the right of a reasonable opportunity to be heard in connection with any independent investigation to be conducted by CASE before imposing any sanction for alleged breaches of the Code of Practice or the CASE-PEO agreement. CASE breached these terms by failing to give the plaintiffs notice of any charge preferred or to be preferred against them before calling upon them to answer the same in connection with its investigation. Further, CASE failed to accord to the plaintiffs a reasonable opportunity to be heard in connection with its investigation before imposing sanctions on the plaintiffs for alleged breaches of the CASE-PEO agreement and/or the Code of Practice.

73 The second basis of claim against CASE is in tort. The plaintiffs have the following causes of action:

(a) They plead that the conduct of CASE in sending the e-mail dated 20 October 2006 to Income which stated that the plaintiffs "may be closing down soon" wrongfully and recklessly induced and procured the breach by Income of its obligations to the plaintiffs (paras 16 to 18).

(b) They plead that the 20 October 2006 e-mail unlawfully interfered with the contractual relationship between the plaintiffs and Income and/or hindered the performance by Income of its obligations to the plaintiffs.

(c) Further, they plead that CASE owed them a duty to not act in any manner that would adversely affect the contractual relationship between them and Income and further, to administer the CaseTrust membership scheme in such a manner so as not to cause loss or damage to the plaintiffs (para 20). CASE negligently or in breach of these duties communicated the e-mail of 20 October 2006 to Income without any reasonable basis, failed to sufficiently investigate the matters set out in that e-mail and failed to afford the plaintiffs a reasonable opportunity to deal with its concerns with respect to the plaintiffs' CaseTrust membership. In this regard, CASE acted arbitrary or capriciously in issuing the Notices of Suspension on 20 November 2006 and CASE acted in an unreasonable manner in all the circumstances of the case.

74 In their closing submissions, the plaintiffs highlighted six main issues relating to their claim against CASE. They formulated these issues as follows:

(a) Whether CASE breached cl 10.1 of the Code of Practice in failing to afford the plaintiffs an opportunity to be heard prior to suspending the plaintiffs' CaseTrust for Education membership;

(b) Whether CASE breached cl 10.2 of the Code of Practice in failing to carry out an independent investigation into the plaintiffs' alleged breaches of the Code of Practice;

(c) Whether CASE breached the pleaded implied terms of the CASE-PEO agreements and the Code of Practice;

(d) Whether CASE wrongfully and recklessly induced and procured the breach by Income of its obligations to the plaintiffs;

(e) Whether CASE unlawfully interfered with the contractual relationship between the plaintiffs and Income and/or hindered the performance by Income of its obligations to the plaintiffs; and

(f) Whether CASE breached its duty of care to the plaintiffs not to act in any manner that would adversely affect the contractual relationship between the plaintiffs and Income and to administer the CaseTrust membership scheme in such a manner so as not to cause loss or

damage to the plaintiffs.

75 I should note at this stage that at all material times, CASE's contractual relationship was with the first plaintiff since the second plaintiff did not acquire its interest in SIC until January 2007. Since the plaintiffs themselves did not draw this distinction in their submissions, I will refer to the plaintiffs collectively in relation to liability. If liability is established, however, it must be remembered that such liability would be *prima facie* to the first plaintiff only and I would then have to consider whether the second plaintiff is in a position to recover damages because of its subsequent takeover of SIC. Also, strictly speaking, it was the schools as distinct businesses of the first plaintiff that were members of CaseTrust for Education.

76 As CASE pointed out in its own closing submissions, it is apparent from the way in which the plaintiffs' list of issues has been formulated that they have abandoned the pleaded contention that the suspension of the schools was *ultra vires*.

First category of issues: was CASE in breach of the Code of Practice or the CASE-PEO agreements?

77 The issues set out in [74(a) to (c)] above can be considered together because they deal with the legal implications of the Code of Practice and the CASE-PEO agreement.

78 The provisions of cl 10.1 and 10.2 of the Code of Practice are set out in [12] above. The heading above both provisions is "Sanctions for breach of this Code". To paraphrase the provisions, cl 10.1 provides that when CaseTrust becomes aware that a breach of the Code or of the terms and conditions of membership has taken place, it will provide an opportunity for the member to answer the allegations. Under cl 10.2, if CaseTrust concludes after an independent investigation that a breach of the Code has occurred, it may impose appropriate penalties including warnings, fines and expulsion or a combination of the same.

79 CASE has denied that it was in breach of cl 10 or the CASE-PEO agreement. It says the following:

(a) cl 10 is not applicable because the suspensions were not a sanction or a penalty;

(b) cl 10 is not applicable as Stansfield and SIC were in breach of the CASE-PEO agreement and not the Code of Practice;

(c) the CASE-PEO agreement is qualified by an implied term that CASE may suspend members without an opportunity to be heard as an interim measure or due to extenuating circumstances; and

(d) in any event, CASE did not breach cl 10 as it gave Stansfield and SIC an opportunity to be heard and carried out an independent investigation.

80 Before I go on to discuss the issues in more detail, I deal with a brief submission made by CASE that the Code of Practice is not even applicable in the present case. The only basis that CASE gave for that submission was it thought that if the Code of Practice is considered in the context of the overall CaseTrust framework and if one takes into account the other contractual documents governing the contractual relationship between CASE, the plaintiffs and their students, as well as the unique characteristics of CaseTrust for Education and the Scheme, it would become apparent that the Code of Practice did not apply to the present situation.

81 It appears that this argument is based on the fact that the Code of Practice is a generic code which applies generally to CASE members across all industries and that the practices governed by the Code include practices in relation to advertising and promotion, customer service, electronic commerce, privacy and marketing by telephone and through other media. The Code was drafted before the CaseTrust for Education scheme was developed and, according to cl 1.1, it sets out good business practices to be used by members and provides a framework for resolving disputes between the member and a consumer or between members *inter se*. The spirit of the Code is also to ensure that all transactions arising out of a member's business will be conducted with honesty, integrity and transparency. CASE seems to be implying in this submission that the Code is aimed more at businesses which involve commercial transactions than at the more specialised private education sector which requires a different regulatory framework.

82 I cannot accept this argument. It is correct that major portions of the Code of Practice are aimed at commerce in its more common form and that some of its clauses are not a good fit for entities providing private education. This is why when the CaseTrust for Education scheme was initiated it had to be supplemented by CASE-PEO agreements, the Info-Kit and the prescribed form of contract with the student. That conclusion does not, however, mean that all portions of the Code cannot be applied to PEOs. Whether a particular clause of the Code applies to a PEO would depend on what that clause prescribes and what the business of the PEO is. It is relevant that para 47 of the Info-Kit which appears as part of the section 7.4 which has the general heading "CaseTrust Accreditation Scheme" reads:

> In order to uphold the standards, which may be updated from time to time, set by CaseTrust, all members shall adhere to the Code of Practice and abide by penalties imposed upon breach/ infringement of the Code of Practice.

Thus, aspiring applicants to membership of CaseTrust were informed from the outset that if membership was granted, they would be expected to adhere to the Code.

83 Further, as the plaintiffs point out, para 1.3 of section 1 of the Code of Practice is very clear. It states:

> This code is intended to provide the general principles to be followed by members when conducting their business and supplements the various agreements, which the members have entered into with CASE (including but not limited to the terms and conditions for membership).

It was envisaged therefore that membership would be regulated not only by the Code but by other terms and conditions tailor-made for the particular industry involved. In this case, those terms and conditions are found in the Info-Kit and the CASE-PEO agreement. It is plain to me that the Code of Practice was intended to apply to all members of CaseTrust and that, in the absence of specific provision to that effect, PEOs who are members of CaseTrust for Education are not exempted from the provisions of the Code insofar as the same are pertinent to the business of private education and the status of being a CaseTrust member. It is also relevant in this connection that cl 10.1 is invoked not only when there is a breach of the Code but also when there is a breach of any other term or condition of membership. *Prima facie* therefore, the applicability of the Code as a relevant document cannot be gainsaid. Whether any particular clause of it applies in any particular situation is, however, a different question.

Were the suspensions a sanction or penalty?

84 The plaintiffs rely on cll 10.1 and 10.2 of the Code of Practice to support their position that

Stansfield and SIC could not be suspended because there was no independent investigation and they were not given a chance to answer the allegations. The position taken by CASE is that cl 10 only applies when a sanction is contemplated or invoked and did not apply in this instance because the suspension of Stansfield's and SIC's membership in CaseTrust for Education in November/December 2006 was not a sanction or a penalty within the meaning of the clause.

85 CASE argues that cl 10 expressly states that members will be given an opportunity to answer the allegations prior to the imposition of certain "sanctions" and "penalties" by CASE. The clause is entitled "SANCTIONS FOR BREACH OF THIS CODE" and cl 10.2 refers to the types of "penalties" that may be imposed by CASE. Therefore, it only applies when penalties are imposed. The natural and ordinary meaning of the words "penalty" and "sanction" is that of a punishment imposed for a violation of certain rules and obligations. Those words do not apply in a case like this where the suspensions were not penalties intended to punish the schools but instead were imposed as an interim and precautionary measure intended to safeguard the reinstatement of Stansfield's and SIC's facilities under the Scheme.

86 The plaintiffs disagree. They submit that the suspension of the schools' membership of CaseTrust for Education was clearly a sanction or penalty. The terms "sanction" and "penalty" are not defined in the Code of Practice but should be understood in their "plain, ordinary and popular sense" (see *Chitty on Contracts*, Sweet and Maxwell, 30th Ed, 2008 para 12-051) because that is the starting point in construing a contract, as *Chitty on Contracts* states in the cited paragraph. They say that a suspension of membership would generally be understood as a sanction or penalty. Moreover, under cl 10.1 CaseTrust may impose "such penalties as may be specified or as may be appropriate in the circumstances, including but not limited to warnings, fines and/or expulsion". Thus, the penalties that are named in the clause are illustrative and not exhaustive. The penalties mentioned range from a low degree of severity to a high one and, on that scale, a suspension would fall in between a fine and an expulsion.

87 The plaintiffs also say that CASE's subjective intentions in issuing the Notices of Suspension are irrelevant in construing the terms "sanction" and "penalty". In any event, the suspensions operated as such because they withdrew all the rights and privileges that the schools had as CaseTrust members. The Notices told the schools to stop using the CaseTrust logo and to remove the CaseTrust decal from their premises. The Notices also left the status of the memberships in limbo because they stated that "[t]he CaseTrust Secretariat shall review and keep you updated on the status of your membership within fourteen (14) days of this letter". The suspensions were published on CaseTrust's website and a result, ICA rejected applications made for student visas for the schools' students. The effect of the suspensions was punitive.

88 The parties cited two cases which dealt with the nature of a suspension. In one case, the one relied on by the plaintiffs, a suspension was held to be equivalent to an expulsion, whilst in the other, a suspension was not considered to be punitive. The first case, *John v Rees* [1970] 1 Ch 345 ("*Rees*"), was a decision of Megarry J in the High Court of England. The case involved the authority of the National Executive Committee of the Labour Party to pass a resolution to suspend the activities of the Pembrokeshire Divisional Labour Party. In holding that such a resolution was a nullity, Megarry J quoted the case of *Burn v National Amalgamated Labourers' Union* [1920] 2 Ch 364 ("*Burn*") where P O Lawrence J in construing a trade union rule which authorised the union to "suspend, expel and prosecute" members held that the language of the rule did not authorise a resolution removing the plaintiff from any office held by him and preventing him from holding any delegation on behalf of the union for five years. Megarry J commented (at 397):

> [P O Lawrence J] went on to consider the position if he were wrong in thus construing the rules,

and said at p. 374,: "I have no hesitation in holding the power to suspend or expel a member for acting contrary to the rules is one of a quasi-judicial nature"; and he accordingly held the resolution bad because the plaintiff had not been given an opportunity of being heard in his defence. In relation to the rules of natural justice Lawrence J. thus made no distinction between suspension and expulsion. I would respectfully concur: in essence, suspension is merely expulsion pro tanto. Each is penal, and each deprives the member concerned of the enjoyment of his rights of membership or office. Accordingly, in my judgment the rules of mutual justice prima facie apply to any such process of suspension in the same way that they apply to expulsion.

It can be seen from the foregoing that Megarry J considered suspension to be as penal as expulsion and to deprive the person suspended from membership of the enjoyment of his rights of membership.

89 A different approach was taken by the majority in the Privy Council decision of *Paul Wallis Furnell v Whangarei High Schools Board* [1973] 1 AC 660 ("*Furnell*"), an appeal from New Zealand which was decided some three years after *Rees*. In that case, a teacher was suspended by the school board from duty as he was charged with certain disciplinary offences. The teacher then instituted legal proceedings against the school board on the ground that there had been a denial of natural justice and that he had not been told that his conduct was being investigated and had not been given an opportunity to be heard. A suspension was not included as one of the penalties prescribed under the relevant regulations. The Privy Council upheld the New Zealand Court of Appeal's decision that the school board did not violate any rules of natural justice and that it was not unfair to suspend the teacher without giving him a right to be heard. The following passage from the judgment of Lord Morris who delivered the majority decision is pertinent (at 682F to 683B):

> It is next necessary to consider whether there was any unfairness on the part of the board, as was strongly suggested in the submissions made on behalf of the appellant. Though the board followed faithfully the directions of the regulations *it is said that nevertheless they should give a teacher an opportunity of being heard before they decide to suspend. Neither in the regulations nor in the Act is suspension classified as a penalty. Section 157(3) shows that it is not*. It must however be recognised that suspension may involve hardship. During suspension salary is not paid and apart from this something of a temporary slur may be involved if a teacher is suspended. But the regulations (by regulation 5) clearly contemplate or lay it down that the written statement of a teacher (under regulation 5(2) and the oral personal statement of a regulation 5(3)) will be made after suspension if any has taken place. Suspension is discretionary. *Decisions as to whether to suspend will often be difficult. Members of a board who are appointed or elected to act as the governing body of a school must in the exercise of their responsibilities have regard not only to the interests of teachers but to the interests of pupils and of parents and of the public. There may be occasions when having regard to the nature of a charge it will be wise, in the interests of all concerned, that pending decision whether the charge is substantiated a teacher should be suspended from duty*. In many cases it can be assumed that charges would be denied and that only after a full hearing could the true position be ascertained. It is not to be assumed that a board, constituted as it is, will wantonly exercise its discretion.
>
> [emphasis added]

90 There is therefore case authority to support the proposition that whether the act of suspending a person from a position or a membership is penal or not depends on the circumstances of the case. Among these circumstances is whether the regulations involved expressly classify suspension as a penalty or not and what the purpose of the suspension is. It may also be a matter of significance as to whether the suspending authority is charged with protecting the interests of third parties. This seems to be a significant difference between the cases of *Burn* and *Rees* on the one hand and *Furnell*

on the other. In the first two cases, the union was considering its own interests and the conduct of the member concerned when it decided to suspend him from membership. In *Furnell*, the school board was investigating a complaint and thus considering the conduct of Mr Furnell but it also had to consider the interests of pupils and their parents and of the public and how these should be protected whilst the investigations were taking their course. The existence of such third party interests was a vital factor in persuading the Privy Council that suspension was invoked as a protective measure rather than a penal one. As important would be the purpose of the suspension *ie* whether it is considered an end in itself or is intended to provide a period in which something else can be accomplished, in the *Furnell* case that something else being the full investigation into the charges which could have resulted either in the complete exoneration and reinstatement of Mr Furnell or in his being subjected to a punishment. There is no indication from either *Burn* or *Rees* that in those cases it was intended that certain action be taken during the period of suspension which might result in either the lifting of the suspension or in the application of another sanction. In fact in *Rees* itself, the court emphasised that the practical result of the suspension there was indistinguishable from expulsion.

91 Coming to the present case, I must therefore examine the circumstances more closely in order to determine whether or not the suspension was a penalty and therefore could not be imposed under cl 10 unless the schools had been given the opportunity to be heard.

92 The first point here relates to the purpose of the suspension. Was it intended to punish the schools because they had not provided insurance cover the foreign students? In considering the intention, I think it is irrelevant that the schools may have experienced hardship after the suspensions in that their applications for student visas were not accepted by ICA or that some students may have withdrawn. Those are painful consequences but, as *Furnell* recognised, hardship arising from a suspension does not turn that action into a punishment. It is also relevant that CASE gave evidence that it suspended the schools' membership in CaseTrust and published the suspensions on its website precisely so that the ICA would not approve student visa applications or issue student passes because these new students would not be able to get protection under the Scheme since Income had suspended the insurance facilities.

93 CASE's position is that the suspension was an interim measure implemented on an urgent basis to address a specific problem in relation to the Scheme. Mr Pillay and Ms Lee testified that CASE only decided to suspend Stansfield and SIC after learning on 17 November 2006 that Income had suspended the insurance facilities. It says that the fact that the suspensions were implemented shortly after CASE discovered that the insurance facilities had been suspended shows that CASE was simply responding to the situation. It used the suspensions as a mechanism to immediately prevent more students from being issued passes without any valid insurance coverage and to provide a space within which the plaintiffs could sort out the matter of compliance with the Scheme.

94 The plaintiffs make the point that CASE did not act on an urgent basis because it knew from 20 October 2006 that the insurance facilities had been suspended. On that day, Mr Teo had informed Ms Lee that Income was suspending with immediate effect its "bond facility to SIC and its affiliated schools till further notice from you". The plaintiffs say that Ms Lee must have known that the phrase "bond facility" referred to the insurance facilities extended by Income. They think that Ms Lee's evidence that she did not understand this phrase and that it "sounded more like maybe a personal loan between the school and the insurer" is suspect and very likely, an afterthought. The plaintiffs emphasise that Mr Teo had informed CASE that the suspension was until further notice from CASE. Logically, there would be no need for Income to wait for further notice from CASE to reinstate their personal loans to the plaintiffs unless the facilities affected CASE's relationship with the plaintiffs in some way which was the case in relation to the insurance facilities. Further, in the course of the

evidence, Mr Teo and other witnesses for Income had confirmed that it was plain that by using the term "bond facility", Income was referring to insurance policies.

95 Having considered the evidence, I think it is probable that Ms Lee truly did not understand that the phrase "bond facility" referred to the insurance facilities. Unlike the persons who gave evidence for Income, she is not in the insurance business and would not be familiar with the way that phrase is used in the insurance industry. She herself said that the phrase was "truly alien" to her. Lay people generally connect bonds with loans rather than with insurance or performance guarantees. The phrase "bond facility" is not a common one and it appears only once in the correspondence produced in the course of these events. Mr Teo agreed that the more precise phrase for the insurance facilities extended to the schools would be "SPS facility". In fact, that latter phrase was the one that Mr Teo used on 17 November 2006 when he instructed Mr Tay to inform the plaintiffs of the suspension of the insurance facilities. Further, even Mr Pillay who is legally trained, did not think that the bond facility meant a personal loan between Income and the schools. When he was asked about it in court, he said that he understood it to mean a bond or charge granted to NTUC Income over certain of the schools' assets. Mr Pillay was not shown the email of 20 October 2006 at that time and therefore did not see how the phrase was used in the email. He had nothing to do with the way that Ms Lee interpreted the phrase and thus, even if he should have understood it to refer to the insurance facilities, that understanding would not have altered the course of events.

96 In any event, I accept CASE's submission that Ms Lee would not have interpreted "bond facility" as being the insurance facilities because it was inconceivable to her that Income would suspend these facilities due to her e-mail of 20 October 2006. In that email, she had told Income about the rumours about the schools but had stressed that CASE needed more "concrete evidence" to substantiate the truth of the same. Whilst telling him that CASE and other governing agencies were highly concerned and that they needed to be prepared for the worst, she also said that she looked forward to receiving information and comments from Income. Thus, this was a letter informing a fellow stakeholder in the Scheme of a potentially difficult situation and asking for further information. There was nothing in that email to indicate any action being taken by CASE at that stage. As the consumer watchdog interested in the welfare of the students, CASE wanted more information but did not want to act precipitately without concrete evidence and would not have wanted Income to suspend the insurance facilities of a CaseTrust member as it would adversely affect new students who enrolled in such member school as well as prevent existing students without any insurance coverage from applying for such coverage under the Scheme. Ms Lee did not ask Income to take any action; what CASE wanted from Income was information to assist in its investigation.

97 Thus, I accept that Ms Lee was not expecting anything to be done by Income in relation to the insurance facilities and therefore Mr Teo's reference in his email to the suspension of the "bond facility" would not have made a strong impression on her when she read it. In hindsight, one could say that she should have wondered why he was telling her about this action and should have found out more about it but since this phrase was not in common use in connection with the Scheme and her attention was focused on other matters relating to the investigation, it is not really surprising that she did not react in any way to it. In fact, her failure to inform Mr Pillay or anyone else about this information from Income is another indication that she did not appreciate its significance. When she was told late on the evening of 17 November 2006 that Income was going to suspend its "SPS facility" to the schools with immediate effect, she went straight to Mr Pillay with the news not withstanding that the office was closing for the weekend.

98 Going back to the purpose of the suspensions, the evidence of Mr Pillay was that the suspensions were not a sanction but were taken as a temporary action so that the plaintiffs would be

able to rectify the situation. He explained that a suspension could be withdrawn at any time, even the day after it was made. On the other hand, if the membership had been revoked it could not have been restored without a fresh application for membership which would have taken about three months to process. Ms Lee had the same view and explained the suspensions were intended to "contain the situation". On the other hand, Mr Seah testified during cross examination the suspensions were a sanction although not a penalty. In re-examination, however, he corrected himself and explained that the suspensions were to contain a situation that had occurred and were not meant to be a sanction or punishment.

99 In this connection, I think it is material that there was no specified period of suspension and it was clear from the Notices that CASE was going to review the situation within a short period. Mr Seah testified that the schools were not suspended for any longer than necessary to ensure that the students' interests were safeguarded. Ms Lee's evidence was that CASE's intention was to immediately lift the suspensions once the schools had been able to remedy the situation either by restoring the insurance facilities or by entering into an escrow arrangement. In the event, that intention was fulfilled and as soon as the insurance facilities were reinstated, the suspensions of membership were lifted. The fact that the suspensions were temporary, were not for any fixed period and ended immediately after the *status quo ante* had been restored, is a very strong indication that the suspensions were not sanctions or penalties but were imposed for a totally different purpose.

100 The next point that has to be considered is the role that CASE was playing when it decided to suspend the schools from membership in CaseTrust. The evidence makes it plain that in administering CaseTrust for Education, CASE does not act as a regulator of private schools *per se*. It has no licensing function nor can it prescribe what courses can be offered or how they should be presented. It does not regulate the activity of these schools at all except insofar as they wish to recruit foreign students and even in respect of such foreign students, CASE's only role is to ensure that the fees paid by these students will be protected if certain events take place before completion of the students' courses. It acts as a consumer protection agency albeit for a very circumscribed group of consumers and in a very narrow compass, and it has to bear the interests of these consumers in mind in relation to every action it takes. I think it bears repeating that CASE's role is to protect students rather than to control PEOs. This protective role is achieved by monitoring the PEOs' compliance with the Scheme and by ICA refusing to issue student passes for persons enrolled in PEOs that are not members of CaseTrust for Education. As long as a PEO is a member of CaseTrust for Education, ICA does not go behind that designation. It is therefore up to CASE to protect students by ensuring that CaseTrust members have an escrow arrangement or insurance facilities in place. In this context, CASE's actions in suspending the schools can be understood as being protective of the students rather than punitive of the schools. CASE's witnesses were at pains to emphasise the protective nature of CASE's role as being the reason for the decision to suspend and I accept their evidence in this regard.

101 In all the circumstances, I am satisfied that the suspensions were not, and were not intended as, penalties or sanctions. Their purpose was to safeguard students and the aim of CaseTrust for Education. They were temporary in nature and removed as soon as the necessity for their existence was itself removed. Although the schools may have experienced hardship as a result of the suspensions, this did not turn them into penalties.

Did the plaintiffs have an opportunity to be heard?

102 Since I have held that the suspensions were not penalties, they did not fall under cl 10 of the Code of Practice and therefore, strictly speaking, I do not have to consider whether or not the plaintiffs were given an opportunity to be heard as required by cl 10.2. However, I will consider this

issue briefly.

103 CASE argues that it is clear from the contemporaneous documents and the evidence led at trial that the schools were given sufficient opportunity to be heard. They had the opportunity to make oral representations during the telephone call between Ms Lee and Mr Yeo and were invited to submit written representations. They did in fact submit their written representations later that day. Both the oral and written representations were considered by CASE, which determined that the explanation given was not satisfactory. In these circumstances, there is no basis for the plaintiffs to allege that such an opportunity was not given to them.

104 The plaintiffs say that the matters referred to by CASE did not amount to a sufficient opportunity for them to be heard as required by cl 10. They say that during the first conversation between Mr Yeo and Ms Lee on 20 October 2006 which took place at about 10am that morning, there was no mention by Ms Lee of the suspension by Income or of the possibility of the suspension by CASE or that CASE required the plaintiffs to respond to the 14 November letters by 4pm that day. During the second telephone conversation at about 4pm that afternoon, Mr Yeo did not receive a positive response to his request that CASE assist the plaintiffs in obtaining the lifting of Income's suspension. The third conversation was a short one relating to Mr Yeo's late arrival and the fourth conversation took no more than two minutes when the exchange of letters outside CASE's office was effected. In these circumstances, the plaintiffs had no notice of CASE's intention to suspend them and no real opportunity to be heard on the matter.

105 The first sub-issue is whether I should accept Ms Lee's account of her interactions with Mr Yeo on 20 November 2006 or Mr Yeo's account of the same. If Mr Yeo's version is to be believed, he had no knowledge during the first conversation of Income's suspension and no knowledge at any time until he opened CASE's letters at 6pm that CASE was intending to suspend the schools' memberships. If that version is accepted, the plaintiffs clearly were not given an opportunity to be heard on the intended action under cl 10. Ms Lee on the other hand was adamant that in the morning itself, Mr Yeo was aware of Income's action and that she told him of CASE's intentions.

106 I find it difficult to accept Mr Yeo's evidence on this point. The 14 November letters gave the schools up to 23 November to respond and, according to Mr Yeo, he did not even know about these letters until the morning of 20 November itself. At the same time, he was unaware of CASE's intention to suspend the schools' membership that day if nothing was done about restoring the insurance facilities. Yet, he rushed down to CASE's office by 6pm that evening so that he could hand Ms Lee a letter from the first plaintiff explaining the schools' failure to insure their students. By his own evidence, he even called Ms Lee at 4pm to inform her that he would deliver the letter that evening. If he had truly been unaware that CASE was on the verge of suspending the schools, he would have been under the impression that the written explanation was due only 23 November 2006 and there would have been no reason for him to rush to CASE's office on an urgent basis and personally deliver the letter to CASE. It seems to me that his actions were consistent with the fact that Ms Lee had told him during their telephone conversations on 20 November 2006 that CASE was intending to suspend the schools that day.

107 Secondly, Mr Yeo did not protest when the Notices of Suspension were handed to him by Ms Lee that evening. This indicates that he was not taken by surprise or shocked by the suspension. This must be because he had already been informed that CASE would suspend the schools if the insurance facilities were not restored by that evening. If he had not known about CASE's intention prior to the meeting at 6pm, it is likely he would not have accepted the Notices of Suspension so calmly. In fact, it was not till more than a week later that the schools wrote to assert that CASE had not given them "reasonable notice of suspension" and even then there was no allegation that no

notice at all of suspension had been provided prior to the handover of the official Notices.

108 Thirdly, Mr Yeo had claimed that on 20 November 2006 he did not tell Ms Lee the reasons for the schools' failure to insure their students. This claim seems odd because there was evidence (supported by an almost contemporaneous memorandum) that on that same day, he had telephoned Mr Tay and told Mr Tay of the reasons for the schools' failure to insure. Given that he explained this to Mr Tay, the likelihood is that he also gave a similar explanation to Ms Lee that day, especially since CASE had asked in writing for an explanation of the discrepancies. Mr Yeo's version was that he merely called Ms Lee to "seek further clarification" regarding the 14 November letters. However, he admitted that he was "shocked" to receive those letters and it is therefore hard to believe that he would not give some sort of explanation to Ms Lee at the first opportunity.

109 Apart from the difficulties with Mr Yeo's evidence, there is the evidence of both Ms Lee and Mr Pillay that she had told him of Mr Yeo's explanation and they had discussed whether the same was satisfactory and should affect the decision to suspend the schools. I find no reason to disbelieve this evidence. The decision to suspend the schools was a serious one which was discussed throughout the day as Ms Lee kept checking the position regarding the insurance facilities and I accept that any explanation of the failure to insure would have been talked about at length and therefore remembered clearly. Overall, I prefer Ms Lee's accounts of her conversations with Mr Yeo to his.

110 Notwithstanding the foregoing finding, I think that if cl 10 had applied to the situation or if, for any other reason the plaintiffs were entitled to an opportunity to be heard, CASE would not have provided the plaintiffs with an adequate opportunity to be heard. If a punishment is to be imposed, the party to be punished has to be told of the charge or allegation against him and given an opportunity either to answer the same in full so as to be exonerated or to give an explanation which would mitigate the severity of the penalty to be levied. This generally would mean a written notification which also specified a reasonable period for response. In this case, there was no written notification that CASE was contemplating suspending the schools from CaseTrust because of the suspension of the insurance facilities and the time given was, at the most, one working day. In view of the possible serious repercussions of a suspension of a membership, the provision of one working day in which to render an explanation could hardly be considered as sufficient opportunity for the schools to answer the allegations.

111 The other requirement of cl 10, if it applied, was that CASE had to conduct an independent investigation before imposing the penalties permitted by that clause. The opening words of cl 10.2 are "If CaseTrust concludes after its independent investigation that a breach of this Code has occurred ...". The parties filed fairly lengthy submissions on why they said the duty of conducting an independent investigation under this clause had or had not been complied with. I do not have to consider those arguments in detail because it seems to me that the independent investigation required by the sub-clause has as one of its essential elements a consideration of the answers that the member being investigated has made to the allegations being made against it. As such, in this case, the independent investigation could not have been concluded because the plaintiffs were not given a sufficient opportunity to answer the allegations as required by cl 10.1. Therefore, if cl 10.2 applied, I would have held CASE to be in breach of it because it imposed the penalty before its investigation had been concluded.

Were CASE's actions in breach of the CASE-PEO agreement and the Code of Practice?

112 In para 10 of the statement of claim, the plaintiffs averred that it was a necessary implied term of the CASE-PEO agreement and the Code that CASE would:

(a) comply strictly with the terms of the CASE-PEO agreement when exercising its jurisdiction and powers to make decisions affecting the rights and interests of PEOs and not exercise any power which was an excess of its powers and jurisdiction;

(b) exercise its powers pursuant to these documents in a reasonable manner;

(c) not act in an arbitrary or capricious manner in dealing with the plaintiffs;

(d) give the plaintiffs notice of any charge preferred or to be preferred against them before calling upon the plaintiffs to answer the same in connection with CASE's investigations; and

(e) observe and comply with accepted principles of natural justice and afford the plaintiffs the rights of a reasonable opportunity to be heard before imposing any sanction for alleged breaches of the Code or the CASE-PEO agreement.

113 In their closing submissions, the plaintiffs did not take up all the pleaded points but shaped their case around the arguments that CASE had breached the pleaded implied terms of the documents in that:

(a) CASE did not exercise its rights in a reasonable manner;

(b) CASE failed to give the plaintiffs notice of any charge preferred or to be preferred against them before calling on them to answer the same in connection with its investigation; and

(c) CASE failed to comply with principles of natural justice before imposing sanctions for alleged breaches of the CASE-PEO agreement and the Code.

I will deal with these issues in the reverse order.

114 First, there is the question of the application of the principles of natural justice. The plaintiffs in their submissions linked adherence to the principles of natural justice to the imposition of sanctions. As I have found that the suspensions were not sanctions, it may be thought that this completely answers the question whether CASE had any obligation to abide by the principles of natural justice in relation to its actions under the CASE-PEO agreement and the Code. The plaintiffs' argument was that quite apart from cl 10, the rules of natural justice had to be implied as part of their contract with CASE. In this regard, they cited *Haron bin Mundir v Singapore Amateur Athletic Association* [1991] 2 SLR(R) 494 where Selvam J observed at [23]:

> The device used by the courts to determine cases of expulsion or suspension of members in an unincorporated association is by the application of the doctrine of natural justice. The rules of natural justice are implied into every contract express or implied which contemplates a hearing affecting the rights and livelihood of persons. The rules are so implied as a matter of law and public policy: *Lee v The Showmen's Guild of Great Britain* [1952] 2 QB 329; *Lawlor v Union of Post Office Workers* [1965] Ch 712; *Russell v Duke of Norfolk* [1949] 1 All ER 109.

115 While I accept the statement of law enunciated above and agree that generally speaking the rules of natural justice apply in the type of situation described by Selvam J, there is other authority which CASE brought to my attention which indicates that the dispensation or exclusion of a right to be heard is permissible where such procedures would hinder prompt action or where there is an urgent need to protect the interests of third parties. *De Smith's Judicial Review* (Sweet & Maxwell, 6th Ed, 2007) notes that at common law procedural propriety may be excluded in such circumstances. The

text states at para 8-019:

> *Urgency may warrant relaxing the requirements of fairness even where there is no legislation under which this is expressly permitted*. Thus a local authority could, without any consultation, withdraw children from a special school after allegations of persistent cruelty and abuse without this involving any procedural impropriety. In such circumstances there exists an emergency in which the primary concern is as to the safety and welfare of the children. The suspension without first affording an opportunity to be heard, of a Romanian Airline's flight permit, following the failure by five of its pilots of Civil Aviation Authority examinations in aviation law, flight rules, and procedures, was not unfair where an immediate threat to air safety was apprehended. Similarly where a self-regulatory organisation acted urgently to protect investors, it was not required to consider whether there was sufficient time to receive representations. Likewise, a local authority was entitled to prohibit allegedly dangerous toys as an "emergency holding operation". *In general, whether the need for urgent action outweighs the importance of notifying or consulting an affected party depends on an assessment of the circumstances of each case on which opinions can differ*.
>
> [emphasis added]

116 CASE also cited two decisions in which the propositions enunciated in the above extract were applied. The first was *R v Life Assurance Unit Trust Regulatory Organisation Ltd, Ex p. Ross* [1993] QB 17 (which report contains both the first instance and appellate decisions) ("*Life Assurance*"). There, it was alleged that a self-regulatory authority acted with procedural impropriety when it failed to hear representations prior to suspending a member in the interests of protecting public investors. The English Court of Appeal found that there was no breach of the rules of natural justice and declared that the authority had to balance the interests of the member against the interests of investors pending a full inquiry into the matter. In that case, the need to urgently safeguard the interests of investors outweighed the requirement to observe the rules of procedural fairness. Glidewell LJ who delivered the judgment of the Court of Appeal agreed with the observation of the judge at first instance, Mann LJ, who had said (at p 32):

> The purpose of an exercise of intervention powers under the Lautro rules, or of an exercise under Part I of the Act of 1986, is the protection of investors. The achievement of that purpose must on occasion require action which has urgently to be taken, and the entertainment of representations may not be compatible with the urgency. Mr. Collins recognised that this could be so, but said that at least there must be a duty to consider whether time admits of the receipt of representations and in this case there was no such consideration by Lautro. *In my judgment, once it is recognised, as inevitably it must be, that a self-regulating organisation may have to act with urgency in order to achieve its purpose, then it would be undesirable to cumber it with the necessity to make a judgment as to whether time admits of an opportunity to make representations*.
>
> [emphasis added]

Glidewell LJ added (at p 52) the qualification that if a decision-making body is to exercise powers such as those of serving an intervention notice without giving anybody the opportunity to make representations beforehand, its procedures should provide that those who might otherwise expect to have been allowed to make representations should at least be allowed to make an immediate application to set the decision aside and to appeal against it.

117 The other case is *Suisse Security Bank & Trust Ltd v Governor of the Central Bank of The*

Bahamas [2006] 1 WLR 1660 ("*Suisse Security Bank*"). There the authority had revoked the bank's licence to carry on banking and trust business on the ground that the bank was carrying on its business in a manner detrimental to the public interest and the interest of its depositors. The Privy Council held that where the authority acted urgently to protect investors, it was not required to consider whether there was sufficient time to receive representations. Lord Mance, who delivered judgment on behalf of the Privy Council, held at [36]:

> The Governor must be able to act quickly, in view of the various risks that may materialize in a situation where, before he can act at all, he must already be of the opinion that the bank's business is being carried on in a manner detrimental to the interests of the public or of depositors or other creditors or in a situation like that under section 14(1)(b) where he must be of the opinion that the bank is contravening one of his directions or the Act itself. To require notice and an opportunity for objections in such a situation would be bound in almost every case to lead to arguments and delay. Meanwhile the bank's existing management would be in charge and have the continued opportunity – indeed what the less scrupulous might see as a last chance – to act to its detriment.

118 It is clear from the authorities cited therefore that although generally the rules of natural justice apply when an authority or quasi-authority such as CASE is making a decision that can have an impact on the livelihood of an organisation whose behaviour it monitors, those rules may not need to be followed if the circumstances require urgent action for the protection of third parties and there is the possibility of representations being received subsequently.

119 CASE submits that it was entitled to immediately suspend the schools without giving them a right to be heard, as an interim measure or due to extenuating circumstances that is the suspension of the schools' insurance facilities by Income, thus putting future students' fees at risk. I accept this argument in the circumstances of this case. It was not disputed that CaseTrust for Education and the Scheme were established in order to safeguard foreign students' tuition fees especially in emergency situations such as may be initiated by the insolvency of a PEO. Therefore, a PEO which wished to enrol foreign students was required to become a member of CaseTrust and, in order to do so, had to have in place either an escrow arrangement or an insurance facility. As the administrator of CaseTrust for Education, CASE is responsible for ensuring that all its members maintain valid insurance or escrow facilities.

120 I agree with CASE that in the light of this objective, as well as its role as the administrator of CaseTrust, it must have the ability to take immediate interim measures, such as suspending members at short notice, to ensure that the Scheme is adhered to. If CASE is not able to act quickly when it finds out that a CaseTrust member does not have either insurance facilities or an escrow arrangement in place, but has to give time for due representations to be made, its ability to protect students would be curtailed. This would mean that during the period when the representations are being formulated and considered, the PEO concerned would still be able to enrol foreign students and those students would not have the protection afforded by the Scheme. This would defeat the purpose of the Scheme. Students' interests will therefore be jeopardised if CASE must conduct a full investigation and hear detailed representations each time a PEO is not a party to a valid escrow or insurance scheme and can only suspend such PEO after this process has been completed.

121 In the present case, once Income suspended the schools' insurance facilities, CASE had to act urgently to protect the interests of foreign students who might be considering enrolling in the schools. In these circumstances, I consider that CASE was entitled to make its decision first and hear representations later, although in fact Ms Lee did inform the schools of the impending suspension and did give them some opportunity to put forward their case. The evidence also shows that after the

suspensions took effect, CASE continued to communicate with the schools and to receive their representations. CASE looked into the contents of the letters sent on 28 November 2006 and when it found out that the insurance facilities had not been restored, informed the schools of this fact and gave them up to 4 December 2006 to rectify the position. In any case, the plaintiffs' complaint is confined to CASE's alleged failure to allow the making of representations before the suspension. They did not plead that CASE had breached any of its obligations by its failure to afford the schools an opportunity to be heard after the suspension.

122 I therefore find that quite apart from the applicability of cl 10 of the Code of Practice, the rules of natural justice did not apply to the circumstances which faced CASE when Income suspended the schools' insurance facilities.

123 I move to the next sub-issue which is whether CASE was obliged to give the plaintiffs notice of any charge preferred. This issue can be considered as part of the applicability of the rules of natural justice argument. In that light, the answer must be the same as that I have given above to the assertion that CASE was obliged to give the plaintiffs an opportunity to be heard before imposing the suspension. In any event, the facts show that CASE did notify the plaintiffs of the matters that CASE was investigating.

124 First, the letters of 14 November had as their subject heading: "Discrepancies found between number of issued student passes and number of students protected by insurance". The letters set out a monthly breakdown of the total number of student passes issued and insurance applications submitted for each school and noted that there was a shortfall. The plaintiffs were asked to explain the reasons for the discrepancy and must have realised that there was an ongoing investigation by CASE. If CASE had not carried out such an investigation, how could it have obtained the figures in the letters?

125 Second, I have accepted Ms Lee's evidence that on 20 November 2006 she made it clear to Mr Yeo that CASE was concerned about the suspension of the schools' insurance facilities by Income and also explained to him that CASE would suspend their membership in CaseTrust if the insurance facilities were not restored.

126 The plaintiffs complain that the Notices of Suspension dated 20 November 2006 did not state the nature of the breach. This is correct. What had happened was that CASE had used standard form templates and had not applied its mind to the particular circumstances at hand. It is clear from the Notices that they were generic in nature and not drafted specifically to deal with the plaintiffs' situation. However, Ms Lee's evidence, which I accept, was that she explained the reason for the suspension to Mr Yeo and told him that the suspension of the insurance facilities by Income constituted a breach of a key criterion of CaseTrust for Education.

127 The plaintiffs also allege that the suspensions were effected without consideration by CASE as to whether there was a valid legal basis for the same. This allegation is not supported by the evidence. Mr Pillay and Ms Lee both testified that they had discussed the legal effect of Income's suspension of insurance facilities and had concluded that the lack of a valid insurance facility was a breach of criterion C.15 of the Info-Kit as well as cll 2.1(a) and (f) of the CASE-PEO agreement.

128 In response to this evidence, the plaintiffs argued that CASE's allegation that it had breached criterion C15 of the Info-Kit was clearly not sustainable. They say that this clause only refers to a desktop assessment and a site assessment which needs to be used by a PEO in order to prepare itself for the initial CaseTrust for Education accreditation. It has no application to any point of time subsequent to the initial accreditation. As far as cl 2.1 of the CASE-PEO agreement is concerned, the

plaintiffs say that it merely stipulates one of the conditions of the Scheme which a PEO is obliged to comply with to gain CaseTrust for Education status. Compliance is not required for the maintenance of that status.

129 I cannot accept that submission. Criterion C15 is one of several criteria that an applicant for CaseTrust status has to comply with. Among these are requirements like C2 which instructs the PEO to issue a standard student contract which includes, as a mandatory requirement, the PEO to commit itself to the Scheme so that the student's fees will be protected. In the standard student contract itself, the PEO confirms and undertakes to the student that it has in place the insurance facilities required under the scheme. This is a contract which is issued to all students after the PEO attains CaseTrust membership and therefore it is envisaged that the commitment to the Scheme will be a continuing one and not one that only needs to exist at the time the application for membership is made. Other criteria in the Info-Kit are also of a continuing nature, for example, the requirement under C1 that PEO has to provide students with receipts to acknowledge payment of fees to itself or into the escrow account as the case may be, and C8 which requires the PEO to maintain up-to-date databases on student records and details. Turning to the CASE-PEO agreement, that document is all about the Scheme and the fulfilment of the PEO's obligations under the Scheme. Under cl 2.1 the PEO warrants to CASE that it will satisfy the requirements of the Scheme by ensuring that not less than 70% of the course fees of each student are protected either by an escrow agreement or by insurance coverage. It is noteworthy that the word "student" is defined as "any person who enrols for any course of studies with [the schools] on or after 1 December 2004". That definition makes it obvious that the requirement to protect students in accordance with the Scheme is not limited to students at any particular time but applies to all students at any time.

130 The plaintiffs' submission was effectively that under the CASE-PEO agreement and the terms and conditions of membership in CaseTrust, the schools were merely obliged to comply with the requirement of having a Scheme facility in place prior to accreditation and once accredited they were no longer obliged to sustain the facility and provide protection under the Scheme to their students. Such an interpretation runs contrary to the entire purpose of the Scheme and for that reason alone must be rejected. Additionally, as I have pointed out above, it is not supported by the language of the documents.

131 I move on to the final issue in this area, which is whether there was an implied term that CASE would exercise its rights under the CASE-PEO agreement and the Code of Practice in a reasonable manner and, if so, whether in this instance those rights were so exercised.

132 In its closing submissions, CASE pointed out that the plaintiffs had simply assumed that the duty on CASE to exercise its rights in a reasonable manner was implied into the documents without explaining the factual and/or legal basis for this assertion. CASE recognised that for the implication of a term into a contract, the term must be either necessary to give "business efficacy" to the agreement or must satisfy the "officious bystander" test as something so obvious that it goes without saying. CASE submitted that neither of these tests was satisfied in the instant case. I do not agree. I think that in a situation such as this, which is not a strictly commercial contract but where, although the form of the relationship is contractual, in fact one party is an arbiter who decides whether the other party is able to do a particular act which affects the livelihood of that second party, any decision taken by the first party which may have an adverse effect on the second's earning capacity must not be an unreasonable decision. Anything else would be an abuse of power. To me, this requirement would definitely satisfy the officious bystander test as both parties would operate on the unspoken assumption that those powers would be exercised in a rational manner and not capriciously and would inform the officious bystander so if he were to pose the question. But even if this term did not pass the officious bystander test, in the light of all the circumstances, it is my view that

administrative law principles should be imported into the relationship between CASE and the plaintiffs in relation to CASE's decision-making powers.

133 I therefore move on to consider whether CASE acted unreasonably.

134 The plaintiffs gave various reasons for their submission that CASE had not exercised its rights in a reasonable manner. First, they note that Mr Seah had testified that CASE's primary principle in administering CaseTrust for Education was that there had to be maximum student protection. They argue that between the option of suspending the schools and the option of asking them to make good the insurance premiums for the uninsured students, the latter option would have been more in line with the primary principle of maximum student protection. CASE, however, did not extend this option. Further, instead of suspending the schools and leaving over 400 of the students exposed, CASE could have obtained an undertaking from the plaintiffs not to enrol more foreign students until either the premiums had been paid under the Scheme for the uninsured students or the plaintiffs had made alternative escrow arrangements. The plaintiffs consider that CASE's assertion that the situation was so urgent that it had no choice but to suspend as being completely baseless.

135 The second contention was that Ms Lee had unilaterally decided to start an investigation into the plaintiffs. On 16 October 2006, she had been informed of the various rumours regarding the schools by the STB and had later been asked to check with Income whether the latter could commence a financial health check on the plaintiffs as part of the regular insurance process. Instead of doing so, Ms Lee admitted that she had unilaterally, without consulting either Mr Seah or Mr Pillay, started an investigation into whether the plaintiffs had complied with the Scheme. Further, she had written to Income to inform it that CASE was conducting investigations and instead of asking Mr Teo to commence a financial health check on the plaintiffs, she asked for certain details from him. Ms Lee had agreed in court that if the plaintiffs had made good the unpaid premiums, this would have indicated whether they were solvent or not but, in the 14 November letters, she did not relay this position to the plaintiffs.

136 The third contention is that CASE was aware of the discrepancies in the insurance figures as early as 3 November 2006 but waited 11 days until 14 November 2006 before writing to the plaintiffs to request for their comments. If the situation was indeed so urgent because more than 400 students were not insured and CASE needed to act immediately, it would have been reasonable to expect that CASE would have written immediately to the plaintiffs. When the letters were sent on 14 November, they were posted and thus would not be received immediately. This did not indicate urgency. On top of that, CASE suspended the plaintiffs on 20 November 2006 although the deadline given in the letters for the plaintiffs' response was 23 November 2006. Pointing out that Ms Lee had told the court that she had not written to the plaintiffs before 14 November 2006 as she was on leave to attend to personal matters relating to her new flat, the plaintiffs submit that if the situation had indeed been so urgent, Ms Lee could have got someone to attend to the matter in her absence instead of waiting 11 days to write to the plaintiffs.

137 Dealing with the first point, CASE argues that it was not under any obligation to consider or offer the proposed "alternatives" of asking the plaintiffs to make good the insurance premiums for the uninsured students and getting an undertaking from them not to enrol more foreign students. It says that the plaintiffs never offered or even suggested to CASE that the schools would make good the insurance premiums or provide an undertaking in lieu of a suspension. When this question was asked of Mr Seah in court, he responded that CASE had not been presented with these options and therefore had not thought of them at that time. CASE argues that since the plaintiffs did not make the offer either before or during the suspension, it does not lie in their mouths to claim that CASE was in breach of contract for failing to consider such an undertaking.

138 Whilst I agree that it is a bit late for the plaintiffs to put forward alternatives for CASE's consideration since they did not bring up these points at the time of suspension, the main point here is whether such alternatives were really feasible at the time and if it was unreasonable not to impose them instead of the suspension. As far as the suggestion of making good the insurance premiums is concerned, that really was not a course that was open to either of the schools. The plaintiffs had not applied for insurance for these students so there were no outstanding premiums. Further, the very fact of the Income suspension meant that no further application could be made until such suspension was lifted. It would therefore have been pointless for CASE to direct the schools to pay the premiums. Such direction could not have been complied with and would not have addressed CASE's concerns regarding compliance with the Scheme.

139 In relation to the undertaking, CASE's submission is that it would not have been prepared to accept such an undertaking from the schools who were already in breach of the CASE-PEO agreement. Under cross-examination, Mr Seah stressed that CASE "would be hard put to agree" to such an undertaking and Mr Pillay also expressed doubts that it would be acceptable. Counsel argues that this attitude was not surprising or unreasonable because in their letters dated 28 November 2006, the schools had claimed that the situation had been rectified and this assertion had turned out to be untrue in that Income had not lifted the suspension and the 479 students were still uninsured.

140 Having considered the matter, I do not think it was unreasonable for CASE to suspend the schools rather than to call on them to give an undertaking not to enrol foreign students until they were compliant with the Scheme again. This is because the facts known to CASE showed that the schools had not insured their students for a period of about five to six months with the result that practically all foreign students had not been insured. This was a serious breach of the terms of the Scheme. Secondly, the schools had not given a detailed explanation of how the omissions had occurred and had not indicated what steps they had taken to ensure that such omissions would not recur. The explanatory letters of 20 November 2006 were vague – attributing the "oversight" to a mix of administrative factors. Thirdly, the plaintiffs had not volunteered such an undertaking. In the absence of an effort on the part of the plaintiffs to convince CASE that there was a workable alternative which they would adhere to and had the administrative facilities to implement, it was not unreasonable for CASE to put in place what amounted to a compulsory suspension of recruitment of foreign students rather than to ask for a voluntary suspension of the same.

141 The second point was that it was unreasonable for Ms Lee to unilaterally commence an investigation into the schools' compliance with the Scheme. I see no merit in this point. The evidence was that one of Ms Lee's duties as a CaseTrust executive was to carry out such investigations and that she was given full authority and discretion to do so. Mr Seah confirmed that she had the authority to investigate into whether CaseTrust members had complied with CaseTrust requirements. Ms Lee herself testified that it was her responsibility to conduct checks to determine whether there were any discrepancies between the figures provided by Income and the banks and those provided by the ICA. Whilst Ms Lee generally conducted such checks on a random basis, the impetus for the checks in the present case was given when the STB alerted her to the rumours about the schools' financial position. As it was CASE's role to protect students from the consequences of a PEO's insolvency, it was only natural that this information triggered Ms Lee's investigations. There was nothing at all unreasonable in her decision.

142 The third point relates to the delay between the discovery of the number of uninsured students and the writing of the 14 November letters. Here again, the criticism is baseless. CASE did not have any obligation to inform the schools immediately after it learnt of the schools' non-compliance with the Scheme. In any case, it was not the discovery of the 479 uninsured students that led to the suspension of membership but the fact that Income suspended the insurance facilities on

17 November 2006.

143 I therefore find that CASE was not in breach of any implied term to act reasonably or to observe and comply with the rules of natural justice.

Second category of issues: has CASE any liability in tort?

Intention to induce a breach of contract

144 The first assertion that the plaintiffs make in this part of the claim is that CASE wrongfully and recklessly induced and procured the breach by Income of its obligations to the plaintiffs. In dealing with this part of the plaintiffs' claim, I will not consider the issue of whether Income was in breach of contract when it suspended the insurance facilities on 20 October 2006. That question can be dealt with more conveniently in the next portion of this judgment in which I consider the plaintiffs' claims against Income. For present purposes, I will assume that Income's action was in fact a breach of contract.

145 The plaintiffs accept, citing *Zim Integrated Shipping Services Ltd v Dafni Igal* [2010] 2 SLR 426 ("*Zim*"), that in order to make out this claim, they must show that:

(a) CASE acted with the requisite knowledge of the existence of the contract between themselves and Income (although knowledge of the precise terms is unnecessary); and

(b) CASE intended to interfere with the plaintiffs' contractual rights.

They also note that the court in *Zim* emphasised that the plaintiff in such an action must show that the defendant in question knew that it was procuring a breach of contract and it would not be sufficient merely to show that the acts committed by the defendant had the effect of procuring such breach.

146 The plaintiffs point out that CASE knew that the schools had procured insurance policies from Income and that those insurance policies were a vital requirement for the schools to be able to secure student passes for their foreign students. The first ingredient has therefore been met.

147 The action that the plaintiffs complain about is the e-mail that Ms Lee sent to Income on 20 October 2006. They complain that she had recklessly and without any basis whatsoever alleged the following:

> ... both the schools may be closing down soon due to losses incurred during their investments in India ...
>
> CaseTrust, together with those governing agencies are highly concerned at this stage ...

During cross-examination, Ms Lee had conceded that the only government agency that had concerns was STB and even then the extent of the concern was simply to ask if a financial health check could be commenced by Income. The plaintiffs thought that it was because of the allegations in that e-mail that Income decided that day to suspend the "bond facility" with the plaintiffs. When Ms Lee received Mr Teo's reply informing her about the suspension of the "bond facility", she did not even ask him why Income had done so. Looking at Ms Lee's conduct as a whole *ie* in sending the e-mail to Mr Teo and in failing to ask him why Income had taken action to suspend in view of CASE's investigation, the plaintiffs submit that the reasonable inference to be drawn was that Ms Lee intended to procure a

breach of Income's contract with the plaintiffs at the time she sent the e-mail to Mr Teo on 20 October 2006. They emphasise that Mr Teo had stated that he was highly concerned that the plaintiffs might be in financial distress purely because of Ms Lee's e-mail.

148 In the circumstances here, the first ingredient of the tort presents no problem to the plaintiffs. What has to be considered is the second ingredient *ie* whether CASE intended to interfere with the schools' contractual rights *vis-a-vis* Income. CASE submitted that a survey of the evidence established that CASE had absolutely no intention of procuring a breach of the SPS policies and, at the very least, the plaintiffs had failed to show that CASE possessed the requisite objective intent. The fact that CASE's actions may have led to the breach as Mr Teo stated, was irrelevant if CASE had not intended this result.

149 I agree that the plaintiffs have not made out this claim. Their case rests on the portions of Ms Lee's e-mail to Mr Teo that I have set out at [147] above. Those were selective portions of the text. The full text of the e-mail can be found at [35] above. If the text of the e-mail and the circumstances in which it was sent are considered in full, it is quickly apparent that CASE had no intention whatsoever when it sent the e-mail to have any effect on the contractual relations between the plaintiffs and Income.

150 It is evident from the contemporaneous correspondence between CASE, STB and Income that Ms Lee sent out the e-mail in question because of a specific request by STB. The rumour that the schools "may be closing down soon" originated from a tip off received by STB who communicated it to CASE on 16 October 2006 and asked CASE to "check with the banks (on escrow default) and/or NTUC Income on whether they can commence a financial health check on the school as part of their regular insurance process". Three days after this specific request was made, Ms Lee sent an e-mail to Mr Teo asking for, *inter alia*, a financial health report on the schools. The first e-mail that she sent out did not mention the rumours and it was only a request for information and details of the schools. This is an indication that CASE was simply acting on a request by STB and had no intention of procuring any breach of contract by Income.

151 It was only after Mr Teo asked for details of the investigation that Ms Lee replied on 20 October in terms of the e-mail that the plaintiffs rely on. At that stage, she told him about the tip off but did not make any request that Income take action against the schools. She was careful to inform him that "more concrete evidence" was needed to substantiate the rumours and this was a clear signal that the rumours had not yet been substantiated. The e-mail cannot be read as a call to action by Income: all that it did was to endeavour to explain why CASE had asked for certain information. I think that the plaintiffs' case on the meaning of the e-mail is exaggerated and without foundation.

152 There is also no merit in their argument that Ms Lee's failure to ask Mr Teo why Income was suspending the "bond facility" indicated that CASE had intended to procure a breach. I have found above that Ms Lee did not know what Mr Teo meant by "bond facility". She was used to the term "SPS facility". Since no alarm bells were rung, her failure to question Mr Teo further about his actions meant nothing.

153 Since the plaintiffs have not been able to establish that CASE intended to affect their contractual relations with Income, this claim must fail. There is no need for me to go on to consider whether in fact it was the e-mail of 20 October 2006 that caused the suspension of the insurance facilities.

Duty of care

154 The second assertion which the plaintiffs have made is that CASE had a duty of care to not act in any manner that would adversely affect the contractual relationship between the plaintiffs and Income and to administer CaseTrust in such a manner so as not to cause loss or damage to the plaintiffs. They say that CASE breached that duty of care and caused them loss. In respect of this allegation, the first issue that arises is whether such a duty of care existed between CASE and the plaintiffs.

155 The plaintiffs cite the decision of the High Court in *Sunny Metal & Engineering Pte Ltd v Ng Kim Eric* [2007] 1 SLR(R) 853 ("*Sunny Metal*") as authority for the proposition that a defendant can owe concurrent duties to a plaintiff in contract and in tort. As a generality, that proposition is not in doubt. That does not mean, however, that in every case of a contractual relationship there will also be concurrent tortious duties. That question can only be answered by reference to the test which has to be applied to determine whether in any set of circumstances a tortious duty exists. The latest authority on the applicable test to determine the existence of a duty of care is the Court of Appeal decision of *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"). There, Chan Sek Keong CJ said at [115]:

> A *single* test to determine the existence of a duty of care should be applied regardless of the nature of the damage caused (*ie*, pure economic loss or physical damage). It could be that a more restricted approach is preferable for cases of pure economic loss but this is to be done within the confines of a single test. This test is a two-stage test, comprising of, first, proximity and, second, policy considerations. These two stages are to be approached with reference to the facts of decided cases although the absence of such cases is not an absolute bar against a finding of duty. There is, of course, the threshold issue of factual foreseeability but since this is likely to be fulfilled in most cases, we do not see the need to include this as part of the *legal* test for a duty of care. [emphasis in original]

156 From the above extract, it can be seen that the starting point in the determination of whether a duty of care exists is to consider the threshold issue of factual foreseeability. In the present instance, the question is whether it would have been foreseeable to CASE that negligence on its part in relation to the administration of CaseTrust would cause loss or damage to the plaintiffs. The plaintiffs submit that by virtue of the contractual relationship between them and CASE as set out in the CASE-PEO agreements, the Code of Practice and the Info-Kit, it was reasonably foreseeable that revoking the schools' CaseTrust membership would cause the plaintiffs to suffer economic loss and loss of reputation. CASE published the schools' suspension on its website and Mr Seah had admitted during the course of cross-examination that it was foreseeable that the media would check the website and pick up the fact of the suspension and publish the same.

157 In its closing submissions, CASE did not dispute that it was reasonably foreseeable that a revocation or suspension of the schools' membership in CaseTrust could result in loss to them. I therefore accept that the threshold test of reasonable foreseeability has been met in this instance.

158 Moving on, I must next consider whether the proximity test has been met and if so there are any policy considerations which would militate against the imposition of the duty of care contended for.

159 In *Sunny Metal*, the main contractor of a construction project did not meet its obligations under its design and build contract with the plaintiff. The plaintiff brought an action against the defendant, the architect employed by the main contractor, based on a deed of indemnity between the plaintiff and the defendant and also on the tort of negligence for pure economic loss. At first instance, the plaintiff succeeded. In the course of his judgment, Andrew Phang J observed (at [120])

that there was:

> no difficulty whatsoever in establishing legal proximity between the plaintiff and the defendant in the present proceedings simply because there was *a contractual relationship* between them in the first instance. Generally speaking, given the fact that a defendant will not be allowed to be better off in tort than it would have been in contract where concurrent liability exists, it is no surprise that – depending on the precise contractual terms – it is more likely than not that legal proximity will be established where there is a contractual relationship between the parties concerned.
>
> [emphasis in original]

On appeal by the defendant, the Court of Appeal in Sunny Metal & Engineering Pte Ltd v Ng Kim Eric [2007] 3 SLR(R) 782, reversed the decision on liability, primarily on the basis of the construction of the deed. It stated that since the deed did not impose the additional duties of care argued for by the plaintiff, it necessarily followed that the deed could not provide the proximity between the plaintiff and the defendant on a tortious basis. It also considered whether, apart from the deed, there was any evidence of legal proximity and held that there was not because the plaintiff had not relied on the defendant to fulfil his alleged additional duties to the plaintiff.

160 It would appear therefore that a contract between parties can create the proximity required for an action in negligence if it creates the duties of care relied on by one of the parties. If it does not, the contract in itself may not be sufficient to constitute proximity between them. In the present case, the duties allegedly created were:

> (a) that CASE had a duty to take reasonable care not to act in any manner which would adversely affect the contractual relationship between the plaintiffs and Income; and
>
> (b) that CASE had a duty to administer the CaseTrust membership scheme in such a manner so as not to act to cause loss or damage to the plaintiffs when exercising its powers under the contract.

161 There is nothing in the CASE-PEO agreements or the Info-Kit or the Code of Practice that expressly imposes such duties on CASE. Nor, in my opinion, can such duties be implied from the documents because the duties sought to be imposed are inimical to any attempt by CASE to properly carry out its duties as the administrator of CaseTrust for Education. If such duties existed, CASE would be duty bound to any PEO that was a member of CaseTrust for Education not to exercise any of its powers under the various documents in a manner that would cause loss or damage. Taken to its logical extreme, this would mean that CASE would not be able to, *inter alia*, suspend or expel its members since the exercise of such powers may conceivably result in some loss or damage or in the withdrawal of insurance facilities. CASE's role is to administer a scheme intended to benefit third parties (*ie* foreign students) and to take all necessary action to ensure that that scheme is properly implemented and adhered to by all CaseTrust members. To impose a duty on an administrator not to act in a manner detrimental to its members, no matter what the circumstances, would be contrary to its duty to the third parties and also to its responsibilities as administrator. The interests of the third parties and those of the members are not always aligned. Here CASE's duty is to act primarily in the interests of foreign students as the same are embodied in the Scheme and, if to do so means that CASE has to act against the interests of a member, then CASE would have to choose the interests of the students over those of the member.

162 Accordingly, I would hold that the contractual relationship between the plaintiffs and CASE

does not result in the proximity required for the imposition of the alleged duties in tort. In any case, even if there was proximity, I would have held that by reason of policy considerations (*ie* the considerations set out in [161] above) no such duties should be imposed on CASE. In *Pacific Associates v Baxter* [1990] 1 QB 993, Russell LJ observed (at p 1038):

> I would hold that, the parties having sought to regulate their relationships the one with the other by a contractual process, the law should be cautious indeed before grafting on to the contractual relationships what might be termed a parasitic duty, unnecessary for the protection of the interests of the parties. ...

I respectfully agree. The terms of the CASE-PEO agreements, the Code of Practice and the Info-Kit were drafted to achieve a certain purpose and I cannot graft onto those terms any duties that would undermine them or have the effect of changing the relationship and responsibilities of the schools with, and to, CASE. The documents already contain terms for the protection of the interests of the schools (for example cl 10 of the Code of Practice) and the courts should be slow to add to or modify such terms.

163 I conclude therefore that there is no basis on which the plaintiffs can pursue any claim in tort against CASE.

The plaintiffs' claim against Income

164 In their pleadings, the plaintiffs set out three bases of claim against Income. First, they averred that the following were implied terms of the SPS policies:

(a) that Income would act with the utmost good faith in its dealings with the plaintiffs under the SPS policies;

(b) that Income would act reasonably and not in an arbitrary and/or capricious manner in administering the SPS policies;

(c) that Income would comply strictly with the terms of the SPS policies;

(d) that Income would not conduct itself in any manner which would frustrate the obligations of Income under the SPS policies; and

(e) that Income would take into account matters that were relevant to Income's assessment of risk under the SPS policies and would not consider or act upon matters which were irrelevant to the said assessment of risk.

165 The plaintiffs then pleaded that the following actions of Income breached either one or all of the implied terms set out above:

(a) on 20 October 2006, unilaterally without any reference to the plaintiffs and without any notification whatsoever to the plaintiffs, Income suspended the plaintiffs' insurance facilities under the SPS policies with immediate effect;

(b) Income had, wrongfully and unilaterally, without notifying the plaintiffs of the same, denied all access by the plaintiffs to Income's SPS online application system. The plaintiffs discovered this on 9 November 2006. By reason of this, the plaintiffs were unable to obtain Certificates of Student Insurance for their prospective foreign students; and

(c) on 20 November 2006, the plaintiffs were told that Income had been informed by CASE that there was an ongoing investigation into the plaintiffs and that for this reason, Income's insurance facilities under the SPS policies would be suspended until further notice.

166 The plaintiffs' alternative claim was couched in tort. They averred that at all material times, Income owed them a duty of care to ensure that it acted reasonably in administering the insurance facilities so as not to cause loss or damage to the plaintiffs. They pleaded that Income had acted negligently or in breach of its duty of care in that:

(a) Income on 20 October 2006 suspended the insurance facility under the SPS policies with immediate effect; and/or

(b) on a date which the plaintiffs are unable to particularise until discovery and/or the administration of interrogatories, Income denied the plaintiffs access to the SPS online application system; and/or

(c) Income on 20 November 2006, again suspended the insurance facility under the SPS policies.

167 The third averment was that Income had wrongfully and recklessly procured the breach by CASE of the CASE-PEO agreement. The conduct relied on to support this averment was:

(a) Income's unlawful suspension of the plaintiffs' rights under the SPS policies on 20 October 2006 and their reckless communication of this decision to CASE; and

(b) Income's unlawful suspension of the plaintiffs' rights under the SPS policies on 17 November 2006 and their reckless communication of this decision to CASE.

In the alternative to the inducement of breach of contract, the plaintiffs relying on the same conduct as set out above pleaded that Income had unlawfully interfered with the contractual relationship between the plaintiffs and CASE.

168 In their closing submissions, the plaintiffs highlighted the main issues arising in their case against Income to be as follows:

(a) whether on a true and proper construction of the clauses in the SPS policies, Income had a contractual right to suspend the plaintiffs' insurance facilities;

(b) whether Income had breached the implied terms of the SPS policies;

(c) whether Income had wrongfully and recklessly induced and procured the breach by CASE of its contractual obligations to the plaintiffs; and

(d) whether Income had breached its duty of care owed to the plaintiffs to ensure that it would act reasonably in administering the SPS policies so as not to cause loss or damage to the plaintiffs.

169 What I said in respect of the first and second plaintiffs' respective positions in [75] above would also apply in relation to Income.

Did Income have a right under the SPS policies to suspend the plaintiffs' facilities?

170 The first issue is one of construction of the clauses in the SPS policies. The plaintiffs' position is that on a true and proper construction of cll 6.3 and 7 of the SPS policies, Income did not have the contractual right to suspend the availability of the insurance facilities either on 20 October 2006 or on 17 November 2006. These clauses are set out in full in [22] above.

171 The plaintiffs submit that cl 6.3 relates to a review of the Maximum Insurable Limit and the decrease or increase or withdrawal of that limit. It does not relate to the freezing of new insurance applications. Further, Income's argument that the decrease or withdrawal of the Maximum Insurable Limit would be the same as freezing the plaintiffs' insurance policies fails *in limine* as cl 6.3 specifically requires that written notice be given to the plaintiffs and this was not done.

172 In respect of cl 7, the plaintiffs say that on a plain and ordinary meaning of this clause, it only gives Income the right to decline cover on a case by case basis when and if, and only if, an application for insurance was made. They submit that Mr Teo had conceded during the course of cross-examination that this clause gives Income the right to accept or reject an insurance application but does not give it the right to freeze all new insurance applications. The evidence of Ms Chua from Income that Income online application system did not allow it to decline applications and therefore Income had to reset the schools' passwords in order to refuse applications, was not meritorious. Ms Chua had conceded that in resetting the passwords, Income was not rejecting applications on a case by case basis but was stopping applications from all prospective applicants. The plaintiffs submit that Income's right under cl 7 to reject any application for insurance was not invoked by the resetting of the passwords because this method meant that no application could be made at all for Income to consider whether it should accept or decline the same. Clause 7 does not permit an en bloc pre-emptive rejection of future applications.

173 The plaintiffs also point out that in his affidavit as well as during the course of cross-examination, Mr Teo had confirmed that prior to the notification of Income's suspension of the plaintiffs' SPS policies, he was aware that Income had the following legal options in regard to the facilities extended:

(a) to choose to reduce the Maximum Insurable Limits of the SPS policies;

(b) to require the plaintiffs to provide more security to maintain the current Maximum Insurable Limits of the SPS policies; or

(c) to cancel the plaintiffs' SPS policies altogether by giving them at least 30 days prior written notice.

Income had not chosen any of those options but had instead taken the unlawful "option" of suspending the plaintiffs' insurance facilities.

174 Income's response was that it had the power to suspend the policies under both cll 6.3 and 7 and that these clauses gave it wide ranging powers to:

(a) reject any new applications without giving reasons; and

(b) unilaterally increase, decrease or withdraw the Maximum Insurable Limit.

These rights were a recognition of Income's unqualified prerogative not to take on additional risks.

175 Relying on *Yamashita Tetsuo v See Hup Seng Ltd* [2009] 2 SLR(R) 265, Income submits that the contextual approach to statutory interpretation which is well established in local jurisprudence should be followed in this case. Having regard to the purpose of the clauses in question, which was to afford Income a right to limit its exposure to additional risks, cll 6.3 and 7 clearly give Income the right to do what it did, which was to prevent any further applications from being made by the plaintiffs.

176 Income emphasises that under cl 7 it had the "right to accept or reject [any application], without having to provide reasons therefor" and points out that the architecture of the online system was such that all applications were automatically approved. Thus, the only way for Income to reject an application was for it to deny the plaintiffs' access by changing the passwords to the system. This was apparent from Ms Chua's evidence. The substance of Income's right under cl 7 was the ability to reject applications. In theory, there were two ways for Income to exercise such a right: first, by rejecting each application one at a time and the other was to reject all applications by changing the login password. It was not possible for Income to reject applications individually because of the way the online application system was calibrated. The only way of rejecting applications was to change the login password. As such, in order to make cl 7 workable, it had to be construed to permit Income to deny the plaintiffs access to the online application system. In this regard, Income cites *The Interpretation of Contracts* by Kim Lewison QC (Sweet & Maxwell, 2004, 3rd Ed) at para 7.14 for the rule that where two constructions of an instrument are equally plausible, upon one of which the instrument is valid, and upon the other of which the instrument is invalid, the court should lean towards that construction which validates the instrument.

177 Considering cl 7 first, the question that arises is whether the right to reject applications that is given to Income by that clause has to be exercised on a case by case basis or whether it can, as contended by Income, be applied across the board to all new applications even before the same have been made. During the course of the trial, my reading of cl 7 was in line with that propounded by the plaintiffs. I have now been able to consider the clause further, however, and to have regard to the established canons of interpretations of contracts. The plain and ordinary meaning of the words "right to accept or reject ... any application" are that they refer to a very wide right especially since the same is further extended by the express provision that no reasons need be given for such action. Not having to explain its decisions implies that Income is at total liberty to reject an application for whatever reason it deems fit or for no reason at all or without even considering the application. If Income is able to reject an application without even considering it, it must also have the right to not receive the application at all since it can be said that refusing to receive an application is equivalent to rejecting it. The plaintiffs' submission that Income only has the right to decline cover on a case by case basis if, and only if, an application is made implies that cl 7 imposes an obligation to consider any application for insurance coverage before rejecting the same without giving reasons. In my view, it is absurd to impose an obligation to consider an application when you are entitled to refuse it at your absolute discretion. Therefore, a plain reading of cl 7 did permit Income's blanket and pre-emptive rejection of applications for insurance coverage by resetting the plaintiffs' passwords to the system.

178 That is not the end of the matter, however, because another canon of construction requires that one must read specific terms as prevailing over general terms. *MacGillivray on Insurance Law* (Nicholas Leigh-Jones Gen Ed) (Sweet & Maxwell, 11th Ed, 2008) ("*MacGillivray*") states at para 11-029:

> Clauses of specific application may contradict clauses of general application which, if they stood alone, would control the specific subject-matter, and the clause of specific application then controls.

179 Here, cl 7 is a provision which gives Income the right to refuse applications for cover without having to provide any reason. It can be used to refuse one, a few, or many applications and therefore is of general application. Clause 6.3, on the other hand, is a provision relating to one specific situation – the situation where Income wishes to "withdraw the available balance of Maximum Insurable Limit for new applications for insurance cover". The clause provides that in that situation, Income has to give the policyholder written notice. The rejection of one or two insurance applications would not fall within cl 6.3 but if Income decides that it is going to exercise its rights under cl 7 to reject all future applications by resetting the passwords so that applications cannot even be received, then in effect it would be withdrawing the available balance of the Maximum Insurable Limit. This is because, in my view, a pre-emptive rejection of all applications for insurance coverage is tantamount to withdrawing the available balance of the Maximum Insurable Limit for new applications for insurance coverage pursuant to cl 6.3. The effects and implications of the two actions cannot be distinguished. In this situation, therefore, the provisions of both cll 6.3 and 7 would apply and, because the specific provision overrides the general one, Income would have to comply with the requirement of cl 6.3 and give the requisite written notice.

180 In the present case, although Income used the word "suspend", its resetting of the plaintiffs' passwords in October 2006 meant that the plaintiffs were not able to apply for any insurance policy at all and therefore effectively meant that Income had withdrawn the available balance of the Maximum Insurable Limits of each of the SPS policies under cl 6.3. For such action to be permissible under the clause, Income had to comply with the written notice requirement it mandates. No notice was given to the schools on that date.

181 Income accepts that the "suspension" which took place on 20 October 2006 was essentially a withdrawal of the Maximum Insurable Limit under cl 6.3. It recognises that the court will look at the substance of the action and not the label that is attached to it. Income, however, submits that although it did not give notice of the suspension on 20 October 2006, it did so at the earliest appropriate time on 20 November 2006. The reason for the delay in giving notice was that Income did not wish to jeopardise the investigations that were being undertaken by CASE. Further, Income contends that cl 6.3 does not state that immediate notice must be given.

182 In my judgment, Income was in breach of cl 6.3 on 20 October 2006 when it reset the schools passwords for logging onto the online application system. The breach arose because Income did not notify the first plaintiff of its action. I do not accept that Income was entitled to delay notification. Clause 6.3 states that the decrease of the Maximum Insurable Limit can be done "with immediate effect by giving written notice to the PEO". This clearly means that the withdrawal only takes effect when the notice is given. It is not a question of the clause requiring the notice to be immediate so much as the clause providing that the power of withdrawal can only be exercised by the giving of notice. If Income does not give notice of what it is doing, then its action does not fall under cl 6.3 and is not permitted by the same.

183 Returning to the issue at hand which is whether Income had the contractual right to suspend the schools' insurance facilities, the answer to this question is that Income did have that right provided it exercised it in accordance with the provisions of the SPS policies. As far as the suspension on 20 October 2006 was concerned, since no notice was given, Income acted in breach of contract. However, when Income gave the schools notice on 20 November 2006 that it had suspended their insurance facilities, that notice complied with cl 6.3 and, accordingly, it effected an immediate withdrawal of the available balance of the Maximum Insurable Limit of each SPS policy which was in line with the provisions of the policy. As from 20 November 2006, therefore, the actions Income had taken to prevent the plaintiffs from having access to the online application system were contractually permitted. Income was thereafter no longer in breach of contract.

184 I will deal with the question of the consequences of Income's breach of contract between 20 October 2006 and 20 November 2006 later in this judgment.

Good faith and implied terms

185 This part of the plaintiffs' claim is based on the legal position that the insurance contract is a contract which is based upon the principle of utmost good faith or *uberrimae fidei*. They say that the SPS policies imposed duties of good faith on Income and that Income acted in breach of those duties when it suspended the insurance facilities extended to the schools.

186 It is established insurance law that the duty of good faith which is expressly stated in s 17 of the Marine Insurance Act (Cap 387, 1994 Rev Ed) (which is the Singapore enactment of the English Marine Insurance Act 1906) is applicable to all contracts of insurance and reinsurance and applies both before a contract is concluded and during the performance of the contract. (See *MacGillivray* at paras 17-001 and 17-002, *The Law of Insurance Contracts* by Malcolm A Clarke (Informa, 5th Ed, 2006) at 27-1A and *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd; The Star Sea* [2003] 1 AC 469 ("*The Star Sea*")). In *The Star Sea*, Lord Hobhouse stated (at [47]) that "utmost good faith is a principle of fair dealing which does not come to an end when the contract has been made". It is also accepted that this duty binds both insured and insurer.

187 Generally speaking, in the cases, the duty of good faith in insurance contracts has been explored in connection with the well established duty of the assured to disclose material facts when obtaining the insurance and to refrain from making untrue statements during negotiations. As far as the insurer is concerned, there has been little practical implementation of the duty of good faith in the performance of the contract and the main situation that the cases deal with is the duty of good faith of the insurer when conducting litigation in the name of the insured. The following extract from *MacGillivray* summarises the position (at 17-002):

> During the post-formation period [good faith] continues to affect the insurance, but the content and effect of the duty is flexible and varies depending upon the circumstances. ... [B]oth parties are required to act in good faith towards each other in the performance of the contract, although there are few instances in which the courts have held that the duty applies. One is when a term of the insurance requires the assured to provide the insurer with information in particular circumstances. Another is when a liability insurer exercises his right to conduct his assured's defence to a claim made by a third party. It is said that the party in question must in such cases act in good faith and with regard to the interests of the other party, although with respect it is difficult to see how the duty of good faith relates to the performance of duties and exercise of rights which have their source in the terms of the contract itself, and for which the contract provides remedies in the event of breach. The irrelevance of the statutory duty is emphasised by the very limited circumstances in which the draconian and often disproportionately severe right of avoidance can be exercised. It is available only in cases when the breach of duty occasions such serious prejudice to the innocent party that it permits him to terminate the insurance contract prospectively under the law of contract. Such cases will be extremely rare.

188 As stated by *MacGillivray*, when one party to an insurance contract breaches the duty of good faith, the remedy available to the innocent party is to rescind or avoid the contract. This proposition is also supported by the cases of *Banque Keyser Ullmann S.A. v Skandia (U.K.) Insurance Co. Ltd. And Others* [1989] 3 WLR 25 ("*Banque Keyser*"), *Aldrich and Ors v Norwich Union* [2000] Lloyd's Rep I.R. 1 and *Banque Financiere de la Cite S.A. v Westgate Insurance Co Ltd* [1991] 2 AC 249.

189 The plaintiffs suggest that there is a difference between a breach of the duty of utmost good

faith under s 17 of the Marine Insurance Act and a breach of the contractual obligation of good faith. They recognise that in *The Star Sea*, both counsel accepted that there would be no remedy in damages for any want of good faith. However, they quote the judgment of Lord Hobhouse in that case and contend that there can be a contractual duty of good faith for which the remedy in case of breach would be damages. Lord Hobhouse said at [49] to [50]:

> 49 Thirdly, both counsel accept and assert that the conclusion of the Court of Appeal in the *Banque Keyser* case [1990] 1 QB 665 is good law and that there is no remedy in damages for any want of good faith. Counsel also drew this conclusion from the second half of section 17 – "may be avoided by the other party". The sole remedy, they submitted was avoidance. It follows from this that the principle relied upon by the defendants is not an implied term but is a principle of law which is sufficient to support a right to avoid the contract of insurance retrospectively.
>
> 50 Having a contractual obligation of good faith in the performance of the contract presents no conceptual difficulty in itself. Such an obligation can arise from an implied or inferred contractual term. It is commonly the subject of an express term in certain types of contract such as partnership contracts. Once parties are in a contractual relationship, the source of their obligations the one to the other is the contract (although the contract is not necessarily exclusive and the relationship which comes into existence may of itself give rise to other liabilities, for example liabilities in tort). The primary remedy for breach of contract is damages. But the consequences of breach of contract are not confined to this. ...

190 It is apparent, however, from the above extract, that Lord Hobhouse recognised that if the duty of good faith was the duty that was implied into the contract because it was an insurance contract and such a duty is attached to insurance contracts, then the only remedy for breach would be avoidance of the contract. When he was dealing with the remedy of damages, he was dealing with it in the context of a good faith obligation which was part of the contract by reason of an express or an implied term. In this case, there is no express obligation of good faith in the SPS policies. Can there be an implied obligation to that effect? The plaintiffs did not put forward any basis on which I should imply a contractual obligation of good faith into the SPS policies which was separate from the good faith obligation implied by insurance law. Quite apart from that, there is a serious obstacle in the plaintiffs' way and that is the Court of Appeal decision of *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*").

191 In *Ng Giap Hon*, the eponymous plaintiff, Mr Ng, who was a remisier with the defendant ("Westcomb"), argued that there was an implied duty of good faith between him and Westcomb as between agent and principal, and it was an implied term of the agency agreement that Westcomb would not do anything to prevent Mr Ng from earning his commission ("the First Implied Term"). Alternatively, Mr Ng sought to argue that good faith was a term implied in fact ("the Second Implied Term"). The Court of Appeal held that it would not endorse an implied duty of faith in the Singapore context. Headnotes (4) and (5) of the report contain the basis of this holding. They state:

> (4) The First Implied Term was based on the broader category of "terms implied in law". However, such a term could *not* be implied. In the first instance, caution would be required as such terms would be based on broader policy considerations and would also entail implying the same term in the future for all contracts of the same type.
>
> (5) Further, the content of such a term involved the doctrine of good faith, which was a fledgling doctrine in English and Singapore contract law and required much clarification, even on a theoretical level. There were differing views as to what the doctrine meant and how it was to be applied. Moreover, the case law appeared to be in a state of flux. For instance, two leading

authors were of the view that good faith was inherent in *all* aspects of the law of contract and that there was therefore no reason for any term concerning good faith to be implied into a contract. Such a term had to be justified by reference to the particular circumstances of each case and not by a general principle. Therefore, until the theoretical foundations and structure of the doctrine were settled, the court would not endorse an implied duty of good faith in the Singapore context. Accordingly, the First Implied Term should not be implied into the Agency Agreement.

192 The decision in *Ng Giap Hon* was endorsed in the subsequent Court of Appeal case of *Chua Choon Cheng v Allgreen Properties Ltd* [2009] 3 SLR(R) 724. At [83] of that judgment, the court observed that the common law does not recognise a principle of good faith, in the sense of fair dealing, to be of general application. *Ng Giap Hon* also dealt with a "Second Implied Term" which was based on the category of "terms implied in fact" and observed that a term could only be implied in fact if it was necessary to satisfy the "business efficacy" test or the "officious bystander" test. The plaintiffs have not shown me how either of those tests are met in the circumstances of the SPS policies.

193 Thus, in relation to the SPS policies, the duty of good faith is that which arises in connection with all insurance contracts and not a duty of good faith that is particular to these contracts. The plaintiffs' position is that the duty of good faith required Income to consider applications when they were made under the SPS policies, notwithstanding Income's right under cl 7 of the same to reject applications. By its act of suspending the insurance facilities, Income had deprived the plaintiffs of their right to even submit applications for Income's consideration. The plaintiffs also cited an American case, *Spindle v Travelers Ins Co* 136 Cal Rptr 404 ("*Spindle*") which held that the right of the insurer to terminate the insurance in accordance with its terms is not absolute and may be limited by the doctrine of good faith. They said that the doctrine was used to prevent cancellation by the insurer if the effect was to deprive the insured of his bargain.

194 The usefulness of *Spindle* as an authority which assists the plaintiffs is, however, limited by the fact that the court there relied on authorities for the proposition that in American contract law, there is an implied covenant of good faith and fair dealing in every contract which requires that neither party would do anything which would injure the right of the other to receive the benefits of the agreement and that this principle applied to insurance policies (at p 6). As I have stated, there is no such implied covenant in either SPS policy.

195 The cases show that the content of the insurers' duty of good faith is likely to be very limited. Dealing with the duty of good faith in insurance contracts governed by English law, in *KS Merc-Scandia XXXXII v Lloyd's Underwriters* [2001] 2 Lloyd's Rep 563, the English Court of Appeal held that the assured's post-contractual duties were governed primarily by the policy. It should be noted that the main question in the case was whether the insurers were entitled to avoid the policy because of an alleged breach of the duty of good faith on the part of the assured which breach took place after the contract had been concluded. Longmore LJ who delivered the main judgment dealt with the development of the law of post-contract good faith and set out the situations in which such a duty arose. He identified these as follows (at [22] to [23]):

(a) a duty of good faith arises when the assured (or the insurer) seeks to vary the contractual risk;

(b) a duty of good faith exists when the insured seeks to renew the contract of insurance;

(c) the requirement that an insurer hold the insured covered in certain circumstances requires

the exercise of good faith by the insured;

(d) if the insurer has a right to information by virtue of an express or implied term, there may be a duty of good faith in the giving of such information; and

(e) other situations may arise under the liability policies, particularly, if the insurers decide to take over the insured's defence to a claim.

In only two of the categories identified is the insurer mentioned as a party that owes the good faith obligation. The facts of this case do not fall into any of the categories in which Longmore LJ found that the post-contractual duty of good faith might exist.

196 In a case dealing with the insurer's right of cancellation, *C T Bowring Reinsurance Ltd v M.R. Baxter (The "M. Vatan" and "M. Ceyhan")* [1987] 2 Lloyd's Rep 416, the court had to construe a clause in a reinsurance policy which gave the reinsurer the right to cancel the cover. The clause provided:

14.1 Cover hereunder in respect of the risks of war ... may be cancelled by either the Underwriters or the Assured giving 7 days notice ...

Hirst J (at p 422) construed the clause as giving to each party an unqualified right to cancel. He said:

So far as clause 14.1 is concerned, while it is undoubtedly correct that cancellation by notice will often occur in the context envisaged by Mr. Steel, viz: where new circumstances lead to a cancellation followed by prompt reinstatement on re-negotiated terms, I am quite unable to construe this sub-clause as being limited to such circumstances. It seems to me to give each party a completely general and unqualified right to cancel on the appropriate notice.

197 Turning back to the SPS policies, if the wording of cl 6.3 thereof is examined it says expressly that Income is to have the right "at any time" and at its "absolute discretion" to withdraw the available balance of Maximum Insurable Limit for new applications for insurance cover "by giving written notice". It appears to me that this gives Income the unqualified right in any circumstance whatsoever to refuse to entertain new applications and thereby withdraw the Maximum Insurable Limit as long as it gives written notice to the PEO as required by the clause. This is an unfettered right. In the face of such an explicitly and clearly worded power, it is not possible for me to impose any restriction on such power by implying that it is subject to a duty of good faith on the part of the insurer, Income. As discussed in the foregoing paragraphs, the authorities so far have given limited effect to the insurers' continuing duty of good faith after conclusion of the contract and there is no precedent for the type of obligation that the plaintiffs seek to persuade me to impose.

198 Further, it is clear that the imposition of such a duty of good faith would not avail the plaintiffs because even if I held that it applied and that it had been breached, the plaintiffs' only remedy would be to rescind the SPS policies. That is not the remedy that plaintiffs seek by this action. They are claiming substantial damages. The authorities cited above (at [188] – [189]), however, establish that such damages are not recoverable for breach of the duty of good faith contained in insurance contracts.

199 In my judgment, the plaintiffs cannot establish any duty of good faith on the part of Income that had to be adhered to by Income in deciding whether or not to exercise its rights under either cl 6.3 or cl 7 of the SPS policies. The nomenclature used in relation to the contracts between the first plaintiff and Income (which contracts I have called here "SPS policies") should not confuse the

issue. These contracts were not actual insurance cover or insurance policies in substance. That cover took the form of individual insurance policies issued to the students and once issued such policies could not be cancelled. The SPS policies were essentially insurance facilities made available to the plaintiffs in accordance with their terms and these terms included the right to reduce or withdraw the Maximum Insurable Limit and to reject applications for the student insurance policies either on a case by case basis or collectively. The SPS policies did not contain any obligation on Income to exercise its right to decline further coverage of students in the interests of the schools. Contractually, this right existed for the benefit of Income and not for the benefit of the schools and was not modified by any good faith requirement imposed by law.

Inducement of breach of contract

200 The next basis on which the plaintiffs put their claim is the assertion that Income wrongfully and recklessly induced and procured the breach by CASE of its contractual obligations to the plaintiffs. As I have found above that there was no breach of CASE's contractual obligations to the plaintiffs, this allegation must also fall. In any event, I am not persuaded that the plaintiffs would have been able to make out a case on this basis because for them to succeed, they would have to show that there was an inducement by Income on CASE to breach its contract with the plaintiffs. The evidence does not establish such an inducement. What Income did was to communicate information to CASE regarding its decision to suspend its facilities to the schools and mere communication of information is not an inducement giving rise to liability for procurement of breach of contract. For inducement to exist, there must be some element of pressure, persuasion or procurement (see *Clerk & Lindsell on Torts* (Sweet & Maxwell, 20th Ed, 2010 para 24-40). I find that the evidence in the case does not show any element of pressure, persuasion or procurement on the part of Income directed towards CASE's contractual relations with the first plaintiff.

Negligence and duty of care

201 The plaintiffs, in their closing submissions, said that they were relying on negligence as a subsidiary cause of action. If the court ruled in their favour in respect of their principal arguments then there would be no need to delve into the analysis of this cause of action. The plaintiffs did not make any further submissions on how this cause of action arose. I am therefore at somewhat of a loss as to how to deal with this subsidiary cause of action. In relation to the plaintiffs' case against CASE, I set out the test that is applicable to determine whether one party owes another a duty of care. I also observed at [160] that a contract between parties can create the proximity required for an action in negligence if it creates the duties of care relied on by one of the parties. If it does not, the contract in itself may not be sufficient to constitute proximity between them.

202 In this instance, the duty that the plaintiffs say Income owed them was a duty to act reasonably in administering the SPS policies so as not to cause loss or damage to the plaintiffs. There is nothing in the policies themselves that expressly or impliedly create such a duty. In fact, such a duty would conflict with the express rights given to Income to unilaterally withdraw the Maximum Insurable Limits. Further, there is no recognised doctrine in contract law that parties have to exercise their contractual rights reasonably. It was for that reason that the plaintiffs gave me lengthy submissions on why the duty of good faith in insurance contracts imposed an obligation on Income to act fairly in deciding whether or not to suspend the policies. As that argument has failed, I see no basis on which to impose on Income any tortious duty of the kind that the plaintiffs pleaded. There is also no case authority for the proposition that the insurer owes a duty of care to the insured to act reasonably in administering the policy or insurance facility. The case in negligence is therefore a non-starter, something that the plaintiffs obviously recognised when they chose not to make detailed submissions.

Damages for breach of contract

203 I have found that Income was in breach of contract when it suspended the insurance facilities on 20 October 2006 without giving notice to the schools. This breach ended on 20 November 2006 when the requisite notice was given. The question arises as to what damages the first plaintiff, who was legally the counter party to the SPS policies, is entitled to recover in respect of such breach. I am considering the position of the first plaintiff only because the first plaintiff was the owner of the schools at the material time *ie* during the period of breach.

204 The plaintiffs' arguments on damages were premised on the basis that Income's breach of contract caused CASE to suspend the schools' membership in CaseTrust and that this resulted in loss of fees when students withdrew from their courses and also in loss of reputation because of the publicity given to the suspension by CASE. Neither of these events was a consequence of the breach with which I am concerned. No one, not even the schools, was aware that the insurance facilities were suspended on 20 October 2006 and no students withdrew because of that. The CaseTrust membership was not suspended until 20 November 2006 and it followed Income's notification on 17 November 2006 that the SPS facilities would be suspended. The CaseTrust suspension therefore had nothing to do with Income's earlier breach and by the time it came into existence, that earlier breach had been cured.

205 Accordingly, there is no evidence of any substantial damages suffered by the first plaintiff by reason of the suspension on 20 October 2006. In the circumstances, I can only award the first plaintiff nominal damages of $100.

Conclusion

206 For the reasons given above, the plaintiffs' claim against CASE is dismissed with costs. In respect of their claim against Income, I give judgment to the first plaintiff for damages of $100. As the plaintiffs have been largely unsuccessful in their claim against Income, I will hear the parties on costs.