

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2025] SGHC 258

Originating Claim No 597 of 2023

Between

- (1) Lee Hsueh Ching @ Fiona Lee
Sargeant
- (2) Sargeant Larry John

... Claimants

And

Loh Kia Hui

... Defendant

And

Bank Julius Baer & Co Ltd

... Third Party

Counterclaim of Defendant

Between

Loh Kia Hui

... Claimant in Counterclaim

And

- (1) Lee Hsueh Ching @ Fiona Lee
Sargeant
- (2) Sargeant Larry John

... Defendants in Counterclaim

JUDGMENT

[Tort — Negligence — Duty of care]

[Tort — Vicarious liability]

[Agency — Rights of agent — Indemnity]

[Civil Procedure — Costs — Contractual indemnity clause]

[Civil Procedure — Costs — Third party costs]

TABLE OF CONTENTS

INTRODUCTION	1
THE PARTIES	2
THE PARTIES' PLEADED CASES.....	2
THE CLAIMANTS' CLAIM	2
THE DEFENDANT'S DEFENCE	6
THE DEFENDANT'S COUNTERCLAIM	8
THE CLAIMANTS' DEFENCE TO COUNTERCLAIM	9
THE DEFENDANT'S THIRD PARTY CLAIM.....	10
THE THIRD PARTY'S DEFENCE	11
ISSUES TO BE DETERMINED	11
ISSUE 1: WHETHER KIA HUI GAVE / MADE THE SALE ADVICE, SHORT-TERM TRADES ADVICE AND REPRESENTATION AT A MEETING ON 22 SEPTEMBER 2017	12
SUMMARY OF MY FINDINGS.....	12
CALL BETWEEN FIONA AND KIA HUI ON 28 JULY 2017	14
CALL BETWEEN FIONA, KIA HUI AND MERILLEE ON 18 SEPTEMBER 2017.....	19
SCHEDULING OF THE 22 SEP 2017 MEETING	22
FIONA'S ACCOUNT OF THE 22 SEP 2017 MEETING	25
MESSAGES BETWEEN FIONA AND KIA HUI ON THE NIGHT OF 22 SEPTEMBER 2017	30
CALLS BETWEEN FIONA AND THE BANK'S NIGHT TRADING DESK ON 23 SEPTEMBER 2017	32

MESSAGE FROM FIONA TO KIA HUI ON 25 SEPTEMBER 2017.....	34
LIMIT ORDER PLACED BY FIONA ON 16 OCTOBER 2017	35
CALL BETWEEN FIONA AND KIA HUI ON 1 NOVEMBER 2017	37
CONSOLIDATION OF LAC SHARES ON 8 NOVEMBER 2017	38
EVENTS OF 9 NOVEMBER 2017	38
FIONA’S SHORT-TERM TRADES OF LAC SHARES FROM 23 TO 26 FEBRUARY 2018.....	41
FIONA’S EXPERIENCE WITH HER SHORT-TERM SHARE TRADING STRATEGY	42
HANDOVER TO CARA IN 2019	43
COMMUNICATIONS BETWEEN FIONA AND KIA HUI ON 14 DECEMBER 2021 AND SHORTLY THEREAFTER.....	44
CONCLUSION.....	62
ISSUE 2: DETERMINATION OF THE CLAIMANTS’ CLAIM	63
THE LAW	63
DECISION	64
ISSUE 3: DETERMINATION OF THE DEFENDANT’S THIRD PARTY CLAIM	71
THIRD PARTY CLAIM IN VICARIOUS LIABILITY	71
THIRD PARTY CLAIM FOR INDEMNIFICATION OF LEGAL COSTS	71
ISSUE 4: DETERMINATION OF THE DEFENDANT’S COUNTERCLAIM	73
COUNTERCLAIM FOR COSTS OF SUCCESSFULLY DEFENDING AGAINST THE CLAIMANTS’ CLAIM	74
<i>Whether Kia Hui has a right to enforce the Contractual Indemnity.....</i>	<i>76</i>
<i>What award of costs should be made</i>	<i>79</i>
(1) What the Contractual Indemnity provided for	79

(2) The true nature of Kia Hui’s counterclaim	82
(3) Decision on costs award.....	83
COUNTERCLAIM FOR COSTS OF UNSUCCESSFUL THIRD PARTY CLAIM AGAINST THE BANK.....	85
CONCLUSION.....	89

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher’s duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

**Lee Hsueh Ching (alias Lee Sargeant Fiona) and another
v
Loh Kia Hui
(Bank Julius Baer & Co Ltd, third party)**

[2025] SGHC 258

General Division of the High Court — Originating Claim No 597 of 2023
Kristy Tan J
15, 18–19, 23–26 September, 12 November 2025

22 December 2025

Judgment reserved.

Kristy Tan J:

Introduction

1 HC/OC 597/2023 (“OC 597”) centres around the claimants’ claim in negligence against their former relationship manager (“RM”) at Bank Julius Baer & Co Ltd, Singapore Branch (“Bank”) in connection with shares which the claimants had held in Lithium Americas Corp (“LAC”) (previously known as Western Lithium USA Corporation¹ (“Western Lithium” or “WLC”)).

¹ Lee Hsueh Ching @ Fiona Lee Sargeant’s Affidavit of Evidence-in-Chief (“AEIC”) dated 25 June 2025 (“Fiona’s AEIC”) at para 46.

The parties

2 The first claimant, Lee Hsueh Ching @ Fiona Lee Sargeant (“Fiona”), and the second claimant, Sargeant Larry John (“Sarge”), are a married couple.² At all material times, they maintained a joint account (“Account”) with the Bank which they used to, *inter alia*, invest in stocks.³ The Account was a non-discretionary account and could only be operated on the claimants’ direct instructions.⁴

3 The defendant, Loh Kia Hui (“Kia Hui”), was the claimants’ RM at the Bank from the time she commenced her employment with the Bank on 9 September 2013 until she left the Bank.⁵ She resigned from the Bank on 28 December 2018, and her employment with the Bank ended on 27 March 2019.⁶

4 The defendant joined the Bank as a third party to the action.

The parties’ pleaded cases

The claimants’ claim

5 The claimants pleaded that Kia Hui owed them a tortious duty of care when rendering advice on their investment portfolio, which extended to the acquisition and liquidation of stocks and the best times and prices to trade a

² Statement of Claim (Amendment No 1) dated 4 June 2024 (“SOC”) at para 1.

³ SOC at para 1.

⁴ Loh Kia Hui’s AEIC dated 3 December 2024 (“Kia Hui’s AEIC”) at para 22.

⁵ Andrew Lee’s AEIC dated 28 November 2024 (“Andrew’s AEIC”) at para 5.

⁶ Andrew’s AEIC at para 5.

particular stock. This obligation “went beyond the contractual obligations owed by the Bank to the [c]laimants”.⁷

6 According to the claimants, on 22 September 2017, a meeting between Fiona and Kia Hui took place at the Bank’s office then located at 8 Marina View, Asia Square Tower 1, #43-01 (“Asia Square office”).⁸ At this meeting, Kia Hui advised Fiona to sell the 198,600 LAC shares (“LAC Shares”) that the claimants then held in the Account (“Sale Advice”).⁹ Fiona replied that she did not want to sell the LAC Shares which she had held on to for a long time.¹⁰ Kia Hui showed Fiona the historical price trend of LAC shares to demonstrate to and advise Fiona that the claimants could have earned more money by capitalising on the share price fluctuations and undertaking short-term trades of LAC shares (*ie*, buying LAC shares when the share price fell and selling them when the share price rose) as opposed to merely holding on to the LAC Shares (“Short-term Trades Advice”).¹¹ In order to persuade Fiona to sell the LAC Shares, Kia Hui further represented to and assured Fiona that if she sold the LAC Shares, Kia Hui would monitor the LAC share price and inform Fiona whenever it fell below C\$1 per share (“Representation”), which was Fiona’s target price to acquire more shares in LAC (“Target Price”).¹²

⁷ SOC at para 10.

⁸ SOC at para 11; Fiona’s AEIC at para 80.

⁹ SOC at para 13.

¹⁰ SOC at para 14.

¹¹ SOC at para 15.

¹² SOC at para 17.

7 By giving the Sale Advice, Short-term Trades Advice and Representation (collectively, “Advice and Representation”), Kia Hui had voluntarily assumed the following responsibilities to:¹³

- (a) monitor the LAC share price;
- (b) inform Fiona whenever the LAC share price fell to or below the Target Price; and
- (c) help the claimants make short-term trades of LAC shares with a view to ultimately earning a greater profit than they would otherwise have made by simply holding on to the LAC Shares.

8 In reliance on the Advice and Representation and Kia Hui’s voluntary assumption of the aforesaid responsibilities, Fiona sold the LAC Shares at or around C\$1.53 per share on 23 September 2017 (“Sale”).¹⁴

9 Kia Hui breached her duty of care owed to the claimants by failing to:¹⁵

- (a) monitor the LAC share price;
- (b) inform Fiona whenever the LAC share price fell to or below the Target Price; and
- (c) help the claimants make short-term trades of LAC shares after the Sale.

10 Unbeknownst to the claimants, LAC shares were consolidated at a 5:1 ratio with effect from 8 November 2017 (“Consolidation”). This meant that

¹³ SOC at para 18.

¹⁴ SOC at para 19.

¹⁵ SOC at para 21.

each LAC share would be worth five times more than it was prior to the Consolidation. Consequently, the Target Price should have been revised to C\$5 per share (“Revised Target Price”).¹⁶

11 Kia Hui’s failure to monitor and inform the claimants of the Consolidation and Revised Target Price was negligent.¹⁷ Between July 2018 and March 2019 (when Kia Hui left the Bank), there were many instances when the LAC share price fell below the Revised Target Price but Kia Hui failed to inform the claimants of the same.¹⁸ Consequently, the claimants were denied the opportunity to buy LAC shares at or below the Revised Target Price.¹⁹

12 After Kia Hui left the Bank in March 2019, one Cara Chua (“Cara”) was assigned as the claimants’ RM. It was incumbent on Kia Hui to communicate to Cara the Advice and Representation and/or at least instruct Cara to monitor the LAC share price and inform Fiona whenever it fell to or below the Revised Target Price.²⁰ However, Kia Hui breached her duty of care by failing to communicate this information to Cara.²¹

13 Had the claimants been informed each time the LAC share price fell to or below the Target Price or Revised Target Price (as the case may be), the claimants would have bought back LAC shares,²² and then sold them again

¹⁶ SOC at para 22.

¹⁷ SOC at para 23.

¹⁸ SOC at para 23(a).

¹⁹ SOC at para 23(c).

²⁰ SOC at para 24.

²¹ SOC at para 28.

²² SOC at para 30.

when the share price rose.²³ The claimants suffered loss and damage as a result of Kia Hui's breach of duty of care and negligence.²⁴ The claimants claimed damages to be assessed.²⁵

The defendant's defence

14 Kia Hui denied owing the claimants any duties beyond the contractual obligations owed by the Bank to the claimants. At all material times, her relationship with the claimants was solely in her capacity as an employee and RM of the Bank.²⁶

15 Kia Hui admitted that a meeting between her and Fiona had been arranged for 22 September 2017 but averred that the meeting did not in fact take place.²⁷

16 Kia Hui denied giving the Sale Advice,²⁸ giving the Short-term Trades Advice²⁹ and making the Representation.³⁰ In particular:

(a) Fiona sold the LAC Shares on her own and did not instruct Kia Hui to sell them. Kia Hui only knew about the Sale after the fact.³¹

²³ Fiona's AEIC at para 130.

²⁴ SOC at para 31.

²⁵ SOC, prayer 2.

²⁶ Defence and Counterclaim (Amendment No 1) dated 10 June 2024 ("D&CC"), Defence at para (10).

²⁷ D&CC, Defence at paras (11) and (12)(i).

²⁸ D&CC, Defence at para (13).

²⁹ D&CC, Defence at para (15).

³⁰ D&CC, Defence at para (17).

³¹ D&CC, Defence at para (13)(iii).

(b) LAC shares were not on the Bank's recommended stock list at the material time, and therefore, advice on the LAC Shares would not have been any part of the service provided by Kia Hui.³²

(c) The strategy of short-term trades of LAC shares was a strategy that Fiona had adopted on her own, even prior to 22 September 2017.³³

(d) Kia Hui did not have the ability, capacity and/or resources to monitor the price of LAC shares, which were traded in a different timezone in Canada.³⁴ The commission she would have earned per trade was low and did not provide any incentive for her to persuade Fiona to sell the LAC Shares and/or to monitor the LAC share price.³⁵

(e) Kia Hui was not informed by Fiona of any target LAC share price for the claimants to buy back LAC shares or that the target LAC share price was C\$1 per share.³⁶

17 Kia Hui denied owing or breaching the duty of care as alleged by the claimants.³⁷ She also put the claimants to strict proof of the actions they claimed they would have taken had they been informed each time the LAC share price fell to or below the Target Price or Revised Target Price, and of the loss and damage they allegedly suffered.³⁸

³² D&CC, Defence at paras (15)(iv) and (17)(iii).

³³ D&CC, Defence at para (15)(v).

³⁴ D&CC, Defence at paras (17)(iv) and (v).

³⁵ D&CC, Defence at para (17)(vi).

³⁶ D&CC, Defence at para (17)(vii).

³⁷ D&CC, Defence at paras (20), (21) and (23).

³⁸ D&CC, Defence at paras (30) and (31).

The defendant's counterclaim

18 Kia Hui also brought a counterclaim against the claimants. In the course of the trial and in her closing submissions, she clarified that her counterclaim was for her costs of defending OC 597 and of her third party claim in OC 597 to be awarded to her “on a full indemnity basis”,³⁹ pursuant to the following provisions in section 1 of the Bank’s General Terms and Conditions (“GTCs”):⁴⁰

(a) Clause 16.1 (“cl 16.1”):⁴¹

16.1 The Client shall fully indemnify and keep indemnified promptly on demand (whether such demand is made orally or otherwise) on a full indemnity basis the Bank, its Affiliates, Agents and every director, officer, employee or agent of any of the foregoing against any and all Loss which may be brought against any of them or which any of them may suffer or incur in connection with the Account(s), Service(s), Facility(ies), Transaction(s) or any Instruction in relation thereto save where the same arises directly from their respective gross negligence or wilful default...

...

... The provisions of this Clause 16.1 and all of the rights of the Bank hereunder shall apply to, and be conferred on, each of the Bank’s Agents, other Affiliates and every director, officer, employee or agent of any of the foregoing, all of whom shall be entitled to enforce and enjoy the benefit of this Clause to the fullest extent allowed by law.

³⁹ D&CC, Counterclaim, prayer 5; Certified transcript of trial on 23 September 2025 (“Transcript 23 Sep 2025”) at pp 119:23–120:9; Defendant’s Closing Submissions dated 29 October 2025 (“DCS”) at para 179.

⁴⁰ D&CC, Counterclaim at paras 2–4.

⁴¹ Agreed Bundle of Documents Vol 9 (“9AB”) at pp 678–679.

(b) Clause 1.2.86 (“cl 1.2.86”):⁴²

“**Loss**” means losses, damages, loss of opportunity, liabilities, claims, actions, suits, proceedings, judgments, demands, Costs, any loss in relation to any Asset, Account, Service, Facility and/or Transaction, and/or any other loss of whatsoever nature and howsoever arising[.]

(c) Clause 1.2.41 (“cl 1.2.41”):⁴³

“**Costs**” means costs, expenses (including fees and expenses of legal and other professional advisers on a full indemnity basis, exchange expenses and all other out-of-pocket expenses), disbursements, fees, interests, commissions, charges (including late charges and bankers’ charges), Taxes, fines, penalties, duties, foreign exchange loss, cost of funding (including break funding cost), any costs incurred in relation to any Asset, Account, Service, Facility and/or Transaction, and/or any other costs of whatsoever nature and howsoever arising that the Bank in its absolute discretion deems necessary and/or appropriate to incur[.]

19 Kia Hui claimed that as an employee and/or agent of the Bank, she was entitled to enjoy the full benefit of cl 16.1.⁴⁴ By reason of the claimants’ action in OC 597, Kia Hui had suffered “Loss” under cl 1.2.86 in the form of legal costs.⁴⁵

The claimants’ defence to counterclaim

20 In their defence to Kia Hui’s counterclaim, the claimants averred that the obligations owed by Kia Hui to them went beyond the contractual

⁴² 9AB at pp 646–647.

⁴³ 9AB at p 643.

⁴⁴ D&CC, Counterclaim at para 5.

⁴⁵ Transcript 23 Sep 2025 at pp 119:23–120:9, read with D&CC, Counterclaim at para 6.

obligations owed by the Bank to them, and Kia Hui was thus not entitled to rely on the GTCs.⁴⁶

21 Further and/or alternatively, on a proper interpretation of cl 16.1 read together with the entire GTCs, the claimants’ obligation to indemnify as set out in cl 16.1 did not arise in a situation where it was the claimants who were the parties claiming against Kia Hui.⁴⁷

22 Yet further and/or alternatively, the claimants’ obligation to indemnify Kia Hui under cl 16.1 did not arise as the alleged “Loss” (as defined in cl 1.2.86) arose directly from the gross negligence or wilful default of Kia Hui.⁴⁸

The defendant’s third party claim

23 Kia Hui also sought, in the event she was found liable to the claimants, an indemnity and/or 100% contribution from the Bank.⁴⁹ Kia Hui claimed that the Bank, as her employer, was vicariously liable for her alleged breach of duty of care.⁵⁰

24 Kia Hui also claimed, as an agent of the Bank, contribution and/or an indemnity from the Bank, as her principal, for all legal costs, disbursements and expenses incurred by her in defending OC 597 and in making the third party claim against the Bank.⁵¹ She maintained this claim against the Bank even if the

⁴⁶ Defence to Counterclaim dated 18 June 2024 (“DtoCC”) at para (6).

⁴⁷ DtoCC at para (6).

⁴⁸ DtoCC at para (6).

⁴⁹ Statement of Claim against the Third Party (Amendment No 1) dated 16 April 2024 (“TPSOC”) at para 3.

⁵⁰ TPSOC at paras 8 and 9.

⁵¹ TPSOC at para 9.

claimants were unsuccessful in their claim against her, on the ground that the claimants' claim against her arose out of her employment with the Bank and caused her to incur liabilities in relation to acts done while she was acting within the scope of her employment as the Bank's RM.⁵²

The third party's defence

25 The Bank denied liability for any alleged breach of duty of care by Kia Hui as the Bank did not provide any authorisation to Kia Hui to provide the Sale Advice, Short-term Trades Advice or Representation (if any) to Fiona.⁵³

26 The Bank also denied Kia Hui's claim for contribution and/or indemnity as an agent of the Bank.⁵⁴ The Bank averred that Kia Hui was not an agent of the Bank, and further and/or in any event, was not authorised to make the Sale Advice, Short-term Trades Advice or Representation on the Bank's behalf.⁵⁵

Issues to be determined

27 I will first address the key factual issue of whether Kia Hui gave / made the Sale Advice, Short-term Trades Advice and Representation at a meeting on 22 September 2017. After making my factual findings on this issue, I will proceed to determine, in turn, the claimants' claim, the defendant's third party claim, and the defendant's counterclaim.

⁵² Kia Hui's AEIC at para 108.

⁵³ Third Party Defence dated 22 April 2024 ("TP Defence") at paras 25, 34, 35(a) and 42.

⁵⁴ TP Defence at para 37.

⁵⁵ TP Defence at paras 40 and 42.

Issue 1: whether Kia Hui gave / made the Sale Advice, Short-term Trades Advice and Representation at a meeting on 22 September 2017

Summary of my findings

28 Fiona’s pleaded case and evidence were specific: the Sale Advice, Short-term Trades Advice and Representation were allegedly given / made by Kia Hui at a meeting between them at the Bank’s former Asia Square office on 22 September 2017 (“22 Sep 2017 Meeting”).⁵⁶ Fiona did not plead that the Sale Advice, Short-term Trades Advice and/or Representation were given / made by Kia Hui on any other occasion. Kia Hui’s position was that the 22 Sep 2017 Meeting never took place.⁵⁷

29 To recapitulate [6] above:

(a) “Sale Advice” was defined by the claimants as advice from Kia Hui to Fiona to sell the LAC Shares.⁵⁸

(b) “Short-term Trades Advice” was defined by the claimants as advice from Kia Hui to Fiona that the claimants could have earned more money by capitalising on LAC share price fluctuations and undertaking short-term trades of the LAC Shares (*ie*, buying LAC shares when the share price fell and selling them when the share price rose) as opposed to merely holding on to the LAC Shares.⁵⁹

(c) “Representation” was defined by the claimants as a representation by Kia Hui to Fiona that if Fiona sold the LAC Shares,

⁵⁶ SOC at paras 11, 13, 15 and 17; Fiona’s AEIC at paras 80, 83, 84 and 86.

⁵⁷ Kia Hui’s AEIC at para 51.

⁵⁸ SOC at para 13; Fiona’s AEIC at para 83.

⁵⁹ SOC at para 15; Fiona’s AEIC at para 84.

Kia Hui would monitor the LAC share price and inform Fiona whenever it fell below C\$1 per share (*ie*, the Target Price).⁶⁰

30 Having considered the evidence, I find that:

(a) It is more likely than not that the 22 Sep 2017 Meeting (between Fiona and Kia Hui) took place.

(b) It is more likely than not that, at the 22 Sep 2017 Meeting, Kia Hui encouraged Fiona to sell the LAC Shares. At the same time, on Fiona’s part, she had hitherto already contemplated and was inclined to sell the LAC Shares.

(c) Kia Hui did *not* give the Short-term Trades Advice, whether at the 22 Sep 2017 Meeting or otherwise. To the contrary, it was Fiona’s idea to engage in short-term trading of LAC shares based on share price fluctuations.

(d) It is more likely than not that, at the 22 Sep 2017 Meeting, knowing that Fiona was minded to buy back LAC shares if the share price fell, Kia Hui said that she would help Fiona monitor if the LAC share price fell after Fiona sold the LAC Shares (“Monitoring Statement”). However, the Monitoring Statement is not equivalent to the Representation. In fact, I find that the evidence does *not* establish that the Target Price (which forms the pith of the Representation) was ever stipulated at the material time by Fiona or Kia Hui. In short, Kia Hui did *not* make the Representation, whether at the 22 Sep 2017 Meeting or otherwise.

⁶⁰ SOC at para 17; Fiona’s AEIC at para 86.

31 The two main buckets of relevant evidence I considered in reaching the above findings relate to:

- (a) contemporaneous communications and conduct of Fiona and Kia Hui in 2017 and 2018; and
- (b) calls and messages between Fiona and Kia Hui in December 2021 in respect of events, which took place a few years prior, pertaining to the LAC Shares.

32 The findings that (a) the 22 Sep 2017 Meeting took place, (b) Kia Hui encouraged Fiona to sell the LAC Shares and (c) Kia Hui made the Monitoring Statement at the 22 Sep 2017 Meeting, are supported by some of the evidence in the first bucket (with other evidence in the first bucket being neutral as regards these matters) and the second bucket of evidence.

33 The findings that (a) Kia Hui did not give the Short-term Trades Advice and (b) Kia Hui did not make the Representation, are supported by both buckets of evidence.

34 I will elaborate as I go through the evidence.

Call between Fiona and Kia Hui on 28 July 2017

35 On 28 July 2017, a Bank-recorded call took place between Fiona and Kia Hui (“28 Jul 2017 Call”). The conversation began as follows (with “KH” denoting Kia Hui as the speaker):⁶¹

Fiona: Hello?

KH: Hi, ya.

⁶¹ Agreed Bundle of Documents Vol 2 (“2AB”) at p 619.

Fiona: Ya, come.

KH: Okay, so, uh, what you mean is, okay, I understand what you mean...

36 Thereafter, Fiona and Kia Hui spoke for some time on Singapore and Hong Kong shares and certain bonds (with no mention of the LAC Shares) before veering off into a long conversation about *feng shui*.⁶² Towards the end of the call, Kia Hui brought the conversation back to Fiona's investment portfolio, and the following exchange regarding the LAC Shares took place:⁶³

KH: Right now I'm asking you about your portfolio, listen to me, what do you want to do with your CAD [*ie*, Canadian dollars]?

Fiona: For CAD, I want to look, eh your West Lit [*ie*, Western Lithium, as LAC was previously known] one, help me take a look, *if it increase to 1.5, sell it, then if it drops, then buy back every time I see it increase to 1.5 and it will start falling, I didn't earn, and I didn't sell*. When it's at 1 dollar or over 1 dollar, help me look at the chart, it's always this way, I'm worried that if I sell it then it will keep increasing, then I miss it again and I held it for so long.

KH: Correct, hold for so long, right now it's around 80 cents. It's over 1 point something.

Fiona: *Every time it goes above 1, it will drop back down*, so every time I have this, it has been going on for a long time *so if I put into other stocks I'm not sure how much money I would have made*. So still have to monitor.

KH: Don't look at it, *I've been saying don't do this, can't you just put it into the ETF?*

Fiona: ETF uh?

KH: Ya.

Fiona: Uh. Aiya let's talk tomorrow la, you help me, you help me, you help me take a look and what else. ...

[emphasis added]

⁶² 2AB at pp 619–668.

⁶³ 2AB at p 668.

37 Fiona claimed that prior to the 28 Jul 2017 Call, she and Kia Hui had spoken on an unrecorded call, in which Kia Hui had requested Fiona to sell the LAC Shares and suggested that she buy back LAC shares when the share price dropped and sell them when the share price rose, to make a profit.⁶⁴ Fiona also claimed that when they switched to speaking on the (Bank-recorded) 28 Jul 2017 Call, Kia Hui asked Fiona what Fiona intended to do with her Canadian dollars as a “cue” for Fiona to raise the subject of the LAC Shares;⁶⁵ Fiona’s response which referred to “eh *your* West Lit one” [emphasis added] indicated that the idea regarding the sale of the LAC Shares and short-term trades came from Kia Hui.⁶⁶

38 I accept, given Fiona and Kia Hui’s opening exchange in the 28 Jul 2017 Call (see [35] above), that they were continuing a conversation started on another call. I also accept, given Fiona’s reference to “eh *your* West Lit one” [emphasis added], that Kia Hui had likely raised the topic of the LAC Shares on that prior unrecorded call such that Fiona followed up on the topic in the 28 Jul 2017 Call. I think it is possible that during the prior unrecorded call, Kia Hui had suggested that Fiona sell the LAC Shares. However, I do not think that during the prior unrecorded call, Kia Hui had advised Fiona to engage in short-term trading of LAC shares based on share price fluctuations, for the following reasons.

39 First, in the 28 Jul 2017 Call, it was Fiona who raised the idea of selling the LAC Shares once the share price reached C\$1.50 and buying back LAC

⁶⁴ Claimants’ Closing Submissions dated 29 October 2025 (“CCS”) at para 13.

⁶⁵ CCS at para 15.

⁶⁶ Certified transcript of trial on 18 September 2025 (“Transcript 18 Sep 2025”) at p 41:15–16; Transcript 23 Sep 2025 at p 81:5–7.

shares when the share price dropped. She even expressed regret at not having done so previously such that she “didn’t earn”. These sentiments encapsulate the substance of the alleged Short-term Trades Advice; but they emanated from Fiona and not Kia Hui. In fact, Kia Hui tried to dissuade Fiona from pursuing such a strategy and to persuade Fiona to invest her money (presumably, from the sale proceeds if Fiona sold the LAC Shares) in an exchange-traded fund (“ETF”) instead. Fiona admitted in cross-examination that during the 28 Jul 2017 Call, Kia Hui did not tell Fiona to sell her LAC Shares and use the sale proceeds for short-term trading in LAC shares, and in fact, advised Fiona against doing so.⁶⁷

40 Second, Fiona initially claimed that the purpose of the 28 Jul 2017 Call was to record what she and Kia Hui had already discussed in their prior unrecorded call.⁶⁸ However, if that was the case, the fact that Kia Hui suggested during the 28 Jul 2017 Call that Fiona invest any LAC share sale proceeds in an ETF contradicts Fiona’s allegation that Kia Hui had suggested short-term trades in LAC shares on the prior unrecorded call. In cross-examination, Fiona contended that Kia Hui had “ambushed” her by changing Kia Hui’s alleged suggestion in the prior call to do short-term trades to a suggestion in the 28 Jul 2017 Call to invest in an ETF; the “ambush” was purportedly evidenced by Fiona’s response of “ETF uh?” to the latter suggestion.⁶⁹ I decline to read so much into Fiona’s response of “ETF uh?”. In my view, Fiona’s response simply showed disinterest in investing in an ETF, which renders it all the more likely that the underlying strategy of the alleged Short-term Trades Advice was Fiona’s own.

⁶⁷ Transcript 18 Sep 2025 at pp 52:23–53:3.

⁶⁸ Fiona’s AEIC at para 70.

⁶⁹ Transcript 18 Sep 2025 at p 54:14–20.

41 Third, in the 28 Jul 2017 Call, Kia Hui made suggestions for Fiona to sell her Kris Energy and Olam bonds and use the proceeds to invest in an ETF or buy shares.⁷⁰ This shows that Kia Hui did not shy away from making suggestions on Bank-recorded calls if she had suggestions for Fiona to consider. This makes it unlikely that the idea of engaging in short-term trades of LAC shares based on share price fluctuations, which was raised by Fiona and not Kia Hui during the 28 Jul 2017 Call, stemmed from any (prior) suggestion of Kia Hui.

42 In the claimants’ closing submissions, Fiona further argued that in the 28 Jul 2017 Call, she “specifically asked [Kia Hui] to monitor the share price of LAC, and it was clear that [Kia Hui] had already been monitoring the share price”.⁷¹ I disagree. Fiona’s remark “help me take a look” was directed towards asking Kia Hui to check the LAC share price so Fiona would know when it was a good time to *sell* the LAC Shares; and Fiona’s remark “[s]o still have to monitor” simply reflected her view that she would still want to watch the LAC share price movement before deciding whether and when to sell the LAC Shares.⁷²

43 On the whole, the exchange between Fiona and Kia Hui on the 28 Jul 2017 Call renders it unlikely that Kia Hui would have subsequently given the Short-term Trades Advice and/or made the Representation (with the specific reference to the Target Price) to Fiona, whether at the 22 Sep 2017 Meeting or otherwise.

⁷⁰ 2AB at p 624.

⁷¹ CCS at para 17.

⁷² Cf. CCS at para 18.

Call between Fiona, Kia Hui and Merillee on 18 September 2017

44 On 18 September 2017, a Bank-recorded call took place between Fiona, Kia Hui and Kia Hui’s assistant, Merillee Tan (“Merillee”) (“18 Sep 2017 Call”). The conversation began as follows:⁷³

KH: Hi, hello.

Fiona: Hello, yeah.

KH: Hey, do you mean, you, I heard through the call that you would like to convert to buy the dollars?

45 In the course of the call, the following exchange regarding the LAC Shares took place:⁷⁴

Fiona: ... And another WLC, I think I’m quite a little bit... Do you know any news or not? I have how many shares in that one?

Merillee: Which one? Sorry?

Fiona: WLC. Western Lithium Corporation. *I think it went up to 1.6 something* on Thursday or Friday.

Merillee: One second. Oh, the Lithium America

Fiona: Yeah, yeah Correct, correct.

...

Merillee: Okay. You have 198,600 shares of that. ...

...

Fiona: Okay. So the price went up on Friday?

Merillee: Yes. Closed at 170.

Fiona: Oh, okay. *I should watch out on that one too.*

Merillee: Yes, yes.

Fiona: But that one I can call in to sell?

Merillee: You can.

⁷³ 2AB at p 721.

⁷⁴ 2AB at pp 729–732.

...

Fiona: Is there any news on that? Kia Hui, can you help me to check.

KH: *We don't cover that stock, but we'll check. And if there is anything, I'll send to you.*

Fiona: Yeah, if it's just *any news or something, or just lithium*, just because the car, electric car is being kind of upmarket now.

Fiona: I just want to know if [i]t's worth to hold on for so long already, *always go up and up and then come down. I have been waiting for so many times, I don't want to miss the train.* [Laughs]

Fiona: So worried that I sell it then it start going up, I will be devastated.

KH: Okay.

Fiona: I hold this stock forever already. *Every time it goes to one fifty or one seventy and then it will come down, right, and then it will go to seventy, eighty and then go back up again. If I do that I can get quite a bit free ride* but sometimes I am worried if I sell then it will just go all the way up.

KH: Hmm.

Fiona: Just see if there is any *news for the company*.

KH: Hmm Ok.

Fiona: Stuff like that. And is there anything positive because it's been going up.

KH: Yes, it has. I think generally the electric car story is still in the limelight.

[emphasis added]

46 Fiona claimed that in an unrecorded call prior to the 18 Sep 2017 Call, Kia Hui had wanted Fiona to sell the LAC Shares.⁷⁵ I accept, given Fiona and Kia Hui's opening exchange in the 18 Sep 2017 Call (see [44] above), that they had been engaged in a prior unrecorded call before continuing their conversation

⁷⁵ Transcript 18 Sep 2025 at pp 85:2–3 and 87:6–14.

on the 18 Sep 2017 Call. However, the transcript of the 18 Sep 2017 Call does not support Fiona’s assertions of what was said in the prior unrecorded call.

47 It is evident that on the 18 Sep 2017 Call:

(a) It was Fiona who raised the idea of selling the LAC Shares and thereafter engaging in short-term trades in LAC shares based on share price fluctuations. Fiona expressed this idea as her own, and did not seek Kia Hui or Merillee’s views on the strategy. Kia Hui did not express any endorsement of the strategy.

(b) Fiona was well aware of LAC share price movements and did not (need to) rely on Kia Hui for that information. Fiona only asked for general “news” on the company or the market, which, as she admitted, did not mean monitoring of the share price.⁷⁶ Kia Hui specifically replied that the Bank did not “cover” the stock⁷⁷ but that she would check and send news if there was any. As Kia Hui explained in her oral testimony, a stock covered or followed by the Bank meant a stock on which the Bank provided research if requested by the client.⁷⁸

48 In my view, the tenor of Fiona’s statements during the 18 Sep 2017 Call reflects her own sentiments rather than Kia Hui’s. The exchange on the 18 Sep 2017 Call does not suggest that Kia Hui had asked Fiona to sell the LAC Shares in a prior call; and more significantly, renders it unlikely that Kia Hui would

⁷⁶ Transcript 18 Sep 2025 at pp 90:22–91:8.

⁷⁷ See also 2AB at p 742.

⁷⁸ Certified transcript of trial on 24 September 2025 (“Transcript 24 Sep 2025”) at p 9:8–19.

have subsequently given the Short-term Trades Advice and/or made the Representation to Fiona, whether at the 22 Sep 2017 Meeting or otherwise.

49 For completeness, I do not think that Fiona had decided by 18 September 2017 whether or not to sell the LAC Shares. She expressed that she was still “worried” that the share price might rise after she sold the LAC Shares.

Scheduling of the 22 Sep 2017 Meeting

50 It is undisputed that Fiona and Kia Hui had scheduled a meeting for 22 September 2017. It is also undisputed that Kia Hui had arranged for the meeting to propose that Fiona purchase mutual funds and borrow against them to acquire a universal life insurance policy.⁷⁹ To that end, Kia Hui had arranged for one Ernest Lim (“Ernest”), a fund specialist with the Bank, and one Choy Ay Jen (“Ay Jen”), an insurance broker, to attend the meeting.⁸⁰ The dispute between the parties is over whether Fiona and Kia Hui did eventually meet on 22 September 2017.

51 In my judgment, the evidence regarding the scheduling of the meeting shows that no meeting between Fiona and Kia Hui *involving Ernest and/or Ay Jen* took place on 22 September 2017. However, the same evidence is *neutral* as to whether a meeting between Fiona and Kia Hui *without the involvement of Ernest and Ay Jen* took place on 22 September 2017. I elaborate.

52 On 21 September 2017, Fiona and Kia Hui spoke over a call and agreed that their meeting on 22 September 2017 would take place at 2.30pm at Fiona’s office. Fiona stated that she “d[id]n’t want to go to the town area” as that was

⁷⁹ DCS at para 83.

⁸⁰ Kia Hui’s AEIC at paras 50, 57 and 61.

“troublesome” for her, and Kia Hui agreed to go to Fiona’s office. Kia Hui also conveyed that she would bring Ay Jen to the meeting.⁸¹

53 On 22 September 2017 at 8.48am, Fiona sent Kia Hui a message asking to meet later that day at 4.30pm.⁸² At 8.50am, Kia Hui replied to state that she would check with Ay Jen, and asked if Fiona could not make it at 2.30pm.⁸³ At 8.59am, Fiona replied that she “got urgent meet for my restaurant [*sic*]”.⁸⁴ From 9.04am to 9.07am, Kia Hui and Fiona exchanged further messages and agreed to meet at 4.30pm at Fiona’s office to discuss investments, with Ay Jen joining the meeting at 6pm.⁸⁵

54 From 9.08am to 9.35am, Kia Hui and Ernest then exchanged messages culminating in them agreeing that Ernest would do a conference call with Fiona and Kia Hui at 5.15pm that day while Kia Hui was at Fiona’s office.⁸⁶

55 At 10.01am, Kia Hui also sent Ay Jen messages to confirm that Ay Jen would meet Fiona at Fiona’s office at 6pm.⁸⁷

56 At 3.25pm, Kia Hui then sent Ay Jen a message informing her that the meeting with Fiona was postponed to 25 September 2017 (the next Monday) at

⁸¹ Agreed Bundle of Documents Vol 3 (“3AB”) at pp 10–11; Transcript 24 Sep 2025 at p 81:1–9.

⁸² 2AB at p 532.

⁸³ 2AB at p 532.

⁸⁴ 2AB at p 532.

⁸⁵ 2AB at p 533.

⁸⁶ 3AB at p 92; Kia Hui’s AEIC at para 61.

⁸⁷ 2AB at p 759.

4.30pm.⁸⁸ At 3.44pm, Ay Jen replied to Kia Hui to ask if the meeting on 25 September 2017 could be fixed for 2pm or 5pm instead.⁸⁹ At 3.44pm, Kia Hui replied to Ay Jen: “She has meeting” and “5 pm can”.⁹⁰ In my view, Kia Hui’s reply “She has meeting” was a reference to Fiona’s availability on 25 September 2017. This indicates that Fiona and Kia Hui had communicated (most likely over a call(s)) regarding postponing their meeting with Ay Jen from 22 September 2017 to 25 September 2017.

57 At 8.26pm, Kia Hui and Ernest exchanged messages. Kia Hui reminded Ernest that on Monday (*ie*, 25 September 2017), she was going to Fiona’s office and Ernest was supposed to join the meeting via a conference call at 4.30pm.⁹¹ This indicates that the intended meeting involving Ernest did not take place on 22 September 2017 but was postponed to 25 September 2017. Kia Hui testified, and I accept it is likely, that she must have called Ernest earlier that afternoon to inform him when the meeting was first postponed.⁹²

58 On 25 September 2017 at 4.28am, Fiona sent Kia Hui a message stating: “Monday [*ie*, 25 September 2017] is bad day for me. I want to meet Tuesday [*ie*, 26 September 2017] instead pls. 430 or 5pm tks. ...”.⁹³ Kia Hui then contacted Ay Jen and Ernest later on 25 September 2017 to inform them of the further postponement of the meeting with Fiona.⁹⁴ As Ay Jen was not available

⁸⁸ 2AB at p 759; Kia Hui’s AEIC at para 55.

⁸⁹ 2AB at pp 759–760.

⁹⁰ 2AB at p 760.

⁹¹ 3AB at p 93.

⁹² Transcript 24 Sep 2025 at pp 71:15–72:17.

⁹³ 2AB at p 535.

⁹⁴ 2AB at p 760; 3AB at p 94.

to meet on 26 September 2017, Kia Hui attempted to reschedule the meeting to 4 October 2017.⁹⁵ It is unclear if a meeting on 4 October 2017 eventually took place.⁹⁶

59 What is clear from the above communications is that the intended tripartite or quadripartite meeting where Ernest and (concurrently or subsequently) Ay Jen would join Fiona and Kia Hui for discussions did not take place on 22 September 2017. It was likely postponed at Fiona's behest since Kia Hui was unlikely to have cancelled on Ernest and Ay Jen after coordinating their planned attendance. The question, however, is whether Fiona and Kia Hui nevertheless proceeded to meet between themselves on 22 September 2017 without the involvement of Ernest and Ay Jen. While the above communications do not bear this out, they also do not foreclose that the 22 Sep 2017 Meeting between Fiona and Kia Hui (without Ernest and Ay Jen's involvement) took place. In my view, the further evidence which I proceed to address indicates that the 22 Sep 2017 Meeting between Fiona and Kia Hui (without Ernest and Ay Jen's involvement) took place.

Fiona's account of the 22 Sep 2017 Meeting

60 Fiona's evidence as to how the 22 Sep 2017 Meeting came to take place was as follows:⁹⁷

While the meeting was originally fixed at my office, I recall that sometime in the afternoon on 22 September 2017, Kia Hui asked me to meet at [the Bank's] office instead. I remember this because Kia Hui had asked me to check the *Feng Shui* of her allocated room in [the Bank's] office at Marina One East Tower which I had never visited. Kia Hui knew that I found travelling

⁹⁵ 2AB at pp 535 and 761–762.

⁹⁶ Kia Hui's AEIC at para 66.

⁹⁷ Fiona's AEIC at para 79.

to be a hassle, which is why my house and office are on the same street. While Sarge could drop me off at her office, he was unable to pick me up after the meeting. Thus, to convince me to attend at her office, Kia Hui said that she could give me a lift back home after the meeting. In light of this, I agreed to meet at [the Bank's] office...

61 I think it is plausible that despite postponing the meeting with Ernest and Ay Jen, Fiona was nevertheless prepared, after her urgent meeting concerning her restaurant had concluded in the afternoon of 22 September 2017 (see [53] above), to meet with only Kia Hui. After all, it was Kia Hui who wanted Fiona to meet Ernest and Ay Jen with a view to recommending that Fiona purchase mutual funds and a universal life insurance policy (see [50] above). There is no evidence that Fiona was interested in these products. The transportation arrangements cited by Fiona (see [60] above) would also have addressed her previous disinclination to meet in town (see [52] above).

62 However, it cannot be gainsaid that Fiona was confused about *where* the 22 Sep 2017 Meeting took place. She first stated that Kia Hui had asked her to go to the Bank's office at "Marina One East Tower" (see [60] above), but next stated that she "attend[ed] [the Bank's] office on 22 September 2017 at 8 Marina View, Asia Square Tower 1, #43-01 [*ie*, the Asia Square office]" where she saw "a chandelier at the [Bank's office] lobby".⁹⁸ The difficulty with this account is that: (a) the Bank only moved (from the Asia Square office) to an office in Marina One East Tower ("Marina One office") in June 2018;⁹⁹ and (b) there was a chandelier in the Bank's office lobby at the Marina One office but not at the Asia Square office.¹⁰⁰ When asked in cross-examination if she

⁹⁸ Fiona's AEIC at paras 79–81.

⁹⁹ Certified transcript of trial on 25 September 2025 ("Transcript 25 Sep 2025") at p 102:8–13.

¹⁰⁰ Exh T1; Transcript 25 Sep 2025 at pp 2:25–3:1 and 101:24–102:7.

could have gotten the Bank's Marina One office and Asia Square office "mixed up", Fiona replied "I don't know".¹⁰¹ Kia Hui testified that Fiona may have visited the Bank's Marina One office at some point.¹⁰² Adding to the confusion, Fiona's account was that Kia Hui had asked her to meet at the Bank's office to check the *feng shui* of Kia Hui's room.¹⁰³ However, Kia Hui did not have her own office room in either the Asia Square office or the Marina One office.¹⁰⁴ In cross-examination, Fiona clarified that Kia Hui showed her several meeting rooms and they ended up in one of those rooms for the meeting.¹⁰⁵ In my view, these inaccuracies in Fiona's recollection pertain to peripheral matters and not to her core memory that she had a meeting with Kia Hui on 22 September 2017 at which the LAC Shares were discussed. It is possible that Fiona had confused the opening part of another meeting held at the Bank's Marina One office with the 22 Sep 2017 Meeting held at the Bank's Asia Square office. On balance, I infer that this is likely given the other evidence discussed at [63]–[64], [66]–[68] and [122] below which indicates that the 22 Sep 2017 Meeting took place.

63 One piece of evidence that inclines me to believe that the 22 Sep 2017 Meeting took place and that Kia Hui encouraged Fiona at that meeting to sell the LAC Shares is Fiona's consistent and unshaken testimony that Kia Hui had shown her a chart of the historical price trend of LAC shares at the 22 Sep 2017 Meeting, which convinced her that the share price was "on the turn" and she should sell the LAC Shares.¹⁰⁶ Fiona's later comments to the Bank's night

¹⁰¹ Transcript 18 Sep 2025 at p 145:19–23.

¹⁰² Transcript 25 Sep 2025 at p 4:15–17.

¹⁰³ Fiona's AEIC at paras 79 and 82.

¹⁰⁴ Transcript 25 Sep 2025 at pp 3:19–4:1.

¹⁰⁵ Transcript 23 Sep 2025 at p 16:3–7.

¹⁰⁶ Fiona's AEIC at para 84; Transcript 18 Sep 2025 at pp 173:7–9, 175:19–21, 178:4–5, 178:23–25, 181:5–7 and 181:24–182:3; CCS at paras 26 and 32.

trading desk dealer in the early morning of 23 September 2017 regarding an anticipated “bounce” downwards in the LAC share price also support that she had been shown a chart of the historical price trend of LAC shares earlier at the 22 Sep 2017 Meeting (see [70]–[71] below). I am persuaded of the veracity of her evidence on this point.

64 While Fiona initially suggested that Kia Hui had advised her at the 22 Sep 2017 Meeting to sell the LAC Shares so that the Bank could earn commission and/or fees from the transaction,¹⁰⁷ I do not think this was a likely motivation because the sale of the LAC Shares would have only netted the Bank estimated commission fees of around C\$1,519.29¹⁰⁸ (which would not have made a difference to Kia Hui’s performance targets¹⁰⁹). However, the claimants’ counsel, Mr Pradeep Pillai (“Mr Pillai”), also suggested to Kia Hui in cross-examination that Kia Hui had pushed Fiona to sell the LAC Shares so that the sale proceeds could be invested in funds with a view to ultimately facilitating the purchase of a universal life insurance policy.¹¹⁰ Kia Hui denied this.¹¹¹ Notwithstanding her denial, I believe that Kia Hui had encouraged Fiona at the 22 Sep 2017 Meeting to sell the LAC Shares in the hope that Fiona could thereafter be persuaded to invest the sale proceeds in funds and/or a universal life insurance policy. The correspondence between Kia Hui and Merillee on 21 September 2017 shows that Kia Hui wanted to persuade Fiona at the 22 Sep 2017 Meeting to put US\$1m in mutual funds, take a loan from the Bank on the

¹⁰⁷ Fiona’s AEIC at paras 82–83.

¹⁰⁸ Kia Hui’s AEIC at para 43.

¹⁰⁹ Kia Hui’s AEIC at para 43; Transcript 25 Sep 2025 at pp 118:12–16 and 119:22–120:3.

¹¹⁰ Transcript 24 Sep 2025 at pp 44:23–46:20; CCS at paras 45–50.

¹¹¹ Transcript 24 Sep 2025 at p 46:21.

security of those funds, and use the loan to purchase a universal life policy (which would also be pledged to the Bank).¹¹² Kia Hui admitted that if Fiona took such a course, the Bank would benefit from the interest payable on the secured loan and Kia Hui's achievement of her performance targets would improve.¹¹³ In conjunction with the admissions made by Kia Hui on 14 December 2021 (see [98]–[127] below), I therefore think it likely that Kia Hui saw the sale of the LAC Shares as an opportunity for Fiona to free up some cash, and thus encouraged Fiona to sell the LAC Shares and made the Monitoring Statement as part of that encouragement. However, I do not think that Kia Hui also gave the Short-term Trades Advice or made the Representation (with the specific reference to the Target Price) as those strategies would have been contrary to Kia Hui's intention to try to eventually persuade Fiona to invest in funds and/or a universal life policy instead.

65 For completeness, I address the Bank's position that it had no record of the 22 Sep 2017 Meeting.¹¹⁴ The Bank took this position based on two factors:

- (a) First, the Bank had “no record of any bookings made by, for, or referring to a meeting involving Kia Hui and Fiona on 22 September 2017”.¹¹⁵ The Bank's witness, Andrew Lee (“Andrew”), a Managing Director, Representative South East Asia and Senior Relationship Manager in the Bank,¹¹⁶ explained that, even if an RM sought to bring a client to an empty meeting room for a last-minute meeting, the practice

¹¹² 3AB at pp 89–90; Transcript 24 Sep 2025 at pp 36:8–42:7.

¹¹³ Transcript 24 Sep 2025 at pp 42:24–43:14.

¹¹⁴ Andrew's AEIC at para 10.

¹¹⁵ Andrew's AEIC at para 11.

¹¹⁶ Andrew's AEIC at paras 1 and 6.

was still for the Bank’s receptionist to record the use of the meeting room by the RM and the client.¹¹⁷ I do not think this evidence conclusively indicates that the 22 Sep 2017 Meeting did not take place. Andrew could only speak to the practice the Bank expected of its receptionists. There was no testimony from the specific receptionist(s) on duty on 22 September 2017.

(b) Second, the Bank had “no contact report of any meeting between Kia Hui and Fiona on 22 September 2017”.¹¹⁸ I place no weight on the absence of a contact report of the 22 Sep 2017 Meeting. Andrew explained that an RM was required to submit a contact report of any meeting where there was a material discussion with a client on his or her account.¹¹⁹ However, he conceded that the Bank could not be sure that RMs would submit contact reports as required.¹²⁰ In the present case, Kia Hui could have decided not to submit or that it was unnecessary to submit a contact report of the 22 Sep 2017 Meeting.

Messages between Fiona and Kia Hui on the night of 22 September 2017

66 On 22 September 2017 from 8.51pm to 9.24pm, the following messages were exchanged between Fiona and Kia Hui:¹²¹

Fiona [8.51pm]:	Can u check wlc
Fiona [8.51pm]:	Tonight how much
KH [8.51pm]:	Ok

¹¹⁷ Transcript 25 Sep 2025 at pp 152:24–153:6 and 155:1–12.

¹¹⁸ Andrew’s AEIC at para 11.

¹¹⁹ Transcript 25 Sep 2025 at p 150:16–23.

¹²⁰ Transcript 25 Sep 2025 at p 154:7–14.

¹²¹ 2AB at pp 534–535.

Fiona [8.52pm]: My buying price how much ?
KH [8.52pm]: I don't have have [sic] the cost price on hand. You can log into your statement to see.
KH [8.56pm]: My network slow. Can't load.
KH [8.56pm]: Can you call the desk to check pic now
KH [9.14pm]: Managed to call the team?
Fiona [9.22pm]: I call later.
KH [9.22pm]: Ok sure
Fiona [9.23pm]: I cant remember my Internet account as my last computer TKO ..already
KH [9.23pm]: You can call and check current px.
KH [9.24pm]: My internet is lagging. Very slow.
KH [9.24pm]: Afraid px not updated

67 Fiona contended that the above messages supported her position that the 22 Sep 2017 Meeting had taken place earlier that day:¹²²

My reference to “*wlc*” refers to Western Lithium which was the former name of LAC. Kia Hui’s response to my query regarding the price of my LAC Shares (i.e. “*Ok*”) clearly shows that she understood what I meant and that there had obviously been a prior discussion on this matter. If not, surely my message would have been confusing to her and she would have sought clarification on what I was referring to and for what purpose I required the price of the shares.

68 I accept Fiona’s point. In the 18 Sep 2017 Call four days prior, while Fiona had explored selling the LAC Shares, she remained undecided, stating that she was “worried” that if she sold them, the share price would thereafter go up (see [45] above). Between then and the night of 22 September 2017, something must have occurred to make her more determined to sell the LAC Shares (as she proceeded to do in the early morning of 23 September 2017

¹²² Fiona’s AEIC at para 94; see also CCS at paras 31 and 38.

(see [69]–[73] below)). Kia Hui’s responses on the night of 22 September 2017 are also telling: she expressed no surprise or curiosity about Fiona suddenly wanting to check the LAC share price that night; responded very promptly to Fiona’s queries about the LAC Shares; and repeatedly told Fiona to check the LAC share price with the Bank’s night trading desk. Kia Hui’s responses suggest that (a) she knew, from a prior discussion with Fiona, that Fiona was going to sell the LAC Shares shortly and (b) she sought to assist Fiona in going about selling the LAC Shares. Taken in the round, the exchange between Fiona and Kia Hui on the night of 22 September 2017 supports that they had met earlier that day at the 22 Sep 2017 Meeting and that Kia Hui had encouraged Fiona to sell the LAC Shares at that meeting. However, the messages do not go so far as to indicate that Kia Hui gave the Short-term Trades Advice or made the Representation at the 22 Sep 2017 Meeting.

Calls between Fiona and the Bank’s night trading desk on 23 September 2017

69 Fiona had two calls with the Bank’s night trading desk in the early morning of 23 September 2017. Fiona had direct access to the Bank’s night trading desk for the purpose of trading shares / stocks, without the need for an RM to be present.¹²³ Kia Hui was not present on these two calls.

70 In Fiona’s first call to the Bank’s night trading desk at around 2.48am,¹²⁴ she told the dealer that she wished to sell all the LAC Shares because she thought the share price was “probably going to bounce and might go all the way down”:¹²⁵

¹²³ Kia Hui’s AEIC at para 30.

¹²⁴ 3AB, Index, s/n C63.

¹²⁵ 3AB at pp 99–100.

Fiona: Okay, maybe you put it at 1.50 for the last, and see if we can sell all?

...

Fiona: Are you able to call me back or? How can we work on that? *Because I think it is probably going to bounce and might go all the way down to eighty cents or something, I don't know. So I am trying to sell It first.*

Dealer: Ya, I am worried as well.

Fiona: *Ya, because it had been trading like that so I would prefer to clear it up for now.*

[emphasis added]

71 In my view, what Fiona conveyed to the dealer in the above exchange coheres with and supports her evidence that she had been shown a chart of the historical price trend of LAC shares at the 22 Sep 2017 Meeting, which convinced her that the share price was “on the turn” and she should sell the LAC Shares (see [63] above).

72 In the second call with the Bank’s night trading desk at around 2.56am, the dealer confirmed that the trader should be able to sell all 198,600 LAC Shares at a low limit of C\$1.50, and Fiona confirmed her order to proceed accordingly.¹²⁶

73 The LAC Shares were then sold at an average execution price of C\$1.53 per share, fetching Fiona net sale proceeds of C\$303,135.10. She made a profit of C\$126,196.90 from the sale.¹²⁷

¹²⁶ 3AB, Index, s/n C64 and p 104.

¹²⁷ Fiona’s AEIC at para 98.

Message from Fiona to Kia Hui on 25 September 2017

74 On 25 September 2017, Fiona sent the following WhatsApp message to Kia Hui at 4.28am (“25 Sep 2017 Message”):¹²⁸

Monday is bad day for me. I want to meet Tuesday instead pls. 430 or 5pm tks. *I sold my WLC stock on Friday at 1.5+ . Pls watch for me if price go down. I will buy some back.* [emphasis added]

75 Kia Hui sent a message in response to Fiona at 10.41am that she and Ay Jen were not available to meet on Tuesday (*ie*, 26 September 2017).¹²⁹ However, there was no message from Kia Hui that day (or thereafter) responding to that part of the 25 Sep 2017 Message where Fiona (a) informed that she had sold the LAC Shares, (b) requested Kia Hui to “watch for me if price go down” and (c) stated her intention to buy back some LAC shares in that event.

76 Kia Hui did not have a good explanation for why she did not reply to Fiona’s statement “[p]ls watch for me if price go down”. In cross-examination, she first said that the statement was “not a request”;¹³⁰ then that it was “not an instruction”;¹³¹ then that she did not ignore the statement;¹³² then that she “may have called [Fiona] on the phone, but [she] cannot remember”.¹³³ In my judgment, the more likely reason Kia Hui did not respond to Fiona’s statement “[p]ls watch for me if price go down” is that Kia Hui had indeed said at the 22 Sep 2017 Meeting that she would help Fiona monitor if the LAC share price

¹²⁸ 2AB at p 535.

¹²⁹ 2AB at p 535.

¹³⁰ Transcript 24 Sep 2025 at p 50:7.

¹³¹ Transcript 24 Sep 2025 at p 50:15–16.

¹³² Transcript 24 Sep 2025 at p 51:19.

¹³³ Transcript 24 Sep 2025 at p 53:15–17.

fell after Fiona sold the LAC Shares, *ie*, Kia Hui had made the Monitoring Statement (see [30(d)] above). Fiona’s statement “[p]ls watch for me if price go down” simply echoed Kia Hui’s earlier Monitoring Statement. Kia Hui thus had no cause to question or object to Fiona’s statement. At the same time, there was no particular need for Kia Hui to express assent to Fiona’s statement since Kia Hui had already made the Monitoring Statement earlier.

77 However, I again emphasise that the Monitoring Statement (which, to my mind, would have been a loose statement made by Kia Hui) is not equivalent to the Representation pleaded by Fiona (which contains a specific reference to the Target Price). Fiona’s statement “[p]ls watch for me if price go down” in the 25 Sep 2017 Message did not contain any reference to the LAC share price that Kia Hui was to watch for, militating against Fiona’s case that Kia Hui had made the Representation at the 22 Sep 2017 Meeting (or at all).

Limit order placed by Fiona on 16 October 2017

78 According to Fiona, in the weeks following the sale of the LAC Shares, she occasionally checked the LAC share price on her own accord and was furious and upset when it rose to around C\$1.60.¹³⁴ She claimed that she called Kia Hui about this in or around mid-October 2017, who suggested that Fiona buy back LAC shares at the share price of C\$1.40 as doing so would still generate some profit and “allow [Fiona] to effectively return to status quo and make it seem as if the initial sale of [the] LAC Shares ‘had never happened’” [emphasis in original omitted].¹³⁵ Kia Hui testified that she did not recall such a

¹³⁴ Fiona’s AEIC at para 101.

¹³⁵ Fiona’s AEIC at para 101.

call with Fiona in mid-October 2017 and that she did not suggest or discuss share buying / trading prices with Fiona.¹³⁶

79 On 16 October 2017 at or around 11.34pm, Fiona called the Bank’s night trading desk to give instructions for certain options trades and to place a limit order for the purchase of LAC shares.¹³⁷ Kia Hui was present on this call. It is undisputed that the Bank’s policy required Kia Hui (as the RM) to be present during Fiona’s calls to the Bank’s night trading desk for the purpose of trading options.¹³⁸ On this call, Fiona initially requested to place a “good until cancel” order to buy 200,000 LAC shares at C\$1.40.¹³⁹ When told by the dealer that that meant the order would be in place until 12 January 2018, she changed her mind and requested a two-week limit order, *ie*, until 31 October 2017 (“16 Oct 2017 Limit Order”).¹⁴⁰

80 In my view, this incident shows three things:

(a) By Fiona’s own account, she was monitoring the LAC share price, which was how she knew it had risen to around C\$1.60 (see [78] above). This belies any alleged reliance she placed on Kia Hui to monitor the LAC share price for her.

(b) Fiona knew that she could place a limit order to purchase LAC shares at any target share price she had in mind, and in fact took such a

¹³⁶ Transcript 25 Sep 2025 at pp 14:17–15:13 and 16:9–17:5.

¹³⁷ 3AB at pp 264 and 266–269.

¹³⁸ Kia Hui’s AEIC at para 30; Certified transcript of trial on 19 September 2025 (“Transcript 19 Sep 2025”) at p 169:7–15.

¹³⁹ 3AB at p 267.

¹⁴⁰ 3AB at pp 267–268.

course of action on 16 October 2017 (see [79] above). This again belies any alleged reliance she placed on Kia Hui to monitor the LAC share price for her.

(c) Fiona was prepared on this occasion to buy back LAC shares at the share price of C\$1.40 (see [79] above). Regardless of whose idea it was to do so (see [78] above), on which I make no finding, the point is that this belies Fiona’s claims that she wanted to acquire LAC shares at the Target Price of C\$1 per share and that Kia Hui was supposed to inform her if the LAC share price fell below the Target Price.

Call between Fiona and Kia Hui on 1 November 2017

81 On 1 November 2017 at 9.34am, Fiona was informed by way of an e-mail from Kia Hui’s assistant, Goh Geok Leng (“Geok Leng”), that the 16 Oct 2017 Limit Order had lapsed on 31 October 2017.¹⁴¹ The LAC share price had not fallen to C\$1.40.¹⁴²

82 At 9.52pm, Fiona sent Kia Hui a message to call her, and at 10.51pm, Kia Hui replied “[n]ow”.¹⁴³

83 Fiona claimed that after she received Geok Leng’s e-mail, Kia Hui called her. Fiona expressed her unhappiness to Kia Hui that the LAC share price had risen so much that “it did not make commercial sense for [her] to purchase the shares”, and Kia Hui “sought to comfort [her] by assuring [her] that the LAC share prices would drop again and, in the meantime, [Kia Hui] would monitor

¹⁴¹ 3AB at p 271.

¹⁴² Fiona’s AEIC at para 103.

¹⁴³ 2AB at p 537.

the prices and update [Fiona] accordingly”.¹⁴⁴ Kia Hui testified that she did not remember this call,¹⁴⁵ but accepted, given the WhatsApp messages of 1 November 2017 (at [82] above), that she had likely called Fiona and they had possibly spoken about the lapse of the limit order.¹⁴⁶ Given that there is no convergence in Fiona and Kia Hui’s respective testimonies, and given the absence of other evidence from which inferences can be drawn as to what was said on this call, I make no findings on what transpired during the call. In any event, I do not think this call is particularly material. Notably, on Fiona’s own account, she did not claim that the Target Price was mentioned on this call.

Consolidation of LAC shares on 8 November 2017

84 It is undisputed that, on 8 November 2017, LAC implemented a consolidation of its outstanding common shares on the basis of one new common share for every five outstanding common shares (*ie*, the Consolidation).¹⁴⁷

Events of 9 November 2017

85 Fiona admitted that, on 9 November 2017, she knew that the LAC share price had increased to about four to five times the approximately C\$1.50 at which she had sold the LAC Shares on 23 September 2017; that was why, on 9 November 2017 at 9.37am, she sent Kia Hui a message stating: “I may buy

¹⁴⁴ Fiona’s AEIC at para 104.

¹⁴⁵ Transcript 25 Sep 2025 at p 21:12–23.

¹⁴⁶ Transcript 25 Sep 2025 at pp 23:13–24:3.

¹⁴⁷ 3AB at p 345; Fiona’s AEIC at para 58(d).

back the LAC”.¹⁴⁸ Kia Hui replied at 9.37am: “Lac”.¹⁴⁹ Notwithstanding Fiona’s knowledge by 9 November 2017 of the manifold increase in the LAC share price, she claimed that she did not know of the Consolidation until 2021 (see [97] below).¹⁵⁰ Fiona also claimed in cross-examination that she and Kia Hui spoke on 9 November 2017,¹⁵¹ but Kia Hui did not recall a conversation on that date,¹⁵² and I make no finding as to whether there was any conversation.

86 In my view, Fiona’s admission that she knew of the manifold increase in the LAC share price and was minded to buy back LAC shares as at 9 November 2017 shows two things:

(a) Fiona was continuing to monitor the LAC share price on her own. This again belies any alleged reliance she placed on Kia Hui to monitor the LAC share price for her.

(b) Fiona was, in all likelihood, aware of the Consolidation as it would otherwise have made no sense for her to express an interest in buying back LAC shares when the share price had increased so steeply.

87 I do not think it is credible that Fiona was unaware of the Consolidation as at 9 November 2017. The sudden and manifold increase in the LAC share price would otherwise have startled her, but it did not. Further, if, as Fiona claimed, she was disinclined to buy back LAC shares as at 1 November 2017 given the share price increase then (see [83] above), she should have been even

¹⁴⁸ Transcript 19 Sep 2025 at pp 51:22–52:3 and 52:22–53:5; 2AB at p 538.

¹⁴⁹ 2AB at p 538.

¹⁵⁰ Transcript 19 Sep 2025 at pp 50:22–51:14.

¹⁵¹ Transcript 19 Sep 2025 at p 13:13

¹⁵² Transcript 25 Sep 2025 at p 32:6–8.

more loath to buy back LAC shares as at 9 November 2017 given the even steeper share price increase, but she was not, suggesting that she was aware of the Consolidation (which affected her commercial calculus as to whether it was worth buying back LAC shares post-Consolidation).

88 The implications of Fiona’s knowledge as at 9 November 2017 of the Consolidation are significant. Once Fiona knew of the Consolidation, she must have known that it was unlikely that the LAC share price would ever fall below C\$1 per share (*ie*, the Target Price) again. Indeed, it was Fiona’s case that, with the Consolidation, the Target Price of C\$1 per share “should have been revised” to C\$5 per share (*ie*, the Revised Target Price).¹⁵³ Yet, it is undisputed that Fiona and Kia Hui never had a conversation about the Revised Target Price.¹⁵⁴ In my view, two conclusions follow:

(a) First, there is no basis for Kia Hui to have known of the supposed Revised Target Price if this was never communicated to her. This wholly undermines the claimants’ case (see [9(b)], [10] and [11] above) that Kia Hui had negligently failed to monitor and inform them when the LAC share price fell to or below the Revised Target Price (a point to which I return at [143(b)] below).

(b) Second, it is unlikely that Kia Hui ever made the Representation (with the specific reference to the Target Price) to begin with. Kia Hui had never promised to inform Fiona if the LAC share price fell to or below a specified price (much less the Target Price of C\$1 per share), and that was why Fiona never had a conversation with Kia Hui about the

¹⁵³ SOC at para 22; Fiona’s AEIC at para 115.

¹⁵⁴ Transcript 19 Sep 2025 at pp 67:22–68:2 and 68:23–69:10.

supposed Revised Target Price after Fiona found out by 9 November 2017 about the Consolidation.

Fiona’s short-term trades of LAC shares from 23 to 26 February 2018

89 On 25 January 2018, LAC began trading its shares on the New York Stock Exchange (“NYSE”) (in addition to the Toronto Stock Exchange (“TSX”) on which its shares were traded since 30 March 2016).¹⁵⁵

90 On 23 February 2018, through an online share trading platform (“Schwab”), Fiona made 15 purchases of LAC shares listed on the NYSE, totalling 5,000 shares, at prices from US\$7.2099 to US\$7.2600 per share.¹⁵⁶ Fiona admitted that (a) she did not seek Kia Hui’s advice on these purchases;¹⁵⁷ (b) she had not required Kia Hui’s help to monitor the LAC share price before making these purchases;¹⁵⁸ and (c) she was “perfectly capable of trading LAC on [her] own” for these purchases.¹⁵⁹

91 On 26 February 2018, Fiona sold all the 5,000 LAC shares purchased on 23 February 2018 at a price of US\$6.6181 per share, making a loss.¹⁶⁰ Fiona admitted that this was an instance of “short-term trading”.¹⁶¹

92 In my view, Fiona’s short-term trades of LAC shares in February 2018 reveal four things:

¹⁵⁵ Fiona’s AEIC at paras 58(c) and (e).

¹⁵⁶ Agreed Bundle of Documents Vol 4 (“4AB”) at p 125.

¹⁵⁷ Transcript 19 Sep 2025 at p 8:5–6.

¹⁵⁸ Transcript 19 Sep 2025 at p 8:14–16.

¹⁵⁹ Transcript 19 Sep 2025 at p 8:22–24.

¹⁶⁰ 4AB at p 126; Transcript 19 Sep 2025 at pp 9:18–10:2.

¹⁶¹ Transcript 19 Sep 2025 at pp 10:3–25 and 14:20–21.

(a) Fiona was capable of checking the LAC share price on her own for the purpose of deciding whether she wished to purchase or sell LAC shares and did not need to, and did not in fact, rely on Kia Hui to monitor the LAC share price for her. This undermines any allegation that Kia Hui owed the claimants a duty of care to monitor the LAC share price.

(b) Fiona could not have had a Target Price of C\$1 per share or Revised Target Price of C\$5 per share at which to buy back LAC shares because she was content, as seen from her purchases on 23 February 2018, to purchase LAC shares at higher unit prices than the supposed Target Price and Revised Target Price. This undermines any allegation that Kia Hui made the Representation to monitor and inform Fiona when the LAC share price fell to or below the Target Price (or Revised Target Price).

(c) Fiona had engaged in short-term trading of LAC shares on her own accord. This undermines any allegation that Kia Hui had given the Short-term Trades Advice.

(d) Fiona's awareness of the manifold increase in the LAC share price as at February 2018 (in comparison to the LAC share price prior to 9 November 2017) shows that she must have known by then of the Consolidation, which again engages the implications set out at [88] above.

Fiona's experience with her short-term share trading strategy

93 I am further fortified in the view that Kia Hui did not give the Short-term Trades Advice and that the strategy for short-term share trading based on share price fluctuations emanated from Fiona herself, based on the following factors.

94 First, Fiona described the purported Short-term Trades Advice as “a type of trading known as ‘channelling’ which is a technique where one looks at the historical price chart of a particular asset and determines ‘channels’ which will indicate where and when to enter a trade, where to place stop-loss orders and where to take profits”.¹⁶² Notably, it was not Fiona’s evidence that Kia Hui had mentioned or introduced the term “channelling” to her. That *Fiona* knew the name to put to the short-term share trading strategy reinforces that the idea to engage in such a strategy was hers.

95 Second, Fiona was not a novice at the strategy of short-term buying and selling of shares based on share price movements. There is evidence that Fiona engaged in such short-term share trading strategy in other share counters on her own and based on her own monitoring of share prices, such as in SOC Quimica Miner shares (across several days in October 2017)¹⁶³ and in Toronto-Dominion Bank shares (in March 2020).¹⁶⁴

Handover to Cara in 2019

96 Before Kia Hui left the Bank in 2019, she handed over the RM relationship with Fiona to Cara, another RM with the Bank. It is undisputed that during the handover, neither Fiona nor Kia Hui told Cara of any need to monitor LAC share prices.¹⁶⁵

¹⁶² Fiona’s AEIC at para 85.

¹⁶³ 3AB at pp 122–126; Transcript 19 Sep 2025 at pp 72:12–74:3 and 77:4–78:11.

¹⁶⁴ Agreed Bundle of Documents Vol 6 (“6AB”) at pp 156 and 160; Transcript 19 Sep 2025 at pp 78:12–81:2.

¹⁶⁵ Certified transcript of trial on 15 September 2025 at pp 8:13–9:22; Agreed Bundle of Documents Vol 5 at p 460; Fiona’s AEIC at para 111; Cara Chua’s AEIC dated 28 November 2024 at paras 12–13.

Communications between Fiona and Kia Hui on 14 December 2021 and shortly thereafter

97 According to Fiona, she found out about the Consolidation in late 2021. She had noticed that the share price of Tesla, an electric vehicle company which purchased large amounts of lithium, was doing very well, and thought that LAC shares must also be doing well given that LAC was in the lithium industry.¹⁶⁶ She thus looked into the LAC share price and realised that it had increased significantly and was charting at about C\$15 on the TSX.¹⁶⁷ She found this “odd”, dug into the escalation of the LAC share price, and found out about the Consolidation.¹⁶⁸ It then became “clear” to her that Kia Hui had not monitored the LAC share price and had not updated her when the Consolidation took place.¹⁶⁹ She was “furious” and contacted Cara in October 2021 to ask, *inter alia*, how she could make a claim against Kia Hui.¹⁷⁰ For the reasons set out at [86]–[87] above, I believe that Fiona had learned of the Consolidation by 9 November 2017 and I do not accept that she found out about the Consolidation only in late 2021. It is possible that in late 2021, she forgot that she had already known of the Consolidation in November 2017.

98 On 14 December 2021 at 12.02pm, Fiona sent Kia Hui a WhatsApp message asking:¹⁷¹

Dear, did you inform Cara before u move on to other about my LAC stock to buy back?

¹⁶⁶ Fiona’s AEIC at para 112.

¹⁶⁷ Fiona’s AEIC at para 113.

¹⁶⁸ Fiona’s AEIC at para 113.

¹⁶⁹ Fiona’s AEIC at para 114.

¹⁷⁰ Fiona’s AEIC at para 116.

¹⁷¹ 6AB at p 279.

99 This was followed by another message from Fiona to Kia Hui at 12.05pm stating:¹⁷²

U asked me to sell and buy back when price is lower, but no one inform me when stock was down, I did tell u I don't want to sell. U insist and promised to watch for me. I kept the stock for so long.

Now I lost over 5m–6m

What sho[ul]d I do from here. I need to know who is the one left my interest and instructions behind.

This is really bad

Thank you.

Fiona

100 At 12.11pm, Kia Hui placed a call to Fiona that lasted 34min 32sec (“14 Dec 2021 Call”).¹⁷³

101 In my view, and as I elaborate below, Kia Hui made admissions on the 14 Dec 2021 Call to the effect that she had previously encouraged Fiona to sell the LAC Shares and that she had previously made the Monitoring Statement. Before delving into what was said on the 14 Dec 2021 Call, I first set out the context in which the call took place.

102 Kia Hui claimed that she did not recall reading the messages from Fiona at 12.02pm and 12.05pm before the 14 Dec 2021 Call.¹⁷⁴ She also claimed to remember that it was Fiona who had called her,¹⁷⁵ and speculated that she could

¹⁷² 6AB at p 279.

¹⁷³ 9AB at p 127.

¹⁷⁴ Transcript 24 Sep 2025 at p 103:4–7.

¹⁷⁵ Transcript 24 Sep 2025 at p 103:9–10.

have been returning a missed call from Fiona.¹⁷⁶ I do not accept Kia Hui's evidence. The call log shows that Kia Hui placed the 14 Dec 2021 Call to Fiona, and does not show a prior missed call from Fiona to Kia Hui. I also think it more likely that Kia Hui had read Fiona's messages of 12.02pm and 12.05pm and was concerned by Fiona's allegations, which was why Kia Hui then called Fiona to address the matter. This means that, going into the 14 Dec 2021 Call, Kia Hui would have known beforehand from the messages that Fiona was asserting that (a) Kia Hui had asked Fiona to sell LAC shares held by Fiona; (b) Kia Hui had promised to watch for when the LAC share price went down so that Fiona could buy back LAC shares; (c) Fiona did not know whether Kia Hui had told Cara, before Kia Hui left the Bank, about Fiona wanting to buy back LAC shares; and (d) Fiona had purportedly lost money in connection with these matters. Kia Hui's responses on the 14 Dec 2021 Call must thus be interpreted in the light of her having the foregoing background as to what Fiona was upset about.

103 At the same time, I bear in mind that:

(a) By the time of the 14 Dec 2021 Call, Fiona and Kia Hui were speaking of events of around four years ago. Kia Hui had also left the Bank more than two years ago. Their respective recollections of past events were unlikely to be perfect.

(b) The 14 Dec 2021 Call was recorded by Fiona's husband, who was with her at the time, about six minutes into the call.¹⁷⁷ Fiona did not tell Kia Hui that the call was being recorded.¹⁷⁸ There was likely an element of Fiona pushing her narrative and trying to obtain concessions

¹⁷⁶ Transcript 24 Sep 2025 at p 107:2–4.

¹⁷⁷ Transcript 19 Sep 2025 at pp 100:11–101:8 and 108:24–109:1.

¹⁷⁸ Transcript 19 Sep 2025 at pp 102:6–8 and 102:25–103:3.

from Kia Hui since Fiona knew the call was being recorded unbeknownst to Kia Hui.

(c) During the 14 Dec 2021 Call, Fiona often made a barrage of statements which may not have been as easy to follow when hearing them in the course of a conversation, as compared to when reading a transcript of the conversation.

(d) Kia Hui was not in a good frame of mind and may have had some difficulty concentrating during the call: she had a lot on her mind as her father was undergoing bladder cancer surgery that day and she was driving while on the call.¹⁷⁹

104 However, even making allowance for all the factors at [103] above, I find that the exchanges between Fiona and Kia Hui on the 14 Dec 2021 Call do support the findings that Kia Hui had previously encouraged Fiona to sell the LAC Shares and had previously made the Monitoring Statement, although I do not think they bear out that Kia Hui had ever given the Short-term Trades Advice or made the Representation. I elaborate on the salient excerpts from the transcript of the 14 Dec 2021 Call which, in my view, bear out these findings.

105 The first excerpt is from timestamps 00:02 to 01:23:¹⁸⁰

Fiona: What was that person, what is his name?

Fiona: Erm...the one you addressed as Wai Kee or Kee Wei?

Fiona: We are at your office at that time.

Fiona: I was unwilling to sell at that time but you had asked me to sell at that time.

¹⁷⁹ Transcript 24 Sep 2025 at p 103:5–9.

¹⁸⁰ 9AB at pp 131–133.

Fiona: I had told you I was into future stock and that Lithium was good in every aspect and then you told me.

...

Fiona: As for L.A.C, I had kept it for many years. It was either around 5,6 years or 7 to 8 years. I said I did not wish to sell because I said Lithium was the future.

Fiona: You told me that the price will rise to about \$1.50 or something, and then go down. You said that I would have profited a few rounds with the price fluctuations.

Fiona: Then, you told me to sell it first and when the price goes down, you will inform me so I can buy it back.

Fiona: Thereafter, I said OK. I was originally reluctant to sell. I had insisted on not selling at that time.

Fiona: I told your assistant who was present, that I did not wish to sell. He said don't worry, and then you said that all of you will help me to keep an eye and will inform me once the prices have dropped so I can buy the stocks.

Fiona: I said OK. We sold it thereafter and the price has since become stagnant.

KH: Yes.

Fiona: Is that correct?

Fiona: Then thereafter, I don't know but you left?

Fiona: After you left, I had asked you whether you had kept and passed on the message to Cara.

KH: I remember I had told her.

106 I note that at timestamp 01:12, Kia Hui responded “Yes” to what Fiona recounted, including Fiona’s statements that Kia Hui had told her to sell the LAC Shares. Mr Pillai did not put to Kia Hui any interpretation of what her “Yes” meant.¹⁸¹ In my view, Kia Hui’s “Yes” (and the fact that she did not seek clarification) shows, minimally, that she followed what Fiona was saying. This means that Kia Hui understood that Fiona was speaking of the sale of the LAC Shares.

¹⁸¹ Transcript 24 Sep 2025 at pp 111:23–112:3.

107 When Fiona asked whether Kia Hui had passed on the “message” to Cara (at timestamp 01:17–01:21), Kia Hui responded “I remember I had told her” (at timestamp 01:22–01:23). In cross-examination, Kia Hui (a) explained that she understood Fiona to be asking whether Kia Hui had handed over to Cara,¹⁸² (b) explained that she was driving at the time and was not very clear about what Fiona was going on about¹⁸³ and (c) disagreed with Mr Pillai’s suggestion that “you [*ie*, Kia Hui] were telling my client [*ie*, Fiona] that you had apparently told Cara about the LAC shares and monitoring the shares”.¹⁸⁴ In my view, this exchange between Fiona and Kia Hui shows, minimally, that Kia Hui was aware that Fiona was asking about the passing of a “message” to Cara that had to do with LAC shares.

108 The second excerpt is from timestamps 01:37 to 04:09:¹⁸⁵

Fiona: Did you know? I felt that it was strange, so I asked Cara, why was I not informed about the fall in price for the L.A.C lithium stock and why did no one tell me to buy back?

Fiona: She said she was not very sure.

KH: Ah?

Fiona: Yes, that is the situation currently.

Fiona: Therefore, I want to meet up with the both of you, because it is not very fair to me, you know?

Fiona: You knew that I did not want to sell Lithium at that time.

Fiona: You knew that I would still hold on to the stock even if it becomes bankrupt.

KH: Ok, I wish to explain to you the problem here [Indiscernible]

¹⁸² Transcript 24 Sep 2025 at pp 113:18–114:15.

¹⁸³ Transcript 24 Sep 2025 at p 114:17–22.

¹⁸⁴ Transcript 24 Sep 2025 at p 116:16–21.

¹⁸⁵ 9AB at pp 133–136.

KH: If you held on to the stock [Indiscernible]

Fiona: If I held on to the stock, what would happen?

KH: [Indiscernible] There is no way for us to follow. Subsequently, I thought ok, we [Indiscernible], that's the reason.

Fiona: You should not have told me, and I would not sell at that time. I did not even want to sell the stocks then. No, you had said, you did not follow the stocks as they were penny stocks, and you do not advise on them. But I had wanted to keep them and you subsequently promised to monitor the prices of the stock for me.

Fiona: I do not need your advice on buying as I had intended to keep the stocks.

Fiona: You only needed to advise me on selling them first, on then the timing to buy them back at a lower price.

Fiona: All you have to do is inform me of the prices and monitor the prices of the stock.

KH: I know, I now fully understand what you mean.

Fiona: Ah.

KH: So, you are saying, this is when I left, is that correct?

Fiona: Yes, the important thing now is when did you leave? You need to tell me when did you leave. I did not know when you had left and when the prices had fluctuated. I needed to know when the prices had changed because if the stocks had continued to rise after I had sold them, I cannot blame anyone, thereafter, correct?

Fiona: The issue is not that the price did not fall. The issue is because you had told me to buy it back at a cheaper price when the stock prices had fallen around 80 cents or so after I had sold them. However, no one helped me to monitor the prices, so, how was I supposed to buy them again?

KH: Oh.

109 In cross-examination, Mr Pillai put to Kia Hui she must have known what the “problem” was when she told Fiona that she wished to explain the “problem” (at timestamp 02:03–02:07). Kia Hui said that she was not sure what

Fiona was unhappy about.¹⁸⁶ I note, however, that in Kia Hui’s explanation of the “problem” to Fiona, Kia Hui stated “If you held on to the stock [Indiscernible]” (at timestamp 02:08–02:10) in response to Fiona’s statements that Fiona “did not want to sell Lithium at that time” (01:56–01:57) and wanted to “hold on to the stock” (at timestamp 01:58–02:02). In my view, this shows that Kia Hui was aware that Fiona was speaking of the sale of the LAC Shares.

110 When asked by Mr Pillai about her statement “I know, I now fully understand what you mean” (at timestamp 02:47–02:48), Kia Hui explained that that line had to be read with her next statement “So, you are saying, this is when I left, is that correct?” (at timestamp 02:50–02:53). Kia Hui explained that she understood Fiona to be unhappy about something to do with Kia Hui’s ex-colleague at the Bank (*ie*, Cara).¹⁸⁷ In my view, these statements of Kia Hui show that, at this point in the conversation, Kia Hui thought that Fiona was complaining of Cara not having monitored the LAC share price. However, it is nevertheless significant that Kia Hui did not refute Fiona’s prior assertions that Kia Hui was supposed to monitor the LAC share price (at timestamps 02:23–02:34 and 02:42–02:46). This suggests to me that Kia Hui was aware that she had previously made the Monitoring Statement. That said, it is equally significant that Fiona never mentioned the Target Price or Revised Target Price: she only referred generally to “lower price” (at timestamp 02:39–02:41), and specifically to “80 cents or so” (at timestamp 03:07–03:14). In my view, this reinforces that Kia Hui had never made the Representation (with the specific reference to the Target Price) to Fiona, and that the part of Fiona’s case alleging that Kia Hui had made the Representation was embellished.

¹⁸⁶ Transcript 24 Sep 2025 at p 121:1–14.

¹⁸⁷ Transcript 24 Sep 2025 at pp 121:23–123:4.

111 The third excerpt is from timestamps 06:14 to 07:09:¹⁸⁸

Fiona: You told me to sell it first, and then you would monitor the price for me.

Fiona: But the problem is, after you left, no one helped me to monitor, and I didn't know what happened. Now I don't even know who it is.

Fiona: You, so now I want to know the time that you left and the price at the time that you left. If the price at the time that you left was still very good, higher than what I sold it for, then probably we may not have such, and it will have nothing to do with you. So you have passed down to Cara, but Cara didn't keep an eye for me.

Fiona: Am I right? Although You all did not follow, you still need to help me monitor because my instructions were to buy this stock when the price drops so you should inform me when it drops.

Fiona: Someone should have told me when it was eighty cents or a few cents, but no one told me.

Fiona: No one. Not even a letter. No one informed me about this stock at all, did you know that?

KH: Hm.

Fiona: Hm. If you did inform Cara, can you ask Cara what happened? You had informed her to monitor this stock at the time you left, isn't it?

KH: It has been so long; I am, I am trying to recall.

112 I note that Kia Hui indicated that she was “trying to recall” what she had told Cara (at timestamp 07:05–07:09). However, I find it telling that Kia Hui did not deny Fiona's assertion that Kia Hui had told Fiona she would monitor the LAC share price (at timestamp 06:14–06:16), or question why there was a need for her (*ie*, Kia Hui) to inform Cara to “monitor this stock” (see timestamp 06:55–07:04). It would have been natural for Kia Hui to react in denial if she had never at the relevant time in the past said anything about monitoring the

¹⁸⁸ 9AB at pp 139–140.

LAC share price. It is thus likely that Kia Hui had made the Monitoring Statement.

113 The fourth excerpt is from timestamps 08:17 to 11:15:¹⁸⁹

Fiona: That's right. Therefore, I wish to find out whether you had pass on to her. In 2018, the prices has not, has not fallen drastically. It remained in the same place, was mostly stagnant.

Fiona: 2018. So, I wish to clarify clearly now when you had left in 2018.

KH: It has been so many years!

Fiona: Exactly. The problem is at the time that you left and if you had informed her and she did not monitor, she should be responsible for it. So now, I wish to ask, did you or did you not tell her?

Fiona: Based on your character, you should have told her, is that correct? You would have passed on.

KH: I explained it thoroughly.

Fiona: That's right. If you had informed her, did you have handover stuff that you gave her?

KH: I..I, Fiona, let me tell you, I would do it. The problem is, and this is my guess, and this is between you and me. We are friends so I can tell you. I understand how you feel.

Fiona: Ah.

KH: The problem is I feel I have worked in many banks. The reason why I would leave – firstly, the opportunities are likely to be different. Secondly, sometimes, I feel that the systems of banks. I mean I too am an investor and also your good friend, I need to tell you that “they will follow what the analyst follows”. They will pick stocks that are more popular and does not fluctuate much. You know, they don't want the clients to make losses, you know what I'm saying?

...

¹⁸⁹ 9AB at pp 142–145.

KH: I personally feel, this is between you and me as friends and I was also previously in this line. Anyway, I can tell you that I think it is likely the bank don't follow. I feel that there has been many such cases, I don't know about Julius Baer but I face the same issue at Deutsche. The bank will place restrictions on us. If it is not on the bank's recommendation list, we cannot recommend or actively do so. In the event, the 80 cents become 8 cents, you know?

Fiona: But now the decision is mine. I wanted to buy it. I wanted to keep it. I insisted on keeping it all along as I wanted to buy the stock.

KH: You are more of an exceptional client. However, I can tell you. I am explaining to you and I am not saying you are wrong or correct.

Fiona: Oh.

KH: Yes, I understand. The problem is let me explain to you the bank's standpoint and explain the reason which is my guess, The first possibility is that Cara did not follow, she could have forgotten. Secondly, the real reason could have been the bank did not follow. She cannot take her own initiative to influence you like this, you understand?

Fiona: She does not need to influence me. She only needed to tell me the current price of the stock. This is because I had asked all of you to inform me, the decision to buy or not is my choice. The bank does not advise.

114 In cross-examination, Mr Pillai put to Kia Hui that her statement “I explained it thoroughly” (at timestamp 08:44) was an assertion that she had told Cara to monitor the LAC share price. Kia Hui disagreed.¹⁹⁰ Kia Hui claimed that by “it”, she meant a handover.¹⁹¹ I do not accept Kia Hui's explanation. Fiona was specifically asking Kia Hui whether she had told Cara to monitor the LAC share price, and Kia Hui's response “I explained it thoroughly” can only be

¹⁹⁰ Transcript 24 Sep 2025 at p 126:14–20.

¹⁹¹ Transcript 24 Sep 2025 at p 126:1–3.

construed as her purporting that she had explained to Cara about monitoring the LAC share price for Fiona.

115 Mr Pillai also put to Kia Hui that when she said “Cara did not follow, she could have forgotten” (at timestamp 10:51–11:07), it showed that she knew Fiona was talking about the instruction to monitor the LAC share price and she was saying that there was a possibility that Cara did not follow those instructions. Kia Hui disagreed.¹⁹² Kia Hui claimed that she was under the impression that Fiona had lost money or had a stop loss or limit order related to some unfollowed stock, and she was thus explaining to Fiona that if the Bank did not follow the stock, Fiona could not blame Cara for not recommending Fiona to buy the stock.¹⁹³ I do not accept this explanation, which does not account for Kia Hui saying “she [*ie*, Cara] could have forgotten”.

116 In my view, this excerpt supports Kia Hui having previously made the Monitoring Statement, but this does not mean or indicate that Kia Hui had made the Representation (which, being specifically tethered to the Target Price, is qualitatively different from the vague Monitoring Statement).

117 The fifth excerpt is from timestamps 19:07 to 19:42:¹⁹⁴

KH: The problem now is that we were not following this stock, so I don’t know how they are going to view that, so [Indiscernible].

Fiona: Yes, if she didn’t follow, but the problem is that if someone is not following, you should tell me you won’t be helping me to monitor. Then, I wouldn’t even have sold it. Do you understand what I mean? I would have kept it. If you told me that you couldn’t monitor for me,

¹⁹² Transcript 24 Sep 2025 at p 132:5–18.

¹⁹³ Transcript 24 Sep 2025 at pp 132:19–133:5.

¹⁹⁴ 9AB at pp 154–155.

then I wouldn't sell it. If you say you all don't follow, you can't help me monitor, that's very fair. Then, I would have said that I won't be selling.

KH: That's why I kept asking you, when she took over and broached on this topic, whether she had told you that they do not follow, but they can help you to monitor privately.

118 In cross-examination, Mr Pillai put to Kia Hui that when she asked Fiona whether Cara had told Fiona that “they can help you to monitor privately” (at timestamp 19:34–19:42), she was suggesting it was possible for the Bank's RMs to privately monitor shares for clients. Kia Hui disagreed and claimed she was trying to understand if there was a misunderstanding.¹⁹⁵ Mr Pillai further put that Kia Hui could suggest this possibility because it was exactly what she had assured Fiona she would do while at the Bank. Kia Hui disagreed.¹⁹⁶ In my view, Kia Hui was raising the possibility of RMs “monitor[ing] privately”. This is consistent with Kia Hui having previously made the Monitoring Statement.

119 The sixth excerpt is from timestamps 23:03 to 24:26:¹⁹⁷

Fiona: I bought it at \$1 plus, 80 cents, 40 cents. and then after heeding your suggestion, sold them to buy back again. Subsequently, no one told me anything, so I didn't buy. Don't even know what's going on.

KH: So, if you put it this way now, it's not really Cara's fault, it is my fault.

Fiona: Yes, you are in the wrong too. I don't understand, so I'm asking you if you have any solution.

KH: So, Cara is a colleague, I don't know why but I did inform her, so whatever the reason is not so. Ok, let's not talk about Julius Baer, talk about me la, just me, ok?

¹⁹⁵ Transcript 24 Sep 2025 at pp 140:21–25 and 145:4–21.

¹⁹⁶ Transcript 24 Sep 2025 at p 150:3–12.

¹⁹⁷ 9AB at pp 158–160.

KH: What do you want me to do as a friend?

Fiona: You give it a thought first how to handle it properly.

Fiona: Now, I...

KH: Now, I , no, no, no.

KH: No need to talk about Cara, that is between Cara and Julius Baer. Now it's me saying, we didn't follow. I said if you sell it, I will help you to keep an eye. Then if I didn't watch over it, I would have handed over to the next person in charge after I left. If we were to look back three years ago, there is no point saying this and that. How you intend to discuss with her, you can talk to her. When she first met you, she should have brought up this topic in the first meeting. She didn't mention it, I don't know why she didn't. You didn't mention it either. You could have said, "I have this, please help me look at it." She didn't mention it either, so maybe she forgot about it. I don't know. I am not going to explain for her.

120 In cross-examination, Kia Hui explained that she was not making an admission that it was her fault (at timestamp 23:13–23:16), but rather, was trying to ask Fiona “[w]hat are you trying to get at now?” and whether Fiona was blaming her or Cara.¹⁹⁸ Kia Hui also explained that she was presenting a hypothetical situation when she said “Now it’s me saying, we didn’t follow. I said if you sell it, I will help you to keep an eye. Then if I didn’t watch over it, I would have handed over to the next person in charge after I left” (at timestamp 23:46–24:26).¹⁹⁹ In my view, even if Kia Hui did not mean these statements as admissions, it was odd for Kia Hui to put forward such a hypothetical if it was simply inconceivable that such a situation had occurred. The fact that Kia Hui even contemplated such a (on her evidence, hypothetical) premise suggests that she had previously encouraged Fiona to sell the LAC Shares and made the Monitoring Statement.

¹⁹⁸ Transcript 24 Sep 2025 at p 151:3–20.

¹⁹⁹ Transcript 24 Sep 2025 at p 156:11–15.

121 The seventh excerpt is from timestamps 26:11 to 27:35:²⁰⁰

Fiona: But this stock is really a stock that I want to keep from beginning till the end. Then, when you keep asking me to sell, I just didn't want to sell.

Fiona: You told me that you will help to keep an eye, and you showed me the chart on the stock, which had fallen from 1 dollar to 80 cents several times. You told me that if I buy it again, I will make several rounds of profits.

Fiona: Hegan was still around. Your assistant, Hegan, was there too. He was the one who told me how many shares I still had. I still remember that I was in your office at that time.

KH: Ah.

Fiona: Right, and then you said don't worry, don't worry. We will help you keep an eye on it, and then it became like this. I don't understand it now, so I have to ask you.

Fiona: We are all friends too, and I don't want to either.

KH: I know, I'll ask you directly. What do you want me to do?

Fiona: I don't know. What do you think I should I as a client?

Fiona: What would you do if it were you today?

KH: I mean as a client, you can ask Cara. But the problem is, the bank said they won't follow. She didn't mention it in the first meeting, and the both of you didn't talk about it either.

Fiona: What would you do if she blamed you for not telling her? If she says you didn't mention it, Kia Hui never said you were interested in this stock or that you wanted to buy, from the start till the end, if that's the case, what should I say?

KH: The problem now is that I have already left, and I have no obligation or responsibility to talk to her clients. It's impossible for me to talk about this issue with her, it's wrong. I don't have information of her client, do you understand?

²⁰⁰ 9AB at pp 162–163.

122 I find it somewhat odd that Kia Hui did not deny Fiona’s assertions of what had supposedly transpired at a meeting at Kia Hui’s office. While this does not mean that all of Fiona’s assertions are accurate, I am inclined to think that some of the assertions (which are also supported by other evidence I have canvassed) are true, *viz*, that there had been a meeting at Kia Hui’s office at which (a) Fiona was shown a chart on LAC share prices, (b) Kia Hui encouraged Fiona to sell the LAC Shares and (c) Kia Hui made the Monitoring Statement. In my view, that meeting was likely the 22 Sep 2017 Meeting.

123 The 14 Dec 2021 Call ended abruptly with Fiona having to attend to another call.²⁰¹ Kia Hui then placed two further calls to Fiona at 12.51pm and 3.38pm on 14 December 2021, with both calls lasting about six minutes each.²⁰² Kia Hui’s evidence was that both calls were to “close the loop” and tell Fiona to talk to her RM and “clarify”.²⁰³ Fiona’s evidence was that Kia Hui mentioned she was having a bad year career-wise and on the personal front as one of her relatives was diagnosed with cancer but wanted to meet Fiona to see how she could help as she felt guilty about the losses Fiona had suffered in relation to the LAC Shares.²⁰⁴ Kia Hui thought it likely she had told Fiona about her father having cancer, but denied the part of Fiona’s evidence that she wanted to meet as she felt guilty about Fiona’s losses.²⁰⁵ I do not have sufficient basis to make a finding on the contents of these two calls.

²⁰¹ 9AB at p 164.

²⁰² 9AB at p 127.

²⁰³ Transcript 24 Sep 2025 at pp 160:15–161:16.

²⁰⁴ Fiona’s AEIC at para 121.

²⁰⁵ Transcript 24 Sep 2025 at pp 162:3–163:1.

124 On 14 December 2021 at 3.14pm, 3.16pm, 3.21pm and 3.47pm, Kia Hui sent Fiona four WhatsApp messages, which Kia Hui then deleted.²⁰⁶ The contents of the deleted messages were unknown to Fiona.²⁰⁷ Kia Hui speculated that she could have inadvertently sent to Fiona messages meant for her sister after their father had completed his surgery, and hence deleted the messages.²⁰⁸ I do not have sufficient basis to make a finding on the contents of the deleted messages.

125 At 3.58pm, Kia Hui sent Fiona the following message:²⁰⁹

As spoken, I left JB 3 years now. When was LAC sold ? If I recall correctly, the stock was not followed by the bank at that time. Not sure about after I left. Did you remind or discuss with Cara about the stock during your meetings / discussion with her ?

126 At 5.18pm, Fiona replied to Kia Hui: “You suppose to inform her when she take over.”²¹⁰

127 At 5.41pm, Kia Hui replied to Fiona: “I can’t remember if I informed her. It’s 3 years ago.”²¹¹ In cross-examination, Kia Hui could not give a coherent explanation of what it was that she could not remember informing Cara of.²¹² In my view, in the context of the 14 Dec 2021 Call and the prior messages between Fiona and Kia Hui (at [125]–[126] above), what Kia Hui meant by her message of 5.41pm was that she could not remember whether she had told Cara that

²⁰⁶ 6AB at pp 279–280.

²⁰⁷ Fiona’s AEIC at para 122.

²⁰⁸ Transcript 25 Sep 2025 at pp 95:15–96:25.

²⁰⁹ 6AB at p 280.

²¹⁰ 6AB at p 280.

²¹¹ 6AB at p 281.

²¹² Transcript 24 Sep 2025 at pp 166:14–168:4.

Fiona was minded to buy back LAC shares if the share price dropped. This reinforces the likelihood that Kia Hui had previously made the Monitoring Statement.

128 At 6.32pm and 10.13pm, Fiona sent Kia Hui messages stating that the LAC share price had “drop[ped] a lot” in 2018 before Kia Hui left the Bank.²¹³

129 On 15 December 2021 at 1.08am, Fiona sent Kia Hui a message stating that she would “do all the necessary filing and let [the] [B]ank check the record”.²¹⁴

130 On 17 December 2021, Kia Hui sent a message to Fiona in reply to Fiona’s message of 14 December 2021 at 12.02pm (see [98] above):²¹⁵

I really don’t know what you are getting at. When you kept asking me questions, I tried to answer you to the best of my recollection, but the honest truth is that the matter is more than 4 years ago and at this point in time with you suddenly coming up with so many questions, I really cannot remember. So Whatever i may have said to you on the phone calls and WhatsApp messages may be incorrect.

131 In my view, this message was an attempt by Kia Hui to distance herself from the implied admissions she had made on the 14 Dec 2021 Call and in her messages of 14 December 2021. When asked in cross-examination if she stood by what she had stated in the 14 Dec 2021 Call, Kia Hui did not seek to correct any statements she made during the call.²¹⁶

²¹³ 6AB at pp 282–283.

²¹⁴ 6AB at p 284.

²¹⁵ 6AB at p 285.

²¹⁶ Transcript 24 Sep 2025 at p 177:12–20.

Conclusion

132 To recapitulate [30] above, having considered the evidence, my findings of fact are, in summary, that:

- (a) It is more likely than not that the 22 Sep 2017 Meeting (between Fiona and Kia Hui) took place.
- (b) It is more likely than not that, at the 22 Sep 2017 Meeting, Kia Hui encouraged Fiona to sell the LAC Shares (albeit this was something Fiona had already contemplated and was inclined to do).
- (c) Kia Hui did *not* give the Short-term Trades Advice, whether at the 22 Sep 2017 Meeting or otherwise. To the contrary, it was Fiona's idea to engage in short-term trading of LAC shares based on share price fluctuations.
- (d) It is more likely than not that, at the 22 Sep 2017 Meeting, knowing that Fiona was minded to buy back LAC shares if the share price fell, Kia Hui said that she would help Fiona monitor if the LAC share price fell after Fiona sold the LAC Shares, *ie*, Kia Hui made the Monitoring Statement. However, the Monitoring Statement is not equivalent to the Representation. The Target Price (which forms the pith of the Representation) was not stipulated at the material time by Fiona or Kia Hui, and Kia Hui did not make the Representation, whether at the 22 Sep 2017 Meeting or otherwise.

133 With these factual findings, I turn to determine the claimants' claim.

Issue 2: determination of the claimants' claim

The law

134 To succeed in a claim under the tort of negligence, a claimant must establish that (a) the defendant owes the claimant a duty of care; (b) the defendant has breached that duty of care by acting (or omitting to act) below the standard of care required of it; (c) the defendant's breach has caused the claimant damage; (d) the claimant's losses arising from the defendant's breach are not too remote; and (e) such losses can be adequately proved and quantified (*Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 at [21]).

135 In determining the existence of a duty of care, the court should consider whether (a) a threshold issue of factual foreseeability is satisfied; (b) there is sufficient legal proximity for a duty of care to arise; and (c) any policy considerations either negate or support the imposition of a duty of care (*Deutsche Bank AG v Chang Tse Wen* [2013] 4 SLR 886 (“*Deutsche Bank*”) at [24]).

136 When determining whether there is sufficient legal proximity, the particular facts of a case should be examined to determine the closeness and directness of the relationship between the parties (*Deutsche Bank* at [36(a)]). The twin criteria of voluntary assumption of responsibility and reliance may be used to demonstrate proximity (*Deutsche Bank* at [36(b)]). The contractual matrix is a factor to be considered when determining the question of legal proximity between the parties: in particular, circumstances showing that the alleged tortfeasor never undertook any relevant responsibility in its contract, or qualified it or even disclaimed it, would ordinarily be expected to feature in the court's inquiry on the existence of a duty of care (*Deutsche Bank* at [37]).

Decision

137 The starting point of the claimants’ case was that Kia Hui owed them a duty of care, going beyond the contractual obligations owed by the Bank, when rendering advice on the claimants’ investment portfolio, such advice extending to the acquisition and liquidation of stocks and best times and prices to trade a particular stock (see [5] above). To establish this assertion:

(a) Fiona averred that her relationship with Kia Hui “grew beyond a mere RM-client relationship” and they became “close friends”, as purportedly evidenced by the claimants’ acquaintance with Kia Hui’s immediate family members; the *feng shui* activities which Fiona and Kia Hui undertook together; the aesthetic procedure and treatments Fiona underwent at Kia Hui’s husband’s clinic as a way of “support[ing] him as a friend”; and Fiona’s recommendations to Kia Hui regarding a property purchase and home renovations;²¹⁷ and

(b) Fiona gave evidence of WhatsApp messages exchanged between her and Kia Hui showing that Kia Hui had provided views when Fiona asked about various matters, mostly regarding the purchase of currencies, shares and funds.²¹⁸ All the messages cited by Fiona were exchanged in 2018,²¹⁹ save for one exchange on 22 September 2017 where Fiona asked if there was any update from the United States Federal Reserve Board on interest rates and Kia Hui responded to say that a move was expected in December.²²⁰

²¹⁷ Fiona’s AEIC at para 24.

²¹⁸ Fiona’s AEIC at para 36.

²¹⁹ Fiona’s AEIC at paras 36(b)–(l).

²²⁰ Fiona’s AEIC at para 36(a).

138 I find that the claimants have not established that Kia Hui owed them the broad and general duty of care alleged. The fact that a friendship may have developed between Fiona and Kia Hui is neither here nor there. In my view, the WhatsApp messages relied on by Fiona (see [137(b)] above) show them engaging in professional exchanges in which Kia Hui communicated in her capacity as Fiona's RM. The Bank's contractual clauses made clear that views provided by Kia Hui as the Bank's RM were not to be regarded by the claimants as investment advice and were not to be relied upon by them as such. For example:

(a) Clause 11.1(c) of section 1 of the GTCs provided that:²²¹

11.1 Unless expressly agreed to in writing by the Bank, the Client acknowledges and agrees that:

...

(c) even if the Bank may have provided information, recommendation, advice or views, such information, recommendation, advice or views are not to be regarded as investment advice provided by the Bank to the Client and not to be relied upon by the Client as such[.]

(b) The Risk Disclosure portion of the Account Application signed by the claimants on 2 July 2013 contained the following declaration and acknowledgment by the claimants:²²²

I/We further declare and acknowledge that in accepting the terms of the Client Agreement and in entering into any investment or transaction hereunder, I/we have decided to do so based on my/our personal judgment, and independently of, and not in reliance on, any statement, representation or recommendation of the

²²¹ 9AB at p 662.

²²² Agreed Bundle of Documents Vol 1 at p 216.

Bank or any of its officers or employees and my/our entry into any investment or transaction shall constitute a representation and warranty to this effect which the Bank shall be entitled to rely upon. I/We acknowledge that I/we make my/our own assessment in relation to any and all investment or trading decisions, including foreign currency, derivatives and securities transactions, and I/we accept any and all risks associated with, and any losses suffered as a result of entering into, any investment or transaction.

139 In these circumstances, the legal proximity required to establish the alleged duty of care on Kia Hui's part when rendering advice on the claimants' investment portfolio is not made out. I add that the claimants would also be unable to establish that the alleged duty of care arose *prior* to the 22 Sep 2017 Meeting by relying primarily (as Fiona did) on WhatsApp messages exchanged between Fiona and Kia Hui in 2018.

140 I turn then to the claimants' more specific case that by allegedly giving / making the Sale Advice, Short-term Trades Advice and Representation at the 22 Sep 2017 Meeting, Kia Hui had voluntarily assumed responsibilities to (a) monitor the LAC share price; (b) inform Fiona whenever the LAC share price fell to or below the Target Price (or Revised Target Price); and (c) help the claimants make short-term trades of LAC shares with a view to ultimately earning a greater profit than they would otherwise have made by simply holding on to the LAC Shares (see [7] and [10] above). It is unclear whether the claimants' case was that these actions fell within the scope of the alleged general duty of care owed by Kia Hui to them when rendering advice on their investment portfolio;²²³ or that Kia Hui owed them a separate or distinct duty of care to take these actions.²²⁴ If the claimants' case was the former, it would not get off the

²²³ CCS at para 123.

²²⁴ CCS at para 129.

ground given that the claimants have failed to establish the alleged general duty of care to begin with (see [137]–[139] above). If their case was the latter, it would also fail for the following reasons.

141 First, the connection between Kia Hui allegedly giving the Sale Advice and allegedly assuming the various asserted responsibilities is unclear. In any event, while I have found that Kia Hui likely encouraged Fiona to sell the LAC Shares, I do not think this amounts to Kia Hui giving the “Sale Advice” as pleaded by the claimants (see [132(b)] above).

142 Second, I do not understand the claimants’ case to be that Kia Hui owed them a duty to monitor the LAC share price *in vacuo*. That would be a meaningless duty as it would be unclear *what* she was supposed to be monitoring for. Rather, I understand their case to be that Kia Hui owed them a duty to monitor for whether and when the LAC share price fell to or below the Target Price (or Revised Target Price) with a view to informing Fiona of any such occurrence. In other words, the claimants’ purported expectations that Kia Hui would (a) monitor the LAC share price and (b) inform Fiona whenever the LAC share price fell to or below the Target Price (or Revised Target Price), did not refer to two separate actions, but rather, to one and the same course.

143 Thus understood, the alleged duty plainly did not arise:

(a) While I have found that Kia Hui likely made the Monitoring Statement, I have also found that this was likely a loose and vague statement, which was not tethered to any level of LAC share price and which was not equivalent to the Representation (see [30(d)], [77], [116] and [132(d)] above). Pertinently, I have also found that Kia Hui did not make the Representation and that the Target Price was not discussed (see

[132(d)] above). It follows from these findings that Kia Hui did not assume any responsibility to monitor the LAC share price with a view to informing Fiona whenever it fell to or below the Target Price.

(b) Further, it is undisputed that after Fiona sold the LAC Shares on 23 September 2017, the LAC share price never fell to or below the Target Price of C\$1 per share, be it prior to or after the Consolidation.²²⁵ The claimants' suggestion that Kia Hui's alleged responsibility morphed, post-Consolidation, into having to inform the claimants when the LAC share price fell to or below the Revised Target Price (see [10]–[11] above) is untenable. Fiona admitted that she and Kia Hui never discussed the Revised Target Price of C\$5 per share.²²⁶ There is no basis in fact or law for the claimants to unilaterally impose on Kia Hui a responsibility or duty in respect of the Revised Target Price.

144 In addition, there was no reliance on the claimants' part that would demonstrate the requisite legal proximity for the alleged duty of care to arise. The evidence shows that Fiona did not rely on Kia Hui to monitor the LAC share price at all, much less to monitor and inform her when it fell to or below the Target Price or Revised Target Price:

(a) After the Sale, Fiona checked the LAC share price on her own and placed the 16 Oct 2017 Limit Order to buy back LAC shares at C\$1.40 per share (*ie, above* the Target Price) (see [78] and [80] above).

²²⁵ Transcript 19 Sep 2025 at p 52:14–16.

²²⁶ Transcript 19 Sep 2025 at pp 67:22–68:2.

(b) In November 2017, Fiona was the one who found out about the increase in the LAC share price (post-Consolidation) and informed Kia Hui that she might buy back LAC shares (see [85] and [86(a)] above).

(c) In February 2018, Fiona checked the LAC share price on her own and purchased LAC shares at share prices *above* the Revised Target Price (see [90], [92(a)] and [92(b)] above).

145 Third, I have found that Kia Hui did not give the Short-term Trades Advice (see [132(c)] above). It follows that she did not assume any responsibility to help the claimants make short-term trades of LAC shares.

146 Given that Kia Hui owed no duty of care to monitor the LAC share price with a view to informing Fiona whenever it fell to or below the Target Price (or Revised Target Price), or to help the claimants make short-term trades of LAC shares, it follows that Kia Hui had no duty to inform Cara of these matters when she handed over to Cara (*cf*, [12] above).

147 It also follows that the question of breach of duty of care does not arise.

148 For completeness, I briefly address the issue of causation. While the trial of OC 597 was bifurcated such that “all issues relating to the assessment and quantification of the [c]laimants’ claims of loss and/or damages” were to be separately tried after the determination of liability,²²⁷ it was still incumbent on the claimants to show that Kia Hui’s alleged breach had caused them damage in order for them to establish liability. In this regard, Fiona made a series of assertions about the purchase and sale transactions of LAC shares she would have entered into “had Kia Hui complied with her Representation such that the

²²⁷ Order of Court HC/ORC 5137/2024 dated 7 October 2024.

channelling trading strategy could be implemented”.²²⁸ In gist, according to Fiona, she would have made various purchases when the LAC share price fell below the Revised Target Price of C\$5 per share,²²⁹ and she would have made various sales when the LAC share price “soared”,²³⁰ making an overall profit of approximately C\$1,680,640 from these transactions.²³¹ I find Fiona’s evidence on the putative transactions to be speculative and do not think the claimants would have succeeded in discharging their burden of proving damage (assuming the existence and breach of duty of care were established):

(a) One, Fiona’s short-term trades in LAC shares in February 2018 show that she had been prepared to purchase LAC shares at prices higher than the Revised Target Price of C\$5 per share, and to sell LAC shares even when that would have resulted in a loss to her (see [90], [91] and [92(b)] above). This suggests that Fiona’s evidence on the putative profit-making transactions she contends she would have entered into (but for Kia Hui’s alleged breach) is more contrived than real.

(b) Two, Fiona provided no evidence of her financial resources to make the asserted putative purchases, one of which would purportedly have taken place during the period of COVID-19 in 2020²³² when, as Fiona admitted, her business was suffering badly and she needed to “keep [her] cash”.²³³

²²⁸ Fiona’s AEIC at para 130.

²²⁹ Fiona’s AEIC at paras 130(a), (b) and (d).

²³⁰ Fiona’s AEIC at paras 130(c), (e) and (f).

²³¹ Fiona’s AEIC at para 130(g).

²³² Fiona’s AEIC at para 130(d).

²³³ Transcript 19 Sep 2025 at pp 81:22–82:1, 82:25–83:3 and 85:11–16.

149 To conclude, I therefore dismiss the claimants’ claim against Kia Hui.

Issue 3: determination of the defendant’s third party claim

Third party claim in vicarious liability

150 It follows from my decision at [149] above that Kia Hui’s third party claim against the Bank based on vicarious liability is dismissed.

Third party claim for indemnification of legal costs

151 Kia Hui also claimed to be entitled to be indemnified by the Bank for her legal costs of defending OC 597 and bringing the third party claim against the Bank, pursuant to the principle in *In re Famatina Development Corporation, Limited* [1914] 2 Ch 271 (“*Famatina*”) that “an agent ha[s] a right against his principal, founded upon an implied contract, to be indemnified against all losses and liabilities, and to be reimbursed all expenses incurred by him in the execution of his authority” (at 282).²³⁴ The Bank countered that “any alleged promise to monitor was outside the scope of [Kia Hui’s] course of employment with the [Bank]” and there was thus no basis for Kia Hui to seek an indemnity from the Bank for her costs incurred in OC 597.²³⁵

152 For an agent to claim from his principal indemnification for losses or reimbursement for expenses incurred, the agent must show that such losses or expenses arose directly from him doing that which was his duty as agent to do and acting within the scope of his authority as agent (*Famatina* at 282; *Chee Kheong Mah Chaly v Liquidators of Baring Futures (Singapore) Pte Ltd* [2003] 2 SLR(R) 571 at [41]; Tan Cheng Han SC, *The Law of Agency*

²³⁴ DCS at paras 180–181.

²³⁵ Third Party’s Closing Submissions dated 29 October 2025 at paras 97, 99 and 103.

(Academy Publishing, 2nd Ed, 2017) (“*The Law of Agency*”) at para 08.055). Where the agent has acted outside the scope of his authority, he is not entitled to be indemnified since he had not done what the principal had instructed him to do (*The Law of Agency* at para 08.058).

153 In the present case, I do not accept Kia Hui’s characterisation that “all of [her] actions under scrutiny in [OC 597] were actions she performed as part of her RM duties”.²³⁶ I have found that Kia Hui encouraged Fiona to sell the LAC Shares and made the Monitoring Statement as part of that encouragement, with the objective of thereafter trying to persuade Fiona to invest the sale proceeds in funds, obtain a loan from the Bank on the security of those funds, and use the loan to purchase a universal life insurance policy (which course would have the effect of improving Kia Hui’s achievement of her performance targets) (see [64] above). There is no evidence that Kia Hui was authorised by the Bank to encourage Fiona to sell the LAC Shares for such ends, or that Kia Hui was authorised by the Bank to make the Monitoring Statement. To the contrary, the making of the Monitoring Statement was clearly outside the scope of what Kia Hui was authorised to do as the Bank’s RM:

- (a) Andrew’s unchallenged evidence was that it was against the Bank’s policy for an RM to monitor a stock for a client.²³⁷
- (b) Kia Hui herself pleaded and admitted that it was not within her role or duties as an RM to monitor share prices for clients.²³⁸

²³⁶ DCS at para 182.

²³⁷ Transcript 25 Sep 2025 at p 106:23.

²³⁸ D&CC, Defence at para (17)(ii); Transcript 24 Sep 2025 at pp 12:21–13:6.

- (c) Fiona’s position was also that Kia Hui knew that she (*ie*, Kia Hui) was not supposed to be offering to privately monitor share prices for Fiona.²³⁹

154 In my view, although Kia Hui’s acts of encouraging Fiona to sell the LAC Shares and making the Monitoring Statement ultimately did not give rise to liability on her part for the claimants’ claim, her conduct in this regard would nevertheless have given Fiona cause to feel aggrieved and impetus to commence OC 597. Given that such conduct was unauthorised by the Bank, I do not think it can be said that OC 597 was brought about (such that Kia Hui had to incur legal costs in OC 597) as a result of Kia Hui acting “in the execution of [her] authority” (*Famatina* at 282). I thus find that Kia Hui is not entitled to be indemnified by the Bank for her legal costs incurred in OC 597. Kia Hui’s third party claim against the Bank for indemnification is thus also dismissed.

Issue 4: determination of the defendant’s counterclaim

155 Following my decision at [149] and [150]–[154] above, it would mean that Kia Hui’s counterclaim was for the claimants to pay her costs “on a full indemnity basis”²⁴⁰ for:

- (a) successfully defending against the claimants’ claim in OC 597;
and
- (b) unsuccessfully pursuing her third party claim against the Bank.

²³⁹ Transcript 18 Sep 2025 at p 96:10–16.

²⁴⁰ DCS at para 179.

156 Kia Hui’s counterclaim was based on her contractual rights under cl 16.1 read with cll 1.2.86 and 1.2.41 (“Contractual Indemnity”) (see [18]–[19] above).

Counterclaim for costs of successfully defending against the claimants’ claim

157 In the claimants’ closing submissions, they argued that:

(a) First, the costs for which Kia Hui sought to be indemnified were incurred at the earliest on 8 September 2023 when OC 597 was commenced. By then, Kia Hui was no longer an employee of the Bank. Under the Contractual Indemnity, the claimants’ obligation to indemnify was owed to “the Bank... and every ... employee or agent”, not to former employees of the Bank. In gist, the benefit of the Contractual Indemnity did not extend to Kia Hui as a former employee of the Bank.²⁴¹

(b) Second, even if Kia Hui could rely on the Contractual Indemnity when she was no longer the Bank’s employee, the court had the discretion to “disregard an agreement on costs in situations where the outcome is manifestly unjust”.²⁴² It would be manifestly unjust to allow Kia Hui to rely on the Contractual Indemnity as she had prevaricated and was untruthful in her evidence regarding the 14 Dec 2021 Call.²⁴³ Even if the court did not find manifest injustice, the court retained the discretion to award Kia Hui costs on a standard basis instead.²⁴⁴

²⁴¹ CCS at paras 141–144.

²⁴² CCS at paras 145–146.

²⁴³ CCS at paras 147–148.

²⁴⁴ CCS at paras 149–150.

(c) Third, if Kia Hui was entitled to rely on the Contractual Indemnity and the court decided not to exercise its discretion to override the agreement on costs, the Contractual Indemnity should not be construed as referring to “Full Costs” (*ie*, 100% of the fees paid by Kia Hui to her solicitors) but to costs on the indemnity basis (as opposed to costs on the standard basis).²⁴⁵

158 Notably, the claimants’ pleaded defences to the counterclaim (see [20]–[22] above) were no longer advanced by them in response to Kia Hui’s counterclaim for the costs of successfully defending against the claimants’ claim.

159 In Kia Hui’s reply closing submissions, she countered that:

(a) First, the Contractual Indemnity should be read as conferring on Kia Hui protection from “Loss” (as defined in cl 1.2.86) in connection with events during her employment. Otherwise, the Bank’s employees’ protection under the Contractual Indemnity would depend on two purely fortuitous events: first, whether and when an employee left the Bank’s employ, and second, when a client made an unmeritorious complaint that caused “Loss” to the employee. This could not have been objectively intended by the Bank and the claimants.²⁴⁶

(b) Second, Kia Hui did not dispute that the court could, in principle, disregard the Contractual Indemnity if it would be manifestly unjust to

²⁴⁵ CCS at paras 151–162.

²⁴⁶ Defendant’s Reply Closing Submissions dated 12 November 2025 (“DRCS”) at para 10.

enforce it.²⁴⁷ However, she rejected any suggestion that her conduct on the witness stand when giving evidence on the 14 Dec 2021 Call was improper, and argued that even if the court found any impropriety relating to this “singular event”, that would be outweighed by the “sheer falsity inherent in [Fiona’s] allegations”.²⁴⁸

(c) Third, the Contractual Indemnity was for Full Costs because cl 16.1 provided for the claimants to “fully indemnify” the Bank’s employees “on a full indemnity basis”. This included indemnification for “Costs” which was defined in cl 1.2.41 to include legal fees and expenses “on a full indemnity basis”.²⁴⁹

160 In my view, two main issues arise for determination:

- (a) whether Kia Hui has a right to enforce the Contractual Indemnity; and
- (b) in the light of the Contractual Indemnity, what award of costs should be made as between the claimants and Kia Hui in respect of the Kia Hui’s successful defence of the claimants’ claim.

Whether Kia Hui has a right to enforce the Contractual Indemnity

161 To recapitulate, cl 16.1 provided in its material part:

16.1 The Client shall fully indemnify and keep indemnified promptly on demand (whether such demand is made orally or otherwise) on a full indemnity basis the Bank, its Affiliates, Agents and every director, officer, employee or agent of any of the foregoing against any and all Loss

²⁴⁷ DRCS at para 11.

²⁴⁸ DRCS at paras 11–15.

²⁴⁹ DRCS at paras 16–29.

which may be brought against any of them or which any of them may suffer or incur in connection with the Account(s), Service(s), Facility(ies), Transaction(s) or any Instruction in relation thereto save where the same arises directly from their respective gross negligence or wilful default...

...

... The provisions of this Clause 16.1 and all of the rights of the Bank hereunder shall apply to, and be conferred on, each of the Bank's Agents, other Affiliates and every director, officer, employee or agent of any of the foregoing, all of whom shall be entitled to enforce and enjoy the benefit of this Clause to the fullest extent allowed by law.

162 Kia Hui was not a party to the Bank's contract with the claimants. The Contracts (Rights of Third Parties) Act 2001 (2020 Rev Ed) ("Act") provides for when a person who is not a party to a contract may enforce a term of the contract. Sections 2(1)(a) and (3) are relevant:

2.—(1) Subject to the provisions of this Act, a person who is not a party to a contract (called in this Act a third party) may, in the third party's own right, enforce a term of the contract if —

(a) the contract expressly provides that the third party may; or

...

...

(3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description, but need not be in existence when the contract is entered into.

163 The question is whether Kia Hui is a member of the class of the Bank's "employee[s]" under cl 16.1, such that s 2(3) of the Act is satisfied. If she is, then, given that cl 16.1 expressly confers an entitlement to enforce and enjoy the benefit of the clause on (*inter alia*) this class, s 2(1)(a) of the Act would be satisfied and Kia Hui may enforce the Contractual Indemnity.

164 The purpose of contractual interpretation is to give effect to the objectively ascertained expressed intentions of the contracting parties as it emerges from the contextual meaning of the relevant contractual language (*Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [30]). In my view, on a proper interpretation of cl 16.1, the term “employee” therein includes both former and current employees:

(a) First, the term “employee” is not circumscribed by words such as “current” or “present”.

(b) Second, the employee’s indemnity in cl 16.1 is for “Loss” brought against or suffered or incurred by him “in connection with the Account(s), Service(s), Facility(ies), Transaction(s) or any Instruction in relation thereto”. There is no timeframe stipulated for when the “Loss” must have arisen. Instead, the focus is on the “Loss” having a causal connection to the “Account(s), Service(s), Facility(ies), Transaction(s) or any Instruction in relation thereto”, all of which concern matters or interactions that the Bank’s employees may have been engaged with in their capacity as employees and in the course of their employment. This indicates that the contracting parties’ objective intention behind the provision is for the Bank’s employees, whether former or current, to be indemnified for the causally connected “Loss” which they have become exposed to by virtue of having acted as the Bank’s employees and in the course of their employment.

(c) Third, the claimants’ interpretation of cl 16.1 as applying only to current employees would lead to the absurd result that an employee’s right to indemnification is dependent on the unrealistic requirement that he must remain employed with the Bank and/or the fortuitous timing of

when a “Loss” crystallises. A construction which leads to unreasonable or absurd results is to be avoided unless it is required by clear words and there is no other tenable construction (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 (“*Zurich Insurance*”) at [131]; see also *Y.E.S. F&B Group Pte Ltd v Soup Restaurant Singapore Pte Ltd* [2015] 5 SLR 1187 at [31]).

165 I thus find that Kia Hui is a member of the class of the Bank’s “employee[s]” under cl 16.1.

166 For completeness, the claimants did not dispute in their closing submissions that, where the entitlement to enforce and enjoy the benefit of cl 16.1 extended to Kia Hui (as I have found), her costs of successfully defending the claimants’ claim fell within the scope of the Contractual Indemnity.

What award of costs should be made

(1) What the Contractual Indemnity provided for

167 Turning to the issue of what award of costs should be made, I start with the language of the Contractual Indemnity which provided that “[t]he Client shall fully indemnify ... on a full indemnity basis the Bank, its ... employee ... against any and all Loss” (cl 16.1), with “Loss” defined to include “Costs” (cl 1.2.86), and “Costs” defined to include “costs, expenses (including fees and expenses of legal and other professional advisers on a full indemnity basis...)” (cl 1.2.41). As a matter of contractual interpretation, I find that the use of the terms “fully indemnify” and “full indemnity basis” points to the Contractual Indemnity providing for Kia Hui to be fully indemnified for her legal costs of

successfully defending the claimants' claim *in so far as such costs were not unreasonable in amount or unreasonably incurred*. The Contractual Indemnity did not stipulate that even unreasonable legal costs fell to be indemnified; indeed, that could not reasonably have been the contracting parties' objective intention (see *Zurich Insurance* at [131]).

168 I find further support in *Gomba Holdings (UK) Ltd v Minorities Finance Ltd (No 2)* [1992] 3 WLR 723 ("*Gomba Holdings*") for the view that the use of the term "full indemnity basis" in a contractual indemnity clause is generally not wide enough to cover costs that were unreasonable in amount or unreasonably incurred. In *Gomba Holdings*, the relevant clause in a mortgage deed provided for the mortgagor to pay to the mortgagee "[a]ll costs charges and expenses howsoever incurred by the bank or any receiver under or in relation to this mortgage ... on a full indemnity basis" (at 728). Addressing the construction of the clause (at 734), the English Court of Appeal held that (at 735):

The reference to "a full indemnity basis" would avoid the risk of a taxation being ordered on a party and party basis or, now, on a standard basis. But nothing in the language used justifies the conclusion that the mortgagor was agreeing to pay, or to permit to be charged on the mortgaged property, costs, charges and expenses that had been unreasonably incurred or that were unreasonable in amount.

While *Gomba Holdings* was a case concerning mortgages, I find that the court's above approach to the construction of the relevant indemnity clause is nevertheless instructive in interpreting the Contractual Indemnity in the present case.

169 I also find the decision in *Wingcrown Investment Pte Ltd v Mannepalli Gayatri Ram* [2023] 5 SLR 583 ("*Wingcrown*") to be in a similar vein. In that

case, the plaintiff-vendor succeeded in its action against the defendant-purchaser for failing to complete the sale and purchase of a property, and claimed as damages certain legal costs pursuant to an indemnity clause in the sale and purchase agreement which provided for the defendant to indemnify the plaintiff against, *inter alia*, “costs and expenses (including all legal and other costs, charges and expenses) on a fully indemnity basis” (at [21]). The court held that the wording of the provision was clear, and justified the plaintiff seeking to be indemnified for “reasonable and necessary legal costs that had been expended” (at [27]). The legal costs claimed by the plaintiff were allowed after the court satisfied itself that the work done as itemised in the solicitors’ invoices adduced by the plaintiff was “appropriate in the circumstances” (at [28]). As for the costs of the action, the court awarded the plaintiff costs on the indemnity basis in view of the indemnity clause (at [69]–[70]). I consider the foregoing approach in *Wingcrown* consistent with my view that the phrase “full indemnity basis” in the Contractual Indemnity in the present case did not, without more, cover costs that were unreasonable in amount or unreasonably incurred.

170 I am aware that in *Sheila Kazzaz v Standard Chartered Bank* [2021] 3 SLR 1 (“*Sheila Kazzaz*”), the court found that the defendants were entitled to be indemnified in full for their legal fees and disbursements pursuant to a contractual provision that the plaintiffs would “indemnify [them] on a full indemnity basis” (at [5] and [7]). However, it is unclear whether the court considered if legal costs which were unreasonable in amount or unreasonably incurred would also fall within the scope of the indemnity. I therefore do not think that *Sheila Kazzaz* undermines my interpretation of the Contractual Indemnity in the present case (at [167] above).

(2) The true nature of Kia Hui’s counterclaim

171 Next, I note that while Kia Hui purported to have “invoked [the Contractual Indemnity] as part of [her] claim”,²⁵⁰ she has nevertheless asked for the court to award her costs “to be assessed if not agreed”.²⁵¹ She submitted that costs should be awarded to her “on a full indemnity basis” pursuant to the Contractual Indemnity.²⁵²

172 In *Telemedia Pacific Group Ltd v Credit Agricole (Suisse) SA* [2015] 4 SLR 1019 (“*Telemedia*”), the court observed that in cases where parties are seeking to directly invoke their contractual rights to recover legal costs on an indemnity basis, “parties are pursuing a contractual remedy (presumably, specific performance of the indemnity agreement, or damages for the failure to indemnify)”; the court hence held that such parties must plead their entitlement to indemnity costs under contract (at [31]).

173 In my view, Kia Hui is *not* pursuing any contractual remedy in respect of the Contractual Indemnity (such as damages for breach of the Contractual Indemnity or an order for specific performance where damages would be inadequate) in the present case. Indeed, at the start of OC 597, Kia Hui’s entitlement to costs and to indemnification under the Contractual Indemnity had yet to be established; it could not be said that the claimants had breached any (as yet undetermined) contractual obligations owed to Kia Hui; and there was no basis for Kia Hui to sue the claimants for any breach of the Contractual Indemnity. Seen in this context, the only avenue for this court to award Kia Hui costs of the proceedings in OC 597 would be through the exercise of this court’s

²⁵⁰ DCS at para 178.

²⁵¹ DCS at para 179.

²⁵² DCS at para 179.

power to award costs under the procedural law. Once this is appreciated, it is evident that Kia Hui is relying on the court's power to award costs of the proceedings in OC 597.²⁵³

174 In the realm of the court's power to award costs, the court has a statutory discretion as to how costs are to be awarded (O 2 r 13(1) of the Rules of Court 2021 ("ROC")) and I do not think that Kia Hui's reliance on the Contractual Indemnity can oust the court's discretion in this regard (*NSL Oilchem Waste Management Pte Ltd v Prosper Marine Pte Ltd* [2020] SGHC 204 at [199]). However, the court will tend to exercise its discretion to uphold the parties' contractual bargain unless it would be manifestly unjust to do so (*Crédit Agricole Corporate & Investment Bank, Singapore Branch v PPT Energy Trading Co Ltd* [2024] 2 SLR 143 ("*Crédit Agricole*") at [43], citing *Telemedia* at [29] and *Abani Trading Pte Ltd v BNP Paribas* [2014] 3 SLR 909 at [93]).

(3) Decision on costs award

175 This brings me to the question of what award of costs would be reflective of and uphold the bargain struck under the Contractual Indemnity.

176 Under O 21 r 22(3) of the ROC, where the court orders costs to be assessed on "the indemnity basis", all costs are to be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred, and any doubts as to whether the costs were reasonably incurred or were reasonable in amount are to be resolved in favour of the receiving party.

²⁵³ Cf. DCS at para 178.

177 In my view, the indemnity basis under O 21 r 22(3) of the ROC most closely approximates and coheres with what the Contractual Indemnity provided for (see [167] above), and it would uphold the parties’ contractual bargain for Kia Hui’s costs of defending OC 597 to be awarded to her on the indemnity basis. Indeed, a similar conclusion appears to have been reached in *Wingcrown*: the relevant indemnity clause provided for the indemnification of plaintiff’s legal costs “on a full indemnity basis”, and the court awarded the plaintiff costs of the action on the indemnity basis (see [169] above).

178 This leaves the final question of whether this court should, in the exercise of its statutory discretion, override the Contractual Indemnity and order costs on the standard basis (see O 21 r 22(2) of the ROC) instead of costs on the indemnity basis. While the court has the power to override the parties’ costs agreement in order to preserve the integrity of the administration of justice, situations warranting the court’s intervention should be limited, and the court will tend to exercise its discretion to uphold the parties’ contractual bargain unless it would be manifestly unjust to do so (*Crédit Agricole* at [43]).

179 In the present case, I find that there is no basis for me to override the Contractual Indemnity and order costs on the standard basis. The claimants argued that I should do so on account of Kia Hui’s conduct in the proceedings.²⁵⁴ I disagree. While I did not accept parts of Kia Hui’s evidence, I also did not accept parts of Fiona’s evidence. On the issues most critical to the claimants’ case, I decided against the claimants, finding that Kia Hui did not give the Short-term Trades Advice or make the Representation, and that the parties did not discuss the Target Price or Revised Target Price. In fact, given Fiona’s admission that she and Kia Hui never discussed the Revised Target Price (see

²⁵⁴ CCS at paras 147–148.

[88] above), there was no footing for the claimants' case that they allegedly suffered loss and damage because Kia Hui did not inform them when the LAC share price fell below the Revised Target Price such that they lost out on engaging in short-term trades of LAC shares (see [11] above). Overall, I would not characterise this matter as one where Kia Hui's conduct of the proceedings fell so short that awarding her costs on the indemnity basis (in line with the Contractual Indemnity) would undermine the administration of justice or be manifestly unjust.

180 I therefore order that the claimants are to pay Kia Hui costs on the indemnity basis for successfully defending the claimants' claim in OC 597.

Counterclaim for costs of unsuccessful third party claim against the Bank

181 The claimants submitted that an order for them to bear Kia Hui's costs of her third party claim was a highly exceptional order, and that Kia Hui had not demonstrated that exceptional circumstances existed for such an order to be made.²⁵⁵ The claimants' claim was that Kia Hui owed them a duty of care which went beyond the terms of their banking relationship with the Bank, and as such, it could not be said that the issues raised by the claimants ought to have been properly litigated between the Bank and them.²⁵⁶ Further, the position taken by Kia Hui in defence of the claimants' claim (in which she denied giving / making the Sale Advice, Short-term Trades Advice and Representation) was contradictory to her position in her third party claim (in which she sought to make the Bank vicariously liable if she was found liable for doing the very acts which she denied).²⁵⁷ This demonstrated that there was no necessity for Kia Hui

²⁵⁵ CCS at para 165.

²⁵⁶ CCS at paras 166–168.

²⁵⁷ CCS at para 170.

to commence the third party action as she could have simply defended the claimants' claim on the merits.²⁵⁸

182 Kia Hui's counter was that the alleged duty of care underpinning the claimants' case was "situated squarely within the banking relationship"; and that the Contractual Indemnity was wide enough to cover the third party claim, which was factually connected with the claimants' allegations.²⁵⁹

183 It is apposite to begin by considering whether the claimants would have been ordered to bear the costs of Kia Hui's third party action based on the usual costs principles. The overarching principle is that the court may exercise its discretion to order a plaintiff to bear the costs of third party proceedings when those proceedings are *inevitable* as a *direct result* of the plaintiff's claim (*Telemedia* at [89(a)]). One clear way in which such inevitability may be demonstrated is if the real issue at the heart of the action is one that ought to be properly litigated between the plaintiff and the third party, rather than the plaintiff and the defendant, such that it may be said that the defendant should never have been embroiled in the litigation in the first place (*Telemedia* at [89(b)]). An order that the plaintiff should be made to bear the costs of third party proceedings is a highly exceptional order, and the burden is on the defendant to demonstrate that such exceptional circumstances exist (*Telemedia* at [89(d)]).

184 In the present case, based on the above principles, I would not have ordered the claimants to bear the costs of Kia Hui's third party action. There was no good reason for Kia Hui to have brought the third party claim against

²⁵⁸ CCS at para 171.

²⁵⁹ DRCS at para 30.

the Bank. As Kia Hui denied giving / making the Sale Advice, Short-term Trades Advice and Representation, and as it would have fallen outside the scope of her authority as the Bank's RM to have made the Representation (for similar reasons as set out at [153] above), the real issues at the heart of the claimants' claim fell to be properly litigated between the claimants and Kia Hui, and it was not inevitable for Kia Hui to commence the third party action.

185 The question then arises whether, not being entitled to claim the costs of the third party action from the claimants under costs principles, Kia Hui would nevertheless be entitled to be indemnified by the claimants for such costs under the Contractual Indemnity. In my judgment, the answer to this question is no. Were it otherwise, it would mean that Kia Hui could make *any* third party claim she wished and the claimants would have to indemnify her for her costs of such third party claim regardless of its merits and whether Kia Hui should have pursued the same. Interpreting the Contractual Indemnity so broadly would be uncommercial and unfair, and such an interpretation should be avoided (see *Zurich Insurance* at [131]).

186 I find further support for this position in *Havila Kystruten AS v STLC Europe Twenty Three Leasing Ltd* [2023] EWHC 444 (Comm). In that case, the relevant contractual indemnity clause ("clause 7") provided that (at [9]):

The Lessee shall pay to the Lessor on demand ... all Losses incurred by the Lessor in connection with: [specified circumstances].

187 A key issue which the court had to consider was (at [28]):

... whether legal costs incurred by an unsuccessful litigant, especially where their recoverability as costs has been dealt with by the court already on a final basis, are or were incurred "*in connection with*" the relevant contractual events, and, even if so, fall within the contemplation of contractually recoverable costs.

188 Addressing this issue, the court held that (at [92]–[94]):

92. As a matter of proper construction, the relevant legal costs can be said, without more, to have been incurred by the Lessors “*in connection with*” the various contractual circumstances set out in clause 7 sub-paragraphs (c) and/or (d) and/or (e) and/or (f). ... They just happen to be litigation costs. That is to say, costs incurred by the Lessor as an unsuccessful party in litigation against the contractual counterparty and which the court ordered should not be recovered. But that does not destroy their essential or substantive characteristic. It does not remove the nexus if otherwise existing ...

93. I therefore ask: did the parties contemplate that legal costs of this kind would be recovered under clause 7 ...? They did not, in my judgment.

94. The relevant indemnification language is framed in terms of nexus, *but there must be limits to the type of legal costs, i.e. those subject to separate and specific treatment by the court, which can be claimed even if falling within that nexus.* ...

[emphasis added]

189 In a similar vein, while the Contractual Indemnity provided for the indemnification of costs incurred by Kia Hui “in connection with the Account(s), Service(s), Facility(ies), Transaction(s) or any Instruction in relation thereto”, and the costs of her third party action could facially be viewed as having this “connection”, it could not reasonably have been the contracting parties’ objective intention that the Contractual Indemnity would extend to requiring the claimants to indemnify Kia Hui for such costs even when she did not have to bring the third party action and the court would not have ordered the claimants to pay her such costs based on costs principles.

190 Accordingly, I find that Kia Hui is not entitled under the Contractual Indemnity to seek the costs of her unsuccessful third party action from the claimants. To avoid doubt, neither do I exercise my discretion to order the claimants to bear the costs of Kia Hui’s third party action.

Conclusion

191 To conclude:

- (a) I dismiss the claimants' claim against Kia Hui.
- (b) I dismiss Kia Hui's third party claim against the Bank.
- (c) I order that the claimants are to pay Kia Hui costs on the indemnity basis for successfully defending the claimants' claim in OC 597. I otherwise dismiss Kia Hui's counterclaim.

192 I will hear the parties on costs.

Kristy Tan
Judge of the High Court

Pillai Pradeep G, Simren Kaur Sandhu (PRP Law LLC) and Violet Huang (Colin Seow Chambers LLC) for the claimants and defendants in counterclaim;
Lok Vi Ming SC, Qabir Singh Sandhu and Clara Lim Ai Ying (LVM Law Chambers LLC) for the defendant and claimant in counterclaim;
Chew Ming Hsien Rebecca, Soh Yu Xian Priscilla and Alicia Tan Ruimin (Rajah & Tann Singapore LLP) for the third party.
