

Walton International Group (Singapore) Pte Ltd v Loh Pui-Pui Sharon
[2011] SGHC 145

Case Number : Suit No 470 of 2008
Decision Date : 03 June 2011
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Indranee Rajah SC, Daniel Soo, Alex Toh and Angeline Tan (Drew & Napier LLC) for the plaintiff; Tan Chee Meng SC, Melanie Ho, Chen Xinping, Megan Tay and Clement Tan (WongPartnership LLP) for the defendant.
Parties : Walton International Group (Singapore) Pte Ltd — Loh Pui-Pui Sharon

Employment Law – Contract of Service – Breach

Employment Law – Contract of Service – Wrongful Dismissal

3 June 2011

Judgment reserved.

Tan Lee Meng J:

Introduction

1 The plaintiff, Walton International Group (Singapore) Pte Ltd (“the company”), terminated the employment of the defendant, Ms Sharon Loh Pui-Pui (“Ms Loh”), its former Vice-President, Sales, on 29 May 2008 and sued her for breach of her employment contract, breach of fiduciary duty owed to the company and unlawful interference with its trade. Ms Loh denied having breached her employment contract or her fiduciary duty to the company. She also denied having unlawfully interfered with the company’s trade and counterclaimed for damages for wrongful dismissal.

Background

2 On 1 November 2005, Ms Loh was employed by the company, which is a part of the Walton group of companies. The company’s primary business is the sale of Walton’s landbanking products. As Vice-President, Sales, Ms Loh was in charge of more than 500 staff in the retail sales division. Under her charge, the company’s retail sales in Singapore improved steadily despite problems within the company. In 2007, she was paid more than \$1.5 million by the company.

3 On 29 May 2008, the company summarily dismissed Ms Loh. On 30 June 2008, Ms Loh’s then solicitors, M/s Alban Tay Mahtani & de Silva LLP (“ATMD”), wrote to the company’s solicitors, and asserted that her employment had been wrongfully terminated. ATMD demanded that the company pay Ms Loh the following:

(a) One month’s base salary until 30 June 2008;

(b) Basic Management Override (1% of Singapore sales) until 20 June 2008; and

(c) Bonus Management Override (0.65% of Singapore sales) until 30 June 2008.

4 After receiving ATMD's letter of demand, the company, which refused to pay Ms Loh the amount claimed, instituted proceedings against her and sought to claim back the salary, overrides and management bonuses paid to her from the date she allegedly breached her employment contract at the end of January 2008 to the time she was dismissed on 29 May 2008.

5 To understand why Ms Loh's employment was abruptly terminated, reference may be made to another suit, namely Suit No 333 of 2008 ("Suit No 333"), by the Walton group of companies against two of its former senior executives, Mr Winston Yau ("Mr Yau"), and Mr James Iseli ("Mr Iseli"). In that suit, the Walton group accused Mr Yau, formerly one of its top officers in Singapore, and Mr Iseli, a former senior sales staff in Walton Malaysia, of, *inter alia*, conspiring to create fear and uncertainty among the Walton group's employees in Singapore and Malaysia by fuelling rumours that the majority of them would soon be made redundant as a result of the group's alleged "corporatisation" business strategy. The defendants in that suit were also accused of soliciting the staff of the company and Walton Malaysia, malicious falsehood, interfering with the trade of the Walton group and defaming the group as well as its president and chief executive officer, Mr William Kevin Doherty ("Mr Doherty").

6 In Suit No 333, Ms Loh was accused of furthering the intentions of Mr Yau and Mr Iseli and acting against the company's interests. However, it is noteworthy that she was not a defendant in that suit.

7 According to Ms Loh, the proceedings in the present suit were a pre-emptive move to discourage her from giving evidence in favour of Mr Yau and Mr Iseli in Suit No 333. Her counsel, Mr Tan Chee Meng SC ("Mr Tan"), asserted that the company's suit against her was "nothing more than a vindictive, oppressive and vexatious attempt to pre-empt the possibility that [Ms Loh] would sue [the company] for sums due to [her] under the terms of her contract of employment, after [she] fired the first salvo by sending a letter of demand dated 30 June 2008". He added that the company's bullying tactics included a failed attempt to consolidate the present action with Suit No 333 to make the proceedings as painful and expensive as possible for Ms Loh, who had merely claimed around US\$159,717.25 from the company. He also questioned why the company sued his client when Mr Gerald Thomas Foo Tiang Boo ("Mr Foo"), its managing director at the material time and the present chairman of Walton Asia, testified that the company had suffered no loss even if she had breached her employment contract. [\[note: 1\]](#)

Whether the company was entitled to dismiss Ms Loh summarily

8 The right of the company to recover the amount claimed from Ms Loh in these proceedings depends on whether it was entitled to dismiss her summarily on 29 May 2008.

9 In *Cowie Edward Bruce v Berger International Pte Ltd* [1999] 1 SLR(R) 739, Warren Khoo J explained at [39]-[40] the right of an employer to summarily dismiss an employee in the following helpful terms:

In each case, it is a matter of degree whether the act complained of is of the requisite gravity. It has been said that it must be so serious that it strikes at the root of the contract of employment, that it destroys the confidence underlying such a contract: *Jackson v Invicta Plastics Ltd* [1987] BCLC 329 at 344, *per* Peter Pain J.

The relevancy and effect of any misdeed complained of must, it seems to me, be judged by reference to its effect on the employer-employee relationship. It also seems to me that in judging the relevancy and effect of the acts complained of, account must be taken of the habits and attitude of the employer at the relevant time. They cannot be judged totally in a vacuum.

10 The reasons pleaded in the present proceedings to justify the summary dismissal of Ms Loh were not the reasons given to her when she was summarily dismissed on 29 May 2008 at a meeting with Walton Asia's chief operating officer, Mr Kent Britton ("Mr Britton"), and Mr Foo, who was Ms Loh's boss. This is not fatal to the company's case for in *Taylor v Oakes, Roncoroni & Co* (1922) 127 LT 267 at 269, Greer J explained:

It is a long established rule of law that a contracting party, who, after he has become entitled to refuse performance of his contractual obligations, gives a wrong reason for his refusal, does not thereby deprive himself of a justification which in fact existed, whether he was aware of it or not.

11 Although Mr Britton hummed and hawed about the reasons for dismissing Ms Loh, the contemporary notes taken by the company's key personnel at the meeting showed that she had been sacked for not providing information to the company about who was conspiring against it. Mr Foo's own notes of the meeting were as follows:

[Mr Britton] said, "I have no other choice. You have no information to offer the company. We have to move to *terminate* you with cause *on that basis*. Any questions?"

[emphasis added]

12 The following notes prepared by the company's legal counsel, Mr Jason Toh, corroborated Mr Foo's notes:

[Mr Britton]: *You have no information to offer. We have to move to terminate you with cause on this basis. Any questions?*

Sharon: Termination with a reason?

[Mr Britton]: Yes, misconduct and insubordination.

[emphasis added]

13 When Mr Britton told Ms Loh that he was sacking her for misconduct and insubordination, it is more likely than not that he was referring to her misconduct in not offering information to him and her insubordination towards him when she insisted that she had no information about the alleged misdeeds of Mr Yau. After all, other forms of misconduct and insubordination were not mentioned at the said meeting. More importantly, although Mr Foo initially toed the company line that Ms Loh had been sacked for the reasons pleaded in the Statement of Claim, he finally conceded that it was quite clear from his e-mail to Mr Doherty on 29 May 2008 concerning the sacking of Ms Loh that she had been sacked because she could not offer useful information to the company. [\[note: 2\]](#)

14 Ms Loh's alleged failure to furnish useful information to the company was pleaded in the Statement of Claim as follows:

75 The Defendant was under an Implied Duty of Obedience, to answer questions and provide assistance to the Plaintiff upon the Plaintiff's lawful and reasonable orders.

76 The Defendant refused to disclose information to the Plaintiff when asked on the following occasions:-

- a) On 30 April 2008, Kent Britton, Gerald Foo and Mike Starvis asked the Defendant to tell them of any information that she had regarding the said meetings. The Defendant denied that she had any information and refused to disclose any information; and
- a) On 29 May 2008, the Defendant further refused to provide the Plaintiff with any information that could help the Plaintiff protect itself when asked by Kent Britton, Gerald Foo and the Plaintiff's General Counsel.

77 By reason of the aforesaid, the Defendant was in breach of the 2008 Employment Contract.

15 Ms Loh asserted that she had no information to offer about Mr Yau's alleged wrongdoing because the company's allegations against the latter were untrue. As I found in Suit No 333 that the Walton group failed to prove that Mr Yau and Mr Iseli committed the alleged unlawful acts against it, it follows that Ms Loh cannot be guilty of refusing to assist the Walton group by giving information of the allegedly unlawful acts. In any case, Mr Britton made the following damning admission about the propriety of summarily dismissing Ms Loh on the ground that she had no information to offer the company when he was cross-examined: [\[note: 3\]](#)

Q Both Gerald Foo and Jason Toh had recorded the fact that [Sharon] was terminated because she had no information to offer the company. *Is that a good basis, in your view as COO, to terminate your number one sales employee?*

A No.

[emphasis added]

New reasons for dismissing Ms Loh

16 The company, which had plenty of time to reflect on other grounds to justify the summary dismissal of Ms Loh, now claimed that she breached her contract and her fiduciary duty to the company and unlawfully interfered with its trade. In its Opening Statement, the company alleged (at para 15) that Ms Loh's breaches arose from the following:

- (i) Her presence at a Lei Garden Lunch with Winston and other Division Managers ("DMs") of Walton on 27 January 2008 and at a Tung Luk Seafood Restaurant dinner (the "lunch and dinner meetings") with the same persons on 29 January 2008;
- (ii) The presentation by Mr Stephen Huggins regarding TSI International Group Inc, a rival land banking company in Kuala Lumpur on 28 April 2008 (the "TSI presentation");
- (iii) Her refusal to assist it with its investigations and her lies to it;
- (iv) Her conversation with her subordinate, Mr Vittorio Joosten ("Mr Joosten") in January 2008, during which she allegedly discouraged him from accepting a promotion.

The lunch and dinner meetings on 27 and 29 January 2008

17 The company alleged that on Mr Yau's instructions, Ms Loh organised a lunch on 27 January

2008 for its top DMs to meet him so that he could induce them to leave the company and join him in his new business venture. It claimed that the dinner meeting on 29 January 2008 was also arranged by Ms Loh to achieve Mr Yau's diabolical aim.

18 The purpose of the lunch and dinner meetings was canvassed at length in Suit No 333. In that case, I held that the plaintiffs' allegation that Mr Yau solicited the company's DMs at the lunch and dinner meetings to resign from the company was not proven. The evidence was that the lunch was a birthday celebration for Mr Yau and that he had encouraged the company's DMs to work hard for Walton Singapore at the lunch and dinner meetings. As such, Ms Loh's presence at the lunch and dinner meetings with Mr Yau could not be a breach of her employment contract and need not be further considered.

The TSI presentation in Kuala Lumpur

19 As for Ms Loh's presence at the Hotel Equatorial in Kuala Lumpur when the TSI presentation was made, it was not established to my satisfaction that she had attended the TSI presentation. In Suit No 333, I found that the allegation that Mr Yau and Mr Iseli had solicited Walton Malaysia's staff to cross over to TSI at the said presentation was not proven. I also found that Walton Malaysia's staff regularly attended product presentations by rival companies to get a feel of the competitors' products and that the TSI presentation was an ordinary product presentation, at which no Walton Malaysia staff was offered any position by TSI. In these circumstances, Ms Loh's presence at the Hotel Equatorial in Kuala Lumpur at the time of the TSI presentation cannot justify her summary dismissal.

Ms Loh's lie about her whereabouts on 28 April 2008

20 Admittedly, Ms Loh lied about her whereabouts on 28 April 2008 when Mr Britton telephoned her to enquire about her whereabouts. Ms Loh said that she going to Labuan via Kuala Lumpur to meet her boyfriend but as their plans changed, she remained in Kuala Lumpur and stayed at the Hotel Equatorial, her usual hotel which gave her special rates. She pointed out that as she was then on leave, there was no reason why Mr Britton should be concerned about her whereabouts. She added that he was rather rude and that he shouted obscenities at her. Knowing that Mr Britton would be agitated if he knew that she was in Kuala Lumpur, she chose to lie about her whereabouts to avoid problems. Apparently, Mr Britton's vulgarities had also upset one of Ms Loh's former colleagues, Ms Helen Chong, a Division Manager of the company at the material time, to such an extent that she wrote to Mr Doherty about the matter.

21 Admittedly, Ms Loh's answers to questions by the company's counsel, Ms Indranee Rajah SC, as to why she lied about her whereabouts on 28 April 2008 were not altogether satisfactory. However, as I have found in Suit No 333 that there was nothing untoward about the TSI presentation, this lie by Ms Loh regarding her whereabouts on 28 April 2008 was not sufficiently serious to justify her summary dismissal. After all, Mr Britton, who had been fully briefed by his DMs about the lunch and dinner meetings, admitted that he had also lied to Ms Loh at the meeting with her on 29 May 2008 when he told her that he did not know anything about these meetings and invited her to tell him about these meetings. By feigning ignorance, he had hoped that Ms Loh would give him some incriminating evidence against Mr Yau. Mr Britton's complaint against Ms Loh for lying to him about her whereabouts on 28 April 2008 was clearly a case of the pot calling the kettle black.

Whether Ms Loh had unlawfully interfered with the company's trade

22 When considering the company's allegations that Ms Loh had unlawfully interfered with the

company's trade, it cannot be overlooked that until she was summarily dismissed on 29 May 2008, she had done yeoman service for the company by helping to increase its sales significantly. In fact, in the 5 months before she was sacked in May, her sales team had generated C\$43.6 million. In the context of the target for the entire year, which was only C\$78 million, this was 34% above the pro-rated target for that 5-month period.

23 When cross-examined, Ms Loh's boss, Mr Foo, said that he was very happy with her performance in so far as sales of Walton products were concerned for the period January to May 2008. [\[note: 4\]](#) Even Mr Britton accepted that Ms Loh was a star performer.

24 Mention must also be made of Ms Loh's e-mail to Mr Doherty on 26 May 2008, in which she reiterated her unwavering commitment to Walton and pointed out that she was saddened at being viewed with suspicion by "higher management". The relevant part of this e-mail is as follows:

Bill, my commitment to Walton has always been unwavering. This is attested by the fact that we have been hitting targets month after month since I became the VP of sales in Singapore in November 2006. In the recent months, despite the departure of Winston and Dirk, despite the rumours and lies that has been spreading around, despite the falling sales from other regions, Singapore has been holding the fort. Singapore has been delivering record sales, month after month since February 2008.

The only reason why we have been able to achieve such results is because all the divisions have been working cohesively together and contributing to our sales targets. We are focussed and keep our eyes on the Goal. Once higher management allows favouritism, this will cause factions among the divisions. This will cause the rest of our Singapore sales team to be demoralised and lose focus. Inadvertently, sales will be affected.

At the same time, I feel that my higher management does not seem to trust me. I am aware that I have been investigated extensively. They even checked my whereabouts with travel agents when I went on leave. I believe this is because of my close relationship with Winston and Dirk. This is extremely hurtful and has caused great distress as I have been doing my best for the company all this while. Granted, Winston and Dirk are my good friends. This fact does not change although they have left Walton. I am still in touch with them as friends. Should I leave Walton one day, I hope I can still keep in touch with you Bill and have you as my friend still.

[emphasis added]

25 Mr Doherty's immediate response to Ms Loh in his e-mail on 27 May 2008 was to encourage her. He went so far as to tell her that he had no objections to her being in contact with Mr Yau.

26 Ms Loh knew that she had a very lucrative career with the company and had not been deterred by rumours of corporatisation allegedly spread by Mr Yau because she received overriding commissions on both retail and corporate sales. She added that it took her 8 years to reach her position in the company and there was no reason for her to bite the hands that fed her. She testified [\[note: 5\]](#) convincingly as follows:

There's no reason for me ... to leave Walton ... - more than 1-over million in pay, in commission and salary, ... to join... a very unstable, or if there's any company,... nobody can pay me this kind of money.

[emphasis added]

27 If one looks at the facts objectively, there was no reason why Ms Loh, who was earning more than \$1.5 million per annum, would want to sabotage the company by interfering with its trade as this would adversely affect her own interests. I thus find that the company did not establish that Ms Loh had unlawfully interfered with its trade and cannot rely on this ground to justify her summary dismissal.

Alleged failure to motivate the staff

28 The company clutched at straws by also making a vague claim that Ms Loh breached her duties by failing to motivate the staff. Ms Loh's boss, Mr Foo, demolished his company's case entirely by agreeing that she had not failed to motivate her staff. When cross-examined, [\[note: 6\]](#) he stated:

Q Mr Foo, *were there any specific matters which Sharon Loh should have addressed that might have affected the motivation of the staff before May 2008?*

A Sales staff?

Q Yes.

A No.

....

Q So in a wider sense, was there anything that she should have done to address the motivation and loyalty of people *other than sales staff*?

A No. *Not that I know of.*

[emphasis added]

29 When reminded that the company's case was that Ms Loh had breached her duty to address matters that could adversely affect the motivation and loyalty of the sales staff, Mr Foo gave the following answer: [\[note: 7\]](#)

At this point in time, between January and May, to the best of my – at that time, during mid-January to May, I was not aware until later on in April/May, when certain information had been – had come to my knowledge. But it was not – it was not something that was general knowledge. In other words, yeah --

30 As Mr Foo rambled on, Ms Loh's counsel, Mr Tan, interrupted him, after which he reiterated his earlier evidence that to his knowledge, Ms Loh had not failed to motivate the staff. The cross-examination [\[note: 8\]](#) was as follows:

Q When I asked you those questions, I believe it was about 10 minutes ago ... your answer was that to your knowledge, you were not aware of anything that she should have done to address the motivation and loyalty of sales staff, so please don't go back to when you knew of the breaches. *You are sitting in court giving evidence, and your answer is that to your knowledge, there was nothing that amounted to a breach.*

A Yes.

Q *Is that still your evidence?*

A Yes.

[emphasis added]

31 In view of Mr Foo's evidence, the allegation that Ms Loh had failed to motivate her staff need not be further considered.

Alleged acts of insubordination

32 As for Ms Loh's alleged acts of insubordination in relation to Mr Foo, the company pleaded in its Statement of Claim at para 33(c) as follows:

- (i) At or about 5.30 pm on 22 January 2008, the Defendant telephoned Gerald Foo and demanded an explanation from him as to why he had agreed to certain requests made by the Division Managers, which she had earlier rejected. During the conversation, she raised her voice and ended the conversation abruptly by putting down the phone before Gerald Foo could explain his reasons to her;
- (ii) On May 26 2008, the Defendant called Gerald Foo at 2.10 am and shouted at him for allowing one of the divisions in the Retail Sales Division to receive trip subsidies under an incentive program, although the Division Manager had not consulted the Defendant. She ended the conversation abruptly by putting down the phone; and
- (iii) The Defendant called Gerald Foo at 2.25 pm and repeated what she had said earlier. She ended the conversation by putting down the phone before Gerald Foo could finish what he was saying.

33 In regard to the first incident on 22 January 2008, Ms Loh's counsel, Mr Tan, asserted that the fact that the company had to rely on an incident some 4 months before her employment was terminated showed how frivolous its claim against her was. I agree that the telephone conversation between Mr Foo and Ms Loh on 22 January 2008 was a rather poor excuse to terminate the latter's employment.

34 As for the incident on 26 May 2008, Mr Foo wrote to Ms Loh as follows:

- 1 I refer to our 2 telephone conversations today, one at 2.10 pm and the subsequent one at 2.25 pm on the issue of trip subsidies for Lusi's division's incentive trip to North America.
- 2 I am placing on record here that your ranting and raving over the phone and absolute disregard for me as your immediate supervisor is highly unacceptable. This is now the second occasion that you have raised your voice to me. Whatever the issue, this kind of behaviour is tantamount to insubordination and unbecoming.
- 3 I am forwarding this matter to Mr Kent Britton, COO Asia, for him to decide on the next course of action.

35 The incident on 26 May 2008 must be viewed in its proper context. Ms Loh, who denied having put down the phone without hearing Mr Foo's explanation, had been justifiably annoyed that Mr Foo had undermined her authority by approving subsidies for staff who did not qualify under the company's

incentive program. When cross-examined, Mr Foo conceded that it was necessary for him to have consulted Ms Loh before showing such "favouritism" to some staff.

36 Both Mr Britton and Mr Doherty knew that Mr Foo and Ms Loh did not get along and that there had been unpleasant encounters between them. After receiving Mr Foo's e-mail of 26 May 2008, Ms Loh wrote to Mr Doherty the same day to let him know about her problems in the company. In that letter, she stated as follows:

In all the 8 years I have worked for you, this is the first time I seek address with you directly. This is because I have no other choice and would like your help to prevail justice over this.

In summary, this was what happened.

We had an incentive program in place last year for consultants and managers. The first batch of qualifiers had already made their trip in April to Phoenix and Texas. We are now preparing for the second batch. I made it clear from the beginning that only full qualifiers in 2006/2007 will get subsidies. All my DMs and my managing director agreed on this. Now, one of the divisions has bypassed me, without my knowledge at all, to get subsidies approval from the managing director for non-qualifiers. To make things worse, the division manager obtained a higher subsidy for herself.

I found out about this only because my managing director told my secretary that he had settled the incentive. I was upset because:-

I was not kept in the loop deliberately

When I expressed [my] displeasure over this to [Mr Gerald Foo], he accused me of being rude and guilty of insubordinate behaviour. Please see the attached e-mail below for your reference....

All this while, the sales team in Singapore has never been given due recognition. For example, during our recent annual dinner and dance, every department head received a plaque in recognition of their contribution. The sales department was left out. My people were disappointed. This may seem like a small oversight. Yet, it is reflective of how we have been treated in recent times....

I sincerely hope you will look into this matter for the sake of the Singapore sales team.

Thank you and best regards.

37 On the very next day, 27 May 2008, Mr Doherty replied to Ms Loh as follows:

I will check into this matter and help where I am able ...

My belief and hope is that you and Gerald will be able to work this matter out as there are too many positive things we should be focussing on....

... I will look into helping you to resolve the situation with Gerald Foo so we can move forward.

All the best.

38 I believe that Mr Doherty really intended to look into issues relating to Ms Loh's working relationship with Mr Foo and the alleged unfairness referred to by Ms Loh. Mr Britton testified that

when he sacked Ms Loh two days after Mr Doherty e-mailed her, no decision had been taken as to who was right in the above-mentioned dispute between Mr Foo and Ms Loh. [\[note: 9\]](#)

39 During the trial, I noticed that Ms Loh spoke in a louder voice whenever she became agitated. She explained that her manner of bringing up matters to her former bosses had caused no furore in the past and her working style did not change after Mr Foo became her boss. She explained in her affidavit of evidence-in-chief ("AEIC") (at para 109):

During the years of working for [the company], I had always been direct and forthright in dealing with superiors and subordinates. The previous management valued this management style but somehow, some innocuous telephone calls have been unjustifiably escalated into acts of insubordination and used to justify immediate dismissal. This is blatantly [un]supportable because there has been no prior issue with this approach of giving feedback and resolving issues that has been effective in [the] organization for years.

40 In my view, the issue of insubordination is an after-thought, contrived to justify Mr Britton's extremely high-handed and unwarranted summary dismissal of Ms Loh.

Whether Ms Loh discouraged Mr Joosten from accepting a promotion

41 Finally, the company's allegation that Ms Loh had discouraged Mr Joosten in January 2008 from accepting any promotion was not proven. Ms Loh, who vehemently denied this allegation, made it clear that there was no reason for her to talk to Mr Joosten about a promotion as this was never on the cards. She did not think highly of him and had ticked him off for incompetence in the following strongly worded e-mail on 25 April 2008:

I would like to point out to you that you must be fast on your feet knowing full well that it is urgent that all sales staff are informed of the AIE postponement and I don't need to "remind you" to take action.

Secondly, you should have an eye for details ... your mail was sent to a few DMs and Division Secretaries who are not holding their current positions anymore and the needful people like Avril and Annjanette were not copied. More care has to be taken in this respect as certain mails may be confidential and sensitive if it is sent out erroneously.

42 A few minutes after Ms Loh e-mailed Mr Joosten, Mr Foo e-mailed her to support her position. In another e-mail to Ms Loh a few minutes later, Mr Foo stated that he will have a chat with Mr Joosten and added that he was very "chui thar", a Hokkien expression that indicated that he was quite fed up with having to talk to Mr Joosten once more about the latter's work performance.

43 When cross-examined, Mr Foo could not remember when he talked to Mr Joosten about the latter being discouraged by Ms Loh from accepting a promotion. Initially, he said that he spoke to Mr Joosten before Ms Loh was sacked but when pressed further, he said that Mr Joosten could have told him about the matter after she had been sacked by the company. He also could not recall the context in which Mr Joosten had the conversation with him. He gave me the distinct impression that the alleged conversation between Ms Loh and Mr Joosten did not take place.

44 Mr Joosten did not advance the company's case with his testimony. He admitted that there was "really no love lost" between Ms Loh and him, and confirmed that he had a tense relationship with her. When asked whether Ms Loh had been critical of his work, he took the opportunity to say that she was critical of many things and not just his work. [\[note: 10\]](#) In his AEIC, he stated that Ms Loh

had “approached” him to tell him not to accept a promotion but when cross-examined, he testified that she had telephoned him “out of the blue” about the matter. When asked by Mr Tan why he did not mention the phone call in his AEIC and had merely stated that Ms Loh had approached him, he became testy. Although he spoke and understood English well enough, he said that he was a “non-English native speaker” and if Mr Tan’s question was rephrased in Dutch, he would be happy to answer it.

45 Mr Joosten, who conceded that no one had offered to promote him after Sharon was sacked, could not remember much about his conversation with Mr Foo regarding what Ms Loh had allegedly told him or what Mr Foo had said to him. When asked to recall his conversation with Mr Foo, which took place months after Ms Loh had been sacked, he did not answer the question but merely stated [\[note: 11\]](#) as follows:

I need to emphasize that you’re trying – you are asking me to recall a period that was very painful for me and I’ve gone through many lengths to try to forget stuff and --

46 I had no doubt that the company’s assertion that Ms Loh had discouraged Mr Joosten from accepting a promotion in January 2008 was baseless and cannot justify her summary dismissal.

Conclusion on the plaintiff’s claim

47 I find that Ms Loh did not breach her employment contract in the manner alleged by the plaintiff. In any case, even if she had been in breach, her boss, Mr Foo testified that the company had suffered no loss as a result. The relevant part of the proceedings is as follows: [\[note: 12\]](#)

Q So if the company did not suffer any damages even if she breached the contract, then what is your basis for recovering from her ...?

....

A *I do not know.*

Q *There is no basis, would you agree with me, if you don’t suffer loss, you can’t claim for damages, it’s as simple as that, Mr Foo.*

A Yes.

[emphasis added]

48 For the record, Mr Britton’s evidence on the sacking of Ms Loh was also most unsatisfactory. For instance, when he was asked why Ms Loh, whose contribution to the company’s profits was as good, if not better, than Mr Iseli’s contribution to Walton Malaysia’s profits, had not been offered a generous financial package to resign whereas Mr Iseli had been offered such a package, he gave the astonishing reply that she had not been offered a severance package because unlike Mr Iseli, she had not been spreading rumours or perpetuating lies. [\[note: 13\]](#) Apparently, he seemed to believe that those who spread rumours and perpetuated lies should be rewarded with a generous severance package whereas Ms Loh, who did not act in such dastardly ways and had spearheaded the increase in the sale of Walton products in Singapore, should be summarily dismissed without any compensation for the flimsiest of reasons.

49 For the reasons stated, I dismiss the company’s claim against Ms Loh and find that she had

been wrongfully dismissed.

The Counterclaim

50 As Ms Loh was wrongfully dismissed, she succeeds in her counterclaim for damages. Counsel for both parties agreed that if Ms Loh was wrongfully dismissed, the amount due to her is US\$159,717.25. I thus order the company to pay her this amount.

The Costs

51 Ms Loh is entitled to costs.

[\[note: 1\]](#) Certified Transcript ("CT"), 2 August 2010, pp 32-34.

[\[note: 2\]](#) CT, 20 October 2009, pp 48-49.

[\[note: 3\]](#) CT, 14 October 2009, p 88.

[\[note: 4\]](#) CT, 2 August 2010, p 20.

[\[note: 5\]](#) CT, 1 July 2010, p 61.

[\[note: 6\]](#) CT, 2 August 2010, p 21.

[\[note: 7\]](#) CT, 2 August 2010, p 22.

[\[note: 8\]](#) CT, 2 August 2010, p 23.

[\[note: 9\]](#) CT, 2 August 2010, p 14.

[\[note: 10\]](#) CT, 3 August 2010, p 74.

[\[note: 11\]](#) CT, 3 August 2010, p 82.

[\[note: 12\]](#) CT, 2 August 2010, pp 33-34.

[\[note: 13\]](#) CT, 14 October 2009, p 73.

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