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

[2026] SGHC 15

Originating Claim No 83 of 2023

Between

Prashant Mudgal

… *Claimant*

And

SAP Asia Pte Ltd

… *Defendant*

JUDGMENT

[Contract — Breach]
[Damages — Assessment]
[Damages — Remoteness]
[Employment Law — Contract of service — Breach]
[Employment Law — Employers' duties]
[Tort — Conspiracy]

TABLE OF CONTENTS

Prashant Mudgal
v
SAP Asia Pte Ltd

[2026] SGHC 15

General Division of the High Court — Originating Claim No 83 of 2023
Dedar Singh Gill J
25–27 February, 4–6, 11–14 March, 30 May 2025

21 January 2026 Judgment reserved.

Dedar Singh Gill J:

1 The claimant was a former employee of the defendant. On 21 November 2019, after a succession of events fraught with conflict and bitter workplace politics, his employment was terminated. The claimant now alleges that the defendant engaged in a conspiracy to terminate his employment and breached various implied terms in his employment agreement. Having deliberated on the evidence and the parties' arguments, I allow the claim for breach of the implied term of mutual trust and confidence. However, I award only nominal damages.

2 Previously described as a "Trojan horse" because of its supposed potential to retroactively import a wide range of obligations into employment contracts, the implied term of mutual trust and confidence has spawned a corpus of authorities which have, at times, signalled a measure of ambivalence about its existence. That is far from saying, however, that the writing is on the wall. As such, much ink in this judgment will be expended on dealing with the

question of whether the implied term of mutual trust and confidence exists in employment contracts under Singapore law. I ultimately answer that question in the affirmative and find that the defendant has breached this implied term. I now proceed to explain how I have arrived at this determination.

Facts

The parties and dramatis personae

3 The claimant is Mr Prashant Mudgal.

4 The defendant is SAP Asia Pte Ltd, a Singapore-incorporated company which is a subsidiary of SAP SE.[1] SAP SE is a German multinational software company that develops enterprise applications to manage business operations.[2]

5 Prior to his employment with the defendant, the claimant was employed by another subsidiary of SAP SE since October 2012.[3] He was then employed by the defendant as a "Solution Sales Engagement Manager Expert" on 11 August 2015 and the final day of his employment was on 31 December 2019.[4] He last held the position of "Head of Services Sales" for the Ariba line of business in the Asia Pacific and Japan ("APJ") region.[5] The Ariba line of business concerns a cloud-based management software that helps purchasers and suppliers manage their procurement processes.[6]

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1 Statement of claim dated 7 February 2023 ("SOC") at para 3.

2 Ms Adele Teo-Gomez's affidavit of evidence-in-chief dated 13 September 2024 ("Ms Teo-Gomez's AEIC") at para 4.

3 SOC at paras 1–4.

4 SOC at paras 4 and 8.

5 Ms Teo-Gomez's AEIC at para 5.

6 Ms Otsakchon Raman's affidavit of evidence-in-chief dated 13 September 2024 ("Ms Raman's AEIC") at para 7.

6 The cast of characters within the defendant or the larger SAP SE Group who are central to this case include the following individuals – Ms Otsakchon Raman ("Ms Raman"), Ms Charmaine Seabury ("Ms Seabury"), Mr Baber Farooq ("Mr Farooq"), Ms Adele Teo-Gomez ("Ms Teo-Gomez") and Ms Valerie Blatt ("Ms Blatt").

7 Ms Raman was, at the material time, the "Head of Services Delivery" for the Ariba line of business for the APJ and Greater China ("GCN") regions.[7]

8 When a customer purchases an Ariba software licence, the defendant is able to provide the customer with certain services in order to help the customer implement and integrate the software into its workflow.[8] The services sales team, which the claimant headed, is responsible for selling those services to customers who have purchased the defendant's Ariba software. After a customer buys those services, the services delivery team, which was headed by Ms Raman, is responsible for providing those services to the customer. As such, Ms Raman and the claimant had to work closely with each other as the heads of the services delivery and services sales teams respectively.[9]

9 It will become apparent below that the strained relationship between the claimant and Ms Raman, as well as some members of their respective teams, was the catalyst for the events that led to the conduct of the defendant which the claimant complains of and the termination of the claimant's employment.

10 As for the other individuals in the ensemble cast, it bears noting that, at the time of the events leading up to the termination of the claimant's

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7 Ms Raman's AEIC at para 2.

8 Ms Raman's AEIC at para 11.

9 Ms Raman's AEIC at para 13.

employment, only Ms Seabury and Ms Blatt were in the direct reporting line of the claimant and/or Ms Raman. While Mr Farooq and Ms Teo-Gomez were not, they were nonetheless involved in the material events which transpired.

11 Mr Farooq was the "General Manager of the Customer Value Organisation" for the Ariba line of business in the APJ and GCN regions.[10] In that role, he was responsible for customer satisfaction, adoption and contract renewals and hence worked closely with the services sales and services delivery teams.[11] The claimant reported to Mr Farooq from March 2017 to January 2018, before there was a re-organisation in SAP SE's business.[12]

12 After the re-organisation, the claimant reported to Ms Seabury. Ms Seabury was the "Global Vice President of Services Sales" for the Ariba line of business.[13] She was the person who informed the claimant that his employment would be terminated.[14]

13 Ms Seabury and Ms Raman, in turn, reported to Ms Blatt. Ms Blatt was the "Global Vice President of Services" for the Ariba line of business.[15] In that capacity, she had oversight of both the services sales and services delivery teams headed by the claimant and Ms Raman respectively.[16] It was also in that role

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10 Mr Baber Farooq's affidavit of evidence-in-chief dated 13 September 2024 ("Mr Farooq's AEIC") at para 2.

11 Mr Farooq's AEIC at para 9.

12 Mr Farooq's AEIC at paras 10 and 12.

13 Ms Valerie Blatt's affidavit of evidence-in-chief dated 13 September 2024 ("Ms Blatt's AEIC") at para 14.

14 SOC at para 15(p).

15 Ms Blatt's AEIC at para 3.

16 Ms Blatt's AEIC at paras 12–13.

that she approved the termination of the claimant's employment with the defendant.[17]

14 Ms Teo-Gomez was the "Human Resources Business Partner" in charge of the APJ region.[18] In that capacity, she was aware of the events leading up to the termination of the claimant's employment.[19]

15 It is worth highlighting that, while Ms Raman, Ms Blatt, Mr Farooq and Ms Teo-Gomez all made an appearance in this trial, Ms Seabury was absent. Ms Seabury was originally listed by the defendant as an intended witness,[20] but was later substituted by Ms Blatt (who was not originally in the defendant's intended list of witnesses).[21]

Background to the dispute

16 The events leading up to the termination of the claimant's employment centre around two incidents, the "Wipro Incident" and the "Sesa Goa Incident".

The Wipro Incident

17 In June 2018, a decision was made to transfer one Mr Girish Kumar Saripalli ("Mr Saripalli") from the services delivery team headed by Ms Raman

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17 Ms Blatt's AEIC at para 5.

18 Ms Teo-Gomez's AEIC at para 1.

19 Ms Teo-Gomez's AEIC at para 7.

20 Agreed bundle of documents (volume 2) dated 3 February 2025 ("2AB") at p 944; Claimant's closing submissions dated 9 May 2025 ("CCS") at para 198.

21 Ms Blatt's AEIC at para 101; Transcript dated 14 March 2025 ("14 March Transcript") at p 118 line 19 to p 119 line 1.

to the services sales team headed by the claimant.[22] This was because a member of the services sales team, Mr Sudeep Gupta ("Mr Gupta"), was "at capacity workwise". However, although Mr Saripalli was "formally transferred" to the services sales team and placed under the headcount which the claimant was responsible for in July 2018,[23] his onboarding was deferred because the services delivery team was unable to source for a suitable replacement for him.[24] In fact, as it so happened, Mr Saripalli never ended up working in the services sales team.[25]

18 At the time that Mr Saripalli was "formally transferred" to the services sales team, he was working on a project for Wipro Limited ("Wipro") in India.[26] Before a suitable replacement for him was found, Mr Saripalli informed Wipro that he would be leaving the project. It is a point of dispute as to whether Wipro was upset because Mr Saripalli was leaving or because there was no suitable replacement for him,[27] although I have doubts about whether such a distinction can be meaningfully drawn. The bottom line is that Wipro did not take kindly to the news that Mr Saripalli was leaving.

19 On the back of this, Ms Raman sent an e-mail on 11 July 2018 to certain key personnel involved in the Indian market, including the claimant, Mr Gupta,

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22 Mr Prashant Mudgal's affidavit of evidence-in-chief dated 13 September 2024 ("Mr Mudgal's AEIC") at para 29.

23 Transcript dated 11 March 2025 ("11 March Transcript") at p 159 lines 9–12.

24 Mr Mudgal's AEIC at para 32.

25 11 March Transcript at p 168 lines 11–17.

26 Ms Raman's AEIC at para 18.

27 Transcript dated 13 March 2025 ("13 March Transcript") at p 17 lines 15–18.

and Mr Nanda Kalyan ("Mr Kalyan"), the head of the services delivery team in India,[28] in which she stated:[29]

> We [*ie*, the services sales and services delivery teams] should have had alignment around next steps for [Mr Saripalli's] replacement and the proper comms channels before letting the customer [*ie*, Wipro] know, the customer was made aware of this fairly early before we had a chance to align and have mitigation plans in place. The bulk of the damage was done when [Mr Saripalli] let the customer know without any tangible options, a sure recipe to upset any customer and impact trust.
>
> …

20 This sparked a series of e-mail exchanges between Ms Raman and Mr Gupta, in which Mr Gupta stated that the services sales team had "clearly called out the customer expectation a long time ago".[30] That exchange ended with Ms Raman telling Mr Gupta that they "need[ed] to move on from an 'us' and 'you' mindset" and that she was "done with this email trail and [would] not be responding further". She also told Mr Gupta to "call should [he] need to discuss further".

21 On 12 July 2018, a day after Ms Raman ended her e-mail exchange with Mr Gupta, the claimant responded to Ms Raman privately (without Mr Gupta and the rest of the personnel who were originally copied in the preceding e-mail chain), stating as follows:[31]

> Chon [*ie*, Ms Raman], no, we are not done here. *You cannot just come in and get to find fault with and school [Mr Gupta] and [Mr Saripalli] according to your convenience and then independently close the conversation at your end.* [Mr Gupta] does not need to call you to discuss further. That's not how "we" works, get on board fully or stay out of it. For one, *I know you*

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28 Ms Raman's AEIC at para 14.

29 Agreed bundle of documents (volume 1) dated 3 February 2025 ("1AB") at p 173.

30 1AB at p 172.

31 1AB at p 171.

> *have an axe to pick with [Mr Gupta], get over that urge, otherwise this will balloon into a slugfest.* Not sure what is being tried to be achieved here … In the absence of clarity of action on [Mr Kalyan's] behalf, I don't see an issue with [Mr Saripalli] having conveyed his imminent exit to the client in advance, this was done in concurrence with me and [Mr Kalyan] too. There has been enough time now since we have known about [Mr Saripalli's] departure and time frame and the requirements that needed to be met for the replacement and I still don't see a plan, it's all wishy washy. *I have frankly had enough of what I believe totals up to gross incompetence on [Mr Kalyan's] part.* There is a lot of undesirable things that I am hearing in feedback from multiple parties both internal and external now on [Mr Kalyan], the guy has no clue, not that it is a surprise given that he has no understanding of the product, process and I hear he doesn't even have his people with him, but I will let you worry about it. What we need on the ground is ownership and action, look forward to that being delivered.
>
> [emphasis added]

22 When Ms Raman replied asking the claimant if he was able to talk to her, the claimant replied:[32]

> Chon *in the absence of a plan for [Mr Kalyan] I don't see any point in discussing.* I don't know what [Mr Kalyan] was told when he was boarded but I don't see this going anywhere anytime soon. Until then for India *you handle your piece, I handle mine.* Anything else I am happy to talk anytime.
>
> [emphasis added]

23 I will refer to the e-mails quoted in [21] and [22] above collectively as the "12 July 2018 E-mails".

24 In a follow-up e-mail, Ms Raman denied that she had a personal vendetta against Mr Gupta and once again reached out to the claimant to "chat".[33] She then proceeded to forward the preceding e-mail chain to Ms Blatt, her direct superior (and the claimant's superior as well), saying that she "may need some

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32 1AB at p 170.

33 1AB at p 170.

advice working with/managing [the claimant]". Ms Blatt's response was: "Yes. Wow. We need to do something here."

25 According to Ms Blatt, after reviewing the e-mail exchange, she found the claimant's response to be "unnecessarily aggressive and divisive", as the claimant had "adopted an abrasive, finger-pointing approach" instead of focusing on resolving the issue of finding a suitable replacement for Mr Saripalli.[34] She was of the view that such behaviour fell below what was expected of the claimant as a senior regional leader and accordingly asked Ms Seabury, the claimant's direct superior, to coach the claimant to be more professional in his dealings with others.[35]

26 It is not clear exactly what sort of "coaching" Ms Seabury provided to the claimant in the following months, as there is no documentary evidence of such coaching on the record. However, on 27 September 2018, the claimant forwarded the e-mail chain containing the 12 July 2018 E-mails to Ms Seabury in order to "provide context on the 'incompetence' of the Services Delivery team to address staffing and other issues which 'were not yet resolved'" [emphasis in original omitted].[36] The claimant also said the following:[37]

> Just curious, I do understand and agree with the feedback on my parts of the email, *not moments of my life I am proud of*, one of many though, *but at the same time I don't regret it.* Now coming to my question, your thoughts on Chon's responses in the email trail below [*ie*, the e-mail trail containing the 12 July 2018 E-mails]?
>
> Also, attaching two mails, will make for a good read, what we spoke about was such a small element of the full issue which

34 Ms Blatt's AEIC at para 31.

35 Ms Blatt's AEIC at para 32.

36 Mr Mudgal's AEIC at para 52.

37 1AB at p 213.

> highlights the incompetence of the delivery team, FYI this is not yet resolved, I would have been happy to step away from all this on day one but it has affected me in two significant ways:
>
> …
>
> The problem is the same with [Ms Raman] and [Mr Kalyan], see attached mail 1 … – "I run a 160 person organization……." kind of mindset that is prevalent with both the individuals, it has gone to their head. Just for your information, I did not accord that mail the dignity of a response, which if I had would have been a nasty one along the lines of "you have a 160 people because the Services Sales team sells enough for you to have a 160 person team"……so I also know when to stop. I generally do it after I have made my point. But point taken, will do this on phones now rather than on emails.
>
> …
>
> I am very disappointed in that [Ms Raman] took out just a convenient bit and maligned me in front of [Ms Blatt], was very troubled yesterday after our call, but only for a bit, slept well after, my heart's clean on this. But this immature/childish act has not gone down well with me, as I said I will react objectively now, no concessions what so ever. Of course in reality what I am supposed to have told about making life difficult for [Mr Kalyan] is complete BS and it is to the contrary and as I mentioned [Mr Farooq] and I continue to have frequent discussions on this to date, of course he hears the same from others in the Ariba MU in India too, but I will let that be, we will see what happens, hopefully what happens will happen for the better.
>
> [emphasis added]

27 It would not be long, however, before tensions flared up between the claimant and members of the services delivery team once again.

The Sesa Goa Incident

28 In an incident concerning another customer in India, Sesa Goa Iron Ore ("Sesa Goa"), it was discovered that Mr Gupta had "unilaterally reduced" the delivery timeline for the scope of work for a project proposal from 11 months

to eight months.[38] Essentially, discussions between the services sales and services delivery teams for the Sesa Goa project were proceeding on the basis that the timeline for delivering the project would be 11 months. However, on 13 October 2018, Mr Gupta submitted a quote containing a reduced timeline of eight months to Ms Raman, without highlighting the change.[39] Ms Raman, believing that there were no changes to the delivery timeline from the previously discussed 11-month timeline, approved the quote "in good faith" (*ie*, without opening the quote document containing the proposed delivery timeline) on 15 October 2018.[40]

29 A second quote with "minor modifications", but no changes to the eight-month delivery timeline in the first quote, was submitted by Mr Gupta on 28 October 2018.[41] It was only after this second quote was submitted that the services delivery team became aware of the change in the delivery timeline from 11 months to eight months.[42] As it was made clear to the services delivery team that a delivery timeline of eight months was "the ask of the customer [*ie*, Sesa Goa] before signing the contract",[43] and that a commitment to such a delivery timeline was already made known to Sesa Goa, Ms Raman "agreed to leave [the delivery timeline] as it [was]" and accordingly approved the second quote on 30 October 2018.[44]

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38 Ms Blatt's AEIC at para 34.

39 11 March Transcript at p 31 line 24 to p 32 line 9.

40 11 March Transcript at p 43 lines 5–8, p 79 line 17 to p 80 line 5.

41 1AB at p 297.

42 11 March Transcript at p 67 lines 12–21.

43 1AB at p 323.

44 11 March Transcript at p 66 lines 10–11, p 70 line 22 to p 71 line 12.

30 On that very same day, Mr Jasper Chong ("Mr Chong"), the "regional Head of Transformation and Adoption for Services Delivery in the APJ and GCN regions" (*ie*, a member of the services delivery team),[45] organised a call with the claimant and Mr Gupta, amongst others, to "resolve the issue".[46] After the call, Mr Chong sent the claimant an e-mail and carbon copied Ms Raman. In that e-mail, Mr Chong purported to reiterate the discussion which took place during the call regarding Mr Gupta's improper conduct:[47]

> Hi Prashant [*ie*, the claimant],
>
> Reiterating what I said during the call we had earlier about how [Mr Gupta] did not conduct himself properly on this:
>
> 1. [Mr Gupta] changed the delivery timeline for this SOW [*ie*, scope of work] from 11 down to 8 [months] and presented it to the customer for signature without validating with delivery team on whether this scope is feasible or not.
>
> 2. [Mr Gupta] claimed in writing that the 8 [month] scope was already approved (attached). Shylesh [*ie*, another member of the services delivery team] clarified on the call that it was not and he still had concerns that needed to be answered.
>
> 3. *[Mr Gupta] also admitted on the call that he independently reduced the delivery timeline down to 8 [months]* because, in his own words 'he has been doing delivery for 13-14 years and he knows how this project should be delivered'.
>
> 4. [Mr Gupta] also admitted on the call that he had already presented this SOW without validation from delivery to the customer for signature and he was asking approval after the fact.
>
> I fully understand if we need to take extraordinary measures as an exception in competitive and time sensitive sales engagements, I would expect our delivery team to support this. In these situations, I would also expect the SSEM [*ie*, solution sales engagement manager] to work openly with our delivery

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45 Ms Raman's AEIC at para 40.

46 Ms Raman's AEIC at para 67.

47 1AB at p 327.

> team and honestly share the facts about what (and why) needs to happen to win a deal. This did not happen here. I observed that *[Mr Gupta] tried to bully and used untruths to force his colleagues from delivery to sign-off on a SOW that he independently amended himself + already sent to customer for signature* – this is not how SAP expects us to conduct ourselves. Let's work together to foster an open and truly collaborative working environment for our teams.
>
> [emphasis added]

31 It is a subject of dispute as to whether the points which Mr Chong purported to reiterate in his e-mail were an accurate summary of the discussion during the call.[48] Nevertheless, it suffices for present purposes to say that the claimant was clearly unhappy about the contents of Mr Chong's e-mail, particularly his comments on Mr Gupta's conduct. It was at this moment that tensions reached a crescendo.

32 The claimant replied to Mr Chong (the "31 October 2018 E-mail"), carbon-copying Ms Raman as well as Mr Samrat Pattnaik, the "Customer Engagement Manager" and "Customer Value Organisation lead" in India, Mr Farooq, and Mr Rupesh Bhayana, "Head of Digital Technology Services" for APJ.[49] In the 31 October 2018 E-mail, the claimant sought to "defend" Mr Gupta, and also addressed Ms Raman directly:[50]

> [Mr Chong], thanks for your note. Without getting into a debate on the below, it will be a pointless exercise since we will both be biased in our views and more so since I am fully aware of where this is coming from, let me suggest the following. *I will set up a call to include a few more folks, already cc'ed here, who are part of the leadership team and have also worked with [Mr Gupta] for a long time and continue to work with him on a daily basis to understand if they all have the same feelings as shared by you below.* I am not saying that [Mr Gupta] is perfect, none of us are, but the below definitely doesn't represent him. I can stand

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48 CCS at paras 66–67.

49 Ms Raman's AEIC at para 69.

50 Mr Mudgal's AEIC at para 56; 1AB at pp 326–327.

> up and say without hesitation that his contribution to the India business over the years has been priceless.
>
> *Chon [ie, Ms Raman], I am frankly tired of this*, we have been through this before with Vishal not once, not twice but thrice and we all are aware of who stuck around and has come through for us eventually. I have also had the opportunity to see your behaviour with respect to Odette, when you admitted to having pawned her off to Services Sales when you had the chance. *I do not have any faith in your ability to be able to stand behind your own people let alone people from other teams.* While all of us have very successfully for the years past and continue to strive to work in a congenial environment, I am now of the view that this is no longer going to be possible. I am aware and have got feedback on the conversations you have had with multiple people in the recent past in what appears to be a concerted effort to malign an honest and hardworking asset to the business.
>
> Look forward to seeing all on the call.
>
> [emphasis added]

33 Ms Raman replied, saying that Mr Chong was "calling out his observations based on the discussion [the claimant, Mr Chong, Mr Gupta, and others] had".[51] She also told the claimant not to "muddy this discussion by [his] personal opinions about [her]", and added that they could "discuss this in a forum that is more appropriate".

34 Ms Raman later forwarded the e-mail chain containing the 31 October 2018 E-mail, and her response, to Ms Blatt, stating:[52]

> My response, fyi. Tried to do my best keeping emotion out of it.
>
> I am trying to stay above the line while being firm but man, it is hard!

35 Ms Blatt responded, saying, "Ok. I need to intervene here; I think." She also forwarded the e-mail chain to Mr Farooq, telling him that she was "not sure

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51 1AB at p 326.

52 1AB at p 339.

of all the small details" but that the claimant's e-mail (*ie*, the 31 October 2018 E-mail) was "way out of line".[53] Mr Farooq agreed that it was "completely out of line" and added that he had spoken to the claimant about it.

36 Slightly less than two weeks later, on 13 November 2018, Ms Seabury reached out to the claimant to "discuss the breakdown in relations between [Mr Gupta] and [the services delivery team] in India".[54] She also told the claimant that, based on the e-mails she had been sent, "this [had] gone a lot further in public debate [than] it ever should have done" and that she had "received a formal request from mgmt. for this to be dealt with [once] and for all".[55] The claimant told Ms Seabury that "this [was] a pointless distraction" as there were "much bigger issues" that needed to be addressed, and that he was "confident that [Mr Gupta] [would] come out shining in this".

37 Ms Seabury, however, highlighted the severity of the issue to the claimant and told him to apologise to Ms Raman:[56]

> Prashant,
>
> This is not going to go away, we now have a very serious issue to address. …
>
> We have discussed this topic before, this issue has been going on for several months and you have not been able to resolve it. In this latest flare up, you actively attacked [Ms Raman] on a personal level, spoke about a member of your team, Odette, who would be deeply offended by these comments, and increased the audience to include Sr. Indian management. Your handling of this issue has only added fuel to a growing fire.
>
> Regardless of the history, the personal conflicts you and [Ms Raman] are having, you cannot allow this to enter into an

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53 1AB at p 354.

54 1AB at p 357.

55 1AB at p 356.

56 2AB at p 1234.

> email exchange. We will all have differences of opinion and I fully accept you[r] right to challenge people professionally, but you cannot make this personal or use email to undermine the authority of a member of the leadership publicly.
>
> Regarding the email below *I expect you to apologise in writing to [Ms Raman], to the full email list you sent this to and me this week*. You must learn to remove the emotion from these exchanges or you will be the one to suffer damage to your reputation as a Sr leader, which is what you are. We can discuss this in detail on our call tomorrow but I would like you to come to that call with a draft of the apology you will be sending to [Ms Raman].
>
> [emphasis added]

38 On or around 14 November 2018, the claimant sent an e-mail to Ms Seabury, in which he stated, amongst other things:[57]

> The exchange below, *I have no doubts that they are not my proudest moments, I regret it but I am not sorry about it. I am sorry but I will not be apologizing*. In any event, an apology from me doesn't make any difference at this point in time, whatever damage has been done willingly or unwillingly, direct or self-inflicted to anyone else or me is already done. We either have to figure out an alternative approach and I am happy to very transparently support you on it or I am happy to work my way out of this role at the earliest. Please do not think that I am being pig headed about this but I cannot do something that is so grossly wrong and against what I have stood for in my life.
>
> [emphasis added]

39 On that same day, Ms Seabury also reached out to Mr Farooq to "talk about [the claimant] and the last email exchanges regarding [Mr Gupta] and his comments about [Ms Raman]".[58]

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57 1AB at p 369; 2AB at p 1233; Transcript dated 26 February 2025 ("26 February Transcript") at p 43 line 15 to p 44 line 1.

58 1AB at p 371.

The Compliance Complaint

40 On 20 November 2018, Mr Chong sent an e-mail to Ms Seabury, carbon-copying Ms Raman, to lodge a formal complaint against Mr Gupta for his alleged misconduct with regards to his handling of the delivery timelines for the Sesa Goa project (the "Compliance Complaint").[59] The alleged incidents of misconduct in the Compliance Complaint were as follows:

> - Independently making changes to delivery scope in SOWs [*ie*, scope of work] + making delivery and product enhancement commitments to customers without prior collaboration or consultation with Delivery [*ie*, the services delivery team]. Then after the fact, aggressively insisting that Delivery commits to deliver.
> - Lies and covers up important facts related to services sales engagements / commitments to customers which has material impact to a successful deployment, when engaging with Delivery for scoping, approvals and delivery.
> - Intentionally discrediting Delivery team's capability in front of customers and with other internal stakeholders.
> - Consistent aggressive and disrespectful written and verbal communication with peers and senior leaders in Delivery.

41 The claimant was interviewed as part of the investigations into Mr Gupta's conduct by the Corporate Audit department (the "CA department"), since he was Mr Gupta's team leader.[60] Ms Teo-Gomez, who was generally copied on the correspondence relating to the Compliance Complaint and aware of the investigative process,[61] initially suggested that the investigators look into the claimant's actions as well since it was not clear if the claimant was involved

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59 1AB at p 395.

60 Ms Teo-Gomez's AEIC at para 36.

61 Ms Teo-Gomez's AEIC at para 31.

in the reduction of the delivery timeline for the Sesa Goa project.[62] However, the claimant was ultimately not investigated.[63]

42 As it turned out, the CA department did not make any finding of non-compliance against Mr Gupta, concluding instead that there was a disconnect between the services sales and services delivery teams.[64]

Escalation of the claimant's conduct to Ms Teo-Gomez and the events leading to the Performance Improvement Plan (the "PIP")

43 On 20 November 2018, the same day that the Compliance Complaint was lodged, Ms Seabury sent an e-mail to Ms Teo-Gomez, attaching various e-mail exchanges involving the claimant, including the e-mail chains containing the 12 July 2018 and 31 October 2018 E-mails (which pertained to the Wipro Incident and the Sesa Goa Incident respectively).[65] She expressed her dissatisfaction with the claimant's conduct in the e-mail exchanges and elsewhere, including his refusal to apologise to Ms Raman for the 31 October 2018 E-mail. She also intimated her view that the claimant "[could not] continue in his role":

> Hi Adele,
>
> The issues with [the claimant] and [Ms Raman] began earlier in the year [Ms Raman] asked for [the claimant's] view on her candidates to lead India Delivery, and then chose, which was her right, someone that [the claimant] did not support [*ie*, Mr Kalyan]. It was then made public by [the claimant] to the team, that we would not do anything to help [Mr Kalyan] succeed. *The email exchanges have moved from the professional issues we have in Delivery, which are real and challenging to a personal [attack] on [the claimant's] behalf.* [The claimant's] leadership

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62 Ms Teo-Gomez's AEIC at para 41.

63 Ms Teo-Gomez's AEIC at para 46.

64 Ms Teo-Gomez's AEIC at para 37, p 152.

65 1AB at p 381.

> style is to be a friend to his team and defend them at all costs, but he is not a manager to his team. He is not for example completing SAP talk calls, there are no development plans for his team in place, during my level up Catalyst calls Tom Garske and Ajit developed plans, these were with [the claimant] to action nothing has happened. [The claimant] openly stated to both [Ms Blatt] and me at Sapphire last year, that he would not want his wife or daughter doing a sales role in India and he would not interview a wom[a]n for these positions. [The claimant] is basing management decisions based on who he "likes and trusts" and does not provide actual evidence to support his decisions. There are no women on the APJ sales team, this is the only region in the world without a female SSEM [*ie*, solution sales engagement manager]. *[The claimant] will verbal attack and undermine women*, the way he writes to and about [Ms Raman], is not something he would ever have done to [Mr Farooq] when he was in this role.
>
> [Mr Farooq] has been coaching [the claimant] on this issue for months and telling him he has to keep the issue on the issue and not make it personal, that he is weakening his argument by behaving this way. [The claimant] assured [Mr Farooq] that he would call [Ms Raman] and apologise after the last exchange, which he never did. I formally asked [the claimant] to draft a written apology to be sent to the same distribution group that he wrote to originally. [The claimant's] response on that was … I am not prepared to write an apology on this, and I realise this could impact my ability to continue in my role or even remain [at] [the defendant]. *If I ask you to apologise and you flatly refuse we have no way to move forward from my perspective, he cannot continue in his role*.
>
> Please review the emails above and then *let's have a conversation [on] next steps*.
>
> [emphasis added]

44 Ms Seabury also sent another e-mail to Ms Teo-Gomez on the same day, stating:[66]

> Hi Adele,
>
> I have spoken with [Mr Farooq] and [Ms Blatt] is going to speak with Jason [*ie*, Mr Jason Wolf, the Head of the SAP Ariba line of business in APJ], *we are moving to full alignment on removing [the claimant]*. I plan to be in Singapore December 3rd–7th. Can you please tell me what steps we need to take to proceed?

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66 1AB at p 402.

[emphasis added]

45 While Ms Teo-Gomez agreed that some of the claimant's e-mails "do create tension/friction; undermines a leader and doesn't reflect well of expected leadership [behaviours]", she asked for evidence of coaching or feedback which had been provided to the claimant and suggested that a "final written warning" be provided instead of removing the claimant.[67]

46 Over the course of the next month or so, Ms Teo-Gomez, along with other personnel from the Employee Relations department, discussed with Ms Seabury the various options open to her with regards to the claimant. These included having the compliance department investigate the claimant to see if any of the conditions for terminating the claimant's employment for cause were made out,[68] as well as placing the claimant on a performance improvement plan ("PIP") and/or issuing him a warning letter.[69] Ultimately, it was decided that the claimant should be placed on a PIP.

The PIP and the termination of the claimant's employment

47 On 1 February 2019, Ms Seabury sent to Ms Teo-Gomez, for her comments, an official warning letter which she intended to issue to the claimant.[70] She also told Ms Teo-Gomez that she had drafted a PIP for the claimant and intended to do a "Zero increase in salary and implement the PIP" upon the claimant's return from an overseas trip.

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67 Ms Teo-Gomez's AEIC at para 49; 1AB at p 402.

68 1AB at p 404.

69 Ms Teo-Gomez's AEIC at para 56.

70 1AB at p 526.

48 On 21 March 2019, Ms Seabury wrote to the claimant to inform him that he would be formally placed on the PIP for a period of 45 days starting from that day.[71] The PIP listed five key "Performance concerns/improvement areas":

> 1) **Respectful Communications.** Be a leader in thoughts words and behavior your team will follow your example. Consider your responses in email and ensure that all communications are professional and respectful, you are welcome to disagree and raise business concerns without offending and attacking individuals.
>
> 2) **Participate in Aligned Senior Leadership.** Don't just show up with problems and point fingers; but work collectively with License, Ariba Delivery, Partner Success, DBS [*ie*, Digital Business Services] and operations leadership to address issues and put the business in a position to succeed. Stop working in a Silo be part of the Leadership team to add real value.
>
> 3) **Leadership behavior** You need to take a more hands-on approach in coaching each of your SSEMS [*ie*, the solution sales engagement managers in the claimant's services sales team]. I need you to adopt a coaching behavior of an "executive sponsor" where you take a personal vested interest in helping each of your SSEMSs by attending customer meetings with them to evaluate and support.
>
> 4) **Managing the team effectively.** Become a team manager and put this at the centre of all you do, visiting each region regularly. This ties in to the 3rd point above where I would like to see all of your SSEMs participate in a sales play … . They each need to close at least one deal in the quarter.
>
> 5) **Improve the relationships with Delivery in India** Have a face to face meeting with [Mr Kalyan] and his leadership team and agree [on] a path forward to work together proactively, setup regular cadence calls with him and his team and document the discussions.

49 The PIP ended on 5 May 2019.[72] According to Ms Teo-Gomez, Ms Seabury and Ms Blatt did not consider the issues with the claimant's conduct to have been satisfactorily resolved and were of the opinion that the claimant

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71 1AB at pp 565–566.

72 Ms Teo-Gomez's AEIC at para 75.

was only "simulating his behaviour so as to satisfy the PIP".[73] However, they were "open to discussion about the action to be taken following the PIP".

50 While Ms Teo-Gomez sought documentation of the PIP process from Ms Seabury, Ms Seabury did not ask for any specific step regarding the claimant's employment to be taken and, hence, Ms Teo-Gomez assumed that Ms Seabury was content to continue working with him.[74]

51 On 25 October 2019, however, Ms Seabury wrote to Ms Teo-Gomez to inform her that there continued to be issues with the claimant's conduct following the expiry of the PIP. Ms Seabury made known her desire for the claimant's employment to be terminated "as soon as possible":[75]

> Hi Adele,
>
> Following on from our PIP earlier in the year several issues remain in [the claimant's] performance:
>
> …
>
> Adele, I have now lost complete faith in [the claimant's] ability to execute his leadership role. Whilst I believe [he] is capable of being a strong individual contributor in sales role, he cannot effectively discharge his responsibilities as a manager. I have discussed this with [Ms Blatt] in detail, she is on copy above. We have jointly agreed *it is time to remove [the claimant] from this role* and replace him with someone capable of leading the team and rebuilding trust with the sales and delivery organisation. *Will you please let me know what steps need to be taken now to terminate his employment with [the defendant]?* From a time line perspective *we would like to see this completed as soon as possible* and definitely before the end of 2019.
>
> Would be grateful if we could schedule a call with [Ms Blatt] and myself to discuss next steps and timelines. …
>
> [emphasis added]

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73 Ms Teo-Gomez's AEIC at para 77.

74 Ms Teo-Gomez's AEIC at para 79.

75 Ms Teo-Gomez's AEIC at para 81; 1AB at pp 611–612.

52 Ms Seabury and Ms Teo-Gomez then began to plan for the termination of the claimant's employment.[76] The notice of termination was finally served on the claimant on 21 November 2019.[77] It stated that the claimant would be placed on garden leave from 22 November 2019, and that his last day of employment with the defendant would be 31 December 2019.

53 It should be noted that the termination of the claimant's employment was effected in accordance with the claimant's employment contract (the "Employment Agreement"). Clause 11.1 of the Employment Agreement stated:[78]

> Either [the defendant] or [the claimant] may at any time terminate this Agreement by giving to the other party one month's written notice after probation or in lieu thereof a sum equal to the amount of salary which would have accrued to [the claimant] during the period of notice.

54 In fact, the defendant gave the claimant more than the required one month's notice.

The parties' cases

The claimant's case

55 The claimant's case is that the defendant's senior leaders pinned the blame on him for its severe fundamental organisational issues and "conspired to silence him".[79] He names as the conspirators Ms Blatt, Ms Seabury, Ms Raman, Mr Farooq and Ms Teo-Gomez (collectively, the "Conspirators")

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76 Ms Teo-Gomez's AEIC at para 90.

77 1AB at p 625.

78 1AB at p 26.

79 CCS at para 3.

and says that they "plotted to remove him" after he refused to apologise to Ms Raman in the manner directed by Ms Seabury in the 31 October 2018 E-mail.

56 The claimant submits that the defendant terminated his employment pursuant to an unlawful means conspiracy.[80] The unlawful acts which the claimant identifies as founding the unlawful means conspiracy are breaches of various implied terms in the Employment Agreement.[81] Amongst other things, the claimant alleges that:

(a) He was merely defending Mr Gupta in the 12 July 2018 E-mails and the remarks which he directed at Ms Raman were intended to highlight that she was "ducking blame for [the services delivery team's] issues and foisting it onto [Mr Saripalli] and [Mr Gupta]", as well as to call out her motivations to blame Mr Gupta due to pre-existing tensions between her and Mr Gupta.[82]

(b) Following the 12 July 2018 E-mails, Ms Raman forwarded the e-mail chain which contained a one-sided picture to Ms Blatt, without any context surrounding the underlying problems which the claimant and his services sales team were facing, in order to portray the claimant in a bad light.[83]

(c) He was justified in sending the 31 October 2018 E-mail as Mr Chong's previous e-mail had contained falsehoods and it was reasonable

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80 CCS at paras 17–151.

81 CCS at para 18.

82 CCS at paras 42–43.

83 CCS at paras 47–48.

for him to defend Mr Gupta considering the severity of Mr Chong's allegations.[84] Moreover, he had merely carbon-copied individuals who had a long working relationship with Mr Gupta so that they could provide their own view of what Mr Chong was suggesting were serious character flaws on Mr Gupta's part.[85]

(d) He was targeted and eventually terminated from his employment by the Conspirators as punishment for not apologising to Ms Raman.[86] This is evidenced by the fact that he underwent a "pre-ordained HR process" after Ms Teo-Gomez was first notified of his conduct in November 2018.[87] While he was willing to apologise to Ms Raman on a "mutual basis", this was not an apology in the manner which the defendant's senior leaders (*ie*, Ms Blatt, Ms Seabury and Mr Farooq) dictated.

(e) The defendant's senior leaders did not evaluate his side of the story and, by focusing primarily on the apology to Ms Raman, failed to address the "severe substantive issues" plaguing the services delivery team in the APJ region that he and his services sales team were trying to communicate to them.[88]

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84 CCS at paras 69–70.

85 CCS at para 72.

86 CCS at paras 83–87.

87 CCS at para 83.

88 CCS at paras 88–99.

(f) The Compliance Complaint was instituted by Ms Raman's services delivery team to deflect from their own incompetence and the issues which gave rise to the Sesa Goa Incident.[89]

(g) The PIP which he was placed on was a charade.[90] It was a hatchet job and its outcome was pre-ordained in that it was never legitimately introduced to give him an opportunity for long-term correction and Ms Teo-Gomez already had the "end-game" of terminating his employment in mind when he was placed on the PIP.[91]

(h) There were no issues relating to his performance during or after the PIP.[92]

(i) After the notice of termination was served on him, Ms Teo-Gomez had a meeting with him in which she threatened him to "not even think of challenging" his termination in court as "[t]his is Singapore".[93]

57 Alternatively, the claimant says that there was a lawful means conspiracy to terminate his employment.[94] According to the claimant, the Conspirators conspired to hide the services delivery team's failures and their own management shortcomings in order to "blame it all" on him and Mr Gupta. In so doing, he was "put through a traumatic and humiliating series of events" before his eventual termination.

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89 CCS at para 104(a).

90 CCS at paras 127–140.

91 CCS at paras 130–136.

92 CCS at paras 141–151.

93 CCS at para 149.

94 CCS at paras 152–154.

58 In relation to the Employment Agreement, the claimant alleges that the defendant breached two implied terms – namely, the implied term of mutual trust and confidence,[95] and the implied term not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith.[96]

59 Finally, the claimant submits that the defendant's breaches and/or the Conspirators' conduct led him to suffer loss and damage in the form of:[97]

(a) continuing financial losses, including a substantial loss of earnings;

(b) damages for pain and suffering and disamenities caused by major depressive disorder ("MDD") to date; and

(c) injury to his reputation, price and dignity, as well as humiliation, distress, insult and/or pain.

60 The claimant also says that he is entitled to aggravated damages and punitive damages because of the defendant's "outrageous conduct" in its treatment of him.[98]

61 In the main, the claimant seeks a sum of $4,961,767.05 in damages.

The defendant's case

62 The defendant says that the claimant brought his case because the business he started after his employment was terminated failed and he was

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95 CCS at paras 155–171.

96 CCS at paras 172–177. `

97 CCS at paras 199–229.

98 CCS at paras 230–232.

unable to achieve the level of remuneration he enjoyed when he worked for the defendant.[99]

63 The defendant's position is that the claimant's inability to work with other leaders and teams in the business led to frequent escalations, and Ms Blatt had to spend a disproportionate amount of time managing these conflicts.[100] Ultimately, Ms Blatt took an executive decision to exercise the contractual right to terminate the claimant's employment.

64 In its submissions, the defendant emphasises that the claimant's employment was terminated lawfully in accordance with the contractual termination provision of the Employment Agreement.[101] The defendant submits that the claimant's argument for an implication in law of a term that an employer cannot exercise its contractual right to terminate a contract of employment arbitrarily, capriciously, perversely, irrationally, or in bad faith flies in the face of the trite common law rule that an employer can terminate the employment of its employee for any reason or for none, so long as it is provided for in the contract.[102]

65 In any case, the decision to terminate the claimant's employment was a management decision "borne out of genuine concerns about [the claimant's] inability to conduct himself professionally as a senior regional leader".[103] This arose from, amongst other things, the claimant's "abrasive and confrontational"

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99 Defendant's closing submissions dated 9 May 2025 ("DCS") at para 2.

100 DCS at para 6.

101 DCS at paras 11–19.

102 DCS at para 12.

103 DCS at para 43.

management style,[104] hostility and inability to work professionally with people, manner of dealing with challenges (which included "pointing the finger" at other teams, lecturing other leaders on how to do their jobs and adopting a "take-it-or-leave-it" approach which precluded collaboration and promoted an "us-against-them" mindset),[105] and injection of irrelevant personal attacks into workplace discussions.[106] Specifically, the defendant alleges that:

(a) in relation to the Wipro Incident, the claimant "immediately injected a hostile and condescending tone" the moment he inserted himself into the discussion and made "unhelpful comments" directed at Ms Raman in the 12 July 2018 E-mails;[107]

(b) despite promising to handle such matters over the phone rather than through e-mails in the future, the claimant continued to stir conflict during the Sesa Goa Incident by, amongst other things, deciding to include members of the management (who were not previously copied on the e-mail chain) in the 31 October 2018 E-mail and making "strong personal attacks" against Ms Raman that were irrelevant to the issue;[108] and

(c) despite the advice he received from Mr Farooq and Ms Seabury regarding his management behaviour, the claimant "remained obstinate in his refusal to apologise" to Ms Raman and was "not remorseful about his behaviour".[109]

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104 DCS at para 44.

105 DCS at para 45.

106 DCS at para 46.

107 DCS at para 47.

108 DCS at paras 51–55.

109 DCS at paras 59–65.

66 The defendant also says that Ms Seabury saw the logic in providing the claimant with opportunities to improve himself,[110] and that the PIP which the claimant was placed on was "a developmental, not a disciplinary process".[111] However, "problems with [the claimant] persisted",[112] including that he remained hostile towards Ms Raman's team,[113] and the decision to terminate the claimant's employment was made because of the "deeper, systemic issues with [his] ability to work productively within a cross-functional leadership team".[114]

67 The defendant also submits that there is no implied duty of mutual trust and confidence under Singapore law.[115] Even if there was such an implied duty, the damages which the claimant seeks are unsustainable at law as there is no basis for relief beyond the required notice payment in the Employment Agreement.[116] In addition, the claimant's claim for psychiatric injury damages is unsustainable and baseless.[117]

68 As for the breach of the implied term to conduct fair investigations, which the claimant says is a subset of the implied term of mutual trust and confidence,[118] the defendant argues that such a claim is legally and factually unsustainable because it is "merely a repackaged wrongful termination claim"

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110 DCS at para 74.

111 DCS at para 78.

112 DCS at para 81.

113 DCS at para 82.

114 DCS at para 86.

115 DCS at paras 92–109.

116 DCS at paras 110–121.

117 DCS at paras 122–159.

118 CCS at para 164.

and thus does not entitle the claimant to any damages beyond his notice pay.[119] The claimant was never the subject of any investigation,[120] and there was no duty on the part of the defendant to investigate before exercising its right to terminate the claimant's employment.[121] In any case, the claimant was afforded opportunities to clarify his position.[122]

69 Finally, in relation to the conspiracy claim, the defendant says that it must fail *in limine* because a company cannot conspire with its employees acting within the scope of their authority.[123] The defendant also submits that it is fanciful to characterise the exercise of the contractual right to terminate as evincing a predominant purpose to injure in a conspiracy, since the consequences of either side exercising that right were known to both parties.[124] In any event, the conspiracy claim is superfluous because it is a mere repackaging of the claimant's wrongful termination claim,[125] and the claimant's conduct before and during these proceedings debunks the conspiracy claim.[126]

70 As such, the defendant prays for the claimant's claim to be dismissed in its entirety with costs.[127]

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119 DCS at para 160.

120 DCS at paras 161–165.

121 DCS at paras 166–170.

122 DCS at para 172.

123 DCS at paras 174–175.

124 DCS at paras 176–180.

125 DCS at paras 181–184.

126 DCS at paras 185–192.

127 DCS at para 203.

Issues to be determined

71 The following issues arise for determination:

(a) whether the claimant's conspiracy claims are made out;

(b) whether the implied term not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith and the implied term of mutual trust and confidence exist in the Employment Agreement;

(c) if such implied terms exist, whether the defendant breached them; and

(d) if the answer to (a) and/or (c) is yes, the quantum of damages that should be awarded to the claimant.

72 Before turning to deal with the claimant's causes of action proper, it is important to emphasise that there is nothing inherently wrongful about terminating an employment contract if such termination was effected in accordance with the contract itself. One need not look further than the Court of Appeal's ("CA") remarks in *Leiman, Ricardo v Noble Resources Ltd* [2020] 2 SLR 386 at [125] ("*Leiman*") (citing *Vasudevan Pillai v City Council of Singapore* [1968–1970] SLR(R) 100 at [7] and *Ridge v Baldwin* [1964] AC 40 at 65) for the trite proposition that "an employer [can] terminate an employment contract at any time, and for any reason or for none", provided that the employer does so in a manner warranted by the contract. This flows from the general principle that parties are free to enter into and exit contracts (see *Dong Wei v Shell Eastern Trading (Pte) Ltd* [2022] 1 SLR 1318 ("*Dong Wei*") at [92]), and that contracting parties are generally entitled to act in their own interests (see *Leiman* at [133]).

73 I emphasise this because, in parts of his pleadings and closing submissions, the claimant has sought to characterise his termination as being "wrongful". I will deal with some of these specific instances below. It suffices to say at this juncture that I see no merit in this characterisation, as it was well within the defendant's right to terminate the claimant's employment at any time in accordance with the Employment Agreement. In fact, as detailed above (at [52]–[54]), the defendant went beyond its obligations in the Employment Agreement by giving the claimant more than the requisite one month's notice.

74 Furthermore, it bears mentioning that the claimant himself acknowledged during the trial that the defendant could have terminated his employment in accordance with the Employment Agreement at any time:[128]

> ... So I understand that you can -- there is a contractual right of companies to terminate at one-month's notice, I mean, especially in the case of [the defendant] and I, yeah? *They could have done that at any point of time, yes, absolutely, I am not refuting that fact.* ...
>
> [emphasis added]

75 As such, any claim which rests on the termination of the claimant's employment being wrongful must necessarily fail.

76 I now turn to address each of the claims in detail.

Whether the claimant's conspiracy claims are made out

77 As summarised in *EFT Holdings, Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 ("*EFT Holdings*") at [112], in order for a claim in unlawful means conspiracy to be made out, the claimant must show that:

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128 26 February Transcript at p 77 lines 16–21.

(a) there was a combination of two or more persons to do certain acts;

(b) the alleged conspirators had the intention to cause damage or injury to the claimant by those acts;

(c) the acts were unlawful;

(d) the acts were performed in furtherance of the agreement; and

(e) the claimant suffered loss as a result of the conspiracy.

78 For a lawful means conspiracy, the following elements must be made out (see *Tuitiongenius Pte Ltd v Toh Yew Keat* [2020] 5 SLR 354 at [114], citing *Visionhealthone Corp Pte Ltd v HD Holdings Pte Ltd* [2013] SGCA 47 at [44] and *EFT Holdings* at [112]):

(a) there was a combination of two or more persons and an agreement between them and amongst them to do certain acts;

(b) the predominant purpose of the conspirators was to cause damage and injury to the claimant;

(c) the acts were performed in furtherance of the agreement; and

(d) the claimant suffered loss as a result of the conspiracy.

79 Essentially, as its name suggests, a lawful means conspiracy can be made out even if the acts performed by the conspirators in furtherance of the agreement were lawful. However, instead of simply showing that the conspirators had the intention to cause damage or injury to him by performing those lawful acts, the claimant must show that *the predominant purpose* of the conspirators was to cause damage and injury to him. In other words, the threshold at which the requisite mental element on the part of the conspirators

will be made out is higher for a lawful means conspiracy than for an unlawful means conspiracy. As the CA noted in *EFT Holdings* (at [96]), "where self-interest is the predominant motivation [in a lawful means conspiracy], the act may be justified".

Whether the unlawful means conspiracy claim is made out

80 To begin with, I have some difficulty understanding the claimant's case as it is framed.

81 The claimant's pleaded case is that the defendant and the Conspirators "agreed between and amongst them to *take steps to terminate the Claimant's employment* with the Defendant" [emphasis added].[129] The claimant then refers to the following two particulars:[130]

> (m) Given his good performance during the course of his employment since 11 August 2015, his dutiful compliance with the requirements of the PIP, and the lack of any further response from Ms Seabury or any other SAP office [after the PIP came to an end], the Claimant avers that between the time of the Incident on 31 October 2018 [*ie*, the Sesa Goa Incident] to 21 March 2019 [*ie*, the date on which the claimant was placed on the PIP], Ms Raman, Mr Farooq, Ms Seabury and Ms Teo-Gomez agreed between and amongst them to cause the Claimant damage or injury by *terminating the Claimant's employment with the Defendant*.
>
> (n) Ms Raman, Mr Farooq, Ms Seabury and Ms Teo-Gomez then used the PIP as a charade to cloak the plan or *conspiracy between them to wrongfully (i.e. capriciously, arbitrarily, perversely, irrationally and/or in bad faith) terminate the Employment Agreement*, in breach of the implied terms of the Employment Agreement not to do so.
>
> [emphasis added]

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129 SOC at para 29.

130 SOC at paras 15(m) and (n).

82 In his closing submissions, the claimant says that the Conspirators "combined to perform acts in furtherance of an *agreement to terminate* [him]" [emphasis added],[131] and that the "unlawful acts" are the defendant's "breaches of implied terms of contract".[132]

83 To my mind, to say that there is a conspiracy to terminate the claimant's employment is an odd submission to make. It is difficult to see how there can be a conspiracy amongst various actors to terminate the claimant's employment when the defendant could, at any time, *and for any reason or for none*, bring the Employment Agreement to an end. It simply does not make sense to say that there is a conspiracy to terminate a contract. As I pointed out to the claimant at trial, the defendant would have only needed to resort to a conspiracy if there was no mechanism to terminate the Employment Agreement.[133] That, however, is not the case, as the defendant had a legally supportable way to terminate the claimant's employment by giving him one month's notice.

84 In any event, an unlawful means conspiracy has not been made out on the facts of this case. I am not convinced that the claimant has surmounted the first barrier to establishing a conspiracy, namely that there was a combination of two or more persons to do certain acts. In *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd* [2018] 1 SLR 818 ("*PT Sandipala*") (at [63]), the CA noted that it would be wrong to treat a director of a company as conspiring with that company given that the director is acting as the company. As the CA explained, "[t]here is effectively only one legal actor in play, *ie*, the company, and this is *typically fatal to the fundamental requirement of a*

131 CCS at para 17(a).

132 CCS at para 18.

133 26 February Transcript at p 77 lines 5–8.

conspiracy that there be two or more persons acting in concert." [emphasis added] The only exception is where the director has acted in breach of his fiduciary or other personal legal duties owed to the company in causing it to commit the acts that form the subject of the conspiracy (*Voltas Ltd v Ng Theng Swee* [2023] SGHC 245 ("*Voltas*") at [33], citing *PT Sandipala*). While the remarks in *PT Sandipala* and *Voltas* pertain to directors of a company, I am of the view that they are equally applicable to employees of a company as they, much like directors, are agents through which a company acts. After all, the proposition in *PT Sandipala* cited above was derived from the more general principle in *O'Brien v Dawson* [1941] 41 SR (NSW) 295 (at 307) that, when an incorporated company acts through its *agents*, the agents "are not in the position of outsiders who are influencing the independent volition of a contracting party who is capable of exercising volition for himself" (cited in *PT Sandipala* at [63]; see also *Said v Butt* [1920] 3 KB 497 at 504–507, where the principle was held to apply to "either a managing director or a board of directors, or a manager or other official of a company").

85 The claimant's reliance on *Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR(R) 80 ("*Nagase*") to say that it was *possible* to find a conspiracy between the director and the company does not assist his case.[134] It is true that, in *Nagase* (at [22]), Judith Prakash J (as she then was) was satisfied that " in law, there *can* be a conspiracy between a company and its controlling director to damage a third party by unlawful means notwithstanding that the director may be the moving spirit of the company" [emphasis added]. However, as the CA emphasised in *PT Sandipala* (at [72]), the approach which it took "[did] not contradict the position (established in cases such as *Nagase*) that a company and its director, notwithstanding that the director is the moving spirit of the

134 Claimant's reply submissions dated 30 May 2025 ("CRS") at para 5.

company, can *in principle* conspire to cause harm to third parties". The CA was more concerned with demarcating the situations in which a company could be held to be conspiring with its director to breach the company's contract. In this regard, the CA explained (at [70]) that *Nagase* was a case in which the director, who fraudulently overcharged the claimant in breach of the company's contract with it, was "clearly in breach of his fiduciary duties owed to the company".

86 In the present case, the claimant has not sought to demonstrate that the Conspirators had acted in breach of fiduciary or other personal legal duties owed to the defendant. In fact, the claimant is not seeking to hold the Conspirators personally liable for the defendant's actions. Hence, there was effectively only one legal actor at play (*ie*, the defendant) as far as the termination of the claimant's employment is concerned and, *a fortiori*, there could not have been a combination between the defendant and the Conspirators to terminate the claimant's employment.

87 Even if one were to take the claimant's case at its highest and assume that the defendant had committed unlawful acts by breaching various implied terms in the Employment Agreement, I do not think it can be said that the alleged conspirators had the intention to cause damage or injury to the claimant by those acts. In *EFT Holdings* (at [101]), the CA stated in no uncertain terms that, for the requisite state of mind for an unlawful means conspiracy to be made out, it is "not sufficient that harm to the claimant would be a likely, or probable *or even inevitable* consequence of the defendant's conduct" [emphasis added], and that "[i]njury to the claimant must have been intended as a means to an end or as an end in itself".

88 The claimant has not explained how the defendant and the Conspirators had intended to cause damage or injury to him as a means to an end or as an end

in itself. Indeed, the claimant would be hard-pressed to do so. To recapitulate, the claimant says he suffered the following forms of loss and damage as a result of the conspiracy:[135] (a) continuing financial losses, including loss of earnings; (b) damages for pain and suffering and disamenities caused by MDD; and (c) injury to his reputation, pride and dignity, and humiliation, distress, insult, and/or pain.

89 Further, even if I proceed on the assumption that these losses are made out, I am unable to find any conceivable basis to say that the defendant and the Conspirators had intended to cause these forms of loss and damage to the claimant as an end in itself, or as a means to the end-goal of terminating the claimant's employment. It should be borne in mind that even an appreciation that a course of conduct would *inevitably* harm the claimant would *not* amount to an intention to injure (see *EFT Holdings* at [101]). There is no way that the injury suffered by the claimant can be said to be an inevitable consequence of the defendant's and the Conspirators' course of conduct.

90 As such, I have no hesitation dismissing the unlawful means conspiracy claim.

Whether the lawful means conspiracy claim is made out

91 My remarks above (at [84]–[86]) in relation to the claimant being unable to show that there was a combination between the defendant and its employees to do certain acts for an unlawful means conspiracy to be made out apply with the same force to the claim in lawful means conspiracy.

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135 CCS at paras 17(d) and 199.

92 Furthermore, as I have found that the mental element for an unlawful means conspiracy claim to succeed is not made out, it follows that a lawful means conspiracy would likewise not be made out as it involves the more stringent mental element of having the *predominant purpose* to cause injury or damage to the claimant (see *Chan Pik Sun v Wan Hoe Keet* [2024] 1 SLR 893 at [173]). If the claimant cannot even establish that the defendant and the Conspirators had intended to cause injury to him, he would likewise fail in showing that the predominant purpose of their course of conduct was to cause such injury. Additionally, as the CA noted in *EFT Holdings* (at [96]), in the context of a lawful means conspiracy, the acts may be justified if self-interest is the predominant motivation. Hence, at least where a lawful means conspiracy claim is concerned, the defendant and the Conspirators would have been perfectly entitled to embark on the course of conduct which they did if their primary motivation was to remove the claimant from the defendant because they did not think he was a suitable fit for the job any longer.

93 Accordingly, I likewise dismiss the alternative claim in lawful means conspiracy.

94 I now turn to address the claimant's allegation that the defendant has breached implied terms in the Employment Agreement.

Whether the implied term not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith and the implied term of mutual trust and confidence exist in the Employment Agreement

95 The claimant says that the defendant breached two implied terms – namely the implied term of mutual trust and confidence,[136] and the implied term

[136] CCS at paras 155–162.

not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith.[137]

96 I will first deal with the implied term not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith, as the claimant's arguments in relation to this term can be dismissed fairly easily. To the extent that the implied term to conduct fair investigations, while pleaded as a separate term from the implied term of mutual trust and confidence,[138] is advanced in the claimant's closing submissions as a subset of the latter,[139] I will deal with them together.

Whether the implied term not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith exists

97 The claimant says that there is an implied term in the Employment Agreement not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith.[140]

98 In *Dong Wei* (at [91]–[92]), the Appellate Division of the High Court (the "AD") was clearly unconvinced that such a limitation on the employer's exercise of his express contractual right to terminate the employment of an employee in accordance with the employment contract should be implied into the contract. While the AD acknowledged that there were some authorities, such as *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661, *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 ("*MGA*") and

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137 CCS at paras 172–177. `

138 SOC at paras 26–28.

139 CCS at para 164.

140 CCS at para 172.

Leiman, which suggest that contractual discretions are not wholly unfettered, these cases pertained to rights subsisting *within* the contours of the contract and not the right to bring a contract to an end. The AD considered this to be a "crucial distinction which … powerfully [undercut]" the appellant's argument that these authorities should be extended.

99 As the AD stated, different considerations are engaged where the termination of a contract is concerned. A key consideration, and indeed the golden thread underlying much of the common law surrounding contracts, is the notion of freedom of contract. The natural corollary of parties' freedom to enter contracts is their freedom to *exit* contracts. This must be so, as the law does not generally impose an obligation on contracting parties to remain in a contractual relationship indefinitely.

100 In the face of the AD's unambiguous view (in *Dong Wei* at [93]) that this was "not an acceptable direction in which the law of contracts ought to be developed", I can see no basis for the claimant to advance a claim which is founded on this implied term.

101 I now come to the nub of the present case, namely, the implied term of mutual trust and confidence.

Whether the implied term of mutual trust and confidence exists

The law on the implied term of mutual trust and confidence

102 The implied term of mutual trust and confidence has its genesis in the House of Lords case of *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* [1998] AC 20 ("*Malik*"). The claimants there were former employees of the defendant bank who lost their jobs when the defendant

collapsed. The defendant had, for a number of years, been carrying on its business fraudulently. The claimants alleged that, as a result of the corrupt and dishonest manner in which the defendant operated and which became widely known following its collapse, they were handicapped in the labour market by the stigma of being associated with the defendant. They claimed that they suffered loss as a result.

103 The House of Lords held that there was an implied obligation on an employer not to carry out a dishonest or corrupt business, and that damages were recoverable for financial losses sustained if the serious possibility that an employee's future employment prospects would be handicapped was reasonably foreseeable. Such an obligation flowed from the implied term of mutual trust and confidence, which was defined by Lord Steyn as imposing an obligation 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" (*Malik* at 45). This would become the *locus classicus* for the implied term of mutual trust and confidence.

104 Leaving aside subsequent developments of the implied term in the UK and other jurisdictions at this juncture, the implied term would, over the course of the next 15 years, gradually find its footing in our legal landscape. In *Scott Latham v Credit Suisse First Boston* [1999] SGHC 302 (at [54]–[57]), Chan Seng Onn JC (as he then was), in assessing the claimant's claim for assessment of loss arising from wrongful termination based on his discretionary bonus, mentioned the implied term in *Malik* in *obiter* remarks. Chan JC noted that, even if the implied term was pleaded, he did not think that a claim under the "stigma" head of loss could be made out in the circumstances of the case.

105 Subsequently, in *Wong Leong Wei Edward v Acclaim Insurance Brokers Pte Ltd* [2010] SGHC 352 ("*Edward Wong*") (at [52]), Steven Chong J (as he then was), in *obiter* remarks, accepted the claimant's submission on the authority of *Malik* that, in principle, if it could be shown that the defendant had wrongfully dismissed him in a manner that was dishonest or illegitimate which amounted to a breach of the implied term, and as a direct result of that wrongful dismissal it can be proven that he suffered a real and provable financial loss, the claimant would be entitled to claim against the defendant for such loss beyond the contractual notice period. However, as Chong J had already found that the defendant was entitled to terminate the claimant's employment on two separate grounds, there was no merit to the claimant's claim for damages arising from the handicap he allegedly suffered in the labour market as a result of his dismissal.

106 Finally, in *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577 ("*Cheah Peng Hock*") (at [59]), a Singapore court pronounced definitively for the first time that "unless there are express terms to the contrary or the context implies otherwise, an implied term of mutual trust and confidence, and fidelity, is implied by law into a contract of employment under Singapore law". This was the first case that squarely dealt with the question of whether the implied term existed under Singapore law.

107 Given Quentin Loh J's unequivocal pronouncement in *Cheah Peng Hock* that the implied term of mutual trust and confidence was implied by law into all employment contracts under Singapore law, it is easy to see why subsequent decisions proceeded on such a basis. As Prof Ravi Chandran describes in *Employment Law in Singapore* (LexisNexis, 6th Ed, 2019) at para 4.434, the implied term of mutual trust and confidence can be said to have "strongly taken root here" after *Cheah Peng Hock*. Indeed, in *Dong Wei v Shell*

Eastern Trading (Pte) Ltd [2021] SGHC 123, the decision which went on appeal in *Dong Wei*, Aedit Abdullah J accepted (at [32]) that the term was "implied by law in employment contracts, as has been recognised in a number of cases".

108 In as much, however, as the implied term of mutual trust and confidence had "strongly taken root" in our local jurisprudence after *Cheah Peng Hock*, the AD's comments about the implied term in *Dong Wei* raised the question as to whether the implied term can *still* be said to exist under Singapore law.

109 In *Dong Wei*, the AD dismissed the appeal entirely on the facts, as the appellant had not challenged various factual findings which formed the basis for his claim that the respondent had breached the implied term. The upshot of this was that he was taken to have accepted, amongst other things, that the investigation process which he was subject to prior to the termination of his employment was fair and the outcome was not preordained (see [41]). This undermined the appellant's claim for breach of contract.

110 Nevertheless, the AD went on to make *obiter* remarks which cast some doubt on the existence of the implied term of mutual trust and confidence in employment contracts under Singapore law. Specifically, while the AD accepted (at [70]–[71]) that *Cheah Peng Hock* stated in clear terms that the implied term formed a part of Singapore law and that other High Court cases had alluded to or implicitly accepted the term, it was of the view (at [82]) that the status of the implied term "ha[d] not been clearly settled in Singapore" and that it remained an open question for the CA to resolve in a more appropriate case. This followed the CA's remarks in *The One Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd* [2015] 3 SLR 695 ("*One Suites*") (at [44]) that the position of the implied term of mutual trust and confidence was "still left open for decision in a future case".

111 The claimant says that this is such a case.[141] Indeed, this is a case in which it is necessary for me to decide whether to proceed on the basis that the implied term of mutual trust and confidence exists or does not exist in employment contracts under Singapore law. Having carefully reviewed the parties' arguments and the relevant authorities, I have decided to proceed on the basis that such an implied term does exist under Singapore law. As I will explain, my conclusion is shaped by precedent, principle and policy.

(1) There is ample precedent for the implied term of mutual trust and confidence in Singapore law

112 To begin with, both the CA and AD have stated in no uncertain terms that the question of whether the implied term of mutual trust and confidence exists under Singapore law is an *open* question (see [110] above). Apart from *Dong Wei* and *One Suites*, the only other case at the appellate level which has dealt with the implied term is the CA's decision in *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] 4 SLR 357 ("*Wee Kim San*").

113 *Wee Kim San* concerned an appeal against the assistant registrar's decision to strike out the appellant's suit. The appellant had argued, *inter alia*, that there was an arguable case that he was entitled to damages exceeding the amount of salary payable for his contractual notice period if such damages flowed from a breach of the implied term of mutual trust and confidence. However, the appellant's claim for damages was beyond the amount of salary payable for his contractual notice period and was thus legally unsustainable. It was on this basis that the CA dismissed the appeal. As the AD noted in *Dong Wei* (at [73]), however, the CA's discussion of the term was "limited

141 CCS at para 160.

substantially by the factual and procedural context of the case before it" and should not be taken as a formal endorsement of the term. Moreover, *Wee Kim San* was referred to in *One Suites* when the CA remarked that the existence of the implied term was still an open question. It is for this reason that the AD in *Dong Wei* said that, on the CA's own reading of *Wee Kim San*, the question of whether such an implied term exists under Singapore law is a question that has yet to be determined.

114 As such, the references to *Wee Kim San*, in this judgment, on the term of mutual trust and confidence must be understood in the context that the comments on the implied term were *obiter* remarks.

115 Notwithstanding this, it is undeniable that there is ample precedent in our local jurisprudence *at the High Court level* to ground the implied term of mutual trust and confidence. In other words, such an implied term is not being plucked out of thin air. As noted by the AD in *Dong Wei* (at [71]), the High Court cases which have either alluded to or implicitly accepted the existence of the implied term include the following: *Cheah Peng Hock*, *Edward Wong*, *Brader Daniel John v Commerzbank AG* [2014] 2 SLR 81 ("*Brader Daniel John*"), *Tullett Prebon (Singapore) Ltd v Chua Leong Chuan Simon* [2005] 4 SLR(R) 344, *Leong Hin Chuee v Citra Group Pte Ltd* [2015] 2 SLR 603 and *Arul Chandran v Gartshore* [2000] 1 SLR(R) 436. I am thus not in any shortage of company in proceeding on the basis that such an implied term exists in our law.

116 Moreover, as Andrew Phang J (as he then was) noted in *Forefront Medical Technology (Pte) Ltd v Modern-Pak Pte Ltd* [2006] 1 SLR(R) 927 ("*Forefront Medical Technology*") (at [44]):

> … the decision of the court concerned to imply a contract "in law" in a particular case *establishes a precedent* for similar cases in the future for *all* contracts of *that particular type*, ***unless of course a higher court overrules this specific decision***. …
>
> [emphasis in original in italics; emphasis added in bold italics]

117 I note that, subsequent to *Dong Wei*, there were three General Division of the High Court decisions in which the implied term was considered or referenced. In two of them – namely, *Kallivalap Praveen Nair v Glaxosmithkline Consumer Healthcare Pte Ltd* [2023] 3 SLR 922 ("*Kallivalap Praveen Nair*") and *BCG Partners (Singapore) Ltd v Sumit Grover* [2024] SGHC 206 ("*BCG Partners*") – the court did not take a position on whether the implied term formed part of Singapore law.

118 In *Kallivalap Praveen Nair* (at [37]), Kwek Mean Luck J proceeded on the assumption that the implied term was part of Singapore law (while expressly stating that he was not making a judgment on it). He rejected the claimant's pleaded version of the implied term, which he found to be "very different" from the original formulation of the implied term in *Malik* (see *Kallivalap Praveen Nair* at [35]–[37]). In *BCG Partners* (at [80]–[82]), Wong Li Kok Alex JC (as he then was) noted that the existence of the implied term was an open question and said that it was unnecessary for him to resolve this legal issue as, in his view, the claimant would not have breached the implied term even if it applied.

119 In *Dabbs, Matthew Edward v AAM Advisory Pte Ltd* [2024] SGHC 260 ("*Dabbs*") (at [89]), however, Wong JC stated in clearer terms that he was "not minded to conclude" that such an implied term existed under Singapore law. *Dabbs* and *Dong Wei* were cited by the defendant to advance the submission

that "the Singapore Courts have answered [the question of whether the implied term exists] in the negative".[142]

120 On no reading of *Dong Wei* can it seriously be contended that the AD answered the question in the negative. The AD had explicitly left the question open and, on my reading of its grounds of decision, was concerned with correcting the misperception that the CA had, in *Wee Kim San*, accepted that the implied term exists in Singapore law (see [70] and [73] of *Dong Wei*). That leaves *Dabbs* as the only known case thus far in which a Singapore court has expressly pronounced that the implied term does not exist under Singapore law.

121 In spite of the pronouncement in *Dabbs*, I would still be in good and abundant company in taking the position that the implied term exists under Singapore law. To my mind, it is tolerably clear that the corpus of authorities in Singapore overwhelmingly supports the existence of the implied term in employment contracts under Singapore law. That the AD and CA have explicitly stated that the question remains open on two occasions does not, in and of itself, cause the pendulum to swing to the other end. At the very most, they exert a gravitational pull which brings it closer to an equilibrium.

122 I therefore conclude, following *Forefront Medical Technology* (at [44]) (see [116] above) that, on the basis of precedent, the implied term has existed and continues to exist in employment contracts under Singapore law since the court's pronouncement in *Cheah Peng Hock*, unless and until *Cheah Peng Hock* is expressly overruled.

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142 DCS at para 92.

123 I am also of the view that principle and policy both militate toward the existence of such an implied term.

(2) The implied term of mutual trust and confidence is justified on principle

124 One of the objections raised by the defendant against implying the duty of mutual trust and confidence into Singapore law appears to be that it was developed specifically within the context of the UK's unfair dismissal legislation.[143] Indeed, this was the very reason why the High Court of Australia (the "HCA") unanimously decided in *Commonwealth Bank of Australia v Barker* (2014) 312 ALR 356 ("*Barker*") (at [26] and [91]–[101]) that the implied term did not form part of Australian employment law. The legislative developments in the UK, which provided the impetus for the UK courts to formulate the implied term, were very helpfully summarised by the AD in *Dong Wei* (at [76]):

> … When [the UK's legislative framework which introduced an action for "unfair dismissal" in 1971] was first enacted, it only accommodated claims resulting from ordinary, outright dismissals (*ie*, "you're fired" cases). It was later amended, however, to include cases where an employee is the one to terminate his own contract of employment "in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct" (see s 95(1)(*c*) of the Employment Rights Act 1996 (c 18) (UK) now; it was then enacted in Schedule 1, para 5(2)(*c*) of the Trade Union and Labour Relations Act 1974 (c 52) (UK) ("TULRA")). ***The question which this change gave rise to, expectedly, was when an employee would be so entitled to terminate***. In 1977, the English Court of Appeal in *Western Excavating (ECC) Ltd v Sharp* [1978] QB 761 ("*Western Excavating*") preferred to answer this question by reference to the employer's repudiatory breach (see 769 *per* Lord Denning MR). In other words, ***an employee would only be "entitled to terminate" if his employer had first committed a repudiatory breach of the***

143 DCS at paras 99–101.

> ***contract of employment***. It was in these circumstances that the implied term was formulated.
>
> [emphasis in original in italics; emphasis added in bold italics]

125 In other words, the UK courts formulated the implied term of mutual trust and confidence in order to provide employees with a ground on which they could argue that their employer had committed a repudiatory breach of the employment contract, which would in turn allow them to say that they had been constructively dismissed (see also *Wee Kim San* at [24] and *Eastwood v Magnox Electric plc* [2005] 1 AC 503 ("*Eastwood*") at [4]–[5]).

126 However, judicial innovations, much like those in the physical world, are rarely confined to and often outlive the original circumstances which birthed them. Early computers, for instance, were used only for mathematical calculations, but no one can realistically assert today that computers cannot be used for anything other than computation. Likewise, the implied term of mutual trust and confidence began taking on a life of its own in the UK apart from being used as a means of alleging constructive dismissal within the unfair dismissal legislative context. In *Malik* itself, the implied term was regarded as an independently actionable term on which damages under certain heads of losses could be recoverable (see also *Johnson v Unisys Ltd* [2003] 1 AC 518 ("*Johnson*") at [44] and [77] and *Wee Kim San* at [28]). I do not think that it would be right to say that the implied term does not exist in Singapore, just because the specific legislative context which gave rise to it is absent here.

127 Indeed, while the AD in *Dong Wei* was mindful of the legislative context which spawned the implied term, it also stated in no uncertain terms (at [79]) that "it is not self-evident that the common law principles developed in support of the application of the statutory regime (*ie*, the implied term) can only be understood in the legislative context in which they were developed". The AD

did *not* regard the historical origin of the implied term as a fundamental and insurmountable objection to its acceptance into Singapore law and expressed that such a term could exist independent of that legislative backdrop "[a]s long as the court is able to precisely delineate the scope of the implied term".

128 It is also important to note that the AD was cognisant of the HCA's decision in *Barker* when it made those remarks (see [75] of *Dong Wei*). So too was the CA when it remarked in *One Suites* (at [44]) that the position on the implied term was still left open for discussion. As noted in *Dong Wei* (at [75]), the HCA in *Barker* took the view that the implied term had arisen specifically within the context of the UK's legislative framework and that, outside that framework, it was *not necessary* to secure the effective operation of employment contracts. The HCA also remarked that the implication of the term was "a step beyond the legitimate law-marking function of the courts" (see *Barker* at [1]).

129 Indeed, in *Barker* (at [36]), when analysing whether the implication of the duty of mutual trust and confidence into law was justified, the HCA took the view that it needed to determine whether the implied term was *necessary* in the sense that it would "justify the exercise of judicial power in a way that may have a significant impact upon employment relationships and the law of the contract of employment in this country". Necessity, in turn, could be demonstrated by the "futility of the transaction absent the implication".

130 It would appear that the HCA was concerned about the far-reaching implications which the implied term may potentially engender, including positive duties foisted unwittingly upon employers (see *Baker* at [39]):

> The need for a cautious approach to the implication is underlined by the observation in the fourth edition of Deakin and Morris's *Labour Law*, that "[i]n its most far-reaching form

> [the development of the implied term] could be said to mark an extension of the duty of cooperation 'from the restricted obligation not to prevent or hinder the occurrence of an express condition upon which performance of the contract depends to *a positive obligation to take all those steps which are necessary to achieve the purposes of the employment relationship …*". That extension was said to reflect a *broader functional view*, essentially a tribunal's view, of good industrial relations practice, embracing not only the material conditions which are essential to the performance by an employee of his or her part of the bargain.
>
> [emphasis added]

131 It was in this context that the HCA said (at [40]) that "[t]he complex policy considerations encompassed by those views of the implication mark it, in the Australian context, as a matter more appropriate for the legislature than the courts to determine". That is perhaps why the HCA so emphatically pronounced (in the opening paragraph of *Baker*, no less) that the implication of the duty of mutual trust and confidence was "a step beyond the legitimate law-making function of the courts". Curiously, though, while the HCA ruled out the implied term of mutual trust and confidence from Australian law, it left open the question of whether the standard of good faith should be applied generally to contracts or particular categories of contracts (such as employment contracts) in Australia (see *Baker* at [107]). The duty of good faith has been considered to be wider and more nebulous than the implied term of mutual trust and confidence (see *Cheah Peng Hock* at [45]–[55]).

132 More fundamentally, it is unclear if the test for the implication of terms into law in Australia is the same as that in Singapore. As mentioned (at [129] above), the HCA in *Barker* had alluded to *necessity* as the key criterion governing the implication of terms into law. In a previous decision, *Byrne v Australian Airlines Ltd* (1995) 131 ALR 422 (at 450), the HCA alluded to the concept of necessity as encompassing an inquiry into whether "unless such a term be implied, the enjoyment of the rights conferred by the contract would or

could be rendered *nugatory*, *worthless*, or, perhaps, be *seriously undermined*" [emphasis added]. This undoubtedly sets a high bar for the implication of terms in law in Australia. Additionally, the HCA in *Barker* (at [36]) had explicitly rejected reasonableness as being the governing criterion for such implication – although it did leave some bandwidth for policy considerations to feature in the inquiry (see also *University of Western Australia v Gray* (2009) 179 FCR 346 (at [141]–[147]).

133 On the other hand, in an oft-cited passage from *Forefront Medical Technology* (at [44]), Phang J described the rationale and test for the implication of terms in law in Singapore as follows:

> The *rationale as well as test* for this broader category of implied terms is, not surprisingly, quite *different* from that which obtains for terms implied under the 'business efficacy' and 'officious bystander' tests. In the first instance, the category is much broader inasmuch (as we have seen) the *potential* for application *extends* to *future* cases relating to the same issue with respect to the *same category* of contracts. In other words, the decision of the court concerned to imply a contract 'in law' in a particular case *establishes a precedent* for similar cases in the future for *all* contracts of *that particular type*, unless of course a higher court overrules this specific decision. Hence, it is my view that courts ought to be as – if not more – careful in implying terms on this basis, compared to the implication of terms under the 'business efficacy' and 'officious bystander' tests which relate to the *particular contract and parties only*. Secondly, the test for implying a term 'in law' is broader than the tests for implying a term 'in fact'. This gives rise to difficulties that have existed for some time, but which have only begun to be articulated relatively recently in the judicial context, not least as a result of the various analyses in the academic literature (see, for example, the English Court of Appeal decision of *Crossley v Faithful & Gould Holdings Ltd* [2004] 4 All ER 447 at [33]–[46]).
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> [emphasis in original]

134 The above paragraph was cited with approval by the CA in *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2006] 3 SLR(R) 769 ("*Jet*

Holding") at [89]). The CA held (at [91]) that the implication of a term that each party owed each other a duty to take reasonable care in the performance of the respective parts of the contract they had entered into was justified on "general reasons of justice and fairness as well as of public policy". No mention was made of the concept of necessity.

135 Considerations of fairness and policy are therefore central to the implication of terms in law. This was subsequently re-affirmed by the CA in *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*") (at [40] and [46]) and *Chua Choon Cheng v Allgreen Properties Ltd* [2009] 3 SLR(R) 724 ("*Chua Choon Cheng*") (at [68]). In *Chua Choon Cheng* (at [69]), the CA also made reference to the concept of "reasonableness", although it cautioned that a term would not be implied in law simply because it is reasonable:

> … In short, ***the court is really "deciding what should be the content of a paradigm contract*** … [and] is in effect imposing on the parties a term which is most reasonable in the circumstances": Andrew Phang Boon Leong, *Cheshire, Fifoot and Furmston's Law of Contract* (Butterworths Asia, 2nd Ed, 2001) at pp 263–264. However, this does not mean that any reasonable term will be implied in a contract: see *Liverpool City Council v Irwin* [1977] AC 239 at 262 (*per* Lord Salmon). …
>
> [emphasis added]

136 It suffices to say that I am guided by the abovementioned decisions of the CA and their *dicta* on the applicable legal test for the implication of terms into law, which does not appear to be of the same level of strictness as the legal test in Australia.

(3) Policy considerations militate toward the implication of the duty of mutual trust and confidence

137 I am also persuaded that considerations of policy and fairness militate toward the implication of such a term in Singapore law. In my view, there are many features of employment contracts which set them apart from ordinary commercial contracts such that implying the duty of mutual trust and confidence into *all* employment contracts would be justified as a matter of policy and fairness.

138 As Lord Steyn aptly put it in *Johnson* (at [20]), one possible way of describing an employment contract in modern terms is as a "relational contract". A relational contract is one which involves a longer-term relationship between the parties in which they make a substantial commitment. In *Yam Seng Pte Ltd (a company registered in Singapore) v International Trade Corporation Ltd* [2013] 1 All ER (Comm) 1321 (at [142]), the court observed that such contracts:

> … may *require* a high degree of *communication, cooperation and predictable performance based on mutual trust and confidence* and involve expectations of loyalty which are not legislated for in the express terms of the contract but are implicit in the parties' understanding and necessary to give business efficacy to the arrangements. …
>
> [emphasis added]

139 The unique nature of an employment relationship and the characteristics which set it apart from an ordinary contractual relationship have also received judicial recognition in Singapore. For instance, Steven Chong JC (as he then was) noted in *Aldabe Fermin v Standard Chartered Bank* [2010] 3 SLR 722 (at [54]) (cited in *Cheah Peng Hock* at [41]) that "[i]t is important to recognise that *an employment contract is not a commercial contract*. It involves *a continuing relationship of trust and confidence* between the employer and the employee." [emphasis added] The special nature of an employment relationship, in

particular the "closeness" between an employer and employee, is also what underpins the legal position that the doctrine of vicarious liability in tort applies *de facto* to employment relationships or those closely analogous to employment relationships (see *Ng Huat Seng v Munib Mohammad Madni* [2017] 2 SLR 1074 at [42]).

140 More specifically, an employment relationship can also be characterised by the power imbalance between the employer and employee, both at the stage in which the employment contract is entered into and when it is being performed. This power imbalance, coupled with the paramount role which a person's occupation plays in his sense of identity and self-worth, makes employees especially vulnerable *vis-à-vis* their employers. This was very helpfully explained by Iacobucci J (delivering the judgment of the majority of the Supreme Court of Canada) in *Wallace v United Grain Growers Ltd* [1977] 3 SCR 701 (at [91]–[93]):

> 91 The contract of employment has many characteristics that set it apart from the ordinary commercial contract. Some of the views on this subject that have already been approved of in previous decisions of this Court (see e.g. *Machtinger*, *supra*) bear repeating. As K. Swinton noted in "Contract Law and the Employment Relationship: The Proper Forum for Reform", in B. J. Reiter and J. Swan, eds., *Studies in Contract Law* (1980), 357, at p. 363:
>
> > *... the terms of the employment contract rarely result from an exercise of free bargaining power in the way that the paradigm commercial exchange between two traders does*. Individual employees on the whole lack both the bargaining power and the information necessary to achieve more favourable contract provisions than those offered by the employer, particularly with regard to tenure.
>
> 92 This power imbalance is not limited to the employment contract itself. Rather, it informs virtually all facets of the employment relationship. In *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, Dickson C.J., writing for the majority of the Court, had occasion to comment on the nature of this relationship. At pp. 1051-52 he quoted with approval

from P. Davies and M. Freedland, *Kahn-Freund's Labour and the Law* (3rd ed. 1983), at p. 18:

> [T]he relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. *In its inception it is an act of submission, in its operation it is a condition of subordination*....

93 This unequal balance of power led the majority of the Court in *Slaight Communications*, *supra*, to describe employees as a vulnerable group in society: see p. 1051. ***The vulnerability of employees is underscored by the level of importance which our society attaches to employment***. As Dickson C.J. noted in *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, at p. 368:

> Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. *A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.*

94 Thus, for most people, work is one of the defining features of their lives. ...

[emphasis added in italics and bold italics]

141 Lord Hoffman similarly observed as follows in *Johnson* (at [35]):

> ... At common law the contract of employment was regarded by the courts as a contract like any other. The parties were free to negotiate whatever terms they liked and no terms would be implied unless they satisfied the strict test of necessity applied to a commercial context. Freedom of contract meant that the stronger party, usually the employer, was free to impose his terms upon the weaker. But *over the last 30 years or so, the nature of the contract of employment has been transformed. It has been recognised that* ***a person's employment is usually one of the most important things in his or her life***. ***It gives not only a livelihood but an occupation, an identity and a sense of self-esteem. The law has changed to recognise this social reality.*** ...
>
> [emphasis added in italics and bold italics]

142 In *Johnson* (at [19]), Lord Steyn went as far as to recognise the increased work pressure brought to bear on employees as a result of modern developments such as globalisation and deregulation in the labour market:

> Since 1909 our knowledge of the incidence of stress-related psychiatric and psychological problems of employees, albeit still imperfect, has greatly increased. What could in the early part of the last century dismissively be treated as mere 'injured feelings' is now sometimes accepted as a recognisable psychiatric illness. … These considerations are testimony to *the need for implied terms in contracts of employment protecting employees from harsh and unacceptable employment practices. This is particularly important in the light of the greater pressures on employees due to the progressive deregulation of the labour market, the privatisation of public services, and the globalisation of product and financial markets*: see Brendan J Burchell and others 'Job Insecurity and Work Intensification' (1999), a report published for the Joseph Rowntree Foundation, at pp 60–61. This report documents a phenomenon during the last two decades 'of an extraordinary intensification of work pressures'. The report states as a major cause the fact that the 'quantity of work required of individuals has increased because of under-staffing so that hours of work have lengthened and, more importantly, the pace of work has intensified'. Inevitably, the incidence of psychiatric injury due to excessive stress has increased. *The need for protection of employees through their contractual rights, express and implied by law, is markedly greater than in the past.*
>
> [emphasis added]

143 Lord Steyn's remarks, which were made over 20 years ago, surely assume greater significance today in a world where globalisation and modern communication technologies have made work an even more pervasive and all-consuming part of one's life. It needs no mentioning that the need to protect employees from harsh and unacceptable employment practices has greatly increased since then.

144 I doubt that this role can be fulfilled *only* by the legislature and not by the courts. The defendant has raised two arguments in support of its position that the implied term of mutual trust and confidence would intrude into

Parliament's sphere of law-making. First, the defendant says that the interposition of the implied term would intrude into the wrongful dismissal regime created under the Employment Act 1968 (2020 Rev Ed) (the "EA").[144] Second, and more broadly, the defendant cites Parliament's consideration of the fair balance to be struck between employers and employees as a reason why "there is simply no place for a broad and undefined implied duty of trust and confidence".[145]

145 The defendant's arguments do not take its case very far.

146 In relation to the first argument, the defendant refers to the difference between the definition of constructive dismissal in the Employment Rights Act 1996 (c 18) (UK) (the "ERA") and the EA. Section 95(1)(c) of the ERA defines constructive dismissal as a situation where "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice *by reason of the employer's conduct*" [emphasis added]. Section 2(1) of the EA, on the other hand, defines the term "dismissal" as *including* "the resignation of the employee if the employee can show, on a balance of probabilities, that the employee did not resign voluntarily but *was forced to do so because of any conduct or omission, or course of conduct or omissions, engaged in by the employer*" [emphasis added]. The defendant says that the EA, unlike the ERA, does not require any inquiry into whether the employer's conduct amounted to a repudiatory breach or any implication of the term of trust and confidence.[146]

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144 DCS at paras 99–103.

145 DCS at paras 104–109.

146 DCS at para 102.

147 Whilst it is true that the concept of constructive dismissal appears to be more specifically defined in the EA, this does not necessarily preclude the implication of the duty of mutual trust and confidence into employment contracts under Singapore law. Even if there is no need for the implied term in the constructive dismissal context because one can just have recourse to the statutory definition of "dismiss" in the EA, this does not inhibit the term from being implied for other purposes. Even in the UK, the implied term has existed independently of the statutory concept of constructive dismissal such that a breach of the implied term can found a claim in damages for breach of contract at common law (see [126] above). This is precisely the situation we are dealing with here.

148 As for the second argument, the defendant refers to the passing of the Workplace Fairness Act 2025 (No 8 of 2025) (the "WFA"), which prohibits an employer from terminating the employment of an employee based on the grounds of statutorily protected characteristics, highlighting that such a law required the Government to engage in extensive consultations with different stakeholders in order to strike the right balance so that employers retain some flexibility in managing their employees.[147] The import of this, the defendant submits, is that "any adjustment of the balance between employer and employee involves deep and careful policy considerations and discussions, which is the province of Parliament".[148] In this regard, the defendant also cites a passage from *Kallivalap Praveen Nair* (at [51]) which purportedly alludes to this.[149]

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147 DCS at paras 104–108.

148 DCS at para 106.

149 DCS at para 107.

149 I am not persuaded that the passing of the WFA would and should hold sway over the existence of the implied term. The defendant appears to be suggesting that, because the WFA already defines the relevant grounds upon which employers' right to terminate an employment contract may be impugned, there is no place for the common law to operate in this regard. This, however, misses the mark. While the WFA does indeed place limitations on employers' discretion to terminate employment contracts, the implied term does *not* do so. I will elaborate on this below (at [158]–[161]), but it suffices to note at the present juncture that, in the UK, courts have explicitly excluded the implied term from affecting an employer's right to terminate the employment contract. I have also rejected the claimant's attempt at arguing that the discretion to terminate the Employment Agreement is fettered by the implied term not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith (see [97]–[100] above). As such, I fail to appreciate the relevance of the WFA to the question of whether there should be an implied term of mutual trust and confidence in employment contracts.

150 Additionally, the defendant's reliance on *Kallivalap Praveen Nair* is wholly misplaced. In its closing submissions, the defendant sought to impress upon me that the court in *Kallivalap Praveen Nair* had conveyed its doubts about whether a court hearing is the best modality to decide if the implied term *in general* should be part of employers' contractual obligations:[150]

> … the Court in [*Kallivalap Praveen Nair*] doubted that "*a court hearing involving a private dispute between a company and its employee is the best modality to decide*" on the implication of a term in law that would "*lay down a contractual obligation for other companies*". Implying a duty of trust and confidence would "*intrude a common law policy choice of broad and uncertain*

[150] DCS at para 107.

> *scope into an area of frequent, detailed and often contentious legislative activity*". As "*the courts have no mandate to create or amend laws in a manner which permits recourse to extra-legal policy factors as well as considerations*", "*it is impermissible for the courts to arrogate to themselves legislative powers*".
>
> [emphasis in original in italics]

151 This was, however, not the case. In *Kallivalap Praveen Nair*, the court was faced with the question of whether the implied term of mutual trust and confidence, *as pleaded by the claimant*, should be upheld. This was because the way in which the claimant pleaded the implied term, namely to say that it encompassed a duty on the part of the employer to comply with its internal policies, was found to be "very different" from its original formulation in *Malik* (see [35]). It was in this context that Kwek J remarked (at [51]) as follows: "[t]his brings me to another issue, which is whether a court hearing involving a private dispute between a company and its employee, is the best modality *to decide if the internal policies of other companies,* should be part of their contractual obligations with their employees" [emphasis added]. As such, the court's doubts were confined to whether a court hearing is the best modality to decide if a *specific* duty on the part of an employer to comply with its internal policies, and not the implied term of mutual trust and confidence in general, should be part of employers' contractual obligations.

152 While Kwek J did refer to *Barker* and noted that courts have no mandate to create laws in a manner that permits recourse to extra-legal policy factors (at [51]), he also expressed the following (at [52], [55] and [56]):

> 52 In my view, the issue here is not about the respective capabilities or the proper reach of the different institutions. Rather, it is a question of whether the wider impact on other companies that flows *from the [claimant's] submission on the pleaded [implied term of mutual trust and confidence]*, is one that is best arrived at through the process of a private employment dispute between two parties, *ie*, the [claimant] and [the defendant].

> …
>
> 55 For the above reasons, I find that *even on the assumption that the [implied term of mutual trust and confidence] exists* in Singapore, the [implied term of mutual trust and confidence] as *pleaded by the [claimant]*, *ie*, that a company is contractually bound to comply with all its policies, is not part of Singapore law.
>
> 56 … While positioning the claim as one of an [implied term of mutual trust and confidence] may allow the [claimant] to tap into jurisprudence accepting [implied term of mutual trust and confidence], one should not lose sight that ***the fundamental question that the [claimant's] submission raises is not whether an [implied term of mutual trust and confidence] exists in Singapore law, but whether it should be implied in law (through an [implied term of mutual trust and confidence]) that companies are contractually bound to comply with all their policies***. For the reasons above, I find that such a term would be too uncertain. I also do not regard an employment dispute between two private parties as being the appropriate forum for determining *that companies elsewhere are similarly contractually bound to comply with all their policies*.
>
> [emphasis added in italics and bold italics]

153 This should leave no room for doubt that Kwek J's remarks in *Kallivalap Praveen Nair*, on courts not being the appropriate forum to resolve private disputes between a company and its employees, should be read as being directed at the implied term of mutual trust and confidence as pleaded by the claimant in that case (or in other words, the specific duty which the claimant alleged to have flowed from the implied term), and not the implied term in general. As such, the defendant has cited *Kallivalap Praveen Nair* out of context.

154 More broadly, it cannot be said that Parliament will be able to envisage and cater to each and every situation in which an aggrieved employee has suffered damage at the hands of his employer. Courts must therefore retain the flexibility to step in and rectify such wrongs in the appropriate case such as in *Malik* or *Cheah Peng Hock*. The facts of *Malik* have been discussed at [102]–[103] above. In *Cheah Peng Hock*, the claimant employee, who was the

chief executive officer ("CEO") of the defendant company, had his management decisions and powers systematically reversed and curtailed without being informed or involved (see [232]–[233]). The absence of the implied term of mutual trust and confidence would mean that such aggrieved employees would have no redress for the clearly unsatisfactory manner in which they are treated.

155 In the round, I am not convinced that courts will be intruding into the province of Parliament in holding that the implied term of mutual trust and confidence exists under Singapore law, provided that certain considerations are borne in mind. This was also alluded to by the AD in *Dong Wei* (at [79]) when it remarked that the historical origin of the implied term was not a fundamental and insurmountable objection to its acceptance "[a]s long as the court is able to precisely delineate the scope of the implied term, and elucidate the appropriate remedial consequences which should follow from a breach of such term". I will elaborate more on this in the next section.

(4) Other factors that support the implication of the term of mutual trust and confidence

156 In *Commonwealth Bank of Australia v Barker* [2013] FCAFC 83 (at [340]), Jessup J (whose dissent was upheld by the HCA in *Barker* at [115]), famously pronounced that "as expressed, the [implied term of mutual trust and confidence] is content-free and has the potential to act as a Trojan horse in the sense of revealing only after the event the specific prohibitions which it imports into the contract". Indeed, the defendant relies on this pronouncement to advance its argument that the implied term is "amorphous".[151] While the implied term will invariably engender *some* degree of uncertainty, I am of the view that the potential for the implied term to act as a Trojan horse is overstated.

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151 DCS at para 94.

157 First, it goes without saying that the implied term must not contradict an express term of the contract and that parties are free to modify or exclude its operation in their contract by express words to that effect (see *Cheah Peng Hock* at [59]); see also *Malik* at 45). There is nothing controversial about this, as this is how implied terms in law are generally treated (see *Ng Giap Hon* at [31]; *Chua Choon Cheng* at [69]; *Razer (Asia-Pacific) Pte Ltd v Capgemini Singapore Pte Ltd* [2022] SGHC 310 at [90]).

158 Secondly, it should be noted that the implied term is *not* meant to restrict or fetter an employer's right to terminate an employment contract in accordance with the provisions of that contract. In *Johnson* (at [46]), Lord Hoffman put this in no uncertain terms:

> … In the way [the implied term of mutual trust and confidence] has always been formulated, it is concerned with preserving the continuing relationship which should subsist between employer and employee. So *it does not seem altogether appropriate for use in connection with the way that relationship is terminated.* …
>
> [emphasis added]

159 This subsequently became known as the "*Johnson* exclusion". The implication of this would be that there is a distinction to be drawn between loss flowing from the act of dismissal itself and loss flowing from the conduct of the employer which has breached the implied term *prior to* the dismissal (see *Eastwood* at [21] and *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2012] 2 All ER 278; cited in *Wee Kim San* at [33]). This would also mean that claims for damages based on the implied term can only be brought if the cause of action in question accrued before and existed independently of the cause of action for wrongful dismissal (*Wee Kim San* at [33]).

160 While the CA in *Wee Kim San* noted that no authoritative view had yet been expressed on the applicability of the "*Johnson* exclusion" in Singapore, it stated in clear terms (at [34]) that:

> … Regardless of whether or not the "*Johnson* exclusion" applies in the Singapore context, it is clear that where wrongful dismissal is the only consequence of a breach of the implied term of mutual trust and confidence and no other independent consequence flows from such a breach, *the only damages recoverable by the employee will be damages for premature termination losses flowing from the employer's failure to give proper notice or pay salary in lieu of notice*.
>
> [emphasis added]

161 I would incline towards the view that the "*Johnson* exclusion" does apply in the Singapore context, simply because saying otherwise would go against the grain of the parties' freedom to exit contracts and the distinction drawn between rights subsisting within the contours of a contract (which can be fettered) and the right to bring a contract to an end (which is generally unfettered) (see [97]–[100] above). These were the principles which led the AD to unequivocally reject any attempt to place any fetters on the right to terminate contracts in *Dong Wei*, and I would think that allowing the implied term of mutual trust and confidence to govern the act of termination and/or dismissal would be tantamount to achieving the same effect (albeit by a different route). That would be wholly contrary to the spirit of the AD's remarks.

162 In any case, it is not necessary for me to come to a firm landing on the applicability of the "*Johnson* exclusion" for the purposes of disposing this matter, as the claimant has not sought to impugn the act of termination itself.

163 Lastly, the implied term of mutual trust and confidence is not as amorphous as the defendant makes it out to be. In every case, a court would have to refer to the original formulation of the implied term and consider if the

extent to which the implied term, as pleaded, is consistent with its traditional formulation in *Malik*, just like any other process of interpreting contractual terms. An example of this would be the analysis which was done in *Kallivalap Praveen Nair*. This would ensure that the precise content of the implied term is determined on a case-by-case basis in a principled, and not arbitrary, manner, having regard to the existing legislation and circumstances in Singapore.

164 I note that, in *Cheah Peng Hock* (at [56]), Loh J listed out the following contexts in which the implied term had previously been applied:

(a) a duty not to act in a corrupt manner which would clearly undermine the employee's future job prospects (*Malik*);

(b) a duty not to unilaterally and unreasonably vary terms (*Woods v W M Car Services (Peterborough) Ltd* [1982] ICR 693);

(c) a duty to redress complaints of discrimination or provide a grievance procedure (*W A Goold (Pearmak) Ltd v McConnell* [1995] IRLR 516);

(d) a duty not to suspend an employee for disciplinary purposes without proper and reasonable cause (*Gogay v Hertfordshire CC* [2000] IRLR 703);

(e) a duty to enquire into complaints of sexual harassment (*Bracebridge Engineering Ltd v Darby* [1990] IRLR 3);

(f) a duty to behave with civility and respect (*Isle of Wight Tourist Board v Coombes* [1976] IRLR 413);

(g) a duty not to reprimand without merit in a humiliating circumstance (*Hilton International Hotels (UK) v Protopapa* [1990] IRLR 316 ("*Hilton International Hotels*")); and

(h) a duty not to behave in an intolerable or wholly unacceptable way (*British Aircraft Corporation Ltd v Austin* [1978] IRLR 332 ("*British Aircraft*")).

165 It is not my position that all of these supposed sub-duties under the broader umbrella of the implied term are necessarily implied into all employment contracts under Singapore law.

166 Apart from *Kallivalap Praveen Nair*, another case in which the court placed limits on the implied term is *University of Nottingham v Eyett* [1999] 2 All ER 437. In that case, the respondent employee had complained that the appellant employer failed to inform him that his pension entitlement would be higher if he retired on a later date. Hart J held that, where an employee proposed to exercise important rights in connection with his contract of employment, the implied term of mutual trust and confidence did not require the employer to warn him that there might be a more financially advantageous way of exercising those rights. Moreover, the following remarks by Hart J (at 443) urging caution and restraint in importing positive obligations into the implied term are instructive:

> ... It is true that the decided cases in which breach of the implied term has been established have all involved deliberate conduct by the employer, and most of them have involved situations where the conduct concerned was perceived by the court as being of a sufficiently serious nature to justify the employee in treating the conduct as repudiatory of the contract itself. Moreover, *the terms in which the duty has been expressed has consistently been in the negative form* of prohibiting conduct calculated or likely to produce the destructive or damaging consequences, rather than as positively enjoining conduct which will avoid such consequences.
>
> Nevertheless, I do not think that the principle underlying the implication of the term necessarily excludes the possibility that it may, in appropriate circumstances, have a positive, as opposed to a merely negative, content, although I recognise that *so to hold would involve an extension of the existing law.*

> In the final analysis, the question for determination comes down to this: does the implied term include a positive obligation on the employer to warn an employee who is proposing to exercise important rights in connection with his contract of employment that the way in which he is proposing to exercise them may not be financially the most advantageous way in the particular circumstances? Expressed in those terms, it can be seen that the recognition of such a duty has potentially far reaching consequences for the employment relationship. A degree of caution is therefore required.
>
> In my judgment, *a proper caution requires the court to examine how such a positive obligation would cohere with other default obligations implied by law in the employment context.*
>
> [emphasis added]

167 It is therefore somewhat of an exaggeration to say that the implied term, in its most far-reaching form, extends to a positive obligation to take all steps which are necessary to achieve the purposes of the employment relationship (as stated in S Deakin and G Morris, *Labour Law* (Oxford: Hart, 4th Ed, 2005) at [para 4.91], quoted in *Barker* at [39]; see [130] above).

168 In addition, as the CA noted in *Jet Holding* (at [90]), some degree of uncertainty will always surround terms which are implied in law:

> The category of "terms implied in law" is not without its disadvantages. *A certain measure of uncertainty will always be an integral part of the judicial process and, hence, of the law itself.* This is inevitable because of the very nature of life itself, which is – often to a very large extent – unpredictable. Such unpredictability and consequent uncertainty is of course a double-edged sword. It engenders both the wonder and awe as well as the dangers and pitfalls in life. Given this reality, however, one of the key functions of the courts is not to add unnecessarily to the uncertainty that already exists. Looked at in this light, *the category of "terms implied in law" does tend to generate some uncertainty* – not least because of the broadness of the criteria utilised to imply such terms, which are grounded (in the final analysis) on reasons of public policy.
>
> [emphasis added]

169 Indeed, it can also be argued that such uncertainty is inherent in the very nature of the common law itself. As Lord Goff famously remarked in *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349, "the common law is a living system of law, reacting to new events and new ideas, and so capable of providing the citizens of this country with a system of practical justice relevant to the times in which they live."

170 Uncertainty, therefore, cannot be the sole reason for throwing the baby out with the bathwater. The question that has to be considered is whether the uncertainty arising from the implied term outweighs the impetus for it. As borne out by the experience of the courts in the UK, this is something which courts are capable of doing. The duty of mutual trust and confidence has been implied and applied in the UK for decades and, indeed, the courts there have not been shy to restrict the scope of the implied term as and when necessary. At noted by the CA in *Wee Kim San* (at [33]), the consequence of the House of Lords' decision in *Johnson* and other subsequent cases (see [158]–[159] above) was that the proposition in *Malik* that a breach of the implied term could give rise to other heads of damage where consequences other than the premature termination of employment have flowed "may now have to be read even more restrictively".

171 Ultimately, the lodestar for any court applying the implied term of mutual trust and confidence must be Lord Steyn's formulation in *Malik* (see [103] above), namely 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". In this regard, I add that, when one looks at the test closely, it is hardly as open-textured as its critics make it out to be. There are three aspects of the formulation which merit emphasising:

(a) The threshold which the employer's conduct must cross in order for the test to be satisfied is a high one, in that it must be calculated and likely to *destroy* or *seriously damage* the relationship of trust and confidence between the employer and employee. As Lionel Yee JC emphasised in *Brader Daniel John* (at [114]), it would take "quite extreme behaviour" on the part of the employer to satisfy the requirements of the test in *Malik*. Hence, it is not the case that any act of the employer which undermines trust and confidence will suffice.

(b) Whether the employer's conduct is such that it destroys or seriously damages trust and confidence is a question that has to be assessed *objectively*. As succinctly put in Douglas Brodie, "Recent cases, Commentary, The Heart of the Matter: Mutual Trust and Confidence" (1996) 25 ILJ 121 at 121–122 (endorsed in *Malik* at 47), "what is significant is the impact of the employer's behaviour on the employee rather than what the employer intended. Moreover, the impact will be assessed objectively." I will elaborate more on the objective standard below (at [182]–[186]), but the point to note here is that not every conduct complained off by an employee will be treated as being calculated and likely to destroy or seriously damage trust and confidence, even if that employee subjectively perceives the conduct to have damaged his trust and confidence in his employer. In my view, this will help in mitigating any unpredictability which may be inherent in the implied term and assuage any concerns on the part of employers that the term may compel them to walk on eggshells when dealing with their employees.

(c) Even if an employer acts in a way that is calculated and likely to seriously damage or destroy trust and confidence, there is no breach of

> the implied term if there is reasonable and proper cause for the employer to act in that manner (see *Hilton v Shiner Ltd - Builders Merchants* [2001] IRLR 727 at [22]–[23]). Hence, an employer will still be afforded the opportunity to justify its actions and should have nothing to fear if it had legitimate and proper reasons for so acting.

172 The mythical Trojan horse which the Greeks used to enter the ancient city of Troy was nothing more than a calculated ruse. Disguised as a gift, it masked a potent force which the Trojans could not anticipate, let alone defend against. The implied term of mutual trust and confidence, however, hardly deserves being associated with the pejorative connotations that accompany a Trojan horse. Far from being an insidious threat, the implied term serves only to augment and sustain the trust and confidence between employer and employee that is vital to any employment relationship.

173 Having concluded that the implied term of mutual trust and confidence exists in employment contracts under Singapore law, I proceed to determine whether there was a breach of the implied term on the facts before me.

Whether the defendant breached the implied term of mutual trust and confidence

174 The claimant submits that the defendant breached three facets of the implied term of mutual trust and confidence – the implied term not to behave intolerably or wholly unacceptably, the implied term not to reprimand without merit in a humiliating circumstance, and the fair investigations implied term.[152]

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152 CCS at paras 161–171.

175 I will deal with the claimant's arguments in relation to each of these in turn. I also add that I reject the defendant's contention that the claimant should not be able to rely on the implied term not to behave intolerably or wholly unacceptably as well as the implied term not to reprimand without merit in a humiliating circumstance because they were not pleaded.[153] These are not implied terms in their own right, but are just different formulations of the larger implied duty of mutual trust and confidence which was pleaded.[154] What is more crucial is that the acts constituting a breach of the implied term of mutual trust and confidence were pleaded, albeit slightly differently from the way these were framed in the claimant's closing submissions, and the defendant knew the case it had to meet with regards to the conduct which was alleged to have breached such implied term. That being said, it would be prudent for a future claimant seeking to rely on the implied term of mutual trust and confidence to elucidate the precise content of the implied term on the facts of each case and explain his basis for saying so.

The duty not to behave in an intolerable or wholly unacceptable way

176 The duty not to behave in an intolerable or wholly unacceptable way is one of the sub-duties of the implied term of mutual trust and confidence listed in *Cheah Peng Hock* (at [56(h)]) (see [164] above). *Cheah Peng Hock* had, in turn, cited the case of *British Aircraft* for this specific sub-duty.

177 *British Aircraft* was a case concerning constructive dismissal. The respondent employee terminated her employment with the appellant company. The events leading up to the termination began almost a year earlier, when it became necessary for employees of the company to wear eye protectors when

153 Defendant's reply submissions dated 30 May 2025 at paras 24–25.

154 SOC at paras 23–25.

performing their work. Although the respondent was provided with goggles, she did not find them suitable as she wore spectacles and complained to the company's management about this. While the safety officer was looking into the matter, the respondent heard nothing more about it six months after she first made the complaint and decided that she was left with no choice but to resign.

178 The UK Employment Appeal Tribunal (the "EAT") dismissed the appeal on the basis that it found the test for constructive dismissal laid out in *Western Excavating (ECC) Ltd v Sharp* [1978] IRLR 27 to have been met, namely that there was a breach on the part of the appellant which went to the root of the employment contract or which showed that it no longer intended to be bound by an essential term of the contract. However, it also made the following *obiter* remarks which encapsulated the duty not to behave in an intolerable or wholly unacceptable way (*British Aircraft* at [13]):

> … if employers do behave in a way which is not in accordance with good industrial practice to such an extent … that *the situation is intolerable or the situation is that the employee really cannot be expected to put up with it any longer*, it will very often be the case, perhaps not always but certainly very often be the case, that *by behaving in that way the employers have behaved in breach of contract* because it must ordinarily be an implied term of the contract of employment that *employers do not behave in a way which is intolerable or in a way which employees cannot be expected to put up with any longer*. …
>
> [emphasis added]

179 As a preliminary point, the duty not to behave in an intolerable or wholly unacceptable way is an obvious facet of the implied term of mutual trust and confidence and I accept that it falls within the scope of the implied term. After all, it is virtually unthinkable that any right-thinking employee would still retain even a shred of trust and confidence in an employer who treats him in an intolerable or wholly unacceptable way.

180 In the present case, the claimant says that the defendant had breached the implied term not to behave in an intolerable or wholly unacceptable way by its following actions:[155]

(a) giving him a "'minimal increase' of 1% in 2019 assigned to his annual target bonus" [emphasis in original omitted];

(b) forcing him to apologise to Ms Raman when he was in fact justified in his comments that triggered the Conspirators to pursue him for an apology;

(c) not assessing him at all during the PIP;

(d) deciding that he failed the PIP before it ended;

(e) not closing out the PIP;

(f) manufacturing incidents to harass him post-PIP; and

(g) issuing a notice of termination.

181 Before turning to discuss whether the defendant's conduct constituted a breach of the implied term proper, I note that, on the face of it, there appears to be a contradiction within the claimant's stated case. On the one hand, the claimant says that the defendant had behaved in an intolerable or wholly unacceptable way. On the other hand, the claimant appeared to have been content with remaining in the defendant's employ despite its conduct. To put it another way, the claimant appeared to have tolerated the defendant's conduct even though he now alleges that the defendant's conduct was intolerable and wholly unacceptable.

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155 CCS at para 161.

182 I am of the view, however, that the question of whether the defendant had behaved in an intolerable or wholly unacceptable manner is one that has to be answered objectively. This can be derived from the general principles articulated in *Malik*, and summarised in *Cheah Peng Hock* (at [57]):

> The House of Lords in *Malik v BCCI* also rejected the three limitations on the implied term proposed by the respondent bank, namely (a) that the conduct complained of must be conduct involving the treatment of the employee in question, (b) that the employee must be aware of such conduct while he is an employee, and (c) that such conduct must be calculated to destroy or seriously damage the trust between the employer and employee. Lord Steyn found at 47 that any conduct "*objectively considered* … likely to cause serious damage to the relationship between employer and employee" gives rise to a breach of the implied obligation, such that the conduct may not even involve the treatment of the employee in question. He further found that *the awareness of the employee as to the employer's conduct was only relevant to the choice of whether or not he should terminate his employment, but was irrelevant to whether there was a breach of the implied duty*. Finally, Lord Steyn found that the intention of the employer was irrelevant as the test of breach of the implied term was an objective one.
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> [emphasis added]

183 It is therefore clear that it matters not whether, subjectively speaking, the claimant's trust and confidence in the defendant was destroyed as a result of the defendant's conduct, so long as the claimant can show that the defendant's conduct was, objectively speaking, of the kind that would destroy that relationship of trust and confidence. Transposing this into the duty not to behave in an intolerable or wholly unacceptable way, the question that arises for consideration is whether the defendant's conduct was such that it would have, on an objective view, been intolerable or wholly unacceptable.

184 I find support for this interpretation in decisions of the EAT following *British Aircraft*. These decisions have cited *British Aircraft* for the proposition that the court's function is to look at the conduct of the employer as a whole and

determine whether its effect, *judged reasonably and sensibly*, is to disable the employee from properly carrying out his obligations, or is such that the employee cannot be expected to put up with it (see *The Post Office v Roberts* [1980] IRLR 347 at [49] and *Woods v W M Car Services (Peterborough) Ltd* [1981] IRLR 347 at [17]). It should not escape notice that these cases had framed the inquiry in *British Aircraft* as an objective one.

185 It was also made clear in *McLoughlin v London Linen Supply Ltd* (2017) UKEAT/0299/16 (at [27]), another case which cited *British Aircraft*, that an objective standard of reasonableness is to be applied. I am fortified in my conclusion by the following remarks made by the EAT (at [29]), which are particularly instructive:

> … The question is whether *looking at the matter objectively* the conduct was likely to destroy or damage the relationship of trust and confidence. People will react differently when they are badly treated at work. Some will put up with it; some will not. If the conduct is likely to destroy or damage the relationship of trust and confidence, *the fact that some people will put up with it does not negate a breach of this implied term.*
>
> [emphasis added]

186 While the EAT cases which I have referred to all concern constructive dismissal, where the employee would have necessarily resigned on his or her own volition due to an inability to tolerate or accept the employer's conduct, they nonetheless make clear that the employee need not necessarily have had to resign in such a manner before a finding can be made that the employer had behaved in an intolerable or wholly unacceptable manner. The fact that an employee did or did not resign *may* have *some* probative value when it comes to assessing whether the employer's conduct had breached that threshold. However, it is quite another thing to say that the employee's decision to either

resign or to stay on in the face of the employer's conduct is dispositive of the matter.

187 I now move on to assess whether the defendant had behaved in an intolerable or wholly unacceptable way.

188 I will focus on the acts listed at (c) to (e) (at [180] above) as these go towards the gravamen of the claimant's complaint, which is that the PIP was a "charade" and had a "pre-ordained" outcome.[156] In my view, if the claimant was indeed pre-judged in a sense that he was not given a genuine opportunity to improve and rectify his previous behavioural deficiencies, this would indeed contravene the duty not to behave in an intolerable or wholly unacceptable way.

189 Having assessed the evidence, it is clear to me that the claimant was so pre-judged.

190 It will be recalled that, primarily as a result of the Wipro Incident and the Sesa Goa Incident, Ms Seabury became dissatisfied with the claimant's behaviour and intimated her desire to terminate the claimant's employment (see [43]–[44] above). She first sent Ms Teo-Gomez an e-mail on 20 November 2018 indicating that, because of the claimant's refusal to apologise to Ms Raman for his conduct, there was "no way to move forward from [her] perspective" and that the claimant "[could not] continue in his role".[157] She then followed up by saying that, after speaking to other senior leaders in the defendant's employ including Mr Farooq and Ms Blatt, there was "full alignment on removing" the claimant.[158] When Ms Blatt was cross-examined on this e-mail, she agreed with

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156 CCS at paras 127–140.

157 1AB at p 381.

158 1AB at p 402.

counsel's suggestion that "the decision ha[d] been made to remove [the claimant], to punish him for the cross-functional tensions" and testified that "[they] did not feel [the claimant] was the right leader for the role".[159]

191 Ms Seabury also asked Ms Teo-Gomez on this occasion and in another e-mail about a week later to let her know the "next steps" in relation to the claimant.[160] Ms Teo-Gomez accepted during cross-examination that Ms Seabury, in her e-mails, was referring to "full alignment" on removing the claimant and was asking her about how to effect the plan to terminate the claimant's employment.[161] Indeed, this precipitated a series of exchanges between Ms Seabury and Ms Teo-Gomez on possible ways of effecting the termination of the claimant's employment, including exploring the possibility of terminating the claimant's employment with cause.[162] Ms Teo-Gomez, however, suggested that the claimant be investigated by the compliance department first before taking the "appropriate actions".

192 When Ms Seabury updated Ms Raman by way of e-mail that Ms Teo-Gomez had suggested putting the claimant's situation through a "full hr compliance review", Ms Raman was apprehensive about the claimant's continued presence in his role, as evidenced by her following reply:[163]

> Thanks [Ms Seabury]. *This is not ideal* as this gives [the claimant] more time to cause further damage to team cohesion but *understand the need to follow process.* ***Let us please look at all possible ways to expedite this.***

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159 14 March Transcript at p 83 lines 6–10.

160 1AB at pp 402 and 405.

161 Transcript dated 6 March ("6 March Transcript") at p 19 lines 8–18.

162 1AB at p 404.

163 1AB at p 444.

> We need to monitor behaviour closely in the interim. … [The claimant] is out to divide, the longer he is around, the more damage he will cause.
>
> [emphasis added in italics and bold italics]

193 When confronted with this e-mail, Ms Raman agreed with counsel's suggestion that she was "impatient and wanted [the claimant] out asap [*ie*, as soon as possible]".[164] However, she attempted to qualify her stated intention of having the claimant removed. According to Ms Raman, she only wanted the claimant removed from "[her] dealing with him" and not from the organisation.[165] When I queried Ms Raman if there was anything in the documentary evidence which indicated that her intention was not to get rid of the claimant from the organisation, but only to remove him from "[her] dealing with him", she acknowledged that there was nothing.[166] Needless to say, I do not find the distinction which Ms Raman sought to draw convincing. It is clear from the face of her e-mail and the surrounding context (*ie*, being a response to Ms Seabury's update on the claimant needing to be put through a compliance review that arose from discussions surrounding the possibility of terminating his employment) that Ms Raman wanted the claimant removed from the organisation and not simply from her sight. This was again reiterated by Ms Raman in another e-mail she sent to Ms Seabury, Ms Blatt and Mr Farooq on 13 December 2018, in which she complained about the claimant's behaviour and repeated her call for the claimant to "go ASAP!!!".[167]

194 I should mention that the facts which I have narrated in the preceding four paragraphs do not bear directly on the defendant's alleged breach of the

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164 Transcript dated 12 March 2025 ("12 March Transcript") at p 112 lines 14–20.

165 12 March Transcript at p 112 line 21 to p 113 line 3.

166 12 March Transcript at p 114 line 4 to p 115 line 5.

167 1AB at pp 413–414.

implied term of mutual trust and confidence. There was nothing wrong with the defendant's personnel discussing the termination of an employee's employment. That is the prerogative of any business. However, this factual background does lay the foundation for the claimant's allegation that the outcome of the PIP (namely, that the claimant's employment would be terminated) was pre-ordained.

195 It is of relevance that, prior to the claimant's placement on the PIP, there were individuals within the defendant's management who were adamant about removing the claimant from the defendant's employ as soon as possible. It is also instructive that there was an allusion to the "process" by Ms Raman (see [192] above) which suggests that said process was being followed only for the sake of doing so and the end-goal in mind was to terminate the claimant's employment. Crucially, Ms Seabury appears to have endorsed Ms Raman's suggestion to "look at possible ways to expedite this" when she forwarded Ms Raman's response to Ms Teo-Gomez (in order to highlight the claimant's alleged interference with the Compliance Complaint against Mr Gupta mentioned in Ms Raman's e-mail) and stated that "[w]e must get this process moving as quickly as possible".[168] During cross-examination, Ms Raman agreed that the language used by Ms Seabury here insinuated her desire to remove the claimant from the organisation.[169]

196 The documentary evidence also suggests that this desire for the claimant to be removed from the defendant's employ as soon as possible persisted *even when the PIP was being contemplated*. On 1 February 2019, Ms Seabury sent Ms Teo-Gomez a draft of the PIP which she intended to place the claimant on,

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168 1AB at p 443.

169 12 March Transcript at p 115 line 16 to p 116 line 5.

to seek her suggestions and support.[170] She also followed up by asking for feedback on a draft warning letter meant for the claimant which she had earlier sent to Ms Teo-Gomez.[171] In internal correspondence between Ms Gayathri Mohan ("Ms Mohan"), the "Employee Relations Partner & HR Compliance officer" who was handling the claimant's case, and Ms Teo-Gomez, Ms Mohan expressed the view that placing the claimant on the PIP would be a "more sustainable approach" and that a warning letter would suffice "[i]f the intent [was] to let [the claimant] go in case of non improvement".[172] She also suggested that, since the claimant was "senior and good in work", placing him on the PIP could be explored as it would bring in "long term correction", and that they should speak to Ms Seabury about this.

197 Ms Teo-Gomez's reply, however, is instructive:

> Hi [Ms Mohan],
>
> *My reading of the situation is that I believe that in* ***[Ms Seabury's] mind, and in the eyes of [Ms Seabury's] leadership,*** *[the claimant] is not a manager they want to retain on their leadership team.*
>
> ***I do not think they have an appetite for "long term" correction of behavioural concerns***.
>
> I appreciate if you please respond to [Ms Seabury] and let her know accordingly your proposal on the go-forward.
>
> …
>
> [emphasis added in italics and bold italics]

198 It is clear that, at the time, Ms Teo-Gomez's reading of the situation was that Ms Seabury and her leadership (*ie*, Ms Blatt),[173] had the end-goal of

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170 1AB at pp 541–542.

171 1AB at p 540.

172 1AB at p 539.

173 14 March Transcript at p 154 line 25 to p 155 line 1.

terminating the claimant's employment in mind *at the same time* that they were setting the PIP in motion. When Ms Teo-Gomez was on the stand, she testified that, while the decision to remove the claimant was not made yet at the time of this e-mail in February 2019), "[they] were trying to let [the claimant] go through the PIP process".[174] However, I note that the statement by Ms Teo-Gomez that the decision to terminate the claimant's employment had not been made yet in February 2019 is contradicted by her later agreement with counsel's question that the decision to remove the claimant from the business was already made by January 2019.[175]

199 It is also worth noting that Ms Teo-Gomez testified that she was hopeful that, in placing the claimant on the PIP, there would be a change in behaviour and she could then "walk back the leadership from making decisions on his termination".[176] Leaving aside the fact that there was nothing in the documentary evidence to suggest that this was Ms Teo-Gomez's intention at the material time, even if one accepts her testimony, the clear inference to be drawn is that the *leadership* was set on a course to terminate the claimant's employment.

200 I add that I do not accept the explanation Ms Teo-Gomez gave, when she acknowledged that she knew of the leadership's lack of an appetite for long-term correction of behavioural concerns and then proceeded to disagree with counsel's suggestion that the PIP was just a charade:[177]

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174 6 March Transcript at p 49 lines 13–15.

175 6 March Transcript at p 55 lines 2–5.

176 6 March Transcript at p 49 line 23 to p 50 line 1.

177 6 March Transcript at p 48 line 13 to p 49 line 7.

> Q. And you also knew and did not think that they have an appetite for long-term correction of behavioural concerns; correct?
>
> A. That is correct.
>
> Q. Therefore, the PIP, Ms Adele, was just a charade and you continued to facilitate it; correct?
>
> A. The PIP was for 45 --
>
> Q. "Yes" or "no"?
>
> A. Incorrect.
>
> COURT: Can you explain your answer?
>
> A. The PIP was for a 45-day period, which was not long term. Long term would have been something for like three months or a six-month kind of correction plan. *[Ms Mohan] had suggested that PIP would be something that we can look at for more sustainable correction of 45 days, right? And that was acceptable because it was not the long term of six months.* If it took six months to get [the claimant] to where we needed him to be, then that would have been a problem that they would not have an appetite for.
>
> [emphasis added]

201 As I understand it, Ms Teo-Gomez was attempting to rationalise the placement of the claimant on the PIP with the understanding that there was no appetite to provide the claimant with an opportunity for long-term behavioural correction by saying that the PIP which the claimant was eventually placed on was not long-term. Ms Teo-Gomez's explanation is clearly an afterthought. Nowhere in the e-mails exchanged between Ms Teo-Gomez and Ms Mohan was there any distinction drawn between a 45-day PIP and a three-month or six-month PIP. The suggestion by Ms Mohan was simply to place the claimant on a PIP for long-term behavioural correction, to which Ms Teo-Gomez responded that Ms Seabury and Ms Blatt had no appetite for that. As such, Ms Teo-Gomez cannot escape the inexorable inference to be drawn from her e-mail exchange with Ms Mohan – namely, that the PIP was being proceeded with even though

there was no appetite for long-term behavioural correction, which is the very essence of a PIP.

202 Indeed, as the name "Performance Improvement Plan" suggests, the whole point of a PIP is to provide a structured plan for an employee to improve his or her performance. And giving an employee a chance to improve his performance would only have meaning if it was done with a view to retaining him, or at least with that in contemplation as a *possible* outcome. This much is clear from the defendant's own PIP policy, which lists three possible decisions to be taken upon the end of a PIP: successful completion, extension and termination/transition for unsuccessful performance.[178] The defendant itself also says that a PIP is "intended to foster improvement and support employee success".[179] It would therefore be inimical to the very nature of a PIP to place an employee on a PIP with the only end-goal in mind of terminating his employment. Even Ms Blatt's evidence on the stand was that, if the claimant performed well while he was placed on the PIP and there was no more unprofessional conduct on his part, his employment would not have been terminated.[180]

203 As the evidence bears out, however, the claimant was never given a genuine opportunity to improve. The attitude which Ms Seabury bore towards the claimant, namely her desire to terminate his employment as soon as possible, persisted even after she formally placed him on the PIP.

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178 1AB at p 122.

179 DCS at para 75.

180 14 March Transcript at p 158 line 9 to p 159 line 7.

204 As alluded to above (at [48]), Ms Seabury formally placed the claimant on the PIP on 21 March 2019 when she sent him the following e-mail:[181]

> Dear Prashant,
>
> You are formally placed on PIP for a period of 45days starting from March 21st 2019.
>
> The PIP objectives are available in the attached document which were framed based on mutual consensus and business objectives. During the PIP we will have regular reviews on the improvement and the support required. Again, *our desire is for you to be successful here at SAP*. I am confident and hereby ***request you to demonstrate immediate, consistent improvement in performance going forward***. ***I hope this will be a learning experience and that we will all move together successfully from this point forward.***
>
> [emphasis added in italics and bold italics]

205 The objectives stated in the PIP document are listed at [48] above. Essentially, the claimant was asked to work on improving the way he communicated with others, including those from other teams, as well as the manner in which he managed his own team. There was also a specific goal for the claimant to "[i]mprove the relationships with Delivery in India". Notably, the scope of the PIP was not confined to correcting the claimant's supposed abrasive and confrontational behaviour towards the services delivery team during the Wipro Incident and the Sesa Goa Incident. It also sought to guide the claimant in managing his own team better. This was something which the claimant no doubt registered in his mind and, as he testified, he regarded the PIP as an opportunity to improve:[182]

> Q. … After I reviewed the PIP, I saw there were elements that still had to be done like setting up regular meetings which I did. A lot of things I knew I could achieve this -- all -- all the requirements of this PIP in the time period I were there.

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181 1AB at p 579.

182 26 February Transcript at p 73 line 20 to p 74 line 5.

> COURT: So did you feel that there were shortcomings in your leadership style?
>
> A. There were four elements, some of those which were brought about, I did understand that there were things that needed to be addressed, absolutely.

206 However, barely one month into the PIP, after Ms Teo-Gomez had sent two e-mails to Ms Seabury to check on how the claimant was progressing, Ms Seabury sent the following e-mail to Ms Teo-Gomez on 24 April 2019:[183]

> Hi [Ms Teo-Gomez],
>
> I have been travelling a lot, sorry for the delay in replying.
>
> [The claimant] is following the plan. Some worrying points
>
> 1. *How can he do a 360 and suddenly be professional, indicates the bad behaviour was a choice.*
> 2. He has told [Ms Raman], the Delivery assurance packages will never work in our region but we will [pay] them lip service, why does he not just tell me what he actually thinks.
> 3. He has complained to the DBS [*ie*, Digital Business Services] leadership that this is a stitch up and he will follow along till its over
> 4. [Ms Raman], Jason and Ben Redwine, do not believe the change is real and that it will only last till the end of the PIP.
>
> Overall having discussed this with [Ms Blatt] *we do not believe these changes in behaviour will be maintained*, he has moved to far to lose full trust from the APJ leadership team and ***we would like to remove him from the business as soon as possible***. Please tell me what the next steps need to be. …
>
> [emphasis added in italics and bold italics]

207 This e-mail is revealing of Ms Seabury's attitude towards the claimant. Even *before the PIP was due to end*, she had already expressed that she wanted to terminate the claimant's employment as soon as possible. What is even more

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183 1AB at p 578.

astonishing is that this came on the back of an *improvement* in the claimant's conduct. Ms Teo-Gomez agreed that the claimant was doing his best to follow the terms of reference that were given to him in the PIP.[184] Mr Farooq testified that, to his knowledge, the claimant had performed well during the PIP.[185] Ms Blatt did not hear of any issues which arose in relation to the claimant's performance while he was on the PIP.[186] Crucially, Ms Seabury herself acknowledged that the claimant was "professional" (see the e-mail quoted at [206] above). However, she nonetheless doubted that the improved conduct on the part of the claimant was genuine and a sincere attempt at changing.

208 The main ground upon which Ms Seabury had come to that conclusion appears to be the fact that the claimant's change in behaviour happened "suddenly". However, this is perplexing in light of Ms Seabury's own request to the claimant to "demonstrate *immediate*, consistent improvement in performance going forward" [emphasis added] (see [204] above). The claimant would be damned if he did and damned if he did not (demonstrate immediate, consistent improvement). After all, according to Ms Blatt, the claimant was supposedly placed on a PIP which lasted only 45 days because she and Ms Seabury felt that such a period of time would suffice for the claimant to correct his behaviour.[187] With such a short runway of time to demonstrate the "immediate, consistent improvement in performance" which Ms Seabury demanded of him, it could only have been incumbent on the claimant to, in Ms Seabury's words, "do a 360". The fact that this led to such a strong level of suspicion in Ms Seabury's mind that the claimant was merely faking his

184 6 March Transcript at p 61 lines 19–24.

185 Transcript dated 5 March at p 53 lines 16–19.

186 14 March Transcript at p 182 line 23 to p 183 line 18.

187 14 March Transcript at p 155 line 19 to p 157 line 19.

improved performance strongly suggests that the seeds of doubt were already planted in her mind way before she sent her e-mail on 24 April 2019. In other words, she had already made up her mind that the claimant would not be able to demonstrate genuine improvement in his performance.

209 Although Ms Seabury's e-mail alluded to other pieces of evidence which purported to corroborate her doubt on the claimant's genuineness and sincerity, these fall apart upon closer examination. There is, for instance, nothing to verify that the claimant had communicated to the DBS (*ie*, Digital Business Services) leadership that he would only "follow along" with the PIP until it was over. The claimant, while acknowledging that he spoke to the DBS leadership about the PIP, denied that he ever told them it was a "stitch up" and that he would only "follow along till its over".[188] No one from the DBS leadership testified on the truth of that allegation. Hence, the only admissible evidence before me is the claimant's denial.

210 The court is also left none the wiser as to how Ms Seabury came to know of this allegation and whether she took any steps to verify it. Indeed, it is telling that Ms Seabury, who was quite clearly the main character within the defendant's organisation involved in this saga, did not make an appearance in this trial. This is especially so when she was originally listed by the defendant as an intended witness,[189] but later substituted by Ms Blatt who was not originally in the defendant's intended list of witnesses.[190] Ms Blatt, in turn, accepted during cross-examination that she did not have any personal

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188 26 February Transcript at p 71 lines 14–20.

189 2AB at p 944; CCS at para 198.

190 Ms Blatt's AEIC at para 101; 14 March Transcript at p 118 line 19 to p 119 line 1.

knowledge of the claimant's conduct or behaviour except through what she was told by other senior leaders such as Ms Raman, Ms Seabury and Mr Farooq.[191]

211 Crucially, the objective evidence before me leads me to doubt whether Mr Jason Wolf ("Mr Wolf") and Mr Daniel Benjamin Redwine ("Mr Redwine") did in fact tell Ms Seabury that they did not think the claimant's change in behaviour would last, as alluded to by Ms Seabury in the fourth point of her e-mail sent on 24 April 2019 (see [206] above). Mr Wolf was the "Head of Ariba and the License Sales team in APJ" and Mr Redwine was the "Chief Operating Officer for Ariba in APJ".[192] Both of them oversaw the license sales team which, like Ms Raman's services delivery team, had to work closely with the claimant's services sales team. About a week after Ms Seabury represented to Ms Teo-Gomez in her e-mail that both Mr Wolf and Mr Redwine believed that the claimant's change in behaviour would only last until the end of the PIP, Ms Seabury reached out to Mr Wolf and Mr Redwine for their feedback on the claimant's performance "over the last six weeks that he [had] been on his PIP" so that she could "complete the process" that week.[193]

212 Mr Wolf had only positive things to say about the claimant's performance, as evidenced by his reply:[194]

> *Performance over past six week has been good.* He has attended and engaged in sales QBRs. We conducted a 1:1 as well. I cannot comment on trust with Sales Heads this is individual perspective. In terms of connectivity with Partners you would be better checking with the partner team. …
>
> [emphasis added]

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191 14 March Transcript at p 139 line 25 to p 140 line 5.

192 Ms Blatt's AEIC at para 15.

193 1AB at pp 598–599.

194 1AB at p 598.

213 On the other hand, Mr Redwine took the view that he was not in a position to provide any feedback on the claimant's performance during the PIP period:[195]

> I've shared my feedback to [the claimant] previously, as well as to [Mr Farooq] and [Ms Blatt]. Happy to speak over the phone at some point about historical feedback, but *I haven't interacted with [the claimant] much in the past month or two* if you're looking for near-term feedback.
>
> [emphasis added]

214 It is revealing that neither Mr Wolf's nor Mr Redwine's responses to Ms Seabury's request for feedback corroborate her scepticism about the genuineness of the claimant's improvement in behaviour, which was supposedly founded on their feedback (amongst other things). Neither did they indicate that they had previously spoken to Ms Seabury about the claimant's performance during the PIP period. Indeed, Mr Redwine, in his affidavit of evidence-in-chief ("AEIC"), made no mention of any previous views he had shared with Ms Seabury about the claimant's performance while on the PIP.[196] In fact, he affirmed the contents of his e-mail reply to Ms Seabury when he was on the stand and testified that he did not recall telling Ms Seabury that he did not believe the claimant's change in behaviour was real and that it would only last until the end of the PIP.[197]

215 Taken together, these raise the very real possibility that Ms Seabury was not telling the truth when she represented in her e-mail to Ms Teo-Gomez that Mr Wolf and Mr Redwine were sceptical about the claimant's good

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195 1AB at p 598.

196 Mr Daniel Benjamin Redwine's affidavit of evidence-in-chief dated 13 September 2024 at paras 21–22.

197 12 March Transcript at p 160 line 4 to p 161 line 5.

performance. Ms Blatt also agreed that it "was maybe not completely valid" to say that there was consensus amongst Ms Raman, Mr Wolf and Mr Redwine that the apparent change in the claimant's behaviour was not genuine and would only last until the end of the PIP.[198] The upshot of this is that, by a process of elimination, Ms Seabury's conclusion that the claimant was only putting up a front and would not maintain his improved conduct beyond the PIP was really only based on Ms Raman's view. This much was acknowledged by Ms Blatt as well when she was being cross-examined.[199] Ms Raman, as we have seen, clearly had an axe to grind with the claimant and was already set on expediting the termination of the claimant's employment even before the PIP had commenced (see [192]–[193] above). Ms Seabury's conclusion was therefore obviously coloured by Ms Raman's prejudiced mind.

216 Moreover, contrary to what Ms Seabury asserted in her e-mail, Ms Blatt testified that she was of the view that the claimant was honestly trying to comply with the PIP and that she did not share Ms Seabury's view that the changes in the claimant's behaviour would not be maintained beyond the PIP.[200] This is yet another indicator that Ms Seabury was being liberal with the truth in her e-mail to Ms Teo-Gomez.

217 To my mind, the e-mail sent by Ms Seabury to Ms Teo-Gomez on 24 April 2019 and the e-mails exchanged between the various members of the defendant's management prior to the claimant's placement on the PIP paint a clear picture – that the outcome of the PIP was pre-ordained and the claimant

198 14 March Transcript at p 169 line 21 to p 171 line 17.

199 14 March Transcript at p 168 line 18 to p 169 line 5.

200 14 March Transcript at p 164 line 15 to p 165 line 2.

was doomed to fail. It is not surprising therefore that even Ms Teo-Gomez acknowledged this inescapable inference:[201]

> Q. The outcome was preordained, [the claimant] had already, in the eyes of the senior leadership, had to be removed; correct? "Yes" or "no"?
>
> A. *Yes, they had wanted him to be removed.*
>
> …
>
> Q. So, [Ms Teo-Gomez], clearly, [Ms Seabury] and [Ms Blatt], having discussed this, when they say they have discussed this and do not believe that these changes in behaviour will be maintained, what they really mean is that *they are sticking to their original plan to terminate [the claimant], to remove him from the business*. Agree?
>
> A. *Agree.*
>
> [emphasis added]

218 Indeed, that the outcome of the PIP was pre-ordained is also demonstrated by the shoddy documentation which accompanied the PIP and the failure to inform the claimant of its outcome. After Ms Seabury sent her e-mail to Ms Teo Gomez on 24 April 2019, Ms Teo-Gomez asked if there were weekly check-ins with the claimant as required by the PIP and whether there were documented minutes for those meetings.[202] She also pressed Ms Seabury for more details regarding the objectives of the PIP which the claimant had met and those which he had not. Ms Seabury, however, simply replied that she had been having weekly calls with the claimant without providing any documentation of those calls.

219 It would appear, though, that Ms Teo-Gomez did have a follow-up meeting with Ms Seabury about the PIP. However, she still had to press

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201 6 March Transcript at p 62 lines 21–24, p 68 line 24 to p 69 line 6.

202 1AB at p 574.

Ms Seabury for documentation and more specificity on the claimant's performance as indicated in an e-mail which she sent to Ms Seabury on 13 May 2019:[203]

> Going back to our meeting on 7 May, *could you please provide additional details* regarding [the claimant's] progress against the PIP topics.
>
> There were a number of items that you asked for him to work on (10 specific items) – *please could you provide against each of those agreed actions what he has done, not done.*
>
> You committed to weekly progress check-ins with [the claimant]; and you confirmed that you had those. *Please provide me the minutes of those weekly meetings that you had with him*
>
> Let's review all of this and then come to a conclusion on how we will close this out with him. I very much want to help you – I cannot do it without reviewing the details.
>
> [emphasis added]

220 All Ms Seabury provided to Ms Teo-Gomez, however, were progress updates that the *claimant* had sent to her. When Ms Teo-Gomez pressed Ms Seabury further for documentation *on her end* regarding the claimant's progress, she gave a non-committal response that she would "go thru [her] notes and comments and send them thru to [Ms Teo-Gomez] next".[204] This back-and-forth between Ms Teo-Gomez and Ms Seabury happened, as Ms Teo-Gomez described it, "a couple of weeks since [the claimant's] PIP ended". On 20 June 2019, Ms Blatt, who was carbon-copied on some of the correspondence between Ms Teo-Gomez and Ms Seabury, asked for an update on the PIP as she "never saw the outcome and follow-up" on it.[205] At that point in time, Ms Teo-Gomez

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203 1AB at p 578.

204 1AB at p 581.

205 1AB at p 584.

was "still awaiting the info requested". She even mentioned that "[i]deally [they] should have been laser focussed in closing out the PIP".

221 Ms Seabury essentially snubbed Ms Teo-Gomez. Even after she sent Ms Teo-Gomez an e-mail on 25 October 2019 stating her intention to terminate the claimant's employment because "several issues remain[ed] in [the claimant's] performance" (see [51] above), Ms Teo-Gomez continued to chase her on multiple occasions for documentation regarding the PIP.[206] More than five months after Ms Seabury told Ms Teo-Gomez that she would provide her notes on her weekly progress check-ins with the claimant during the PIP, she still had not done so. On 5 November 2019, Ms Seabury replied to Ms Teo-Gomez and conveniently stated that she had been "unable to find the emails on the final PIP discussion" and that she "[had] all of [her] notes and the date of the call but [she] [couldn't] find any of the email exchanges on the final session and the weekly follow-up calls".[207]

222 Needless to say, Ms Seabury's response strains credulity, and one has to wonder if such documentation of the PIP process ever existed or indeed if Ms Seabury's purported attempts to coach the claimant were as extensive as she made them out to be. While the claimant acknowledged during cross-examination that he had weekly calls with Ms Seabury when he was on the PIP,[208] it is unclear what those weekly calls entailed because of a lack of documentation. Ms Teo-Gomez herself agreed with counsel's suggestion while on the stand that "[t]o [her] personal knowledge, coaching and feedback were

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206 1AB at p 610.

207 1AB at p 615.

208 26 February Transcript at p 69 line 25 to p 70 line 2.

never provided".[209] Hence, at the very least, the lacklustre and irresponsible manner in which Ms Seabury managed the PIP process leads to the irresistible conclusion that she did not treat it seriously. In this regard, Ms Teo-Gomez also agreed with counsel's suggestion that, if Ms Seabury, Ms Blatt and the other senior leaders were serious in ensuring that there was a change in behaviour on the claimant's part or that the claimant would get a real opportunity to make the appropriate changes, they would have made some effort during the PIP.[210]

223 Even at the material time, Ms Teo-Gomez did not have kind words when she informed Ms Blatt that there was a "clear lack of respect for the process" and that it "seem[ed] obvious [Ms Seabury] [had] never intended to take any coaching from [herself] or Employee Relations as to how to manage this situation".[211] It is also of significance that Ms Teo-Gomez herself had stated pointedly to Ms Seabury that she was "very uncomfortable" with the absence of any documentation as to the final conclusion of the PIP as well as the lack of documentation during the time the PIP was in place. As Ms Teo-Gomez agreed to on the stand, the lack of documentation meant that she could not assess the claimant's performance during the PIP objectively.[212] Ms Blatt was also of the view that the lack of documentation was "upsetting" and that the outcome of the PIP should have been told to the claimant:[213]

> Q. … Ms Blatt, it is appalling that there is total disregard in this case for HR practices such as this PIP and I'm very disappointed that that can happen in a global organisation like yours which is otherwise an exceptional organisation. Do you agree or disagree?

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209 6 March Transcript at p 102 lines 14–18.

210 6 March Transcript at p 97 lines 3–9.

211 1AB at p 614.

212 6 March Transcript at p 99 line 25 to p 100 line 3.

213 14 March Transcript at p 184 lines 13–18, p 185 lines 15–20.

> A. Yes, I agree, that's upsetting.
>
> …
>
> Q. … And apart from the lack of documentation, the fact that no decision was ever announced, Ms Blatt, was even worse, correct? *[The claimant] did not even know whether he completed the plan*, Ms Blatt?
>
> A. I -- that is -- I agree that that is *it not something we would want*, yes.
>
> [emphasis added]

224 The point to be made is not that the PIP process and outcome should have been documented or that certain processes should have been followed *per se*, but that the failure to do so casts serious doubt over whether the PIP was actually meant to give the claimant a chance to improve.

225 From the claimant's perspective, he was obviously left in the dark about all these machinations going on behind his back to terminate his employment while he was being put through the PIP process. The failure to properly close out the PIP with him led him to believe that he had successfully completed it. Indeed, this can be seen in a WhatsApp conversation he had with Mr Farooq in July 2019, in which he told Mr Farooq that the PIP had not officially been closed yet but that he was "not on PIP as far as [he] [was] concerned".[214] Both Ms Teo-Gomez and Ms Blatt also acknowledged that the claimant was led to believe that the PIP was successfully closed out.[215] Even upon learning that Ms Seabury desired to terminate the claimant's employment in November 2019, Ms Teo-Gomez expressed the view that, based on her recent discussions with some of the other leaders (including Mr Farooq, Ms Raman and Mr Wolf), she believed they would be "very surprised" by the action which Ms Seabury was proposing

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214 Claimant's bundle of documents dated 27 February 2025 ("CB") at pp 45–46.

215 6 March Transcript at p 77 lines 10–13; 14 March Transcript at p 177 lines 1–4, p 177 line 20 to p 178 line 6.

to take.[216] One can only imagine the shock that the claimant must have felt when he learnt that, despite being put on a PIP, demonstrating an improvement in his performance, receiving no negative feedback and being led to believe that the PIP was successfully closed out, his employment was being terminated.

226 The fact that the claimant was pre-judged and put on the PIP while it had already been decided that his employment would be terminated, along with the abject shoddiness with which the PIP was handled, leads me to the conclusion that the claimant was treated in an intolerable and wholly unacceptable way. No employee should be expected to put up with being misled and deceived in such a manner. To be very clear, there was nothing inherently wrong in the defendant's decision to terminate the claimant's employment in accordance with the terms of the Employment Agreement. The defendant had every right to do so at any point in time. However, in so far as the defendant took great pains to emphasise that the decision to terminate the claimant's employment was a "business decision", "executive decision" and "management decision",[217] that misses the point. It is the defendant's conduct *before* the termination of the claimant's employment which is problematic. It is also irrelevant that Mr Wolf, Mr Redwine and Ms Raman supposedly continued to face difficulties working with the claimant *after the PIP ended*.[218] At its highest, this amounts to a submission on the defendant's part that it was justified in terminating the claimant's employment. Hence, even if it were indeed true that various persons within the defendant's organisation continued to face difficulties working with the claimant after the PIP ended, this says nothing about whether the defendant was justified in placing the claimant on the PIP

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216 1AB at p 614.

217 DCS at paras 6, 9, 14, 43, 89, 109 and 202.

218 DCS at paras 81–82.

without intending for it to be a genuine opportunity for him to improve because the defendant already had the end-game of terminating his employment in mind.

227 It is true that the defendant could have chosen not to place the claimant on the PIP. However, having chosen to place the claimant on the PIP, it was not open to the defendant to lead him on like a lamb to slaughter on the false pretext that he was being given a genuine opportunity to improve. Such dishonest conduct had no reasonable and proper cause and would, on any objective view, be calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. I accordingly find the defendant to be in breach of the implied term of mutual trust and confidence.

The duty not to reprimand without merit in a humiliating circumstance

228 The claimant refers to the same conduct to say that the defendant breached the duty not to reprimand without merit in a humiliating circumstance (see [180] above),[219] which is one of the other sub-duties that purportedly flows from the implied term of mutual trust and confidence. As I have already found that such conduct breaches the implied term of mutual trust and confidence, in particular the duty not to behave in an intolerable or wholly unacceptable way, it is not necessary for me to make a finding as to whether the implied term extends to the duty not to reprimand without merit in a humiliating circumstance and, if so, whether the defendant had breached such a duty. In any case, I have doubts as to whether this sub-duty, if it flowed from the implied term, was indeed breached.

229 The case which purportedly established this sub-duty is *Hilton International Hotels* (see *Cheah Peng Hock* at [56(g)]) (see [164] above), which

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[219] CCS at para 162.

concerned an appeal to the EAT against the Industrial Tribunal's decision to uphold the respondent's constructive dismissal claim. In that case, the respondent employee, Ms Protopapa, suffered a toothache and made an appointment without consulting any of her superiors. She then passed the message on to her superior, Ms Glover, who gave her a reprimand described as "officious and insensitive" by the Industrial Tribunal (see *Hilton International Hotels* at [4]). This finding of the Industrial Tribunal could not be challenged on appeal, and its view of the superior's conduct, as quoted by the EAT, merits setting out in full:

> The Tribunal finds as a fact that the reprimand given by Miss Glover was *officious and insensitive*. The applicant in her conduct certainly had not merited that sort of treatment. Further, taking into account the loyalty, length of service and status of the applicant we find that the applicant was *humiliated, intimidated and degraded* to such an extent that there was a breach of trust and confidence which went to the root of the contract. The degree of hurt that she had suffered as a result of this breach of trust and confidence left her no alternative but to terminate her employment without notice. For these reasons we find that the applicant was constructively and unfairly dismissed.
>
> [emphasis added]

230 As the Industrial Tribunal's findings of fact could not be challenged, the EAT did not detail the manner in which Ms Glover had reprimanded Ms Protopapa. Nevertheless, in the first place, I very much doubt that the defendant had "reprimanded" the claimant in any sense of the word. The only conduct which the claimant listed that *may* constitute a reprimand is the defendant giving him a minimal increase in his bonus and forcing him to apologise to Ms Raman when he was in fact justified in doing what he did.[220] Even if these acts could constitute a reprimand, I have great difficulty in comprehending how they rose to the level of humiliating, intimidating and

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220 CCS at paras 161(a) and (b).

degrading treatment based on the descriptors used by the Industrial Tribunal (as recorded in *Hilton International Hotels*).

The duty to conduct fair investigations

231 The claimant also submits that the defendant breached the fair investigations implied term, which he says is an iteration of the implied term of mutual trust and confidence.[221] In this regard, the claimant cites *Cheah Peng Hock* as establishing that the implied term encompasses such a duty to conduct fair investigations.[222] I doubt, however, that *Cheah Peng Hock* stands for that broad a proposition.

232 In *Cheah Peng Hock*, the claimant was the CEO of the defendant company. In that capacity, he rolled out a series of organisational changes. There was a series of meetings with the board and senior management staff for the purpose of discussing the claimant's changes and leadership in his absence. Subsequently, the defendant's founder and executive director, Mr Niu, was appointed joint-CEO. The board then started reversing the claimant's changes without discussing such reversal with him, and Mr Niu progressively took over the day-to-day operations of the company.

233 Loh J found, amongst other things, that the exclusion of the claimant from meetings held to discuss his decisions as CEO was a clear breach of the implied term of mutual trust and confidence. It was in this context that he made the following remarks which the claimant now relies on as a basis for the purported fair investigations implied term (*Cheah Peng Hock* at [102]):[223]

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221 CCS at paras 163–164.

222 CCS at para 164.

223 CCS at para 165.

> I further find that it is a clear breach of the implied term of mutual trust and confidence for meetings to be held discussing the employee's decisions without at least informing him of the accusations being made against him at that meeting. The situation is not unlike that in *Post Office v Roberts*, where the employee had had a bad report lodged against her without her knowledge and was subsequently refused a promotion. *A relationship of mutual trust and confidence requires that the employer inform the employee of charges levelled against him, and give him the opportunity to rectify any problems or clarify any misunderstandings. This is particularly so where the employee is in a high level executive role and makes complex decisions on behalf of the company.* The more complex an issue, the more discretion is needed and hence the greater the need to clarify an issue with the employee. In light also of my findings on the unauthorised changes, I find the truth to be that Mr Niu was always aware of the organisational changes and of the problems they were causing, but failed to bring these concerns up with [the claimant] as required by the implied term of mutual trust and confidence. *He instead brought these changes up during the 11 August staff meeting in the absence of [the claimant] and without consulting him, thus also undermining [the claimant's] authority as the man who had implemented these changes and was overall in charge of operations and management … I find that [the claimant] had asked to be involved in the meetings but had been rejected by Mr Niu whose actions as well as words indicated that [the claimant's] views and opinions would not be welcome. This would plausibly have, for example, deterred [the claimant] from asking to attend further meetings which he was not informed about, or from volunteering his opinions straight to the Board and thus bypassing Mr Niu.* [The claimant] testified that these were his concerns and I believe him.
>
> [emphasis added]

234 I do not believe that Loh J meant to import such a wide-ranging duty to conduct fair investigations into the implied term of mutual trust and confidence. However, even if one assumes that *Cheah Peng Hock* does establish such a duty to conduct fair investigations, the circumstances in that case are clearly distinguishable from those in the present case. In *Cheah Peng Hock*, not only did the defendant's board and management not inform the claimant about the supposed problems with his organisational changes and leadership and deliberated about these behind his back, they also took active steps to prevent

and/or deter the claimant from participating in these deliberations. In other words, the claimant was being silenced. One can therefore see why he had no "opportunity to rectify any problems or clarify any misunderstandings". Moreover, Loh J was clearly influenced by the "high level executive role" which the claimant employee in *Cheah Peng Hock* played, and the complexity of the organisational changes at stake.

235 In the present case, the claimant says he has never claimed that the defendant breached his right to a hearing or any particular process.[224] He only claims that the defendant's senior leaders "failed to afford him an opportunity to clarify his position". However, I fail to see how he was not afforded such an opportunity. Unlike the claimant in *Cheah Peng Hock*, he was neither silenced nor deterred from airing his opinions. Neither was he kept in the dark about the accusations that were being levelled against him. To the contrary, he had ample opportunity and certainly did not shy away from staking his position and airing his views on the accusations against him.

236 From as early as 27 September 2018, after Ms Seabury ostensibly gave him feedback on the e-mails which he sent to Ms Raman during the Wipro Incident, the claimant forwarded the entire e-mail chain containing that correspondence to Ms Seabury (see [26] above).[225] He went on to explain what he perceived to be the incompetence of Ms Raman's services delivery team and how that had affected his services sales team. He also aired his grievances about Ms Raman's e-mail responses to him, calling them "immature/childish".

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224 CCS at para 167.

225 1AB at p 213.

237 When tensions between the claimant and Ms Raman flared up once again during the Sesa Goa Incident, Ms Seabury informed the claimant that she received a formal request from management to deal with the claimant's conduct once and for all and proceeded to detail the elements of the claimant's behaviour which she took issue with (see [37] above).[226] These included attacking Ms Raman on a personal level and copying other members of the senior management for India in his e-mail correspondence with Ms Raman. She was very specific in telling the claimant that he "cannot make this personal or use email to undermine the authority of a member of the leadership publicly".

238 Once again, the claimant replied with a laundry list of grievances in which he pinpointed the "combination of severe shortage of resources in APJ, primarily on the Delivery side at this point in time compounded by an incompetent Delivery Management across most of the region" as the "underlying reason for all these flash points".[227] He also acknowledged that he had personally attacked Ms Raman, but sought to justify it on the basis that Ms Raman was the instigator behind Mr Chong's e-mail which detailed Mr Gupta's allegedly improper conduct (see [30] above) and that it was "part of a concerted effort to discredit one of the gems [they] [had] in [their] business in [Mr Gupta]". Finally, he refused to apologise to Ms Raman as directed by Ms Seabury as he felt that it would not make a difference at that point in time and he could not do something so "grossly wrong" and against what he stood for in his life.

239 It bears mentioning that the shortfalls in the delivery team's performance and capabilities which the claimant raised did not escape Ms Seabury's

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226 2AB at p 1234.

227 2AB at p 1233.

attention. In response to Ms Raman's e-mail complaining about the services sales team's "bullying and antagonising behaviour" and calling for the claimant and Mr Gupta to "go ASAP" (see [193] above),[228] Ms Seabury expressed the view that, having seen e-mails from the customer regarding its concerns about delivery resources, they could not "blame all of the issues and chatter on [Mr Gupta] and [the claimant]".[229]

240 The claimant was therefore well-aware of the accusations levelled against him regarding his conduct (regardless of the merits of those accusations). The fact that, on more than one occasion, he expressed that he was not proud of his behaviour, is testament to this. Moreover, there was always an open channel of communication between him and his direct superior, Ms Seabury, for him to air his grievances and tell his side of the story. Evidently, he was not hesitant to use it. I therefore see no merit in his complaint that he was not informed of the charges that were levelled against him and not afforded an opportunity to clarify his position. Unlike the claimant in *Cheah Peng Hock*, the claimant was confronted with these accusations directly and he was never deterred or systematically prevented from rebutting them.

Summary

241 In summary, I find that the defendant placed the claimant on the PIP even though it had the endgame of terminating his employment in mind. In so doing, the defendant had pre-judged the claimant and misled him into thinking that he was being given a genuine opportunity to improve his conduct and/or performance when this was not the case. The defendant had thereby behaved in

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228 1AB at pp 413–414.

229 1AB at p 411.

an intolerable or wholly unacceptable way and, accordingly, breached the implied term of mutual trust and confidence in the Employment Agreement.

242 I now turn to the remedies sought by the claimant.

Remedies

243 The claimant says that, as a result of the defendant's breaches, he suffered significant loss and damages.[230] There are three heads of losses which the claimant claims he suffered: (a) continuing financial losses; (b) damages for pain and suffering and disamenities caused by MDD to-date; and (c) injury to his reputation, pride and dignity, and humiliation, distress, insult and/or pain. Additionally, the claimant asks for aggravated and punitive damages because of the defendant's "outrageous conduct" in its treatment of him.

244 In the main, the claimant seeks $4,961,767.05 in damages.[231]

245 I will deal with each head of loss in turn.

Continuing financial loss

246 The claimant avers that, because of the defendant's breaches and heinous conduct leading to his eventual termination, he suffered a substantial loss of earnings of $4,961,767.05 from 2020 until 31 May 2025.[232] He arrived at this figure by applying a "conservative" 10% uplift to his annual future earnings from his last-drawn annual income of $665,673 in 2019, less his earnings to-date of $50,000. The claimant emphasises that he was a

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230 CCS at para 199.

231 CCS at paras 231–232.

232 CCS at para 204.

"consistently high earner" and that his financial losses are "especially crippling" considering that he was raking in more than $700,000 at the height of his career with the defendant.[233]

247 I have no hesitation rejecting the claimant's claim for loss of future earnings.

248 The claimant cited *Wee Kim San* for the proposition that continuing financial losses are a recoverable head of loss.[234] In *Wee Kim San* (at [25]), the CA noted that the normal measure of damages in wrongful dismissal cases is the amount which the employee would have received under the employment contract had the employer lawfully terminated the contract by giving the required notice or paying salary in lieu of notice (citing *Alexander Proudfoot Productivity Services Co S'pore Pte Ltd v Sim Hua Ngee Alvin* [1992] 3 SLR(R) 933 at [13] and *Teh Guek Ngor Engelin née Tan v Chia Ee Lin Evelyn* [2005] 3 SLR(R) 22 at [20]). Where a claim is brought for loss occasioned by the premature termination of an employment contract, this measure of damages would still apply even if the claim was mounted on the back of an alleged breach of the implied term of mutual trust and confidence.

249 That being said, the above does not preclude a claim founded on a breach of the implied term being brought for other types of losses so long as they are causally connected to such breach (see *Wee Kim San* at [26]):

> … While the cases have recognised that a breach of [the implied term of mutual trust and confidence] is capable of giving rise to financial losses of a *different* nature which are to be assessed on a separate footing from that established in the *Proudfoot* line of authorities, this is so only where the consequence of the

233 CCS at paras 205 and 207.

234 CCS at para 200.

> breach is something *other than* the premature termination of the employment contract. The leading example of this would be the "continuing financial losses" sustained and claimed as damages ***where the breach has affected an employee's future employment prospects***. This was recognised as a recoverable head of loss by the House of Lords in *Malik*, ***subject to proof of causation and the limiting principles of remoteness and mitigation***: see *Malik* at 37 and 48. In *Malik*, it was held that the employees concerned could prove in the employer's liquidation for "stigma" damages reflecting the damage to their future employment prospects caused by the corrupt manner in which the employer's business had been run in breach of the implied term of mutual trust and confidence. Another example would be financial loss flowing from psychiatric or other illness brought about by the employer's breach of this implied term: see *Eastwood* at [29].
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> [emphasis in italics in original; emphasis added in bold italics]

250 In my view, the claimant has failed to demonstrate that his loss of future earnings was causally connected to the defendant's breaches, beyond making a bare assertion that he is "similarly entitled to stigma damages [as in *Malik*] given [the defendant's] heinous conduct which has caused irreparable damage to his ability to secure gainful employment".[235] In *Malik*, it was the dishonest and corrupt manner in which the defendant employer ran its business that resulted in the claimant employees being stigmatised and hence handicapped in the labour market by mere virtue of their prior association with the defendant. As Lord Nicholls cautioned (in *Malik* at 42) (cited in *Edward Wong* at [51]), it would ordinarily be difficult to prove the causal link between a breach of the implied term of mutual trust and confidence and the stigma suffered by an employee as a result of such breach:

> [O]ne of the assumed facts in the present case is that the employer was conducting a dishonest and corrupt business. I would like to think this will rarely happen in practice. Thirdly, there are many circumstances in which an employee's reputation may suffer from his having been associated with an unsuccessful business, or an unsuccessful department within

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235 CCS at para 201.

> a business. In the ordinary way this will not found a claim of the nature made in the present case, even if the business or department was run with gross incompetence. *A key feature in the present case is the assumed fact that the business was dishonest or corrupt.* Finally, although the implied term that the business will not be conducted dishonestly is a term which avails all employees, proof of consequential handicap in the labour market may well be more difficult for some classes of employees than others. *An employer seeking to employ a messenger, for instance, might be wholly unconcerned by an applicant's former employment in a dishonest business, whereas he might take a different view if he were seeking a senior executive.*
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> [emphasis added]

251 Indeed, where a breach of contract is concerned, it is well-established that a claimant may only recover damages for loss flowing from the breach when the breach was the "effective" or "dominant" cause of that loss (*Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782 at [60], relying on *Monarch Steamship Co, Limited v Karlshamns Oljefafabriker (A/B)* [1949] AC 196 at 225).

252 The conduct on the defendant's part which I have found to be in breach of the implied term of mutual trust and confidence is that it had pre-judged the claimant and put him through a PIP with the end-goal of terminating his employment in mind. I fail to see how such conduct would have had any bearing on the defendant's employability in the labour market, much less caused him "irreparable damage to his ability to secure gainful employment". To begin with, I very much doubt that prospective employers would have even known of the manner in which the claimant was treated by the defendant unless he decided to disclose the entire saga on his own accord when applying for other jobs. All the claimant says is that he has been unable to secure a job despite applying for over 300 jobs from 2020 to 2023 and being invited for over 25 calls and

interviews.[236] In fact, he conceded during cross-examination that the circumstances surrounding him leaving the defendant did not feature in any of these job applications:[237]

> Q. … In each of these instances [of job applications], when the company told you that there was no role for you with them, mental condition, psychiatric injury, circumstances of your leaving [the defendant] all did not feature, right?
>
> A. No, Mr Tan, that's correct.
>
> Q. So your inability to find employment with any of these entities that you applied to did not hinge or depend on how your employment with [the defendant] ended, correct?
>
> A. Yes, that is correct, but I would like to clarify, if I can.
>
> COURT: Yes.
>
> A. For the same question, the direction which was asked before, *none of them reached a stage where it had come -- to a stage where I would have -- that would have probably come up in a conversation*, if it had. Clearly at the stages that these are, they are not.
>
> [emphasis added]

253 Moreover, the claimant himself acknowledges that the COVID-19 pandemic had made it hard for foreign nationals such as himself to get sponsorship from their employers, and that this had caused the job market to be "notoriously difficult to navigate" at the material time.[238] This appears to be the main reason, from the claimant's point of view, as to why he had difficulty finding employment. As the claimant explained during re-examination:[239]

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236 Mr Mudgal's AEIC at para 101.

237 Transcript dated 25 February 2025 ("25 February Transcript") at p 126 line 16 to p 127 line 6.

238 Mr Mudgal's AEIC at para 93.

239 26 February Transcript at p 123 lines 7–20.

> Most of them [*ie*, the status of the claimant's job applications] were impersonal responses and the reason for that, when -- like I mentioned yesterday, so when you apply, [Y]our Honour, a couple of things that they ask you is, are you qualified, do you have the required immigration status to be able to work, and you have to answer those questions. At this stage, *for close to almost I would say at least two years until after COVID, there was a known difficulty of people who didn't have at least a PR in Singapore for being able to get employment. So most of mine were probably getting struck off, that's a supposition I'm making, but most of my applications were getting struck off.* The few places that I went ahead, I had one or two rounds of interviews in some cases.
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> [emphasis added]

254 This should pour cold water on any contention that the claimant had difficulty finding employment because of any stigma which the defendant's breach may have caused him to suffer. Clearly, the defendant's breach of contract was *not* the dominant or effective cause of his failure to secure any gainful employment after the defendant terminated his employment.

255 It would appear that the claimant's real complaint with regards to his alleged loss of future earnings can be found in his AEIC:[240]

> The income generated from Velocerator [*ie*, the company which the claimant set up after leaving the defendant] paled in comparison to what I earned annually while employed by the Defendant. In fact, my annual income rose steadily over the years that I was with the Defendant ... which at its highest, exceeded **S$600,000** in a single year.
>
> [emphasis in original]

256 By claiming the salary that he would have earned had he remained in the defendant's employ, the claimant's complaint appears to centre around what he believes was the premature termination of his employment – as he is in substance seeking to claim losses sustained as a result of that supposed

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240 Mr Mudgal's AEIC at para 96.

premature termination. However, as the defendant rightly pointed out,[241] there is no right to specific performance of an employment contract or to require an employer to continue the employment relationship indefinitely (see *Wee Kim San* at [39] and *Ariokasamy Joseph Clement Louis v Singapore Airlines Ltd* [2002] 2 SLR(R) 924 at [50]). There was also nothing in the Employment Agreement which obliged the defendant to provide the claimant with any specific percentage of salary increase every year, as the claimant himself acknowledges.[242] Hence, there is no basis for the claimant to assume that he would have continued to be employed by the defendant and receive a 10% salary increment every year until the present day were it not for the defendant's breaches. Given that the claimant was given more than the requisite one month's notice under the Employment Agreement prior to his employment being terminated, and paid his salary during that notice period (see at [53]–[54] above),[243] the claimant's claim for loss of future earnings premised on those assumptions must necessarily fail.

Damages for pain and suffering and loss of amenities caused by MDD

257 The claimant was diagnosed with MDD on 27 May 2019.[244] He says that his MDD was caused by the defendant's conduct in 2018 and 2019.[245] According to him, this has damaged his employment prospects and "wrecked his marriage and family life". In this regard, the claimant lists, *inter alia*, the

241 DCS at para 113.

242 25 February Transcript at p 128 lines 11–14.

243 DCS at para 114.

244 CCS at paras 212–214; 2AB at p 1709.

245 CCS at para 210.

following particulars to illustrate how the defendant's conduct had affected him:[246]

(a) By February 2019, he was "engulfed in a perpetual state of anxiety" about his employment status and the actions which the defendant's management might take. This caused him to withdraw from his family and suffer a pronounced loss of libido which affected his intimacy with his wife.

(b) In April 2019 (*ie*, while he was on the PIP), his symptoms were at their peak. As documented by his psychiatrist, he experienced racing thoughts and anxiety and was "extremely stressed out". He also suffered from a severe loss of appetite and an inability to sleep properly.

(c) Even after he was prescribed medication in end-May 2019, he was unable to see immediate improvement. Each time he had to meet with Ms Seabury or any of the Conspirators, he was "walking on eggshells" as he was "gripped with the fear of reprisals" from them.

258 *Wee Kim San* was a case in which the CA decided that the appellant's claim for damages for breaches of the implied term of mutual trust and confidence ought to be struck out as the heads of damages sought to be recovered were legally unsustainable. The CA had suggested (at [26]) that a court can award damages for financial loss flowing from psychiatric or other illness brought about by the employer's breach of the implied term (citing *Eastwood* at [29]) (see [249] above). However, as with damages for any other head of loss, the rules on causation and remoteness will apply.

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246 CCS at paras 212–213.

259 To the extent that the claimant is saying the psychiatric harm he suffered as a result of the defendant's breach damaged his employment prospects, this argument can be dismissed fairly easily. As explained above in relation to the claim for continuing financial loss (at [248]–[256]), the link between any conduct on the part of the defendant and the claimant's inability to secure employment after his termination is exceedingly tenuous. It is more likely than not that the claimant could not secure a job because of other factors.

260 Furthermore, it is doubtful that the defendant's breach was the dominant or effective cause of the claimant's MDD in the first place. The claimant first consulted a psychiatrist, Dr Adrian Wang ("Dr Wang"), on 27 May 2019 after his wife encouraged him to upon noticing his symptoms.[247] In response to a request from the claimant's solicitors for a medical report in relation to his termination from employment, Dr Wang prepared a report which purported to document his observations of the claimant at the material time:[248]

> 2. [The claimant] consulted me as an outpatient on 27 May 2019.
>
> 3. He presented then with worsening anxiety, *largely related to work pressure*.
>
> 4. His appetite was poor and he had lost 12kg over a 2 month period. He was sleeping poorly. He was constantly worrying about *work-related matters*.
>
> 5. I noted that [the claimant's] mood was low. His energy levels were down and he was struggling to get through the day.
>
> 6. I diagnosed him to suffer from **Major Depressive Disorder (MDD)**.
>
> …

247 2AB at p 1709; 25 February Transcript at p 64 lines 14–17.

248 2AB at pp 1709–1710.

> 13. In summary, [the claimant] suffered an episode of **Major Depressive Disorder** in early 2019, precipitated by *work-related stressors*.
>
> …
>
> 15. He has been in remission of his illness since late 2019, and continues to be on maintenance medication.
>
> …
>
> [emphasis in original in bold and underline; emphasis added in italics]

261 It can be seen that Dr Wang's report was vague as to what constituted the "work-related" stressors which contributed to the claimant's MDD. This was also noted by Dr Jacob Rajesh ("Dr Rajesh"), the common expert witness appointed by consent of the parties pursuant to HC/ORC 4436/2024, in his report:[249]

> 19. … The stressors leading to a diagnosis of major depressive disorder was not specified in [Dr Wang's] report except that [the claimant] had reported work pressure to [Dr Wang] and *he could not remember whether he had disclosed to [Dr Wang] that he was on a personal improvement plan* and could not remember whether he had informed [Dr Wang] about him receiving a lower bonus as compared to his peers (information provided by [the claimant] during my interviews).
>
> 20. According to the information given to me by [the claimant] during the interviews with me, ***the main triggers for him was more pressure and more scrutiny on him from his bosses after he had refused to apologise to [Ms Raman] after he had sent the email on 31 October 2018 …, getting a lower bonus in early 2019 as compared to his peers and being placed on a PIP in March 2019***. He reported that combination of these three factors probably led to him developing depression.
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> [emphasis in original omitted; emphasis added in italics and bold italics]

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249 Affidavit of Dr Jacob Rajesh dated 5 December 2024 at p 15–16 (Bundle of affidavits of evidence-in-chief (volume 3) dated 3 February 2025 at pp 2315–2316).

262 Obviously, the specific factors which the claimant had identified as having contributed to his MDD to Dr Rajesh carry less weight because Dr Rajesh had interviewed the claimant for the purpose of him testifying in these proceedings on the claimant's psychiatric condition. In contrast, Dr Wang's report was ostensibly based on his own clinical notes, which would have been contemporaneous documentation of what the claimant told him at the material time. In addition, the claimant's own testimony indicates that he was likely not very specific with Dr Wang about the kind of "work pressure" he was facing:[250]

> ... I wouldn't have spoken to [Dr Wang] about [Ms Raman], *that would go under the general work pressure that I would have told him I have been under for a while because we had a very hectic 2018 also*. Lower bonus is not something that would have been a reason on my mind because I was -- I was disappointed at not getting a lower bonus but that was not something to make me depressed because I know there was always a next year. *The performance improvement plan, I did I think mention it to him, I'm not very sure* because I did meet him towards the PIP after it having been completed, but all this would have again gone into work pressure and he was also not very insistent on – ***our discussion was more of everybody knows how high pressure working in organisations generally is and especially in a sales role***. ...
>
> [emphasis added in italics and bold italics]

263 It would therefore appear that, based on the claimant's own recollection of what he reported to Dr Wang during his first consultation, it was the high pressure caused by the nature of his work while being employed by the defendant which he felt was the main (or a dominant) contributor to his MDD.

264 Even if one takes what the claimant told Dr Rajesh at face value, it is evident that his MDD was not caused by the defendant's conduct of pre-judging him and placing him on a pre-ordained PIP. The factors which were listed by

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250 26 February Transcript at p 121 line 20 to p 122 line 10.

the claimant, being work pressure and scrutiny from his bosses, getting a lower bonus and being placed on the PIP, are *not* acts of the defendant which constitute breaches of the Employment Agreement. It bears reiterating once again that it is not the decision to place the claimant on the PIP *per se* that breached the implied term of mutual trust and confidence. Rather, it was the manner in which the defendant misled the claimant into believing that he was being given a genuine opportunity to improve which did.

265 In this regard, it is the claimant's own case that he only found out he was pre-judged and misled *after* his employment was terminated. Indeed, it has always been his overarching narrative that the PIP was a "cloak" and "charade" to mask the defendant's real intention of terminating his employment, and that he only came to this realisation after commencing this suit. This much is clear from the claimant's reply closing submissions:[251]

> The documentary evidence and undisputed facts that emerged at trial only vindicate [the claimant's] quest for truth in OC 83. In fact, [the claimant] testified that his "*initial thought*" when filing OC 83 was his "*sense there was a lot of subtle things which were happening*" in terms of a "*coincidental sequence of events*" that led to his termination. It was **only <u>after</u> undergoing "*the discovery process*"** since he lacked "*access to any of the email communications*" that [the claimant] testified he could eventually "*fill the gaps*" and **"*was actually surprised with the level of planning which was going on much, much earlier*"** in terms of the conspiracy to remove him.
>
> [emphasis in original in italics; emphasis added in bold and underline]

266 If the conduct of the defendant which forms the breach (*ie*, the pre-judging of the claimant and the fact that the PIP had a pre-ordained outcome) only came to light after the material time (and during the course of these proceedings), then, logically speaking, it cannot be the case that the MDD which

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251 CRS at para 40; see also CCS at para 151.

the claimant was diagnosed with at that time was caused by such conduct. Indeed, the claimant would not have had any sight of the e-mails exchanged behind his back which pointed to the PIP being a sham.

267 I also view with a pinch of salt the claimant's averment in his AEIC that, when the PIP ended on 3 May 2019, he never received any communication of an outcome from Ms Seabury and was "left in limbo" as to the status of his employment and that this "took a drastic toll on [his] mental health".[252] The claimant cannot blow hot and cold by alleging that he was led to believe the PIP had successfully been closed out and saying that he was left in a limbo (which presumes that he did not believe the PIP was successfully closed out).[253] Indeed, the documentary evidence (*ie*, the claimant's WhatsApp conversation with Mr Farooq) indicates that, at least as at 10 July 2019, the claimant subjectively believed that he had successfully completed the PIP (although it had not been closed out "formally") (see [225] above).[254]

268 As such, I fail to see how any causal link can be drawn between the defendant's breach and the losses flowing from the claimant's psychiatric condition (much less say that the defendant's breach was the dominant or effective cause of such losses).

269 Furthermore, it is clear that such losses are too remote.

270 In *Out of the Box Pte Ltd v Wanin Industries Pte Ltd* [2013] 2 SLR 363 ("*Out of the Box*") (at [17]–[18]), the CA affirmed (relying on *Hadley v Baxendale* (1854) 9 Exch 341 (at 354) and *Victoria Laundry (Windsor) Ld v*

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252 Mr Mudgal's AEIC at para 85.

253 CCS at para 138.

254 CB at pp 45–46.

Newman Industries Ltd; Coulson & Co Ltd (Third Parties) [1949] 2 KB 528 at 539–540) that one of the key elements for determining if a contract breaker should be liable for losses is the contract breaker's knowledge. This includes imputed knowledge (*ie*, knowledge which a reasonable person in the contract breaker's situation is taken to know or, in other words, reasonably foreseeable facts) as well as actual knowledge of "special or extraordinary facts" (even if they may not have been reasonably foreseeable).

271 This was encapsulated in the following analytical framework laid down by the CA for questions of remoteness of damage (*Out of the Box* at [47]):

(a) First, what are the specific damages that have been claimed?

(b) Second, what are the facts that would have had a bearing on whether these damages would have been *within the reasonable contemplation of the parties* had they considered this at the time of the contract?

(c) Third, what are the facts that have been pleaded and proved either to have in fact been known or to be taken to have been known by the defendant at the time of the contract?

(d) Fourth, what are the circumstances in which those facts were *brought home to the defendant*?

(e) Finally, in the light of the defendant's knowledge and the circumstances in which that knowledge arose, would the damages in question have been considered by a reasonable person in the situation of the defendant at the time of the contract to be *reasonably foreseeable as a not unlikely consequence* that he should be liable for?

272 In the specific context of a breach of the implied term of mutual trust and confidence, the defendant has referred to *Yapp v Foreign and Commonwealth Office* [2014] EWCA Civ 1512 ("*Yapp*"),[255] which lays down guidance on applying the principles of remoteness in cases where psychiatric harm as a result of a breach of the implied term has been alleged.

273 In *Yapp*, the claimant was withdrawn from his post as High Commissioner and suspended pending an investigation into allegations of misconduct. He commenced an action against the British Foreign and Commonwealth Office, alleging that the stress which resulted from the manner of his withdrawal and the way in which the disciplinary process was conducted, as well as its outcome, caused his depressive illness. It was found that the withdrawal of the claimant from his post was unfair and constituted both a breach of contract (specifically, of the implied term of mutual trust and confidence) as well as a breach of the duty of care in tort (see *Yapp* at [3] and [67]).

274 On the issue of remoteness, the English Court of Appeal in *Yapp* laid down the following principles which I gratefully adopt:

(a) Psychiatric injury on the part of an employee caused by the acts or omissions of the employer will not usually be reasonably foreseeable unless there were some indications, of which the employer was or should have been aware, of some particular problem or vulnerability on the part of the employee (at [119(1)]).

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255 DCS at para 134.

(b) The starting position is that it would be exceptional that an apparently robust employee, with no history of any psychiatric ill-health, will develop a depressive illness as a result of even a very serious setback at work (at [125]).

(c) However, the employer's conduct in a particular case might be so devastating that it was foreseeable that even a person of ordinary robustness might develop a depressive illness as a result (at [123]). An example would be where there was gross and arbitrary injustice (at [127]).

275 In my view, these principles fit neatly into the analytical framework set out in *Out of the Box* (see [271] above). In particular, they can be used to answer the question set out at (b) of that framework (*ie*, whether a pre-existing vulnerability on the part of the employee and/or the egregiousness of the employer's conduct would have a bearing on whether psychiatric harm would have been within the reasonable contemplation of the parties had they considered it at the time of the contract).

276 While the EWCA in *Yapp* acknowledged that the claimant's withdrawal from his post was a major setback to his career which was bound to cause him distress and anger, it was not so egregious as to render it foreseeable that psychiatric injury would result (see [127]). There was also an absence of any sign of special vulnerability on the part of the claimant.

277 The claimant would be hard pressed to show that he satisfies the test for remoteness in the present case. Indeed, it is telling that, in his reply closing submissions, the claimant asserts but does not explain how the defendant's

conduct fulfils the requirements laid down in *Yapp*.[256] It is plain to me that the requirements are not fulfilled.

278 To begin with, there are no indications that the claimant had some pre-existing problem or vulnerability of which the defendant should have been aware. In fact, it is the claimant's case that, because of his limited physical interactions with the defendant's officers and/or employees, the defendant's witnesses in this case could not have observed his symptoms.[257] The claimant himself explained during re-examination why he did not see any reason to bring up his MDD to his superiors or the defendant's HR department:[258]

> ... For me, it might be the cultural background that I come from, [Y]our Honour, but even in general I have seen, I've worked across a lot of companies, *such illness are not seen very kindly in the organisations and I didn't see any reason to bring up, bring this up to somebody* when I was pretty confident of being able to handle it on my own and I was doing a fairly decent job. ...
>
> [emphasis added]

279 Given that the claimant himself had consciously chosen to suppress outward signs of his MDD, one cannot reasonably expect his superiors to realise that he was suffering from such a condition. The defendant would therefore have been entitled to presume that the claimant was an apparently robust employee who would not develop a depressive illness even from a very serious setback at work.

280 Additionally, the conduct of the defendant in the present case, while obviously leaving much to be desired, falls short of the level of conduct that was so devastating that it would have been foreseeable that even a person of ordinary

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256 CRS at para 48.

257 CCS at para 214(b); Transcript dated 4 March 2025 ;at p 40 lines 1–7.

258 26 February Transcript at p 124 lines 11–18.

robustness might develop a depressive illness as a result. In *Yapp* (at [127]), the EWCA referred to the "gross and arbitrary injustice" of the kind in *Eastwood* as an example of such conduct which may render it foreseeable that even an ordinary person with no known pre-existing vulnerabilities might develop a depressive illness. *Eastwood*, in turn, was a case in which the claimant employees were subject to a four-month "campaign to demoralise and undermine" them (see *Eastwood* at [17]–[20]). They were accused of sexual harassment after other employees were encouraged to formulate complaints against them, publicly suspended from work, and then put through a disciplinary process in which facts were assumed against them even though no witnesses were called to support them and some witnesses withdrew what they previously said.

281 In contrast, the claimant in the present case was put through a PIP process which, to all outward appearances, was a genuine opportunity for him to improve when, in actuality, it was not. As highlighted above (at [265]–[266]), the conduct evidencing the defendant's breach was hidden from plain sight. The deception which the claimant was subject to was insidious, not apparent. The corollary of this is that this could not have been conduct which the defendant would have foreseen to cause the claimant any psychiatric harm. In fact, it is arguable that the defendant could not even have foreseen that its pre-judging of the claimant would come to light. Even if it was made apparent to the claimant at the material time that the defendant was trying to pull wool over his eyes, the defendant's conduct would not have risen to the level of "gross and arbitrary injustice" which the claimant employees in *Eastwood* faced. Being placed on a pre-ordained PIP is different from being subject to a public disciplinary process built on a concerted campaign to incriminate and oust them.

282 Accordingly, even if the claimant could prove a causal link between the defendant's breach and the losses flowing from his MDD, such losses would still be too remote to establish a claim in damages.

Injury to the claimant's reputation, pride and dignity, and humiliation, distress, insult and/or pain

283 The gist of the claimant's claim for damages under this head of loss is that his "male pride" has been shattered.[259] He says that he was "unable to come to terms with his inability to perform his intrinsic male need of providing for the family". In his closing submissions, the claimant details the setbacks he has suffered in searching for employment after leaving the defendant and how that had caused him to go from being the main provider of the family expenses to having to rely on his wife to maintain such expenses.[260] According to him, this shift in earning disparity shifted the power dynamics between the couple and strained their relationship to the point of near-separation.[261] Apparently, his family was "in crisis" because his wife became the "*de facto* 'man' of the household on the financial front" and he "went from being the provider to being provided for".[262] The claimant ultimately says that the defendant "deprived him from the stability that comes with a loving and an emotionally healthy marriage".[263]

284 Needless to say, I fail to understand how there is a causal link between the defendant's breach and these losses (even if one assumes that they are made

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259 CCS at para 219.

260 CCS at paras 220–223.

261 CCS at paras 217, 224 and 228.

262 CCS at para 226.

263 CCS at para 229.

out). It would appear that, on the claimant's own case, much of his loss of pride stemmed from his inability to secure a job which provided him with the same level of income that his employment with the defendant did. As explained above (at [252]–[254]), the defendant's breach had little to do with the claimant's inability to secure employment after his termination. Accordingly, the claimant's attempt at claiming damages under this head of loss can be quite easily dismissed.

Aggravated and punitive damages

285 It goes without saying that, having failed to even prove that he is entitled to general compensatory damages, there is no basis to award aggravated and/or punitive damages to the claimant.

Award of nominal damages

286 Be that as it may, it is well established in law that the innocent party is always entitled to claim damages as of right for loss resulting from a breach of contract (*Youprint Productions Pte Ltd v Mak Sook Ling* [2023] 3 SLR 1130 ("*Youprint Productions*") at [5], citing *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* [2007] 4 SLR(R) 413 at [40] and *Denka Advantech Pte Ltd v Seraya Energy Pte Ltd* [2021] 1 SLR 631 at [60]). Concomitantly, nominal damages may be awarded if a claimant fails to prove either the fact of damage or the quantum of his loss (*Youprint Productions* at [5], citing *Biofuel Industries Pte Ltd v V8 Environmental Pte Ltd* [2018] 2 SLR 199 at [40]). This reflects that the loss suffered by the claimant is only notional, or "in name" (*The Law of Contract in Singapore* vol 2 (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) at [para 20.073]). This was also explained in further detail in *Butterworths Common Law Series: The Law of Damages* (Andrew

Tettenborn gen ed) (LexisNexis, 2nd Ed, 2010) ("*The Law of Damages*") at [paras 2.05–2.06] (cited in *Youprint Productions* at [6]):

> **2.05** A fundamental fault-line runs through the English law of obligations. It divides wrongs into two categories: (1) those for which proof of loss is an essential ingredient, and (2) those which are actionable *per se*. In cases in the former category, which importantly includes the torts of negligence, nuisance, deceit and the economic torts, no cause of action at all arises unless and until some loss is suffered by the claimant. In the latter, any infringement is automatically wrongful, and damages are available as of right whether or not any loss is suffered. It follows from this that, *if no other recoverable loss is proved, the claimant still has a right to nominal damages*. …
>
> **2.06** … nominal damages are essentially symbolic. The giving of them is only appropriate where no actual recoverable loss is shown. …
>
> **2.07** For the purpose of the award of nominal damages, wrongs actionable *per se* include *all breaches of contract* …
>
> …
>
> **2.09** … where a claimant proves a breach but no recoverable loss, the court has effectively no choice but to award nominal damages. …
>
> [emphasis added]

287 The claimant has succeeded in proving that the defendant had breached the Employment Agreement. I thus award him a sum of $1,000 in nominal damages.

Conclusion

288 In conclusion, I find that the defendant has breached the implied term of mutual trust and confidence in the Employment Agreement. However, the claimant has failed to prove the losses flowing from his breach and, accordingly, I ultimately award only a sum of $1,000 in nominal damages to him.

289 Objectively, it is easy to see how and why the claimant's self-righteous and unyielding behaviour contributed to the hostility in an already volatile environment between the services sales and services delivery teams. He was, to a large extent, the author of his own misfortunes that culminated in the termination of his employment. However, the defendant had an easy means of dealing with the claimant. All it needed to do was to invoke the termination provision expressly provided by the Employment Agreement to terminate his employment. Yet, this was not the remedy that the defendant immediately availed itself to. It imposed a farce of the PIP on the claimant.

290 The outcome of this case may well be a pyrrhic victory for the claimant, but I hope that it will provide him with some vindication and allow him to move on with his life. Having said that, the facts of this case demonstrate precisely why the implied term of mutual trust and confidence is needed to sustain an employment relationship. It is not uncommon to hear of employees dedicating themselves fully to their jobs, sometimes at the expense of their personal lives and family commitments. Lord Hoffmann's description of the employment relationship as being one of the most important things in a person's life and as a source of a person's identity and self-esteem in *Johnson*, echoed more than 20 years ago, rings truer than ever. The term of mutual trust and confidence, being a product of the English common law, has been implied and applied by courts in the UK for decades. Barring Australia, I know of no other major common law jurisdiction that does not recognise this implied term. There is nothing irreconcilable between the right to bring an employment relationship to an end and the duty not to behave in an intolerable or wholly unacceptable way. That is the cornerstone of any functional employment relationship.

291 I will hear the parties on costs separately.

Dedar Singh Gill
Judge of the High Court

Shobna d/o V Chandran, Navin Kumar s/o Tamil Selvan (Shobna Chandran LLC) and Jacintha Gopal (JG Law Chambers LLC) for the claimant;
Tan Teck San Kelvin, Goh Qian'En Benjamin and Kenneth Kwek Junjie (Drew & Napier LLC) for the defendant.