

TSMP LAW CORPORATION
MOOT AND MINGLE 2023

IN THE SUPREME COURT OF THE REPUBLIC OF ARTIFICANI

HC/S 99 of 2023

Gullybo Pte Ltd

... Plaintiff

Vs

1. Mel & Vize LLC
(UEN: 3048293)

2. UnCognito Pte Ltd
(UEN: 7814951)

... Defendants

GROUNDS FOR DECISION

1. This is a summary judgment application made by the Plaintiff, on the ground that the Defendants have no defence to the Plaintiff's claim. I set out the undisputed facts below.
2. The Plaintiff, Gullybo Pte Ltd ("**Gullybo**"), is a start-up company incorporated in the Republic of Artificani. Gullybo specialises in developing gummy bear recipes for other F&B businesses. As a new start-up, it has been entering into many new contracts with businesses and suppliers.
3. The 1st Defendant, Mel & Vize LLC ("**M&V**"), is a well-known local law firm. The 2nd Defendant, UnCognito Pte Ltd ("**UnCognito**"), is the official developer of an AI chatbot called "**LawChat**". LawChat is a free AI programme created by a passionate ex-lawyer to help law firms with simple legal research and the drafting of simple contracts. It is also widely advertised as being an aid to the public at large. An extract from an advertisement dated 10 February 2022 for LawChat is set out below:

LawChat is an artificial intelligence chatbot developed by UnCognito and launched in December 2021. It is built on the latest machine language models and has been fine-tuned using both supervised and reinforcement learning techniques. With data on legal authorities, cases, articles and precedents from major jurisdictions in the world up to December 2021, even a layperson can use LawChat to understand simple legal concepts and address simple queries on their legal rights!

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4. On 5 February 2022, Gullybo approached M&V for legal advice about certain clauses in a 5-year contract that Gullybo was entering into with one of its suppliers, Sugarcoat Pte Ltd (“**Sugarcoat**”). One particular clause was of concern to Gullybo, as it required Gullybo to pay a large sum of money to Sugarcoat if Gullybo were to prematurely cease business with Sugarcoat before the expiry of the 5-year term of the contract. Gullybo requested M&V to advise on whether this clause (the “**Clause**”) was a penalty clause and was enforceable.
5. M&V’s managing partner, Ms. Gaide, assigned newly qualified associate Neo Lim to handle the legal opinion. Mr Lim has testified that at the time, he was overworked and had to tend to other urgent tasks for Ms. Gaide including procuring a supplier for Ms. Gaide’s special decaf coffee beans and organic oat milk. Further, the legal opinion on the Clause required complex and thorough legal research, as the law on penalty clauses in the Republic of Artificani had not been settled then by any Supreme Court decisions. As such, on 10 February 2022, Mr Lim resorted to LawChat to draft the legal opinion. LawChat typically requires first-time users to accept upon registration that the content it generates does not constitute legal advice, and that it only contains data up to December 2021. However, the servers of LawChat were heavily trafficked the day Mr Lim signed up for its services, which resulted in a global glitch. As such, when Mr Lim registered and used LawChat for the legal opinion, the usual consent form did not pop up.
6. Mr Lim keyed in the necessary information regarding Sugarcoat and Gullybo, and LawChat generated a draft legal opinion which Mr Lim forwarded to Ms. Gaide. The draft opinion reviewed the law on penalty clauses in the Republic of Artificani and stated “*Although there has been no Supreme Court decision on this issue, prior decisions from lower courts and from other major jurisdictions all suggest that the Clause is a penalty, and penalty clauses are invariably unenforceable*”. Ms. Gaide was happy with the opinion and signed it (the “**Legal Opinion**”) and sent it to Gullybo.
7. Gullybo’s in house legal counsel, Mr Lazey Fu, reviewed the Legal Opinion. Mr Fu is a young Gen-Z legal counsel who firmly believes in the future of artificial intelligence. Having heard of LawChat, he decided to give it a try as a second check on the law. At this time, LawChat’s

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glitch regarding its consent form had still not been fixed, as UnCognito’s main programmer was down with a flu. Upon being satisfied that the Legal Opinion’s analysis of the law is consistent with that of LawChat, he advised the business manager of Gullybo in an email on 12 February 2023: “Have reviewed M&V’s legal opinion. Looks good and their advice is that the clause is not enforceable. Also used LawChat to double check.” As such, Gullybo signed the contract with Sugarcoat, convinced that if anything went sour, Gullybo would not need to pay the amount stated in the Clause.

8. Unbeknownst to all the parties at the time, just a few days prior to the issuance of the Legal Opinion (on 8 February 2022 to be exact), the Supreme Court of the Republic of Artificani issued a landmark decision on the law on penalty clauses in *Pandemican Pte Ltd v. Covidore Limited* [2023] SRRA 3 (“**Pandemican**”). This decision represented a departure from the lower courts’ earlier judgments, and substantially changed and settled the law on penalty clauses in the Republic of Artificani. The decision was released to the public and was available free of charge. One key finding in the decision is that not all penalty clauses are invariably unenforceable; so long as the amount payable under the penalty clause in question is a genuine pre-estimate of losses that might be caused by the breach of contract, it is enforceable.
9. Subsequently, Gullybo encountered severe financial difficulties as worldwide demand for gummy bears plummeted. Gullybo wrote to Sugarcoat on 19 June 2022 to terminate the contract. A few days thereafter, Sugarcoat brought a claim against Gullybo for the amount stated under the Clause. Under an expedited procedure, a decision regarding Sugarcoat’s claim was rendered on 2 December 2022, wherein the judge decided that *inter alia*:
 - a. The Clause was a penalty clause;
 - b. Prior to the decision in *Pandemican*, all penalty clauses were deemed unenforceable. However, applying the new law in *Pandemican*, the Clause did indeed represent a genuine pre-estimate of losses that Sugarcoat would suffer by Gullybo’s breach of the contract. As such, the Clause was enforceable; and
 - c. Gullybo had to pay Sugarcoat the amount stated in the Clause.
10. Neither Gullybo nor Sugar appealed on the above decision.

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11. Gullybo has since brought a claim against M&V for negligence, asserting that M&V had negligently given wrong legal advice in the Legal Opinion. Upon discovering UnCognito's role in the Legal Opinion, Gullybo further added UnCognito as a co-defendant.
12. Before hearing the parties' full arguments in Gullybo's summary judgment application, I wish to consider the following preliminary issues regarding UnCognito's role in the dispute:
 - a. **Did UnCognito owe Gullybo a duty of care?**
 - b. **If Uncognito owed Gullybo a duty of care, did Uncognito breach its duty and cause Gullybo's losses?**

I. **INSTRUCTIONS**

13. The Court will hear oral arguments from Counsel for Gullybo and Counsel for UnCognito **for a total of 15 minutes each** (10 minutes for submissions and 5 minutes for rebuttals) on the above questions on **17 March 2023**.
14. In crafting their submissions, Counsel are to consider the following decisions:
 - a. *Spandek Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100.
 - b. *Anwar Patrick Adrian and another v Ng Chong & Hue LLC and another* [2014] 3 SLR 761.
 - c. *Hotel Royal @ Queens Pte Ltd (trading as Hotel Royal @ Queens) v J M Pang & Seah (Pte) Ltd* [2014] 3 SLR 967.
 - d. *Quoine Pte Ltd v B2C2 Ltd* [2020] 2 SLR 20.

***Note:** All names are fictional. You may assume all decisions of the Singapore Court are taken as binding precedent in the Republic of Artificani (**except** for decisions relating to penalty clauses). The format of this moot problem does not reflect usual civil procedure. The format is used to set out the scenario for the purposes of the Moot problem.