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

[2021] SGHC 289

Suit No 107 of 2020

Between

Thillainathan Aravinthan

… *Plaintiff*

And

EMC Information Systems Management Ltd Singapore Branch

… *Defendant*

JUDGMENT

[Contract] — [Breach] — [Contractual entitlements upon termination of employment]
[Contract] — [Collateral contracts]
[Tort] — [Misrepresentation] — [Fraud and deceit]
[Employment Law] — [Contract of service] — [Termination with notice]

TABLE OF CONTENTS

Thillainathan Aravinthan
v
EMC Information Systems Management Ltd Singapore Branch

[2021] SGHC 289

General Division of the High Court — Suit No 107 of 2020
Lai Siu Chiu SJ
12–14 April, 14 May 2021.

17 December 2021

Lai Siu Chiu SJ:

Introduction

1 In this suit, Thillainathan Aravinthan ("the Plaintiff" who is also known as "Ted") sued his former employer EMC Information Systems Management Limited Singapore Branch ("the Defendant") for unpaid salary, redundancy and other benefits alleged to be due to him under his employment contract with the company.

The facts

2 The facts set out hereinafter below are the Plaintiff's version. Where his version differed from the Defendant's version, that will be addressed when the court considers the parties' pleadings as well as the evidence for the Defendant's case.

3 The Plaintiff was in the employment of the Defendant as a director of sales from 15 January 2018 to 30 September 2019 (a period of 20½ months) pursuant to an employment contract dated 12 December 2017 ("the Employment Contract").[1] He holds a master's degree in business administration[2] and commercial contract negotiations is one of his specialties.

4 Prior to joining the Defendant, the Plaintiff worked for Cisco Systems Pte Ltd ("Cisco") for around ten years holding various positions with the post of sales team manager (global accounts – ASEAN/ANZ) being his last appointment. According to the Plaintiff's Affidavit of Evidence-in-Chief ("AEIC"),[3] he was one of the top performers during his employment with Cisco. He consistently met his targets and contributed greatly to its growth in sales for global accounts.

5 In or about August 2017, the Plaintiff deposed he was approached by a recruitment company TekSystems (Allegis Group Singapore Pte Ltd) ("TekSystems") in particular by Daniel Wentworth-Sheilds Boyd ("Boyd") who informed him of an available position as sales director in the Defendant's organisation. The Plaintiff however had reservations about taking up the post for the reason which is set out below at [7].

6 Around 7 September 2016, the Defendant was acquired by Dell Technologies Inc ("Dell"), an entity incorporated in the United States.

---

1 Statement of Claim (Amendment No. 2) ("SOC") at paras 6 and 22.

2 Transcript, 12 April 2021, p 16:14–23.

3 Plaintiff's Affidavit of Evidence-in-Chief ("Plaintiff's AEIC") at para 5.

Following Dell's acquisition, the Defendant underwent internal restructuring and there were resultant employee redundancies.[4] (Henceforth references to the "Defendant" would, where appropriate, also include references to "Dell").

7 In his AEIC, the Plaintiff deposed[5] that he was reluctant to leave Cisco because if he did, he stood to lose Restricted Stock Units ("RSUs") that had been granted to him and were vesting and also future RSUs which would be granted to him if he continued in Cisco's employment. The value of the RSUs was substantial and it would be foolish of the Plaintiff not to factor such benefits into any future employment offer that he received.

8 Consequently, the Plaintiff informed Boyd of his potential loss in RSUs should he leave Cisco. Boyd advised the Plaintiff to attend the Defendant's hiring interviews and address the Plaintiff's concerns in subsequent negotiations, if he was offered employment by the Defendant.

9 The Plaintiff accepted Boyd's advice. When the Plaintiff was later informed by Boyd that he had been selected from the five shortlisted candidates for the Defendant's post of sales director, the Plaintiff commenced negotiations[6] through Boyd with the Defendant's Ms Ambu Arun ("Ambu") a senior adviser of the Defendant's talent acquisition team.

---

4 Plaintiff's AEIC at para 7.

5 Plaintiff's AEIC at paras 8–14.

6 Plaintiff's AEIC at para 10.

10 The Plaintiff deposed he shared his concerns with Ambu and Boyd on the stability of employment with the Defendant in view of Dell's takeover.[7] It was at this juncture that the Plaintiff's version differed from the Defendant's as to what actually transpired in the negotiations between the parties.

11 According to the Plaintiff, in his telephone and (mainly) WhatsApp messages) with Ambu and/or Boyd, he understood from them that:

(a) the position to be filled played a critical role in the Defendant's operations. The Defendant's practice was to retain high performing employees by rotating them internally[8];

(b) the Defendant would provide redundancy benefits to the Plaintiff which consisted of three months' salary if redundancy took place within the first year of employment. Thereafter, redundancy benefits would be an additional month's salary for every year of employment with the Defendant[9];

(c) the Defendant would compensate the Plaintiff for his loss of RSUs in leaving Cisco.[10]

12 In regard to the Defendant's compensation for the Plaintiff's loss in value of RSUs in leaving Cisco's employment, the Plaintiff's version also

---

7 Plaintiff's AEIC at para 14.

8 Plaintiff's AEIC at para 15.

9 See Boyd's WhatsApp message to the Plaintiff dated 27 Nov 22017 at 1AB78.

10 Plaintiff's AEIC at paras 36–37, 47 and 51.

differed from the Defendant's (which will be set out in the Defence and in the testimony of its witnesses).

13 The Plaintiff claimed he wanted to be compensated by the Defendant for RSUs that would have vested in him over three years had he stayed with Cisco. Those RSUs were equivalent to US$109,000 or S$150,000 in value. For the RSUs that formed a component of his annual bonus, the Plaintiff told the Defendant that he wanted that to be built into his base salary as part of the On-Target Earnings ("OTE") component.[11] It was the Plaintiff's case that the Defendant agreed to his request.[12] The Plaintiff deposed that in 2017, Cisco paid him around S$460,000 divided equally between fixed and variable elements.[13]

14 According to the Plaintiff, he expected the OTE component at the Defendant to be around S$580,000 comprising of the fixed and variable elements as follows[14]:

(a) S$530,000 being a 15% increase on the Plaintiff's compensation at Cisco;

(b) S$50,000 being an acceptable compensation for the value of the RSUs that he lost in leaving Cisco.

---

11 Plaintiff's AEIC at para 24.

12 Plaintiff's AEIC at paras 24 and 29.

13 Plaintiff's AEIC at para 25.

14 Plaintiff's AEIC at para 25.

15 On or around 7 November 2017, Ambu conveyed the Defendant's employment offer to the Plaintiff, comprising of an annual OTE component of S$495,000, an annual car allowance of S$30,000 and a proposed sign-on bonus of S$30,000 meant to compensate the Plaintiff for the loss in value of RSUs that were granted and would vest over three years. The Plaintiff rejected[15] the offer as it was below his expectations and he told Ambu his reasons.

16 It was the Plaintiff's case[16] that during his conversation with Ambu, she represented to him that she would work on increasing the OTE component in the Defendant's offer and the Plaintiff would be compensated for his loss in value of the RSUs by an alternative method. This would be done by way of the Defendant's long term cash award ("LTCA") scheme – instead of the Plaintiff's receiving a lump sum at the commencement of his employment, his payment would be staggered over a period of three years. However, no specifics were provided to him over how the LTCA worked. It should be noted that in communication between the parties namely the Plaintiff, the Defendant's representatives and Boyd, the words "long term incentives" abbreviated to LTI were used interchangeably to refer to LTCA.

17 On 9 November 2017, the Plaintiff discussed with Boyd the lack of developments regarding his employment offer from the Defendant, repeating his expectations of the Defendant's employment offer.[17] He referred to his WhatsApp exchanges with Boyd on that day. Boyd indicated he would be

---

15 Plaintiff's AEIC at para 26.

16 Plaintiff's AEIC at para 29.

17 Plaintiff's AEIC at para 33.

meeting Ambu's superior Kurt Bridge ("Kurt") and would find out the Plaintiff's position.[18]

18 Boyd met Kurt on the same day. Boyd then updated the Plaintiff by WhatsApp on what transpired at the meeting. Boyd informed the Plaintiff that the Defendant was looking to compensate the Plaintiff for his loss in value of the RSUs that had already vested in the Plaintiff but the amount would be two not three years' worth of RSUs and would be paid over three years.[19]

19 On 10 November 2017, Ambu requested the Plaintiff to provide supporting details of the value of his RSUs with Cisco. The Plaintiff provided the requested details to Ambu[20] as well as an explanation of how the amount worked out to be about US$83,559, excluding the bonus RSUs that the Plaintiff expected to receive that month.

20 Through Boyd, the Plaintiff received a revised offer from the Defendant on 14 November 2017 which terms he informed Boyd[21] still did not satisfy him because the Plaintiff was offered US$60,000 as compensation for his loss in value of the RSUs which worked out to US$20,000 per year for three years against his estimated loss of US$83,559.

---

18 Plaintiff's AEIC at para 35.

19 Plaintiff's AEIC at para 36.

20 See Plaintiff's email to Ambu at 1AB85; Plaintiff's AEIC at para 37.

21 See Plaintiff's WhatsApp to Boyd at 1AB73; Plaintiff's AEIC at para 39.

21 On 15 November 2017, in a telephone conversation, Ambu briefed the Plaintiff on the progress of the Defendant's employment offer.[22] She also explained to the Plaintiff how the Defendant's WorkDay online system operated. She told the Plaintiff he needed to create an account on WorkDay through which the Defendant would provide him with a soft copy of his letter of offer.

22 The Plaintiff received as part of his annual bonus from Cisco, further RSUs on or about 17 Nov 2017 which he estimated to be worth US$28,800.[23] He informed both Boyd and Ambu of that fact.[24] Boyd and Ambu apparently discussed the issue on 21 November 2017.[25] On 27 November 2017, Ambu telephoned the Plaintiff to inform him that she was working on his employment offer. She also informed him that she was waiting for word from the Defendant's US team on the amount of compensation for his loss of RSUs. Pending that, she told him she would upload onto the WorkDay system a letter of offer from the Defendant containing the previous offer of US$60,000 as compensation for the loss in value of his RSUs. She added that once the approved amount of compensation was made known to her, she would update the Defendant's letter of offer.[26]

---

22 Plaintiff's AEIC at para 41.

23 Plaintiff's AEIC at para 42.

24 Plaintiff's AEIC at paras 43 and 44.

25 Plaintiff's AEIC at para 45.

26 Plaintiff's AEIC at para 46.

23 On 28 November 2017, Boyd informed the Plaintiff that the Defendant had agreed to offer him USD82,300 for the LTI.[27] On or around 4 December 2017, the Plaintiff received from the Defendant the employment contract. He resigned from Cisco on the following day. The Plaintiff noted from the employment contract that the Defendant offered him US$82,300 as compensation for loss in value of RSUs at Cisco but termed it as a LTCA. He further noted there was a reference to a "Long Term Cash Incentive and Retention Award Agreement"[28] ("LTCA Agreement") on which he sought clarification from Ambu, both by WhatsApp[29] and by email[30].

24 Ambu responded[31] stating that there were no terms and conditions attached to the Defendant's compensation for his loss in value of RSUs at Cisco that was termed a LTCA. She added that the Plaintiff would receive a separate letter once he joined the Defendant.

25 On 7 December 2017, the Plaintiff spoke to Ambu seeking clarification that payment for the US$82,300 compensation to him for the loss in value of his RSUs at Cisco would be staggered over three years. She confirmed his understanding and added that there were no other terms and conditions that the Plaintiff needed to comply with.[32]

---

27 Plaintiff's AEIC at paras 47–49.

28 1AB145–148.

29 1AB138.

30 1AB88.

31 See her WhatsApp message at 1AB138.

32 Plaintiff's AEIC at para 52.

26 On 12 December 2017, the Plaintiff countersigned the Defendant's letter of offer dated 30 November 2017 which became the Employment Contract. It was a replacement for the first contract the Plaintiff signed on or about 4 December 2017 as that contained the incorrect commencement date of 1 January 2018 instead of 15 January 2018[33], and a notice period of one month instead of three months[34].

27 It was the Plaintiff's case that as of 12 December 2017, he had no knowledge of the contents of the LTCA agreement and had neither seen nor received a copy of that document. He deposed[35] that it was only around 26 March 2018 that he was made to log into the Defendant's online system "Fidelity" to review the compensation for his loss in value of RSUs at Cisco. The Plaintiff alleged that it was because of Ambu's representation in [24] that there were no other terms and conditions in his Employment Contract, that he assumed the LTCA was a standard company document that the Defendant requested him to sign.[36]

28 At this juncture, it would be appropriate to set out the relevant clauses in the Employment Contract[37]:

> **[a] Compensation**
>
> As a sales employee, [the Plaintiff's] compensation is on a 50/50 split. **Based on the prevailing Sales Incentive Plan***, your

---

33 Transcript, 12 April 2021, p 123:14–19; 1AB81.

34 Plaintiff's AEIC at para 53.

35 Plaintiff's AEIC at para 55.

36 Plaintiff's AEIC at para 56.

37 1AB126–136

total On-Target Earnings on a per annum basis will be:

Base salary

SGD 260,000

Commission

SGD 260,000

On Target Earnings

SGD 520,000.00

…

The On-Target Commission will be detailed in the Quota Acknowledgment Form upon commencement. The split between base and variable or bonus may be amended from time to time, in accordance with company practice and policy.

The Target Incentive will be detailed in the Sales Compensation Plan and Quota Acknowledgement Form [the Plaintiff] will receive and need to sign after [he] start[s] employment. …

["the Compensation clause"]

…

[b] Car allowance

Work Required Car Allowance is paid to the Company employees in eligible positions who are required to supply and maintain a motor vehicle for business purposes. [The Plaintiff] will only receive Car Allowance when [he is] employed in an eligible role. …

[The Plaintiff] will be entitled to a company car allowance of SGD30,000 per annum, which will be paid monthly through payroll and subject to normal taxes.

["the Car Allowance clause"]

[c] Long Term Cash Allowance

[The Plaintiff] will also be eligible for a Long Term Cash Award (LTCA) with a total value of 82,300.00 USD.

The Award will be subject to the terms and conditions of the Long Term Cash Incentive and Retention Award Agreement which is separately attached and will need to be signed and submitted without modification.

["the LTCA clause"]

…

[d] Termination of Employment

…

Upon satisfactory completion of probation, your employment may be terminated by either party at any time by giving to the other party 3 months written notice prior to the termination date or salary in lieu at the sole discretion of the [Defendant].

["the Employment Termination clause"]

…

[e] Code of Conduct

…

This letter cancels and is in substitution for all previous letters of engagement, agreements and arrangements, whether oral or in writing between [Dell] and yourself. This letter, together with [Dell's] Code of Conduct and all prevailing Dell policies and regulations, is the entire agreement between you and [Dell] upon which you are employed.

["the Entire Agreement clause"]

…

[f] Confirmation of Acceptance

…

The terms and conditions of [the Plaintiff's] employment with [the Defendant] are as specified in this document, contract of employment [with the Defendant]. ...

> ["the Confirmation of Acceptance clause"]
>
> …
>
> [emphasis in original in bold and bold underline]

29 The Plaintiff received from the Defendant around February 2019 the sum of US$27,433 (being one-third of US$82,300) that being the first tranche of payment of the compensation for the loss in value of his RSUs at Cisco. He did not receive the subsequent two payments. He found out much later (after he left the Defendant's employment) that what he understood of the LTCA and what he received was radically different.[38]

30 The Plaintiff commenced his employment with the Defendant on 15 January 2018 but deposed it was not a happy experience. He complained of repeated changes of his reporting lines within short time spans. In his AEIC[39], he set out a chronology (between December 2017 and July 2019) of those reporting line changes due to the Defendant's internal restructuring.

31 Notwithstanding the reporting line problems, the Plaintiff deposed[40] he worked diligently and exceeded the quota targets set by the Defendant. Hence, the Defendant increased his monthly salary from S$21,666.67 to S$22,394.67 in October 2018.[41] If he met his quota targets in full (which he did), the

---

38 Plaintiff's AEIC at paras 59–60.

39 Plaintiff's AEIC at para 61.

40 Plaintiff's AEIC at para 62.

41 Plaintiff's AEIC at para 65.

Defendant paid the Plaintiff commission which was the same amount as his salary.

32 As recognition of the Plaintiff's high performance, the Defendant invited him to join the President's Club ("the Club") around 4 May 2019 and to attend an exclusive company event in Bali. It was apparently a very prestigious event within the Defendant's organisation which was reserved for very few elite performing sales members.[42]

33 On 13 August 2019, without warning and which shock caused him to lose consciousness momentarily, the Plaintiff was told in person and by a letter dated the same day ("the Termination Letter")[43] from the Defendant's Human Resource Manager, that his employment with the Defendant would be terminated on 1 September 2019. The Plaintiff alleged he was coerced into countersigning the Termination Letter after he regained consciousness.

34 Following upon the abrupt termination of his employment, the Plaintiff engaged in extensive/intensive communication with the Defendant's personnel between 22 August and 5 September 2019, regarding his redundancy benefits, outstanding commission. The net outcome was that at the end of the exercise, the Plaintiff took the position that the Defendant had failed to pay him his dues including the outstanding sum of US$54,866 for the loss in compensation of his RSUs.

---

42 Plaintiff's AEIC at para 68.

43 1AB236; Plaintiff's AEIC at para 69–71.

35 In the Termination Letter, the Defendant had given as the reason for his termination that the Plaintiff's "role ha[d] become redundant". The Plaintiff questioned the validity of that reason as the Defendant hired an Australian the week after the Plaintiff was given his notice[44] and part of the Plaintiff's role was filled by the Australian. Subsequently, the Defendant hired other staff who to some extent filled the Plaintiff's role.

36 The Plaintiff received a letter dated 9 September 2019[45] ("the 9 September letter") from the Defendant informing him that his last day of employment would be 30 September 2019. Attached to the 9 September letter was a schedule stating the Plaintiff would be paid S$88,251.42 as of 30 September 2019 based on the following breakdown:

Earnings & Allowances	**SGD**
*Monthly base salary (September 2019)	22,394.67
*Car / Transportation allowance	2,500.00
Severance Pay	38,294.88
Notice Pay	44,789.33
Leave encashment	5,167.21
Total Payout	88,251.42

* Subject to pro-rations wherever applicable

44 Plaintiff's AEIC at paras 74 and 90.

45 2AB59.

37 The Plaintiff did not agree with the Defendant's calculations describing the total payout figure as "hopelessly incorrect"[46]; he refused to countersign the 9 September letter to confirm his agreement. The Plaintiff said he was aware that he was entitled to 21 days annual and had a prorated balance of unutilised leave of 7.5 days as of 30 November 2019 (the expiry of his contractual notice period of three months).[47] Yet, the Defendant only paid him 5 days' unutilised leave of S$5,167.21. The Defendant had also failed to pay him his commission.

38 At his insistence, the plaintiff had a meeting with the Defendant on 17 September 2019 where he rejected the offer of compensation in the 9 September letter.[48]

39 The Plaintiff engaged solicitors who on 19 September 2019 sent a letter of demand ("the letter of demand") to the Defendant[49] setting out at length the terms of his employment and benefits, his grievances *vis-à-vis* his termination and his demands. For the first time, an allegation was raised that the Plaintiff had been wrongfully dismissed. The letter of demand concluded with a claim on the Plaintiff's behalf for: (a) salary in lieu of notice amounting to S$97,078.68; (b) S$230,535.53 as severance pay under his redundancy package and (c) 9.25 days of unconsumed leave equivalent to S$20,829.83.

---

46 Plaintiff's AEIC at para 84.

47 Plaintiff's AEIC at paras 85–86.

48 Plaintiff's AEIC at para 88.

49 3AB12–18.

40 I should add that in his AEIC[50] the Plaintiff seemed to suggest that the letter of demand was privileged and should not have been disclosed by the Defendant in its list of documents. However, after clarification that no waiver of solicitor-and-client privilege was involved, the letter of demand became part of the agreed bundles of documents placed before the court.[51]

41 Notwithstanding the letter of demand in [39], on 30 September 2019, the Defendant's Cecilia Teh ("Cecilia") from its Human Resources department sent an email[52] to the Plaintiff repeating the total payout figure set out in the table at [36] above.

42 The Plaintiff left the Defendant's services on 30 September 2019 without receiving the sums he had claimed in the letter of demand. Instead, he received S$122,623.71 from the Defendant in two tranches: (a) S$31,341.32 on 26 September 2019 and (b) S$91,282.39 on 12 October 2019.[53]

The pleadings

43 On 4 February 2020, the Plaintiff filed this suit. In his Statement of Claim Amendment No. 2 ("the SOC"), the Plaintiff largely narrated the facts set out earlier at [11] to [41] above. The Plaintiff alleged that the Defendant had breached the express terms of employment contract in:

---

50 Plaintiff's AEIC at para 93.

51 Minute sheet dated 12 April 2021 (Chamber hearing).

52 2AB132.

53 Plaintiff's AEIC at para 98.

(a) failing to pay him his monthly salary, car allowance and sales commission as part of his monthly salary[54]; and

(b) failing to pay the Plaintiff his unutilised (prorated) annual leave based on his monthly base salary[55].

44 The Plaintiff further alleged that the Defendant breached the implied term of the employment contract as the Defendant had promised to pay the Plaintiff redundancy benefits in the event he was made redundant but failed to do so.[56]

45 As the Plaintiff was made redundant on 30 November 2019, the Plaintiff averred he was entitled to 4.875 months of redundancy pay based on his monthly salary.[57]

46 The Plaintiff further alleged that the Defendant had orally misrepresented to him on or about 27 November 2017 that he would be entitled to the following redundancy benefits[58]:

(a) he would be paid three months' salary if he was made redundant in his first year of employment; and

---

54 SOC at paras 34–36.

55 SOC at paras 40 and 41.

56 SOC at para 44.

57 SOC at para 45.

58 SOC at para 54.

(b) if he was made redundant after his first year of employment, the Plaintiff would be paid an additional month's salary for every year of employment that he completed with the Defendant.

(which the Plaintiff collectively termed "the Redundancy Agreement")[59]

47 In reliance on the above representation, the Plaintiff averred that he accepted the Employment Contract and the Redundancy Agreement.[60]

48 The Plaintiff alleged that the Defendant also represented to him in or around November and December 2017 that he would receive a sum of US$82,300 as compensation for loss of value of his RSUs and that the sum would be payable to him over three years instead of as a lump sum.[61] In breach of the representation, the Plaintiff alleged that the Defendant failed to compensate him US$82,300 and only paid him US$27,433 for the loss in the value of his RSUs leaving a balance of US$54,866 outstanding.[62]

49 The Plaintiff alleged that the Defendant made the above representation fraudulently, *ie*, knowing that the representations were false or recklessly not caring whether the representations were true or false.[63] In the alternative, if the

---

59 SOC at para 19.

60 SOC at paras 56 and 57.

61 SOC at para 64.

62 SOC at para 67.

63 SOC at para 68.

representations were not made fraudulently, the Plaintiff relied on s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed)[64]. The section states:

> **2.**—(1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

50 In summary, the SOC made the following claims against the Defendant[65]:

(a) Damages for breach of the express and implied terms of the Employment Contract;

(b) Alternatively damages for breach of s 11 of the Employment Act (Cap 91, 2009 Rev Ed) ("the Employment Act");

(c) In the further alternative, damages for breach of the Redundancy Agreement; and

(d) Damages in the sum of US$54,866 for loss of RSUs or in the alternative, damages to be assessed.

51 The Defendant's Defence (Amendment No 2) ("the Defence") admitted that Ambu was involved in negotiations with the Plaintiff but denied Boyd had

---

64 SOC at para 69.

65 SOC at p 19.

authority to make representations and/or enter into agreements on the Defendant's behalf.[66]

52 The Defence disputed a number of the Plaintiff's allegations set out in the SOC. The Defendant[67]:

(a) averred that the Plaintiff's target incentive/commission was governed by Dell's Sales Compensation Policy ("the SCP") and the Quota Acknowledgement Forms ("the Quota Forms") which the Plaintiff accepted during his employment with the Defendant;

(b) averred that the Plaintiff's LTCA was governed by the LCTA Agreement (see [23] above) which the Defendant granted on 15 February 2018 to the Plaintiff and which he accepted on 26 March 2018;

(c) denied that the Plaintiff's rights in redundancy were set out in the Redundancy Agreement (see [46] above) or there was such an agreement. The Defendant contended that the Plaintiff's rights in the event of termination were set out in the Employment Contract.

53 Further, under cl 13 of the LTCA Agreement, the Defendant asserted[68] that the Plaintiff is estopped from asserting he relied on and was induced by any representations or promise when he entered into the agreement. Alternatively,

---

66 Defence (Amendment No 2) ("Defence") at para 9.

67 Defence at para 4.

68 Defence at para 8.

the Plaintiff did not rely on any purported representations when he signed the LTCA agreement. Clause 13 reads[69]:

> **Acceptance of Terms and Conditions** — This Award will not be effective and you may not receive any Award Payments until you have acknowledged and agreed to the terms and conditions set forth herein in the matter prescribed by the Company. You agree that you are not relying on any representations or promises outside of this Agreement, the Plan and the Grant Summary. You must accept your award no later than 4pm Eastern Time, five business days prior to the first vesting date or your entire award will be cancelled. You should print a copy of this Award and your Grant Summary for your records.

54 The Defendant added that for the process of determining the quantum of the Plaintiff's award under the LTCA Agreement, his loss of RSUs with Cisco was taken into consideration. The Defendant added[70] that in signing the LTCA agreement and in accepting the first tranche of US$27,433 of the LTCA in February 2019, the Plaintiff affirmed and agreed to be bound by the LTCA Agreement.

55 The Defendant admitted that the sum of US$82,300 was to be paid to the Plaintiff over three years under the LTCA agreement but denied that the sum was compensation for the Plaintiff's loss of value in RSUs.[71]

56 The Defendant accepted the Plaintiff's figures for his monthly basic salary (S$22,394.67) and car allowance (S$2,500) but disagreed that his sales commission formed part of his monthly salary. The Defendant added that the

---

69 1AB148.

70 Defence at para 12.

71 Defence at para 14.

Plaintiff's commission was a productivity incentive which was governed by the terms of the SCP (see [52] above). The Plaintiff would only be paid commission if he met the criteria for the sales compensation payout before the last day of his employment as set out in the Quota Forms.[72]

57 The Defendant denied the Plaintiff was entitled to notice pay after 13 November 2019[73] (the Defence stated the year as 2017 which is clearly incorrect). The Defendant averred that the sums payable and paid to the Plaintiff were revised in Cecilia's email to him dated 30 September 2019[74] (see [41] above) and totalled SG$122,623 which included two months' salary in lieu of notice (for October and November 2019). He was also paid a gratuitous sum of S$38,294.88 (termed "Severance Pay" at [36] above).[75] As the Plaintiff did not work and make any sales in October and November 2019, he was not entitled to a car allowance and sales commission respectively for those months. Neither was he entitled to commission under the SCP for the months of October and November 2019.[76]

58 The Defendant denied contravening ss 2 and/or 11 of the Employment Act and averred those provisions did not apply to the Plaintiff's claims for sales commission and/or car allowance.[77] The Defendant further denied the Plaintiff

---

72 Defence at para 18.

73 Defence at para 26.

74 2AB132.

75 Defence at paras 29 and 42.

76 Defence at para 35.

77 Defence at para 39.

was entitled to salary for unutilised 7.5 days of leave.[78] His prorated unutilised leave balance was 5 days for which he was paid S$5,167.21. In addition, he received a gratuitous payment of S$38,294.88.

59 In his Reply (Amendment No 3) ("the Reply"), the Plaintiff asserted that the sum of US$82,300 was not a LTCA nor was the sum governed by the LTCA Agreement or Dell's LTI plan.[79]

60 The Plaintiff added that even if he had accepted the LTCA Agreement on 26 March 2018 (which he denied), it was fundamentally different from his belief and understanding of the Defendant's assurance that the sum was an outright quantified compensation for the loss in value of his RSUs in Cisco. The Plaintiff averred he was neither furnished with the LTCA Agreement nor apprised of its terms prior to the execution of the Employment Contract. The terms were only made known to him some two months after the Employment Contract was given to him for his review and acceptance. Consequently, the Plaintiff contended that the terms of the LTCA Agreement were not enforceable against him.[80]

61 The Plaintiff disagreed with the Defendant's interpretation on how the SCP and the Quota Forms applied to him.[81] He pleaded that the sum of S$38,294.88 was severance pay.[82]

---

78 Defence at paras 40–42.

79 Reply (Amendment No 3) ("Reply") at para 4.

80 Reply at para 5.

81 Reply at paras 8 and 10.

82 Reply at para 17.

The evidence

62 Besides himself, the Plaintiff had one other person (Boyd) as his witness. The Defendant had three witnesses in Cecilia, Verena Chua Tong Siew ("Verena") and Ambu.

(i) The Plaintiff's case

63 As the Plaintiff's version of the facts has already been set out earlier, the court turns to his cross-examination for the additional facts that were adduced therein.

64 Notwithstanding that the Plaintiff had accepted (after review) and signed the LTCA Agreement, he maintained he was not bound by its terms as he did not think it applied to him – to him, it was just a "tool"[83], a means whereby he would be paid for his loss in RSUs. Moreover, the terms were not inconsistent with what Ambu had told him at [24].[84]

65 The Plaintiff gave the above evidence after the counsel for the Defendant (and the court) questioned him[85] on his expertise in and familiarity with, commercial contracts as a specialist in commercial contracts. Although the Plaintiff agreed that he was familiar with contracts such as the LTCA Agreement, he explained that his familiarity with such contracts extended to figures and payments – he was not allowed to negotiate legal terms in

---

83 See, *eg*, Transcript, 12 April 2021, pp 25:9–26:6.

84 Transcript, 12 April 2021, pp 26:2–6, 67:12–19.

85 Transcript, 12 April 2021, pp 26:11–27:9.

commercial contracts as this would normally be done by his employer's legal counsel.[86]

66 The Plaintiff's attention was drawn to the terms of the LTCA Agreement[87] and in particular to cl 13 set out earlier at [53] as well as the following cl 1:

> 1. **Payment Schedule** – Your Award will vest and you will receive cash payments in accordance with the schedule in your Grant Summary ('Award Payments'). … Other than termination of Employment due to death or Permanent Disability (as defined in the Plan), your eligibility to receive an Award Payment is conditioned upon your continued Employment. …
>
> [hereinafter referred to as "the Payment Schedule Clause"]

67 The Plaintiff agreed that Ambu did not represent at any time to him that he was entitled to the RSUs payout over three years without conditions[88] or his continued employment by the Defendant, which was in line with the Payment Schedule Clause in [66]. He further agreed that the LTCA was also not inconsistent with a sign-on bonus.[89]

68 However, the Plaintiff disagreed that the Defendant's purpose in granting the LTCA was to incentivise its employees to help the Defendant achieve its long-term goals, even though those words appeared in the document. He claimed that such a purpose did not apply in his case as the LTCA was

---

86 Transcript, 12 April 2021, pp 27:23–28:10.

87 1AB145–148.

88 Transcript, 12 April 2021, p 66:6–22.

89 Transcript, 12 April 2021, p 68:21–24.

merely a payout tool used for his RSUs[90]. In re-examination[91] the Plaintiff explained that by "tool" he meant the Fidelity system whereby the Defendant made its payments. He then referred to a document[92] as an example of what can be seen in the Defendant's Fidelity system.

69 The Plaintiff's attention[93] was also drawn to the following clause that appeared in section 4 of the Defendant's Worldwide Sales Compensation Policy[94]:

> **Termination**: If a sales maker's employment terminates (voluntary or involuntary), the sales compensation payout shall be paid if the criteria for the sales compensation payout calculation are met on or before the employee's last day worked. Attainment and Sales commissions will be calculated based on original quota and Target Incentive (TI) assigned for the period (excl. DFS sales makers). If no quota has been assigned for the quota performance period, the departing sales maker may be paid at 100% of their Target Incentive (TI), pro-rated, through their last day worked as approved by segment Finance.

70 Boyd testified[95] that he was "a bridging individual for Ambu and the Plaintiff and facilitated the transmission of information between them." The terms of employment he conveyed to the Plaintiff were what Ambu on behalf of the Defendant represented to him and *vice versa*. He was aware that sometimes Ambu and the Plaintiff communicated directly with one another. In

---

90 Transcript, 12 April 2021, pp 69:3–70:17.

91 Transcript, 12 April 2021, pp 144:18–145:2.

92 2AB137.

93 Transcript, 12 April 2021, pp 91:25–92:17.

94 2AB21.

95 Boyd's Affidavit of Evidence-in-Chief ("Boyd's AEIC") at para 17.

cross-examination[96], Boyd agreed with the Defence (see [51] above) that he could not make representations nor enter into contracts on the Defendant's behalf.

71 Boyd's AEIC regarding TekSystems' recruitment of the Plaintiff by the Defendant was aligned with the Plaintiff's version. Boyd made copious reference to his WhatsApp exchanges with the Plaintiff in his AEIC. In cross-examination he disagreed that because the Employment Contract did not contain a redundancy clause, it meant the Plaintiff was not entitled to redundancy benefits, pointing out[97] that the Defendant may well have a redundancy policy outside an employee's contract of employment that is applicable to all its employees.

(ii) The Defendant's case

72 Nothing turns on the testimony of the Defendant's other two witnesses Cecilia and Verena as neither were involved in the negotiations between the Plaintiff and the Defendant and both joined the Defendant's services well after the Plaintiff. Verena was in charge of administering and monitoring benefits such as LTCA in her role as the Compensation & Benefits Lead for Dell. She deposed that the Plaintiff had access to and would have seen the LTCA Agreement, the Dell Technologies Inc 2012 Long Term incentive Plan and the

96 Transcript, 13 April 2021, pp 158:10–159:7.

97 Transcript, 13 April 2021, pp 167:18–168:11; see Verena's Affidavit of Evidence-in-Chief ("Verena's AEIC") at para 13.

Grant Summary on the Defendant's Fidelity Portal.[98] In re-examination[99] she explained that the Fidelity portal was not managed/administered by the Defendant but by a third party. Had the Plaintiff not accepted and/or signed the LTCA Agreement, Verena added that the Defendant would not have granted or distributed to him the first tranche of the LTCA.[100]

73 Cecilia in her role as the senior adviser in human resources with the Defendant dealt with the Plaintiff's claims in (a) higher notice pay for September–November 2019; (b) more pay in lieu of leave and (c) redundancy benefits.[101] Cecilia was the writer of the email dated 30 September 2019 at [41] where she set out the Plaintiff's payments and attached his payslip for September 2019; the letter states[102]:

> With reference to the WFR letter and benefits statement, appended below the payout details.
>
> 1. You would have received your monthly base salary, car/transportation allowance and commission (1) in your regular September 2019 salary payout on 27 September 2019.
>
> 2. The commission (2) and WFR payout will be made to you within the next 3 days.

Earnings & Allowances	**SGD**
*Monthly base salary (**September 2019**)	22,394.67

98 Verena's AEIC at para 22.

99 Transcript, 13 April 2021, p 187:3–8.

100 Verena's AEIC at para 27.

101 Cecilia's Affidavit of Evidence-in-Chief ("Cecilia's AEIC") at paras 1, 4 and 5.

102 2AB132.

*Car/Transportation Allowance (**September 2019**)	2,500.00
Commission (1) (**September 2019**)	7,646.65
Commission (2)	6,630.98
WFR payout	
Severance Pay	38,294.88
Notice Pay in lieu	44,789.33
Leave encashment	5,167.21
Total Payout	**88,251.42**

74 By the time of the trial, Ambu was no longer in the employment of the Defendant. In fact, she left the Defendant's services in the same month (January 2018) that the Plaintiff joined the Defendant before joining her current employer on 5 February 2018[103]. She was a crucial witness in the light of the Plaintiff's repeated allegations in the SOC that she had made representation to him which prompted him to join the Defendant but which turned out to be untrue.

75 Although she was a subpoenaed witness, Ambu affirmed an AEIC on behalf of the Defendant. Due to the lapse of time since she left the Defendant's services, Ambu was largely unable to recollect specific events and dates during her cross-examination.

76 In regard to the Plaintiff's allegations that she fraudulently misrepresented to him:

---

103 See her WhatsApp message to Boyd on 22 Jan 2018 at 1AB67.

(a) that he would be entitled to certain redundancy benefits in the event he was made redundant[104]; and

(b) the sum of US$82,300 under the LCTA was compensation for the Plaintiff's loss of the value of his unvested RSUs in Cisco[105]

Ambu deposed in her AEIC[106] that those benefits would be inconsistent with the terms and conditions of the Plaintiff's employment as stated in the Employment Contract. In the light of the provisions in the document, she rejected outright the Plaintiff's allegation that she intended to mislead him.

77 Ambu pointed out[107] that during her period of employment with the Defendant (September 2011–January 2018), she was aware that the Defendant's Human Resources ("HR") department had the discretion to make goodwill payments to departing employees for loss of office. If the HR department was so minded, she stated that the departing employee would be given goodwill payments of an additional month's salary for every year of completed service that he served. Since she was aware of this goodwill practice, she would not have promised the Plaintiff he was entitled to goodwill payments.

78 The Plaintiff had relied on Boyd's WhatsApp message to him dated 27 November 2017[108] which stated:

---

104 SOC at paras 44, 54 and 55.

105 SOC at paras 64–65.

106 Ambu's Affidavit of Evidence-in-Chief ("Ambu's AEIC") at para 3.

107 Ambu's AEIC at para 16.

108 1AB108.

> hi Ted, spoke with Ambu, as around the retrenchment clause, she said if there is a retrenchment in the first year you will be paid 3 months salary and this period increases each year of employment.

Ambu noted that Boyd's message in any event referred to "retrenchment clause" and not "redundancy benefit" or a "redundancy agreement".[109]

79 Ambu then referred to Boyd's earlier WhatsApp message to her on 24 November 2017[110] which said:

> good morning Ambu, Ted said he submitted the application yesterday via the link as requested. He mentioned that he a while ago he asked about verbiage within the contract on retrenchment, have you any visibility on this? He is also waiting on any updates for the LTI.

She opined that it was clear therefrom that parties were negotiating a written term that could *potentially* be part of the Plaintiff's terms of employment. Ambu confirmed during cross-examination[111] that Boyd acted as a bridge between her and the Plaintiff. He was not authorised (as he himself confirmed at [70] above) to make representations or enter into contracts on the Defendant's behalf.

80 Ambu had testified[112] that as the Plaintiff held the position of a director, he was entitled to the Defendant's standard notice period for directors of three months.

---

109 Ambu's AEIC at para 17.

110 1AB65.

111 Transcript, 14 April 2021, p 298:11–14.

112 Transcript, 14 April 2021, p 259:16–24.

81 In the course of cross-examining Ambu[113], counsel for the Plaintiff repeatedly stressed that throughout her WhatsApp exchanges with Boyd, Ambu not once used the words "Subject to Contract" when she talked of the terms of employment offered to the Plaintiff. That is correct. However, that also does not mean that the terms that were discussed orally were binding on the Defendant.

The issues

82 The issues that require the court's determination in this case are:

(a) Is the Plaintiff bound by the terms set out in the LTCA agreement even though the document was made available to him *after* and not when, he signed the Employment Contract on 12 December 2017?

(b) Did Ambu represent to the Plaintiff he would be paid redundancy benefits at one month's salary for every year of service with the Defendant? If so, did Ambu's representation amount to a collateral agreement between the parties?

(c) Did Ambu represent to the Plaintiff that the Defendant would compensate him outright for the loss in value of his Cisco RSUs amounting to US$82,300?

(d) Was the Plaintiff entitled to his sales commission and car allowance for October and November 2019 despite having left the Defendant's services on 30 September 2019?

---

113 See, *eg*, Transcript, 14 April 2021, pp 231:20–235:12.

(e) Was the Plaintiff entitled to 7.5 days of unutilised leave rather than the 5 days the Defendant paid him?

(f) Was the Defendant in breach of any express or implied terms of the Employment Contract?

The submissions

83 Before the court makes its findings, it would be helpful to look briefly at the submissions filed by the parties, starting with the Plaintiff's Closing Submissions ("PCS"). In their respective submissions, the parties gave their own interpretation of the WhatsApp exchanges between the Plaintiff, Boyd and/or Ambu. As the court will address the relevant communication between the parties in the course of its findings, it would not be necessary to review the parties' submissions in this regard.

(i) The Plaintiff's submissions

84 The Plaintiff's submissions were highly critical of the Defendant's choice of witnesses and the evidence they presented. He asserted[114] that Verena and Cecilia were "wholly irrelevant witnesses" as they were never involved in his negotiations with the Defendant and joined the company after him. On the other hand, he criticised[115] the Defendant for not calling Kurt and Peter Hanna to testify even though they were involved in the Plaintiff's pre-contractual negotiations with the Defendant.

---

114 Plaintiff's Closing Submissions ("PCS") at para 23.

115 PCS at para 22.

85 The court notes that Ambu confirmed[116] during cross-examination that Kurt has left the Defendant but she was uncertain about Peter Hanna. Neither Verena nor Cecilia were cross-examined on either gentleman. As they are still the Defendant's employees, it would have been more appropriate for the Plaintiff to inquire of Verena and Cecilia as to the present whereabouts and availability as witnesses of either gentleman than to ask Ambu, an ex-employee of the Defendant. The court does not think it is right therefore for the Plaintiff to make any adverse comment(s) on the absence of Kurt and Peter Hanna as the Defendant's witnesses when no evidence was adduced in that regard.

86 The Plaintiff also criticised the fact that Boyd was called as his witness and not the Defendant's. He added[117] that Boyd delivered a truthful account of events, amplifying his strong sense of justice and at the expense of him being engaged by the Defendant in the future for similar assignments. The court notes that no evidence was adduced at the trial to support the submission that Boyd testified at the expense of future work from the Defendant. Moreover, it is trite law that no litigant has a proprietary right to any witness. The Defendant was not *obliged* to call Boyd to testify. Indeed, the fact that Boyd was the Plaintiff's witness gave the Defendant the advantage of cross-examining him.

87 Ambu was not spared from the Plaintiff's criticisms either. She was said to be an unwilling witness as the Defendant had to subpoena her[118]. Then in the

---

116 Transcript, 14 April 2021, p 213:7–12.

117 PCS at para 14.

118 PCS at para 18.

next breath[119], Ambu was criticised for doing a 180 degrees turn in affirming an AEIC for the Defendant. The Plaintiff's ambivalence brings to mind the idiom "Damned if you do and damned if you don't". The Plaintiff then went on to say that he could only "hazard guesses as to why Ms. Ambu had a change of mind to depose to an AEIC and testify at trial for the Defendant."[120] For added measures, the Plaintiff criticised[121] Ambu for being an unreliable witness with a highly selective and biased memory – she was accused of fitting into the Defendant's strategy to stonewall the Plaintiff.

88 In his submissions[122], the Plaintiff submitted that there are differences between stock options and RSUs. Instead of relying on a textbook authority raised only at the submissions stage by the Plaintiff (Steven M Bragg, *The New CFO Financial Leadership Manual* (Wiley, 3rd Ed, 2011), the court would have found it more helpful if the Plaintiff and/or Ambu had been questioned on the differences the Plaintiff has now raised after trial.

89 The Plaintiff submitted[123] that a collateral contract came into being based on Ambu's promise of redundancy benefits to the Plaintiff which enticed him to join the Defendant and for which he provided separate consideration by entering into the Employment Contract. In support of this submission, the Plaintiff cited *Goldzone (Asia Pacific) Ltd (formerly known as Goldzone*

---

119 PCS at para 19.

120 PCS at para 19.

121 PCS at para 21.

122 PCS at paras 8-9.

123 PCS at paras 143–148.

(Singapore) Ltd) v Creative Technology Centre Pte Ltd [2011] SGHC 103 ("*Goldzone*")[124] and the following criteria set out by Andrew Ang J (as he then was) at [45] for the formation of an oral collateral contract:

> (a) The statement must be promissory in nature or effect rather than representational (*Lemon Grass v Peranakan Place Complex Pte Ltd* [2002] 2 SLR(R) 50 at [116]–[117]);
>
> (b) There must be certainty of terms;
>
> (c) There must be separate consideration; and
>
> (d) Existence of *animus contrahendi*, *ie*, a statement must be intended to be legally binding (*Inntrepreneur Pub Co (GL) v East Crown Ltd* [2000] 2 Lloyd's Rep 611 at [614]).

90 The Plaintiff also submitted[125] that a term of trust and confidence was to be implied into the Employment Contract.

91 However, nothing was said in the Plaintiff's submissions regarding the Entire Agreement clause set out earlier in [28(e)].

(ii) The Defendant's submissions

92 The Defendant's Closing Submissions ("DCS") did not criticise the witnesses in the manner the Plaintiff did. What the Defendant did was to point

---

124 PCS at para 76.

125 PCS at paras 140–142.

out[126] that Boyd may have conflated the notice provision in the Employment Contract with the possibility of goodwill payment, as Ambu pointed out[127]. It should be noted however that during her cross-examination[128], counsel for the Plaintiff put it to Ambu (who disagreed) that as an experienced recruiter, Boyd could not possibly have mistaken the notice provision in the Employment Contract to be the Plaintiff's entitlement for redundancy. To Ambu, redundancy was part of termination[129]. However she did eventually concede that the termination clause in the Employment Contract did not address the Plaintiff's rights in redundancy[130].

93 The Defendant also submitted[131] that even if one accepts the Plaintiff's testimony that the alleged Redundancy Agreement was confirmed in his telephone conversation with Ambu on or about 27 November 2017, such evidence would be inadmissible under s 94(*b*) of the Evidence Act (Cap 97, 1997 Rev Ed) ("the Evidence Act") which states:

> When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions:

---

126 Defendant's Closing Submissions ("DCS") at para 24.

127 Ambu's AEIC at para 18; see Boyd's WhatsApp message to the Plaintiff on 27 November 2017 at 1AB78.

128 Transcript, 14 April 2021, p 277:5–15.

129 Transcript, 14 April 2021, pp 285:11–14, 288:2–17.

130 Transcript, 14 April 2021, p 289:2–3.

131 DCS at para 108.

> …
>
> (*b*) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;
>
> …

It was submitted[132] that s 94(*b*) of the Evidence Act precludes the Plaintiff from asserting any separate oral Redundancy Agreement which terms are inconsistent with the terms of the Employment Contract. Taking the Plaintiff's claim at its highest, the Defendant argued that the alleged Redundancy Agreement would have been cancelled and substituted by the terms of the Employment Contract which the Plaintiff accepted on 12 December 2017.

94 In its closing submissions, the Defendant[133] set out the requirements of the five elements that a plaintiff seeking damages for fraudulent misrepresentation must prove, as laid down by the Court of Appeal in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14], that:

> (a) The defendant made a representation of fact by words or conduct;

---

132 DCS at paras 110–112.

133 DCS at para 118.

(b) The defendant made the representation with the intention that it should be acted upon by the plaintiff or by a class of persons which includes the plaintiff;

(c) The plaintiff acted upon the false representation;

(d) The plaintiff suffered damage by doing so; and

(e) The defendant made the representation with the knowledge that it is false or at least in the absence of any genuine belief that it is true.

95 Citing the Court of Appeal decision in *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308, the Defendant submitted that cogent evidence is required before a court will be satisfied that the allegation of fraud is established. The Defendant argued that the facts in this case do not remotely support the Plaintiff's allegation of fraud[134].

96 The Defendant further submitted[135] that the Plaintiff's claim based on an implied term of trust and confidence is a red herring – if a legally relevant promise of redundancy benefits had made to him, that would be enforceable independent of any implied term of trust and confidence. In any case, a duty to pay redundancy benefits is not an element of the implied duty of trust and confidence because such a duty is concomitant with the continuation of the employment contract and has no relevance when an employment relationship is not to continue. The Defendant added that the implied term is intended to

134 DCS at para 120.

135 DCS at para 101.

address conduct and behaviour *during* the course of employment (citing *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577 ("*Cheah Peng Hock*") at [56]).

The findings

(i) Is the Plaintiff bound by the terms of the LTCA even though he received the agreement after 12 December 2017?

97 It is telling that the Plaintiff had sent to Ambu on 12 July 2017[136] the message below:

> Hi Ambu, assume all is fine now? Do let me know about the LTI docs as well … will that be done after I join ?

The message contradicted the Plaintiff's claim that he was unaware of the existence of the LTCA Agreement *before* he joined the Defendant.

98 The court finds it incredible that the Plaintiff can claim[137], despite signing the Employment Contract which contained the LTCA clause set out earlier at [28(c)], that he was unaware of the need for him to sign another agreement. This is particularly so when in the Plaintiff's own WhatsApp exchanges with Ambu on 17 and 24 November 2017[138], he himself had referred to the LTCA and he had even requested that the Defendant's US team "review and uplift the LTI". Why would the Plaintiff refer to the LTI unless he already knew of its existence and terms?

---

136 2AB175.

137 Transcript, 12 April 2021, p 83:1–22.

138 2AB174–175

99 It bears remembering that the Plaintiff holds a master's degree and commercial contract negotiations is one of his specialties (see [3] above). The Plaintiff's explanation (at [65]) that his familiarity with contracts and negotiations expertise extended to numbers is not an acceptable excuse to overlook his having signed and thereby accepted the terms of, the LTCA Agreement. Given his qualifications and contract expertise, it does not lie in the Plaintiff's mouth to argue[139] that at the time of the signing of the Employment Contract, he was not advised by legal professionals nor was he sophisticated enough to understand legal contractual principles.

100 The Plaintiff's explanation at [64] that he considered the LTCA Agreement as a tool or mechanism to receive payment for his loss in RSUs is equally unconvincing and is similarly rejected by this court.

101 Although he was unable to produce a copy nor did he sign such a document, the Plaintiff insisted[140] that the Defendant had a separate LTI agreement apart from the LTCA agreement. It is the court's finding that there was no LTI agreement other than the LTCA Agreement and the parties used the abbreviations LTCA and LTI interchangeably to refer to the Defendant's long term cash award or incentive.

102 The Plaintiff's case had also relied heavily on Ambu's WhatsApp messages of 4 December 2017 for his contention that she had assured him there

---

139 PCS at para 192.

140 Transcript, 12 April 2021, pp 113:14–114:14.

were no other terms and conditions attached to the payment of LTCA to him. The full text[141] of that message is set out below:

> [12/4/17, 3:00:23 PM] [Plaintiff]: Is there a document for the Ltca conditions ?
>
> …
>
> [12/4/17, 3:00:34 PM] Ambu Arun: Ltca?
>
> [12/4/17, 3:00:45 PM] [Plaintiff]: Long term cash award
>
> [12/4/17, 3:01:05 PM] Ambu Arun: No this is it
>
> [12/4/17, 3:01:19 PM] Ambu Arun: U might get a separate letter maybe later on once ur on board
>
> [12/4/17, 3:01:20 PM] [Plaintiff]: On the contract doc it says there's a separate document
>
> [12/4/17, 3:01:24 PM] [Plaintiff]: Ah ok

It is clear therefrom that Ambu's message could not have given the Plaintiff the impression there was no document that covered the LTCA. The Plaintiff himself referred to a separate document that was stated in the Employment Contract. That was also clear from the two clauses of the LTCA Agreement set out earlier at [53] and [66]. Unless the Plaintiff signed the LTCA agreement which he did, the Plaintiff would not have received any LTCA payment from the Defendant.

(ii) Did Ambu represent to the Plaintiff that he would receive redundancy benefits? If so, did the representation amount to a collateral contract?

103 The Defendant had cited[142] the case of *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("*Broadley*") to support his case of representations that were made by Ambu. In *Broadley*, the Court of Appeal

---

141 2AB175.

142 DCS at para 124.

agreed with the trial judge that in certain situations, *silence* on the part of the representor can amount to fraudulent misrepresentation if the representee was thereby induced to take a certain course of action or inaction (at [28]). However, the appellate court disagreed with and reversed the trial judge's decision (see *Alacran Design Pte Ltd v Broadley Construction Pte Ltd* [2018] 4 SLR 224) and held that fraudulent misrepresentation was not established there (at [29]).

104 The Court of Appeal there had referred to the English case of *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] 2 Lloyd's Rep 511 ("*Peekay*") and stated at [36]:

> *Peekay* stands for the proposition that a plaintiff would not ordinarily be held to be induced by a misrepresentation if the express contractual terms which the plaintiff placed importance on, read and signed, and which the defendant expected that the plaintiff would read and understand, contradict or correct the defendant's misrepresentation. … It is still the law that representees are not obliged to test the accuracy of the representations made to them and it does not matter if they had the opportunity to discover the truth as long as they did not actually discover it (*Peekay* at [40]). But where the true position appears clearly from the terms of the very contract which the plaintiff says it was induced to enter into by the misrepresentation (*Peekay* at [43]), the position is quite different. After all, it is a corollary of the basic principle of contract law that a person is bound by the terms of the contract he signs, notwithstanding that he may be unaware of its precise legal effect. Such a claimant should be taken to have actually read the contract and known the falsity of the earlier representation. To hold otherwise would undercut the basis of the conduct of commercial life – that businessmen with equal bargaining power would read their contracts and defend their own interests before entering into contractual obligations, and that they would rely on their counterparties to do the same.

105 Applying the Court of Appeal's *dicta* to this case, it is noteworthy that (a) there is no evidence of the alleged representation set out in [46] above; (b)

it was Boyd's not Ambu's WhatsApp message dated 27 November 2017 at [78] to the Plaintiff[143] which he alleged were the misrepresentations made to him. Boyd did not have a WhatsApp chatgroup with the Plaintiff which included Ambu. Hence, Ambu did not know what message Boyd conveyed to the Plaintiff on 27 November 2017. In any case, it was clear from Boyd's and Ambu's evidence at [70] and [79] that the former had no authority to propose terms on the Defendant's behalf to the Plaintiff.

106 It is the court's finding that Ambu would not have made the representations the Plaintiff alleged at [46]. The five elements to found fraudulent misrepresentation as set out in [94] are absent in this case. The court has already noted above that there were no WhatsApp messages from Ambu to the Plaintiff that evidenced such representations. For the Plaintiff to submit that Ambu/the Defendant would be bound by whatever representations Boyd made to the Plaintiff is to ignore the evidence of his own witness that Boyd had no authority to make representations on the Defendant's behalf and to ignore the Entire Agreement clause set out earlier at [28(e)]. *Broadley* does not assist the Plaintiff's case.

107 As for the Plaintiff's claim based on a collateral contract (see [89] above), it is the court's view that the claim fails *in limine*. One of the requirements of a collateral contract as with any contract is consideration. The Plaintiff's submission that the Plaintiff provided consideration by entering into the Employment Contract is flawed. The consideration for the Employment Contract was the Plaintiff's services in exchange for salary and other benefits

143 1AB108.

from the Defendant. For a collateral contract to come into existence, the Plaintiff had to provide *fresh* consideration (see [89] above); he did not.

108 Earlier at [90], the court had alluded to the Plaintiff's submission that[144] an implied term of mutual trust and confidence in law applied to his claim for redundancy benefits, citing *Malik v Bank of Credit and Commerce International SA* (*in compulsory liquidation)* [1998] AC 20 ("*Malik's case*"). The Defendant also referred to *Malik's case* albeit indirectly. The Defendant had referred to *Cheah Peng Hock* where Quentin Loh J (as he then was), at [56]–[59], cited *Malik's case* and in particular the following extract from Lord Nicholls' judgment where he said (at 34–35):

> ... the bank was under an implied obligation to its employees not to conduct a dishonest or corrupt business. This implied obligation is no more than one particular aspect of the portmanteau, general obligation not to engage in conduct likely to undermine the trust and confidence required if the employment relationship is to continue in the manner the employment contract implicitly envisages.

109 The Plaintiff's claim is misconceived as it related to a *post-termination* benefit by which time the implied term of mutual trust and confidence no longer existed. *Malik's case* makes it clear that such a duty is part and parcel of an existing contract of employment. The court accepts the Defendant's submission[145] that a duty to pay redundancy benefits (if it existed) is in any case not an element of the implied duty of trust and confidence – the Plaintiff quite rightly did not make such an assertion. Such a claim would also be inconsistent with the Entire Agreement clause spelt out earlier at [28(e)] above.

---

144 PCS at para 72.

145 DCS at para 104.

110 The Defendant's submission[146] had referred to the following extract from Boyd's cross-examination[147]:

> Q. And so if there was no retrenchment clause in the employment agreement, that means that there was no entitlement to redundancy, correct?
>
> A. Not necessarily, counsel, no.
>
> [Ct]. Can you explain your answer, Mr Boyd?
>
> A. Your Honour, just because there is no redundancy clause in an employment contract does not mean that there is no redundancy clause for the organisation. The employment agreement typically would talk about the person's employment, not the person's exit from the organisation bar, maybe, termination and that would be an agreement between the defendant and Mr Aravinthan. So retrenchment typically isn't listed within employment agreements and therefore we were asking for an exception to see if it was possible for that to be included.

to submit that since ultimately no redundancy clause was included in the Employment Contract in any event, the Plaintiff's claim must fail. The court agrees.

111 Ambu's view on the other hand[148] was that Boyd could have mistaken the possibility of goodwill payment of one month's salary for every year of service (which it was the Defendant's practice to pay and which she did disclose to him) with the three months' notice provision in the Employment Contract.

---

146 DCS at paras 106–107.

147 Transcript, 13 April 2021, pp 167:13–168:4.

148 Ambu's AEIC at para 18; see also Ambu's cross-examination in Transcript, 14 April 2021, p 285.

112 Even if Boyd was not confused as he and the Plaintiff both asserted, the court accepts the Defendant's submission[149] that the Entire Agreement clause (read with the Confirmation of Acceptance clause: see [28(f)] above) and s 94 of the Evidence Act (see [93] above) precludes the court's recognition of the Redundancy Agreement. Apart from his bald assertion, the Plaintiff did not produce an iota of evidence to support the alleged oral agreement. He had alleged that Ambu represented to him that he would receive redundancy benefits (see [46] above) but this was denied by Ambu who said during cross-examination[150] that it was outside her jurisdiction/authority to make such an offer. Consequently, the court finds that the Redundancy Agreement did not exist.

113 Assuming *arguendo* that there was indeed a Redundancy Agreement, the court turns to the sums the Plaintiff was paid as at 30 September 2019 (see [36] above). For the early termination of the Employment Contract, the Plaintiff received severance pay amounting to S$38,294.88 (see [36] above). Based on his monthly salary of S$22,394.67 (as at September 2019), his severance pay equated to 1.71 times his last drawn monthly salary (S$38,294.88 ÷ S$22,394.67). The *Oxford English Dictionary Online* (Oxford University Press, 2021) ("*OED Online*") defines "severance pay" as "money paid in compensation to one whose contractual employment is terminated".

114 In the court's view, there is very little difference between redundancy and severance payment. The *OED Online* defines "redundant" (of an employee)

---

149 DCS at paras 111–112.

150 Transcript, 14 April 2021, p 228:14–25.

as "[a] person who is no longer needed in a particular job or place of employment … [and] who leaves or loses his or her job for this reason". "Redundancy" is "[t]he condition of being surplus to an organization's staffing requirements; (hence) the state or fact of losing a job for this reason". The Defendant had referred to the severance payment as a "gratuitous" sum (see [57] and [58] above). The court disagrees. The amount of S$38,294.88 was stated to be severance pay both in the 9 September letter (see [36] above) and in the Defendant's email dated 30 September 2019 at [41] to the Plaintiff and that was exactly what it was.

115 The Plaintiff worked for 20.5 months for the Defendant and received severance pay of S$38,294.88 equivalent to 1.71 times his last drawn salary. He should have received only 1.71 times his salary (20.5 ÷ 12 months = 1.71). He had therefore received precisely the amount of redundancy benefits that he was entitled to if indeed there was a Redundancy Agreement. He cannot therefore complain.

(iii) Did Ambu represent to the Plaintiff he would be compensated US$82,300 for the loss in value of his Cisco RSUs?

116 The Plaintiff's claim in his SOC (see [50(d)] above) was for US$54,866 being the balance of his unvested LTCA on the basis that Ambu had falsely represented to him that the agreed LTCA of US$82,300 was an outright entitlement to compensate him for the loss in value of his unvested Cisco RSUs. He claimed[151] this was to be inferred from:

---

151 SOC at para 65.

(a) An email chain of 10 November 2017 between himself and Ambu[152];

(b) A series of text and telephone exchanges between himself and Ambu on or about 17 November 2017; and

(c) A series of text, telephone and email exchanges between himself, Ambu and Boyd from around 7 November to 4 December 2017[153].

117 If the Plaintiff (as he asserted) understood from Ambu he was entitled to the RSUs by way of the LTCA without conditions, he would *not* have requested the Defendant to make an exception in his case, as seen in the email from Nikhil Dhawan ("Nikhil") to Verena[154] dated 29 August 2019 which was also addressed to him. The relevant extract reads:

> **Query**: Should he need to exit Dell on 30-Sep-2019, how would his unvested LTI grant be treated? Will the complete grant be paid out or only the vested LTI's? Are there any exception process/approvals to ensure a complete grant payout?

Cross-examined on a later email dated 5 September 2019 in which the Plaintiff repeated his request for an "exception approval request to pay out the outstanding LTI"[155], the Plaintiff claimed he used the word "exception" because Nikhil[156] told him that was what it was – Nikhil needed to get an exception

---

152 1AB85–86.

153 See 1AB

154 2AB54.

155 2AB53; Transcript, 12 April 2021, pp 62:14–65:23.

156 Transcript, 12 April 2021, p 63:8–16.

approval. I should point out that the Plaintiff went to the extent of saying[157] that even if he resigned one week after signing the Employment Contract let alone during the three years thereafter, he was still entitled to his RSUs payout. That is an absurd contention which the court dismisses outright.

118 In her re-examination, Ambu's attention was drawn[158] to the WhatsApp messages on 7 November 2017[159] between the Plaintiff and Boyd where there was reference to her having to seek "approvals" on the issue of the Plaintiff being compensated for his Cisco RSUs. Surely that should/would have been a clear indication to the Plaintiff that Ambu did not have the final say and she could not bind the Defendant to whatever terms she offered to him without clearance from her superiors.

119 Ambu had informed Boyd on 28 November 2017 via WhatsApp[160] that the Plaintiff's LTCA would be increased to US$82,300 but that it needed to be approved by the Defendant's US team. The need for such approval was reinforced by the following WhatsApp exchange between Ambu (A) and Boyd (B) on 28 and 29 November 2017[161]:

> 28/11/2017, 15:05 - [B]: … are we on track to get him his offer today?
>
> 28/11/2017, 15:13 - [A]: No it might be difficult the stock needs to be approved again.

---

157 Transcript, 12 April 2021, p 65:6–12.

158 Transcript, 14 April 2021, pp335:7–337:2.

159 1AB69–70.

160 1AB65, at 1453 hours.

161 1AB66.

> 28/11/2017, 15:13 - [A]: Most likely he will get the offer tomorrow.
>
> …
>
> 29/11/17, 15:17 - [B]: Hi Ambu, can I understand what the hold up is so I can let Ted know? …
>
> 29/11/17, 15:38 - [A]: The offer has been routed.
>
> 29/11/17, 15:38 - [A]: It goes for approval to US.

120 The Plaintiff knew by his inquiry of Ambu via email on 5 December 2017[162] that the LTCA was a separate document. As the Defendant submitted[163], there was no evidence that the alleged representations regarding the LTCA were made to the Plaintiff. In fact, during cross-examination[164], the Plaintiff himself agreed Ambu never told him he was entitled to payment of the US$82,300 over three years unconditionally. The relevant extracts of that evidence that the Defendant relied on are set out below:

> Q. Okay. I will also suggest to you that Ms Ambu Arun did not at any time say to you that you would be unconditionally entitled to any RSU payouts. Do you agree or disagree?
>
> A. The condition was it will be paid out in three tranches, in a payment scheme.
>
> Q. Aside from that condition. Ms Ambu Arun did not say to you, did not represent to you at any time, that you would be entitled to these payments over three years, unconditionally?
>
> A. Not in so -- in those words, no, correct. You're correct.
>
> Q. She did not -- in particular, she never told you that you would be entitled to these payments over three

---

162 1AB88–89.

163 DCS at para 144.

164 Transcript, 12 April 2021, pp 66:6–67:19.

> years even if your employment was terminated before the third year was up?
>
> A. No, I don't think we had that conversation.
>
> Q. Of course you didn't, and that is why the LTCA award agreement is not inconsistent with anything that Ms Ambu Arun said to you, correct? Do you want to go back to the LTCA award agreement? ... Again, I am referring to clause 1, the words ... :
>
> > 'Other than termination of Employment due to death or Permanent Disability…'
> >
> > It says:
> >
> > '… your eligibility to receive an Award … is conditioned upon your continued Employment.'
> >
> > And that is not inconsistent with anything that Ms Ambu Arun told you, correct?
>
> A. Correct.
>
> Q. Because Ms Ambu Arun never told you that you would be paid over three years even if your employment terminated prior to the expiration of the three-year period?
>
> A. Correct.

121 Nothing could be clearer than the Plaintiff's above answers – he understood that the payouts under the LTCA over three years were not unconditional but were dependant on his continued employment by the Defendant for three years. This is reinforced by the Payment Schedule Clause in the LTCA set out earlier at [66].

122 If there were still doubts on this issue, they were resolved by Boyd's evidence in cross-examination[165] when he was questioned on the following

---

165 Transcript, 13 April 2021, pp 172–173.

WhatsApp messages[166] he sent to the Plaintiff on 9 November 2017 after he had met Kurt:

> [11/9/17, 14:51:53] Boyd Wentworth Shields: met with Kurt, he has said they are addressing the shares and the long term incentive seperatly [*sic*] from what he said
>
> [11/9/17, 14:53:48] Boyd Wentworth Shields: shares will be recorded by averaging what you have received over the past 2 years from CISCO. this will continue for 3 years and be paid over 3 years. also the long term incentive will be paid yearly based on performance against goals.

The portion of Boyd's cross-examination[167] on the above WhatsApp messages reads as follows:

> Q. Okay. I am just talking about this text message now, okay? You are informing the plaintiff here that long term incentive will be paid yearly based on performance against goals, correct?
>
> A. That was what it was usually used for, correct, yes.
>
> Q. And there can be no performance if someone is not working, correct?
>
> A. That's correct.
>
> Q. So that means that there was no promise or, rather, the plaintiff would have known that he would not be paid out over three years in terms of his LTIs if he was not working for that period?
>
> A. If he was not working for the sum total of three years?
>
> Q. Yes.
>
> A. That's correct.

166 1AB72.

167 Transcript, 13 April 2021, p 173:3–20.

123 In regard to the issue of the Cisco RSUs that had not vested in the Plaintiff after he left the company, the court accepts the Defendant's submission[168] that there can be no "loss" to the Plaintiff as those RSUs were not earned by/vested in him when he left Cisco's services. The Plaintiff unreasonably claimed his RSUs in full (including those that had yet to accrue) and at the same time disavowed the terms and conditions in the LTCA attendant to the payouts. The law does not allow the Plaintiff to approbate and reprobate at his own convenience as he tried to do.

124 Ambu's evidence and her WhatsApp exchanges which were reinforced by Boyd's testimony, showed that no representations on the LTCA were made to the Plaintiff as he alleged in the SOC. Consequently, the Plaintiff's claim for the balance LTCA amounting to US$54,866 fails.

(iv) Was the Plaintiff entitled to his sales commission and car allowance for October and November 2019?

125 In regard to the car allowance, the Plaintiff had accepted[169] in cross-examination that he was not entitled to the car allowance he had claimed. In this regard, the Defendant's car allowance policy[170] states the following definition in item 3:

> For purposes of this policy, unless otherwise stated, the following definitions shall apply:

---

168 DCS at para 150.

169 Transcript, 12 April 2021, p 142:18–24.

170 3AB5.

Term	Definition
Client Facing	Required to travel to and between customer sites as an inherent part of the role, >50% of time spent, visiting multiple customer sites, field based and not a single customer site based role.

As the Plaintiff did not travel to *visit any customers after 30 September 2019*, he was not entitled to any car allowance after that date. As the Defendant submitted[171], the car allowance (as well as sales commission) and the salary are separate/different components in the Plaintiff's remuneration and it was so reflected in his payslips[172].

126 Additionally, the definition of "gross salary" (*ie*, "gross rate of pay") under s 2(*e*) of the Employment Act excludes "travelling, food or housing allowances".

127 Similarly, the Plaintiff was not entitled to any sales commission after 30 September 2019. The court is puzzled by the Plaintiff's explanation – he claimed his employment was forcibly terminated on 30 September 2019 even though he wanted to continue working throughout his notice period. Therefore he insisted, he was entitled to claim for sales commission and pro-rated leave until 30 November 2019 even though he was paid his salary for doing no work for two months (October–November 2019). It should be noted that under the Employment Termination clause set out earlier at [28(d)], it is the Defendant

171 DCS at paras 72–73.

172 1AB150–170.

that has the sole discretion to decide whether the Plaintiff can serve out his notice period of three months or be paid his salary in lieu thereof.

128 Indeed, as the Defendant pointed out[173], the Defendant's contractual right of termination is also to be found in s 11 of the Employment Act which states:

> **Termination of contract without notice**
>
> **11.**—(1) Either party to a contract of service may terminate the contract of service without notice or, if notice has already been given in accordance with section 10, without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of salary at the gross rate of pay which would have accrued to the employee during the period of the notice and in the case of a monthly-rated employee where the period of the notice is less than a month, the amount payable for any one day shall be the gross rate of pay for one day's work.

129 In paying the Plaintiff three months' salary in lieu of notice, the Defendant fully complied with the Employment Termination clause as well as s 11 of the Employment Act. Consequently, the Plaintiff's SOC (see [50(b)] above) alleging he was entitled to damages for breach of s 11 of the Employment Act is without merit.

130 The court therefore rejects as illogical the basis for the Plaintiff's claim set out at [127]. Common sense dictates that if the Plaintiff did not work and did not make sales, he is not entitled to any sales commission.

---

173 DCS at para 66.

(v) Was the Plaintiff entitled to 7.5 days of unutilised leave?

131 In the light of the court's findings on his car allowance claim at [125] and his sales commission claim at [130], it follows that the Plaintiff's claim for 7.5 days for unutilised leave is also unmeritorious and is also dismissed.

132 Unlike Boyd, the court did not find the Plaintiff to be a convincing witness. Notwithstanding the Plaintiff's criticisms, the court found Ambu to be truthful. Granted she could not recall many events in detail but her failing in that regard, due to having left the Defendant's services more than three years did not make her any less a credible witness.

Conclusion

133 As the Plaintiff failed to discharge the burden of proof for all the reliefs set out in the SOC, his claim is dismissed with costs to the Defendant to be taxed on a standard basis unless otherwise agreed.

Lai Siu Chiu
Senior Judge

Ramesh Bharani s/o K Nagaratnam, Wong Teck Ming and Ong Ying Ting Eunice (RBN Chambers LLC) for the Plaintiff;
Nair Suresh Sukumaran, Tan Tse Hsien Bryan and Sylvia Lem Jia Li (PK Wong & Nair LLC) for the Defendant.