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

[2025] SGHCR 12

Originating Claim No 539 of 2024 (Summonses No 3301 of 2024)

Between

Andrew Vigar

… *Claimant*

And

XL Insurance Company Se
Singapore Branch

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure – Pleadings - Striking Out]
[Employment Law – Contract of service – Breach - Implied term of mutual trust and confidence]
[Employment Law – Contract of service – Breach – Loss of Chance]

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v
XL Insurance Company Se Singapore Branch

[2025] SGHCR 12

General Division of the High Court — Originating Claim No 539 of 2024
(Summons No 3301 of 2024)
Assistant Registrar Leo Zhi Wei

8 January 2025, 6 March 2025, 28 March 2025

2 May 2025

Assistant Registrar Leo Zhi Wei:

1 The claims in the present suit, HC/OC 539/2024 ("OC 539") stem from various internal investigations conducted by the Defendant sometime in 2018 against its employee, Mr Andrew Vigar, who is the Claimant in this suit. The Claimant alleges that the Defendant's conduct during these investigations, and events that followed, breached various implied duties under his employment contract.

2 The Defendant applied in HC/SUM 3301/2024 ("SUM 3301) to strike out OC 539 in its entirety. On 28 March 2025, I rendered oral judgment in SUM 3301 to strike out part of the Claimant's claims. I now provide the full grounds of my decision.

Background

3 The Claimant, Mr Andrew Vigar, has been an employee of the Defendant, XL Insurance Company Se Singapore Branch, since 2000. The Defendant is a subsidiary of AXA XL, which is in turn a subsidiary of the global insurance and reinsurance company, AXA S.A. Even up till the hearing of this application, the Claimant has remained in continuous employment by the Defendant and its predecessors, and has held the title of Head of Client and Distribution Asia since June 2024.

4 OC 539 arises from the Claimant's claims pertaining to the Defendant's alleged mishandling of an internal investigation that was commenced against him in 2018 ("the 2018 internal investigations"). These investigations were conducted further to harassment allegations raised by one Ms Kazumi Fujimoto, an employee of XL Catlin Japan (an entity related to the Defendant), (the "harassment allegations") who was reporting to the Claimant at the time. Proceedings were also underway before the Tokyo District Court in relation to the same harassment allegations. The Claimant alleges that sometime in September 2018, the Defendant informed him of the outcome of the 2018 internal investigations, in which he was found guilty of the harassment allegations. On 14 February 2023, the Tokyo District Court dismissed the harassment allegations.

5 Following the decision of the Tokyo District Court, the Claimant raised concerns regarding the Defendant's conduct of the 2018 internal investigation and requested the AXA XL's internal audit department to investigate these issues and related events. After the internal audit department informed the Claimant that it would not be upholding his complaints, the Claimant

commenced these proceedings against the Defendant. The Claimant brought claims against the Defendant for breaching its implied duties of mutual trust and confidence in the contract of employment between the Claimant and the Defendant (the "Employment Contract") and the internal company policies applicable to the employment relationship, by virtue of the Defendant's mishandling of the 2018 internal investigations and a subsequent internal audit. The Claimant also claimed that as a result of the Defendant's breaches, he lost the chance to secure various career opportunities. He further contended that the Defendant had breached its implied duties to exercise its contractual discretion reasonably in its award of bonuses and salary increments to the Claimant between 2018 and 2023. While the Claimant had originally sought damages against the Defendant for the mental and emotional distress he had suffered due to the events that had transpired since 2018, the Claimant subsequently withdrew this claim at the hearing before me on 8 January 2025.

6 The Defendant denies the Claimant's claims in its entirety. The Defendant disagreed that the Employment Contract imposed the duties alleged by the Claimant, namely, the implied duties of mutual trust and confidence and obligations requiring the Defendant to comply with any internal company policies. In any event, the Defendant denied these breaches on the basis that it had neither mishandled the 2018 internal investigations nor the internal audit. As for the Claimant's loss of chance claims, the Defendant claimed that it was not liable as it did not have any obligation under the Employment Contract to provide career opportunities to the Claimant in the first place. Further, the Employment Contract did not entitle the Claimant to any bonuses and salary increments; the Defendant had absolute discretion to assess the same, and had reasonably exercised its discretion in this regard.

Procedural history

7 On 12 November 2024, the Defendant applied in SUM 3301 to strike out the Claimant's claims in the Statement of Claim dated 16 July 2024 and Further and Better Particulars dated 15 October 2024 (the "original pleadings") in its entirety on the grounds that his claims disclosed no reasonable cause of action or that it would be in the interests of justice to do so.

8 On 8 January 2025, after hearing submissions from parties' counsel, I found that the Claimant's original pleadings were defective as he did not adequately plead his intended claims against the Defendant in respect of its implied obligations of mutual trust and confidence under the Employment Contract, its implied obligations to exercise its contractual discretion reasonably in awarding bonuses and salary increments to the Claimant, and his claims for the loss of chance to secure career opportunities due to the Defendant's breaches. Even though the Claimant had relied on these claims in his supporting affidavit and legal submissions in resisting the Defendant's application, the original pleadings had either omitted to expressly plead these causes of action or material facts in support.

9 Further to the Claimant's oral application to amend the original pleadings to remedy these defects, I ordered the Claimant to amend the same. While parties' counsel had also made submissions before me regarding whether the Claimant's aforesaid claims ought to be struck out on the merits, I informed parties that I would revisit these issues, if necessary, after the Claimant had made the relevant amendments to properly plead the claims he intended to advance against the Defendant.

10 On 21 January 2025, the Claimant filed its amended Statement of Claim (the "1st amended SOC") and Further and Better Particulars ("1st amended F&BP") (collectively, the "1st amended pleadings"). The Defendant filed its amended Defence on 5 February 2025.

11 On 6 February 2025, the Defendant informed the Court that it would be applying to strike out the 1st amended pleadings as the Claimant's claims remained defective or unsustainable despite the amendments. The Defendant's application was subsequently fixed for hearing before me on 6 March 2025.

12 On 28 March 2025, I rendered oral judgment to strike out the Claimant's claims in part. In summary:

(a) I declined to strike out the Claimant's claims against the Defendant for failing to exercise its contractual discretion reasonably in awarding bonuses and salary increments to the Claimant;

(b) I struck out the Claimant's claims that the Defendant had implied obligations under the Employment Contract to comply with any internal company policies and most of the Claimant's claims pertaining to the Defendant's breaches of its implied obligations of mutual trust and confidence, and all material facts pleaded in support of these claims;

(c) In respect of the Claimant's loss of chance claims, I struck out the claims which appeared to refer to opportunities provided by the Defendant and ordered the Claimant to amend its remaining claims to refer only to the lost opportunities that were offered by third parties; and

(d) I ordered the Claimant to amend paragraphs 60(n) – (o) of the 1st amended SOC to state the material facts he was relying on in support of

his claims. The said paragraphs appeared to comprise evidence in the form of *verbatim* extracts from a telephone conversation between the Claimant and one Mr Zarrouk. Thus it was unclear which facts the Claimant had intended to rely on and how these facts related to his claims.

13 On 3 April 2025, the Claimant filed his second amended Statement of Claim ("2nd amended SOC") to incorporate the amendments I had ordered at [12(c)] and [12(d)] above. I allowed the Claimant's amendments save that:

(a) Regarding the loss of chance claims, I struck out the Claimant's pleading that he had the lost the chance to be properly considered for a Head of Client and Distribution role with XL Insurance Company SE. As the Claimant did not plead that the lost opportunity arose from any breach on the Defendant's part or any other cause of action against the Defendant, I was of the view that the claim was not sustainable.[1]

(b) Regarding the amendments made to paragraphs 60(n) – (o) of the 1st amended SOC, I struck out specific portions where the Claimant had referenced the Defendant's breaches of the internal company policies, as this was not permissible in view of my orders described at [12(b)] above.[2]

The Law on Striking Out

14 The Defendant relied on O 9 r 16 (1)(a) and O 9 r 16 (1)(c) of the Rules of Court 2021 in this application, which are reproduced below for reference:

[1] 2nd amended SOC at [34(d)(iii)].

[2] 2nd amended SOC at [60(n)(1)(b)].

> **Striking out pleadings and other documents (O.9, r.16)**
>
> *16.— (1) The Court may order any or part of any pleading to be struck out or amended, on the ground that —*
>
> *(a) it discloses no reasonable cause of action or defence;*
>
> *(b) it is an abuse of process of the Court; or*
>
> *(c) it is in the interests of justice to do so,*
>
> *and may order the action to be stayed or dismissed or judgment to be entered accordingly.*

15 Next, I consider the underlying principles in respect of both provisions, which are informed by the jurisprudence on striking-out applications under their predecessor provision, O 18 r 19 of ROC 2014.

16 Under O 9 r 16(1)(a), the test is whether the action has some chance of success when only the allegations in the pleadings are concerned: *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 ("*Iskandar*") at [17]. If that is found to be the case, the action will not be struck out.

17 Under O 9 r 16(1)(c), the Court is empowered to strike out the pleadings when it is in the interests of justice to do so. This may be the case where the claim is plainly or obviously unsustainable: *Iskandar* at [19], citing *The Bunga Melati 5* [2012] 4 SLR 546 ("*Bunga Melati 5*") at [33]. A claim is: (a) legally unsustainable if it is clear that a party will not be entitled to the remedy he seeks even if he succeeds in proving all the facts he offers to provide; (b) factually unsustainable if "it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance": *Bunga Melati 5* at [39].

18 Applying the above principles, I turn to the consider the key issues that were raised by parties in this application:

(a) Whether the Claimant's claims that the Employment Contract contained an implied term in law of mutual trust and confidence in the manner pleaded by the Claimant, and an implied term in fact obliging the Defendant to comply with the applicable internal company policies ("implied terms pleaded in the 1st amended SOC"), are plainly sustainable or have some chance of success ("Issue 1");

(b) Whether the Claimant's claims for the loss of chance to secure career opportunities are legally sustainable ("Issue 2");

(c) Whether the Claimant's claims that the Defendant had failed to exercise its contractual discretion reasonably in awarding bonuses and salary increments to the Claimant between 2018 and 2023 are plainly sustainable or have some chance of success ("Issue 3").

Issue 1: Whether the Claimant's claims that the Employment Contract contained the implied terms pleaded in the 1st amended SOC are sustainable or have some chance of success

19 I begin with a summary of the Claimant's claims pertaining to the implied terms which he alleged that the Employment Contract contained.

20 First, the Claimant submitted that the Employment Contract contained an implied term in fact obliging the Defendant to adhere to the internal company policies of AXA XL, which included the following policies, among others: (a) AXA XL Singapore Employee Handbook; (b) AXA Compliance & Ethics Code (including the Code Supplement); (c) Dignity at Work: Policy Prohibiting

Harassment and Discrimination (collectively, the "Internal Company Policies"). The Defendant sought to strike out this claim on the basis that the Claimant had failed to plead any material facts to support such a claim or to demonstrate the business or commercial necessity for such a term.

21 Second, the Claimant submitted that the Employment Contract contained an implied term of mutual trust and confidence in law, which the Defendant had breached by reason of the following failures (as reproduced from the Claimant's 1st amended SOC at [76] ("SOC [76]")):

> a. Failure to act in accordance with and apply the Internal Company Policies fairly and reasonably towards the Claimant;
>
> b. Failure to conduct the 2018 Internal Investigation promptly, thoroughly, and fairly towards the Claimant;
>
> c. Failure to ensure a working environment where the Claimant can be treated with dignity and respect by senior personnel and other employees of the Defendant and AXA XL, and instead allowing an intimidating, hostile and offensive work environment for the Claimant to persist during the period following from the Power Harassment Allegations and 2018 Internal Investigation;
>
> d. Failure to act accordingly to protect Claimant's psychological safety and wellbeing in line with Internal Company Policies, especially when the Claimant had repeatedly requested the same during the aforementioned period;
>
> e. Failure to formally acknowledge and remedy any errors made, and compensate for any losses suffered by the Claimant, in relation to outcome reached in the 2018 Internal Investigation, especially after the decision by the Tokyo District Court in relation to the Tokyo Lawsuit exonerating the Claimant; and
>
> f. Failure to carry out an investigation promptly, thoroughly, and fairly towards the Claimant with respect to the issues raised by the Claimant to the Internal Audit department.

22 On the other hand, the Defendant submitted that it did not owe any of the above duties to the Claimant in law, whether independently or as part of the

implied term of trust and confidence in law, if such a term had existed under Singapore law.

23 In various parts of its pleadings, the Claimant had also pleaded that "*there is a reasonable expectation that the Defendant would and does intend to align its conduct with, uphold, and adhere to all Internal Company Policies in force vis-à-vis its employees (including the Claimant)*".[3] However, the Claimant's expectations, however reasonable, cannot on its own give rise to any binding contractual obligations on the Defendant's part: see *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [56] – [60]. I therefore struck out the Claimant's claims insofar as they were premised on this "reasonable expectation".

24 Next, I turn to consider each of the aforesaid implied terms.

Implied Term of Mutual Trust and Confidence in Law

25 The issue of whether an implied term of mutual trust and confidence exists in employment contracts under Singapore law remains unsettled to date. While earlier High Court decisions, such as *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577 ("*Cheah Peng Hock")*, accepted this term as part of Singapore law, more recent developments have cast doubt on this position. The Appellate Division observed in *Dong Wei v Shell Eastern Trading Pte Ltd and another* [2022] SGHC(A) 8 ("*Dong Wei (AD)*") that the Court of Appeal has not definitively ruled on the matter. More recently still, Wong JC expressed in *Dabbs, Matthews Edward v AAM Advisory Pte Ltd* [2024] SGHC 260 that such an implied term ought not to exist.

[3] SOC at [5] and [8].

26 Given that no Appellate Court has issued a definitive ruling on the issue, it remained, in my view, at least arguable whether an implied term of mutual and confidence existed in the Employment Contract in the present case.

27 However, while the existence of the aforesaid implied term remains unsettled in Singapore law, earlier High Court decisions recognising the existence of this implied term have nonetheless laid down principles to determine the specific parameters of such a term. Having regard to these decisions, I examined whether the implied term pleaded by the Claimant – specifically, one that required the Defendant to comply with the Internal Company Policies and other duties pleaded at SOC [76] – is legally sustainable.

Implied term in law that the Defendant is bound to comply with its Internal Company Policies

28 On the issue of whether the Employment Contract contained an implied term in law obliging the Defendant to comply with its Internal Company Policies, the High Court's decision in *Kallivalap Praveen Nair v Glaxosmithkline Consumer Healthcare Pte Ltd* [2023] 3 SLR 922 ("*Kallivalap*") is instructive. In *Kallivalap*, Kwek J considered whether the implied term of mutual trust and confidence, assuming it is part of Singapore law, should encompass an implied contractual duty on the part of the employer to comply with all of its internal policies.

29 Kwek J expressed that such a term ought not to exist as it would introduce far too much uncertainty into employment contracts for the following reasons. First, given that the employee had in *Kallivalap* had pleaded that the employer was obliged to comply with *all* of its internal policies, there was significant uncertainty over which of the employer's documents (such as those

that were not adduced at trial) constitute such internal policies: at [40] – [44]. Second, even if all of the internal policies could be ascertained, it is uncertain which part of such policies should be regarded as statements which are contractually binding: at [45] – [46]. Many of the statements in the policies, which were phrased as aspirational statements, such as its values and principles described in the code of conduct, did not appear to give employees the right to sue the employer or impose legal standards it is contractually obliged to meet: at [50]. Finally, the implication of such a term would cause significant uncertainty for other companies or entities; it would mean that such companies would be contractually bound by their internal policies, even if it would not be appropriate for such policies to form part of their contractual obligations: at [51] – [55].

30 While the Claimant acknowledged the decision in *Kallivalap,* he submitted that his claim should not be struck out for two reasons. First, the Claimant contended that *Kallivalap* could be distinguished from the present case on the facts. Unlike *Kallivalap,* which concerned an employment contract that contained express terms obliging the *employee* to comply with the company's internal policies, the Employment Contract in the present case contained no such terms. Additionally, in this case, the Defendant had stated in its own reports filed with third party regulators that it was subject to various of the Internal Company Policies.

31 Second, the Claimant submitted that even if the present case could not be distinguished, his claim should be allowed to proceed to trial as he wished to challenge the correctness of the decision in *Kallivalap* and it was possible that the trial Judge presiding over this suit may likewise adopt a different view from *Kallivalap*. The Claimant argued that the trial Judge may take the view that the

uncertainty raised in *Kallivalap* was not so great as to prevent the implication of such a term in all circumstances; for instance, aspirational statements may be capable of constituting legally binding obligations if a lower standard of compliance is required relative to other provisions of the Internal Company Policies.

32 I disagreed with the Claimant's submissions for the following reasons.

33 First, I find that *Kallivalap* applies to the present case. Similar to *Kallivalap*, the Employment Contract is silent on whether the Defendant is obliged to comply with its Internal Company Policies. I did not consider the distinction raised by the Claimant – that the employment contract in *Kallivalap* obliged the *employee* to comply with the internal policies – to be of any significance, since the focus of the inquiry is on the *employer's* obligations. Neither do I consider the unilateral representations made by the Defendant to third party regulators to be of consequence, since these statements would not have any impact on the Defendant's implied obligations under the Employment Contract. Further, the Internal Company Polices which the Claimant relied on are similar in nature to the policies that the Court had considered in *Kallivalap,* such as the company's employee handbook and code of conduct. There was therefore no basis to distinguish *Kallivalap.*

34 Second, since *Kallivalap* cannot be distinguished from the present case, I consider that I am bound to apply the High Court's decision in accordance with the doctrine of *stare decisis*. As expressed in *Actis Excalibur Limited v KS Distribution Pte Ltd* [2016] SGHCR 11 (at [13] – [20]) and *Peter Low LLC v Higgins, Danial Patrick* [2017] SGHCR 18 (at [15] – [31]), Assistant Registrars are bound by the decisions of High Court Judges by virtue of the higher position

that High Court Judges occupy in our prevailing judicial hierarchy. This principle continues to apply under the Rules of Court 2021, as the decisions of an Assistant Registrar continue to be appealable to a High Court Judge in chambers under O 18 r 24 of the said Rules, and High Court Judges continue to exercise confirmatory jurisdiction over the decisions of Assistant Registrars.

35 Bearing the above in mind and having considered the arguments raised by the Claimant in challenging the correctness of *Kallivalap,* I was of the view that his claim has no legal merit or chance of success. None of the Claimant's arguments would sufficiently address the fundamental concerns raised by Kwek J, especially given the far reaching impact that such a term would have on the employer-employee relationship in Singapore. Moreover, the Claimant was unable to provide any judicial endorsement for his arguments or any authorities expressing a contrary position to *Kallivalap*.

36 For the above reasons, I struck out the Claimant's claim on the basis that it is legally unsustainable or has no chance of success.

Implied term in law that the Defendant owes the remaining duties pleaded at SOC [76]

37 Next, I consider if the remaining duties pleaded by the Claimant under SOC [76] could form part of the implied term of mutual trust and confidence in law. In brief, these claims pertain to the Defendant's duty to conduct the 2018 internal investigation and the internal audit "promptly, thoroughly and fairly"; to acknowledge and remedy its errors pertaining to the 2018 internal investigations and compensate the Claimant for the same; to ensure a working environment where the Claimant "can be treated with dignity and respect by… employees of the Defendant and AXA XL"; and to protect the Claimant's

psychological safety during the period following from the harassment allegations and 2018 internal investigations: see [21] above.

38 While there are authorities recognising the existence of the implied duty of mutual trust and confidence in employment contracts, the duty is not an open-ended one. As Abdullah J (as he then was) explained in *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2021] SGHC 123 ("*Dong Wei (HC)*"), the implied term of mutual trust and confidence is intended to ensure that an employer shall not "without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee": at [36]. The purpose of the implied term is to strike a balance between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited: at [37]. Examples of duties which have been held to form part of the implied term include: a duty not to act in a corrupt manner which would clearly undermine the employee's future prospects; a duty to redress complaints of discrimination or provide a grievance procedure; a duty to behave with civility and respect; and a duty not to reprimand without merit in a humiliating circumstance, among others: see *Cheah Peng Hock* at [56].

39 As observed in *Dong Wei* (HC), the focus of the inquiry is on the impact of the employer's behaviour on the employee, although proof of the employee's subjective loss of confidence in the employer is not an essential element of the breach. Further, this impact must not be trivial, as the court does not generally manage the employment relationship in detail: at [38] – [39].

40 In circumstances where an employer suspends or investigates allegations levelled at an employee, the implied term of mutual trust and

confidence requires a "minimum content of fairness" to apply, but does not import all the obligations of natural justice, or due process obligations, that may apply in other contexts: at [56] – [57]. This would, for instance, require the employer to clearly put any allegations to the employee so that the employee has a chance to clarify his position, and to ensure that the procedures adopted and manner of investigations do not amount to a "hatchet job" or to be so unfair that it would destroy the basis of any expected continuation of the employment relationship: at [56]. However, it would not impose any obligations on the employer to suspend or investigate allegations against employees in a particular way or to inform employee of the investigation outcome: at [56], [102] – [103].

41 With reference to the above principles, I turn to examine the Claimant's specific formulation of the implied term at SOC [76]. While I accept that the "minimum content of fairness" would require the Defendant, as part of its obligations under an implied term of mutual trust and confidence, to conduct the 2018 internal investigations and the internal audit fairly, I find no basis for the remaining obligations pleaded by the Claimant at SOC [76]. The case authorities provide no support for the Claimant's broad-ranging claims that the Defendant had an obligation to conduct the said investigations and internal audit "promptly" and "thoroughly"; to "ensure a working environment where the Claimant can be treated with dignity and respect" by not only the employees of the Defendant but those of AXA XL; to protect the Claimant's psychological safety; and to formally "acknowledge and remedy any errors made" and compensate for losses suffered by the Claimant due to the Tokyo District Court decision. These obligations would go significantly further than the implied term's intended purpose of preventing conduct that would not merely result in an employee's subjective loss of confidence in the employer, but seriously damage the trust and confidence of the employer-employee relationship. As

Abdullah J puts it, the import of broad obligations into an employment contract can be "onerous if undefined, and unduly constrain the employer's interest in managing her business as she sees fit": at [59]. Similarly, I found that the obligations pleaded by the Claimant would unduly stray into the realm of interfering with the Defendant's conduct of its internal affairs and ought not to form part of the implied term.

42 Accordingly, I struck out the Claimant's claims at SOC [76] on the basis that they are legally unsustainable or have no chance of success, save for the claims that the Defendant failed to conduct the 2018 internal investigations and internal audit fairly.

Implied term in fact that the Defendant is bound to comply with its Internal Company Policies

43 I next consider whether there is any factual basis to imply a term into the Employment Contract that would require the Defendant to comply with its Internal Company Policies.

44 The Claimant submitted that it was necessary in the business or commercial sense for such term to be implied given: (a) the Defendant's express acknowledgment in the XL Insurance Company SE Annual Solvency and Financial Condition Reports (the "Reports") that it is "subject to" the AXA Group's Compliance & Ethics Code and AXA XL's Code Supplement; (b) the Defendant's actions in carrying out various of the Internal Company Policies, such as the conduct of regular "Dignity at Work" training to all of its managers, taking steps to highlight and promote these polices.[4] The Defendant did not

[4] SOC [7(a)] to [7(c)].

dispute any of these facts as pleaded by the Claimant, but maintained that they did not establish the necessity of implying such a term. The Defendant thus submitted that as there were no triable issues of fact, the question of whether such a term could be implied in fact could be determined at this striking out stage without proceeding to trial.

45 Given that there were no disputed facts between the parties on this issue, I considered that it would be appropriate to consider this claim at the striking out stage.

46 The test for implying a term in fact was established in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 and consists of the following three steps:

(a) First, the court will ascertain how the gap in the contract arose. The implied term will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.

(b) Second, the court will determine whether it is necessary in the business or commercial sense to imply a term in order to give efficacy to the contract.

(c) Third, the court will consider whether the specific term to be implied was one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had it been put to them at time of the contract. If it is not possible to find such a clear response, then, the gap persists, and the consequence of that gap ensues.

47 As emphasized by Sir Thomas Bingham M.R (as he then was) in *Philips Electronique Grand Public SA v BSkyB Ltd* [1995] E.M.L.R. 472 at 481, terms are not lightly to be implied in fact, given that "the implication of terms is potentially so intrusive that the law imposes strict constraints on the exercise of this extraordinary power".

48 Before applying the three-step process under *Sembcorp,* I make three preliminary observations on the nature of the implied term advanced by the Claimant.

(a) First, the implied term pleaded by the Claimant would oblige the Defendant to comply with *all* provisions in the Internal Company Policies, and not merely specific provisions that the Claimant alleged that the Defendant has breached.

(b) Second, the implied term would potentially impose an extensive and open-ended range of obligations on the Defendant. The Employee Handbook alone is approximately 35 pages long and contains a myriad of aspirational statements, company values, and general information on the company's internal procedures such as contact details, workplace surveillance.[5]

(c) Third, for the same reasons raised by Kwek J in *Kallivalap* (see [29] above), there is significant uncertainty regarding which provisions of the Internal Company Policies would form part of the implied term or would confer obligations on the Defendant giving the Claimant a contractual right to sue.

[5] Affidavit of Ang Bee Lay Charlotte dated 12 November 2024 at pg 20 - 56

49 With these observations in mind, I turn to consider the implied term pleaded by the Claimant based on the three-step process in *Sembcorp.*

50 Under the first step, the Court is required to consider whether a gap exists in the contract and how it arose. Implication will only be considered if the Court discerns that the gap arose because the parties did not contemplate the gap. While the Employment Contract is silent on the Defendant's obligations to comply with the Internal Company Policies, the Employee Handbook explicitly states in its introductory remarks that it "does not constitute a contract of employment or a guarantee that your employment will continue for any specified period of time".[6] In this vein, Claimant emphasized in his submissions that the Defendant's acknowledgement in the Reports that it was subject to various of these policies would indicate its intention to be bound by the same. However, the fact that the Defendant had referred to the Internal Company Policies only in external sources (such as the Employee Handbook and Reports) but not the Employment Contract would suggest the contrary - that the Defendant had intentionally chosen to exclude the implied term from the Employment Contract.

51 Be that as it may, even assuming there was a gap under Stage 1, I find that the term which the Claimant seeks to imply clearly fails Stage 2 and 3 of the *Sembcorp* test.

52 Under the second step, the Court has to consider if it is necessary in the business or commercial sense to imply a term in order to give the contract business efficacy. The classic formulation of the business efficacy test provides

[6] Affidavit of Ang Bee Lay Charlotte dated 12 November 2024 at pg 24

that "[t]he implication which the law draws from what must obviously have been the intention of the parties, the law draws with the object of giving efficacy to the transaction and preventing such a failure of consideration as cannot have been within the contemplation of either side": see Bowen LJ's remarks in the *The Moorcock* (1889) 14 PD 64, cited in Andrew Phang, *The Law of Contract in Singapore* (Academy Publishing, 2nd Ed, 2022), at [06.122].

53 It is undisputed by the parties that they had entered into the Employment Contract to give effect to the Defendant's employment of the Claimant, one which imposed obligations on the Claimant to carry out job responsibilities and on the Defendant to remunerate the Claimant accordingly, amongst others.[7]

54 Significantly, neither party had pleaded any facts to demonstrate how the Employment Contract would be unworkable based on its express terms alone. The Claimant's pleaded facts (which the Defendant did not dispute) merely showed that the Defendant had carried out training in accordance with the Internal Company Policies. While this may demonstrate the Defendant's commitment to carrying out these policies, it does not explain why the term which the Claimant sought to imply is necessary in ensuring the workability of the Employment Contract. After all, the Defendant was free to carry out any training or other practices based on the Internal Company Policies even if it was not contractually obliged to do so.

55 The Claimant's counsel, Mr Kok, submitted that while the Employment Contract could technically work without the implied term, the said term would still affect the efficacy of the employment relationship as they are necessary for

[7] See SOC [1] – [4] and the provisions of the Employment Contract exhibited in Affidavit of Ang Bee Lay Charlotte dated 12 November 2024 at pg 12 - 18

an employment relationship to work well. In my respectful view, this submission would in fact demonstrate that the said term was merely *desirable,* rather than *necessary* for the business efficacy of the Employment Contract. This clearly falls short of the business efficacy test.

56 Consequently, it remained unclear how the pleaded implied term could add any business efficacy to the Employment Contract which would otherwise be missing.

57 Finally, under the third step, the Court considers the specific term to be implied and whether the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" if the proposed term had been put to them.

58 For the reasons highlighted above, I could not see anything to suggest that the parties would have responded affirmatively if an officious bystander put the implied term to them, bearing in mind: (i) the uncertainty surrounding which provisions of the Internal Company Policies would form part of the implied term and were capable of imposing contractual obligations on the Defendant (see [48(c)] above); and (ii) my view that the term sought to be implied would not add any business efficacy to the Employment Contract which would otherwise be missing. To the contrary, and particularly in view of the sheer breadth of obligations that such a term would impose on the Defendant, I would have expected the parties to dispute the need for such a term.

59 Accordingly, I struck out the Claimant's claims pertaining to the said implied term, on the basis that they have no chance of success or alternatively, are plainly unsustainable.

Issue 2: Whether the Claimant's claims arising from the loss of chance to secure career opportunities are legally sustainable

60 The Claimant's claims in the loss of chance were pleaded as follows:

(a) The Claimant pleaded that during the period between 2018 and 2024, "[he was] unfairly sidelined and/or excluded from several opportunities for potential career advancements *within the organisation*..." (emphasis in italics added), which included various roles such as "Head of APAC Global Programs based in Hong Kong", "director of XL Catlin Japan KK", and "other senior roles within the organisation": see 1st Amended SOC at [34(c)];

(b) Further, the Claimant sought damages arising from the following claims (see 1st Amended F&BP at pg 8):

> (c) The Claimant's loss of prospect for career advancement **within the organisation** during the relevant period, as a result of the stigma of being unfairly referred to as "*the guilty priest*" by senior personnel with respect to the Power Harassment Allegations, unwarrantedly being found "*guilty*" by the 2018 Internal Investigation on 12 September 2018 (i.e. the same day that AXA group announced the completion of its acquisition of XL Group Ltd – thereby negatively affecting the Claimant's prospect for career advancement within AXA group)…; and
>
> (d) Further or alternative to (c), the Claimant has suffered a loss (or at least a reduction of chance with respect to such opportunities where the decision-maker was not the Defendant…
>
> (emphasis in bold added)

61 In applying to strike out the Claimant's claims, the Defendant submitted that it could not be held liable for failing to provide the Claimant with career advancement opportunities or any loss of chance claims as it did not have any

such legal obligation to do so under the Employment Contract. For this reason, the Claimant's claims were legally unsustainable and should be struck out.

62 At the outset, I observe that the Claimant's pleadings were unclear in two material respects. First, in the 1st amended SOC, the Claimant did not state *who* had unfairly sidelined him from the said opportunities or which cause of action the Claimant was relying on. These facts would be material given that, as the Defendant submitted, the Employment Contract does not impose any express obligations on the Defendant to provide the Claimant with career advancement opportunities. Second, while the Claimant referred in both the 1st amended SOC and 1st amended F&BP to opportunities which he had allegedly lost "within the organisation", he did not define or specify which "organisation" he was referring to. One could only speculate whether the Claimant was referring to the Defendant itself, AXA XL, other companies with the broader AXA group, or any other external third parties.

63 During the hearing, the Claimant's counsel, Mr Kok, clarified that the Claimant was not claiming for the loss of chance to secure any career opportunities within the Defendant's organisation, but only for three opportunities from third party entities related to the Defendant. These entities were based in Hong Kong (XL Insurance Company SE, Hong Kong), Japan (XL Catlin Japan KK, Japan) and Dublin (XL Insurance Company, Dublin) (the "Three Opportunities").[8] However, the Defendant's counsel, Ms Goh, submitted that this was not clear from the Claimant's pleadings, which the Defendant had instead construed as referring to lost career opportunities within its own organisation.

[8] Claimant's Supplementary Written Submissions at [19].

64 I agreed with Ms Goh that it was not apparent from the Claimant's pleadings that he was only referring to lost opportunities provided by third parties and not the Defendant. Clarity in the Claimant's pleadings would have been essential for two reasons. First, it was necessary to ensure that the Defendant would know the case it had to meet. Second, it would enable the Court to apply the correct legal principles in determining the Claimant's claims. The ambiguity was made all the more significant as different legal tests would apply depending on whether the loss of chance claims related to opportunities provided by the Defendant or third parties. Indeed, due to this ambiguity, parties' respective counsel appeared to have been arguing at cross-purposes in their legal submissions regarding the correct legal test to apply to the Claimant's claims.

65 As Andrew Burrows QC sitting as a High Court Judge (as he then was) explained in *Palliser Ltd v Fate Ltd* [2019] EWHC 43 (QB) (cited in *McGregor on Damages* (Sweet & Maxwell, 22nd Ed, 2024) ("*McGregor on Damages*") at [11-044]), if there is uncertainty over what a claimant would have done in a hypothetical situation, the all-or-nothing balance of probabilities test applies; however, a third party's actions are assessed according to the chances:

> Where the uncertainty is as to hypothetical events, the correct test to be applied depends on the nature of the uncertainty: if it is uncertainty as to what the claimant would have done, the all or nothing balance of probabilities test applies; if it is as to what a third party would have done, damages are assessed proportionately according to the chances.

66 With reference to the above passage, the learned authors of *McGregor on Damages* added that the balance of probabilities test also applies if there is uncertainty over what a *defendant* would have done, or what a third party would have done, if that third party was an agent of, or if their actions were attributable

to, the claimant or defendant: at [11-044], [11-070] – [11-702]. This distinction stems from the requirement that a claimant must prove its case on the balance of probabilities against the defendant – this entails that a claimant would have to prove that he (or the defendant) would have acted in a particular way, and not merely a chance that he (or the defendant) would have so acted. However, this burden does not extend to the actions of third parties (at [11-069]):

> While at first glance it may seem somewhat strange to have different tests applicable to hypothetical acts of the claimant and hypothetical acts of third parties, it can be seen to make sense, with nothing at all arbitrary about it and with no need to bring in public policy to justify it. For a claimant can hardly claim for the loss of the chance that he himself might have acted in a particular way; he must show that he would have; it cannot surely be enough for a claimant to say that there was a chance that he would have so acted. The onus is on a claimant to prove his case and he therefore must be able to show how he would in fact have behaved. There is no such onus on third parties.

67 An exception to the rule only applies where the claimant is able to show that the provision of the chance was the object of the duty that the defendant had breached, as affirmed in *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2023] 4 SLR 1 ("*BCBC*") at [196]. In *BCBC*, the Singapore International Commercial Court held (for similar reasons elaborated by *McGregor on Damages* at [65] – [66] above) that the loss of chance doctrine only applies where the chance alleged to be lost depends on the actions of a third party, and not the defendant: at [201]. Consequently, a defendant cannot be held liable for depriving the plaintiff of a favourable outcome unless the defendant was contractually obliged to provide such an outcome: at [196], [200] – [207]. The Court in *BCBC* thus held that the claimant could not claim against the defendant for loss of chance to profit from the Tabang Plant's expanded capacity, as the defendant was not contractually obliged to carry out such an expansion in the first place.

68 Returning to the Claimant's pleadings and applying the above principles, I found that the Claimant would not be entitled to pursue any claims against the Defendant for loss of career advancement opportunities, as the Employment Contract imposed no such duty on the Defendant. However, I was prepared to allow the Claimant to pursue his claims in respect of the Three Opportunities. Although these opportunities were provided by third parties related to the Defendant, the question of whether these third parties should be considered independent third parties or agents of the Defendant remained to be decided at trial.

69 As mentioned above, while Mr Kok had clarified in oral submissions that the Claimant was not pursuing any claims for lost career opportunities within the Defendant's organisation, this was not consistent with how the Claimant had pleaded his case. Accordingly, at the hearing on 28 March 2025, I struck out the Claimant's existing pleadings relating to loss of chance claims "within the organisation" given that it was unclear if these claims involved opportunities provided by the Defendant, and ordered the Claimant to amend its pleadings to refer expressly to the Three Opportunities. Subsequently, after the Claimant filed his 2nd amended SOC on 3 April 2025, I allowed the amendments for only two of the three opportunities, for the reasons explained at [13(a)] above.

Issue 3: Whether the Claimant's claims that the Defendant had breached its implied obligation to exercise its contractual discretion reasonably are sustainable or have some chance of success

70 The Defendant sought to strike out the Claimant's claims that the Defendant had failed to exercise its discretion reasonably in awarding bonus and salary increments between 2018 and 2023 on two main grounds: (a) first,

such an implied term would be precluded from the Employment Contract, which clearly stated that the Claimant did not have any contractual entitlement to bonuses or salary increments.; (b) second, the facts pleaded by the Claimant in support of the Defendant's breach of the implied term hardly rise to the high threshold of perversity required for the claim to succeed.

71 I declined to strike out these claims for the following reasons.

72 In respect of the first ground, I disagreed with the Defendant that such an implied term would be precluded. Notwithstanding that the Claimant had no contractual entitlement to any bonuses or salary increments and the Defendant had the sole and absolute discretion to determine the same, the Defendant would nonetheless owe implied obligations regarding the manner in which such discretion is exercised. This would require the Defendant to exercise such discretion objectively reasonably, or not to exercise it irrationally, capriciously or arbitrarily: see *BCG Partners (Singapore) Ltd v Sumit Drover* [2024] SGHC 206 ("*BCG*") at [114] – [116].

73 In respect of the second ground, I considered that it was too early at this stage to conclude with confidence that the Claimant's claims are factually unsustainable. The Claimant had raised numerous factual allegations in his pleadings, including matters relating to how the Defendant had pre-judged the Claimant's guilt in the 2018 internal investigations, failed to properly assess his work performance and other factors before awarding the Defendant's bonuses and salary increments, and several other claims to impugn the Defendant's conduct relating to the said investigations, subsequent internal audit and related

events.[9] Many of these allegations were not admitted or denied by the Defendant. On the evidence adduced before me, it could not be said that the factual basis for the Claimant's claims was fanciful or entirely without substance. These claims ought to be ventilated and determined at trial only after all the relevant documentary evidence and witness testimony have been considered.

Costs

74 Given that the Defendant had succeeded in raising deficiencies in the Claimant's original pleadings and partially striking out the Claimant's claims in the 1st amended pleadings and the 2nd amended pleadings, I was of the view that costs should follow the event and the Defendant was entitled to its costs in SUM 3301 on a standard basis.

75 Having regard to the number of hearings and the duration of each hearing, the complexity of the issues raised, the various rounds of amendments to the Claimant's pleadings and the relevant costs guidelines for striking out applications in Appendix G of the Supreme Court Practice Directions 2021, I fixed the costs of SUM 3301 at S$22,000 (all in) in favour of the Defendant, with the following breakdown:

[9] 1st amended SOC at [30] – [74]; 1st Affidavit of Andrew Vigar dated 3 December 2024

Description	**Costs awarded**
Costs of the hearing on 8 January 2025 and wasted costs in respect of the Claimant's withdrawal of his claims relating to mental and emotional distress	S$7,500 (all in)
Consequential costs in respect of amendments to the Defendant's pleadings arising from the orders made on 8 January 2025	S$3,000 (all in)
Costs of the hearings on 6 and 28 March 2025	S$9,500 (all in)
Consequential costs in respect of amendments to the Defendant's pleadings arising from the orders made on 28 March 2025 and 15 April 2025	S$2,000 (all in)
Total	**S$22,000**

Conclusion

76 For the foregoing reasons, I struck out part of the Claimant's claims in SUM 3301 and ordered the Claimant to pay the Defendant costs of S$22,000 (all in).

Leo Zhi Wei
Assistant Registrar

Tan Chau Yee, Kok Yee Keong, Laila Jaffar (Harry Elias Partnership LLP) for the claimant;
Goh Seow Hui, Jingjie Yuan (Bird & Bird ATMD LLP) for the defendant;
