Sanae Achar *v* SciGen Ltd
[2011] SGHC 253

Case Number : Suit No 222 of 2010

Decision Date : 28 November 2011

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Jonathan Yuen, Joana Teo and Jasmin Kaur (Harry Elias Partnership LLP) for the plaintiff; William Ong and Sylvia Tee (Allen & Gledhill LLP) the defendant.

Parties : Sanae Achar — SciGen Ltd

Employment Law

28 November 2011 Judgment reserved.

Judith Prakash J:

Introduction

1 The plaintiff is a young woman of Moroccan nationality currently residing in Dubai. In April 2008, the plaintiff was employed by the defendant, a Singapore biotechnology company listed on the Australian Stock Exchange, as a business development consultant for the Middle East in connection with the defendant's sale in the region of its vaccine against hepatitis B. The plaintiff claims that her contract of employment was prematurely terminated and, as a result, the defendant is contractually obliged to pay her various sums of money. The defendant's response is that the plaintiff's employment was not terminated in December 2008 as she claims but rather that the defendant terminated the contract for cause in May 2009 and, accordingly, the plaintiff's claim has no basis.

2 The employment contract dated 14 April 2008 ("the Contract") between the defendant (described therein as the "Employer") and the plaintiff (addressed therein as "You") contained the following material terms:

> **Period of Employment**
>
> 2. Your employment will start on the 14th of April, 2008 and will continue for the remaining period of three (3) years or until it is terminated by either Party in accordance with the provisions of this Agreement.
>
> ...
>
> **Duties**
>
> ...
>
> 5. You will:
>
> 5.1 devote the necessary working time, attention and skill to your employment by the Employer;

5.2 devote such time as is necessary for the proper performance of your duties;

5.3 properly perform your duties and exercise your powers;

...

5.6 obey the directions of the Employer; and

...

7. You will keep the Employer fully informed of your conduct of the business, finances or affairs of the Employer or any of its Related Entity in a prompt and timely manner. You will provide information to the Employer in writing if requested.

...

Reporting Structure

10. You will report to Saul Mashaal, Chairman and Chief Executive Officer and the position is to be located in Dubai.

...

Annual Leave

42. You are entitled to annual leave, as set out in Schedule 1, and on the following conditions:

...

42.2 Annual leave shall be taken at times agreed with the Employer; ...

...

D Termination of Employment

Termination by Either Party on Giving Notice

You or the Employer may terminate your employment as a consultant by giving the other Party one month's written notice. If the notice is given by the Employer prior to the end of the employment period as per the agreement the Employer shall give you the balance due to the end of the employment agreement.

PROVIDED ALWAYS that the Employer may at any time terminate your employment by giving the requisite payment in lieu of notice or part thereof.

Termination by Employer without Notice and Suspension

46. The Employer may terminate your employment without giving notice if you do any of the following:

46.1 Commit a serious or persistent breach of your employment obligations under this Agreement;

46.2 Guilty of serious misconduct or a serious dereliction in the performance of your duties;

46.3 Fail to comply with any lawful and reasonable order or direction given by an authorised officer of the Employer;

...

46.6 Guilty of dishonesty ... whether in connection with your employment or otherwise;

...

46.13 Any other act which at common law would entitle the Employer to end your employment summarily.

You will have no claim for damages or any other remedy against the Employer if your employment is terminated for any of the reasons set out in this Clause.

3 The plaintiff's case is that on 1 December 2008, she was informed by her superior, Mr Saul Mashaal ("Mr Mashaal"), by way of a letter that a pre-existing distribution agreement between the defendant and a Middle-Eastern company named Gulf Pharmaceutical Industries (commonly referred to as "Julphar") had been terminated. As such there was no longer any reason for her job role and hence her employment with the defendant was terminated. The termination letter provided that she would continue to receive her total compensation monthly from the defendant until the Contract terminated on 30 April 2011 except that once she accepted a position elsewhere the Contract would automatically terminate. On 29 May 2009, however, the defendant sent her a letter purporting to terminate her employment without notice. This was a breach of contract and she was thereby wrongfully deprived of the salary and benefits she would otherwise have enjoyed and earned for the duration of the Contract and has therefore suffered loss and damage. In total, the plaintiff claims to be entitled to payment of US$255,428.57.

4 The defendant's case is that no termination letter was issued to the plaintiff on 1 December 2008 and that the document that the plaintiff relies on was not signed contemporaneously but was created in April or May 2009 and backdated. The plaintiff was an employee of the defendant until 29 May 2009 when the defendant terminated her employment for cause because the plaintiff had been guilty of dishonesty by falsely alleging that she had been given notice of termination. Additionally, the defendant alleges that there were other facts that entitled it to terminate the plaintiff's employment for cause.

5 The questions raised by this case are therefore questions of fact and questions of the credibility of the various parties.

The plaintiff's story

6 This account is taken entirely from the plaintiff's affidavit of evidence-in-chief. The plaintiff stated that she was employed by the defendant on 14 April 2008 with a job description that was

"coordination and support function between SciGen [*ie* the defendant], Julphar and its distributors throughout the Middle East and North Africa". The Contract provided that she was to report directly to Mr Mashaal, the then CEO of the defendant.

7 On 1 December 2008, the plaintiff was informed by Mr Mashaal by way of letter ("the Termination Letter") that the distribution agreement between Julphar and the defendant for the hepatitis B vaccine had been terminated with effect from 1 December 2008. As such, there was no longer any reason for her job and hence the plaintiff's employment with the defendant was terminated. The Termination Letter stated:

> (a) You are to stop all promotional activities with the distributors in the Middle East effective immediately;
>
> (b) The employment agreement executed between you and SciGen will be honoured and you shall continue to receive your total compensation monthly until it terminates April 30th, 2011; and
>
> (c) Once you have accepted a position elsewhere, the agreement between you and SciGen will automatically terminate.

8 On the same day, 1 December 2008, the plaintiff received an email from Mr Mashaal on her company account giving her 30 days' notice of termination of employment effective 1 December 2008 ("the Termination Email"). As she already had the Termination Letter printed on the defendant's letterhead, she did not print out a copy of the Termination Email.

9 On 15 December 2008, the plaintiff applied to Mr Mashaal for leave of absence from work for the period from 20 April 2009 to 15 May 2009 as she did not know if she would receive another job opportunity before April 2009 and thought it best to apply for leave formally in that case.

10 Mr Mashaal sent her an email on the same day informing her that her leave had been approved ("the Leave Email"). Immediately after the email, Mr Mashaal also signed a memorandum ("the Leave Memorandum") stating that her leave of absence had been approved and adding that "overseas employees need only request authorization from their immediate supervisor for a leave of absence". Furthermore, Mr Mashaal advised the plaintiff over the telephone that she no longer needed to apply for leave as she had been terminated. As she had received the Leave Memorandum signed by Mr Mashaal in his capacity as chairman and CEO of the defendant and printed on the defendant's letterhead, she did not print out a copy of the Leave Email.

11 After the plaintiff had been given notice of termination, she began looking elsewhere for employment opportunities. She attended interviews in India in January 2009 to secure alternative employment. The plaintiff was supposed to arrive in Singapore on 3 May 2009 for interviews that Mr Mashaal was to arrange for her. He subsequently advised her that it was no longer his responsibility to organise interviews as his own employment had been terminated. The trip was therefore cancelled.

12 On 20 April 2009, the plaintiff went on vacation as scheduled. On 21 April 2009, she received an email from Ms Lena Chng ("Ms Chng"), the personal assistant to Mr Adam Allerhand ("Mr Allerhand"), who had become the CEO and chairman of the defendant on 20 April 2009 upon the termination of Mr Mashaal's employment. Ms Chng asked for the plaintiff's travel approval form for the trip to Singapore. The plaintiff responded the same day that her trip to Singapore had been cancelled and the ticket was to be sent for a refund.

13 On 22 April 2009, Mr Allerhand sent the plaintiff an email enquiring as to the purpose of her visit to Singapore and for a status report on her current projects. The plaintiff did not understand why Mr Allerhand wanted a status report when he knew or ought to have known as CEO of the defendant that the distribution agreement, for which she had been hired, had been terminated and her role had been made redundant.

14 The plaintiff was also offended because she had been fired by Mr Mashaal and Mr Allerhand should already have been aware of that. She knew it was only Mr Allerhand's third day on the job and she assumed he had not been informed of her termination. She was annoyed that she would have to type out a long response explaining her termination while she was on vacation and so she responded with a short email on the same day to say that she was on vacation and would respond on her return. The next day, the plaintiff received emails from both Mr Allerhand and Ms Chng asking for her leave approval form. However, being on vacation, she did not check her email account and did not see these messages.

15 On 4 May 2009, the plaintiff saw the 23 April 2009 emails and a further email dated 4 May itself from Mr Allerhand asking for a response to his previous email. The plaintiff was very annoyed that she was being pushed on an issue of leave that had already been approved in writing by her supervisor. She therefore replied to Mr Allerhand that she was on vacation with limited access to her email account until 15 May 2009 and that in December 2008, Mr Mashaal had already approved her annual leave.

16 On 5 May 2009, the plaintiff received a further message from Mr Allerhand asking to see a copy of the signed leave application. The plaintiff replied by email and reminded him that her annual vacation had been approved by Mr Mashaal. She then informed Mr Mashaal himself about Mr Allerhand's emails and Mr Mashaal helped her draft a letter to Mr Allerhand giving background information on her position with the defendant. Mr Mashaal sent her this draft on 7 May 2009 and at the same time forwarded her a copy of the Termination Letter.

17 On 8 May 2009, Ms Jenny Low ("Ms Low"), who held the positions of senior vice president and corporate secretary of the defendant, sent the plaintiff an email asking whether she was still on vacation or whether she had resigned. The plaintiff thought the query was ridiculous and she was also feeling frustrated at all these different emails from the defendant. She forwarded Ms Low's email to Mr Mashaal for him to respond to it since he was the one who had terminated her employment and he should be explaining things to the defendant not her.

18 On 8, 9 and 10 May 2009, Mr Mashaal drafted three different versions of a response on the plaintiff's behalf to Ms Low's email. On 10 May 2009, the plaintiff used the most recent version of the response that Mr Mashaal had sent her. At that stage, she realised that the defendant and Mr Mashaal were using her "as a pawn to fight their internal rifts".

19 On 11 May 2009, Mr Allerhand wrote to the plaintiff telling her that she had ignored requests to explain herself and to provide copies of her leave application and a report as requested. He accused her of being "evasive". The plaintiff forwarded this email to Mr Mashaal to deal with and he replied that she should not respond to it. The same day, Mr Mashaal sent her three further emails. Two of these were emails that he had sent her earlier.

20 As Mr Mashaal was the person who had terminated the plaintiff's employment, he also helped her to draft a response to Mr Allerhand. This draft was sent to her on 12 May 2009. The next day, the plaintiff sent this response to Mr Allerhand. He replied asking for the written notice of her termination. On 19 May 2009, the plaintiff replied attaching a copy of the Termination Letter. Despite

receiving her explanation of 13 May 2009 and a copy of the Termination Letter, Mr Allerhand then proceeded to terminate the plaintiff without notice on 29 May 2009. The plaintiff was very upset by this letter and responded with a long letter on 4 June 2009. Thereafter, her solicitors took over the matter and began corresponding with the defendant and subsequently with its solicitors.

21 On 9 June 2009, the plaintiff received a final letter from the defendant, signed by Mr Allerhand, stating that:

> We have strong reasons to believe that the letter of termination of your employment dated 1st December 2008 was not signed contemporaneously, but was back-dated. ...

The plaintiff found this shocking and considered the defendant's position to be absurd. She said that it was very clear from her job description that she was to handle all matters relating to the Julphar project. The defendant was fully aware that that project had been terminated on 1 December 2008. On 3 May 2009, the defendant had received an email from Hasan Jibreel, the projects director of Julphar stating that the distribution agreement between Julphar and the defendant had been terminated on 1 December 2008. It was therefore clear that the defendant knew that the plaintiff's role had been deemed redundant and thus fired her on the same day that the distribution agreement was terminated.

22 The plaintiff believed that the terms of the Contract were clear – the defendant had to pay her until 20 April 2011 or, as Mr Mashaal stated in the Termination Email, until she found alternative employment. She believed all of Mr Allerhand's and Ms Low's email attacks against her were simply to deny her what was due to her under the Contract. The plaintiff said she was in the unfortunate position of being caught in the middle of a dispute between Mr Mashaal and the defendant.

The issues

23 In her closing submissions, the plaintiff contended that the main issues before the court were as follows:

(a) Whether the agreement with Julphar had been terminated on 1 December 2008;

(b) If so, then whether the plaintiff's position with the defendant had been made redundant by way of the termination of the agreement with Julphar;

(c) Whether Mr Mashaal as the founder, chairman and CEO of the defendant in his official capacity had the right and/or capacity to act and did terminate the plaintiff's employment with the defendant on 1 December 2008; and

(d) In any event, whether the defendant's purported termination of the plaintiff on 29 May 2009 was wrongful and/or invalid.

24 The defendant formulated the issues somewhat differently. In its closing submission, it stated that the key issues were as follows:

(a) Whether or not the documents relied upon by the plaintiff in support of her claim were back-dated;

(b) In any event, whether or not the documents relied upon by the plaintiff constituted valid notices of termination to the plaintiff; and

(c) Whether or not the defendant was entitled to terminate the plaintiff without notice for:

(i) Falsely alleging that she had been given notice of termination of employment on 1 December 2008; and/or

(ii) Persistently failing and/or neglecting and/or refusing to provide to the defendant a status report on her projects and/ or copies of her approved leave application.

25 It appears to me that the main issues I have to decide are the following:

(a) Whether the plaintiff's employment was terminated on 1 December 2008 due to redundancy;

(b) Whether the plaintiff's employment was terminated with notice on 1 December 2008 and this involves:

(i) Whether the Termination Letter and the Termination Email were indeed sent out on or about 1 December 2008; and

(ii) If so, whether the plaintiff's employment was in fact terminated by the Termination Letter and the Termination Email.

(c) Whether or not the defendant was entitled to terminate the plaintiff's employment on 29 May 2009 without notice.

Was the plaintiff's employment terminated by reason of redundancy?

26 Before I discuss the plaintiff's case and the defendant's response on the issue of redundancy, it is worth setting out the pleaded position on this issue. In her statement of claim (and these paragraphs were not subsequently amended), the plaintiff states:

15. It is the Plaintiff's position therefore that she was validly terminated by the Defendants through Mr. Mashaal on 1 December 2008; that the Termination Documents evince the same and that the purported termination issued by the Defendants on 29 May 2009 is invalid.

16. Further, the Defendants are well aware that the Sci B Vac Project had ceased together with the termination of the Gulf Pharma, the distributor for the Middle East, and the Plaintiff was told to cease promotional activities with distributors in the Middle East with effect from December 2008, hence negating the sole reason for the Plaintiff's employment by the Defendants.

The only other reference made by the plaintiff to redundancy was in her reply where she says:

19. The Plaintiff avers that her employment was terminated with effect from 1 December 2008 and repeats paragraphs 3 to 6 of the Statement of Claim. The Plaintiff further avers that she was terminated because she had become redundant with the discontinuance of the vaccine project and the Defendant knew or ought to have known of the same. ...

27 From these pleadings, it is apparent that the plaintiff's position was that her employment was terminated by the Termination Letter and that the reason for that termination was that her job had become redundant since the defendant had decided not to sell the hepatitis B vaccine in the Middle-East. The plaintiff did not contend in her pleadings that because her job had become redundant there

had been an automatic termination of employment. Rather, the redundancy was an explanation for the action taken by Mr Mashaal. The plaintiff's position in her closing submissions is, however, somewhat different. On the one hand, she uses the evidence which she says supports the contention of her position having been made redundant to show that the alleged termination of her employment by Mr Mashaal was wholly understandable and rational in the circumstances. On the other hand, she argues that the circumstances leading to her redundancy meant that she was constructively dismissed. In this section, I shall deal only with this latter argument.

28 In relation to redundancy, the plaintiff relies on two authorities: *Ang Beng Teik v Pan Global Textile Bhd, Penang* [1996] 3 MLJ 137 ("*Ang Beng Teik*") and *Noor Mohamed bin Mumtaz Shah v Apollo Enterprises Ltd (trading as Apollo Hotel Singapore)* [2000] 1 SLR(R) 670 ("*Apollo Hotel*"). In *Ang Beng Teik*, the Malaysian Court of Appeal held that:

> Where there is no formal order of dismissal, but there is conduct on the part of an employer which makes a workman consider that he has been dismissed without just cause or excuse, lawyers term such conduct as "constructive dismissal". There is no magic in the expression. It is only a convenient label to describe the kind of conduct we have referred to. It could be an order of transfer or of demotion. Or, it could be that the workman has been made redundant by the employer. Or, it may be the case where the workman is asked to retire. The categories are not, we emphasize, closed.

29 The plaintiff submits that while *Ang Beng Teik* dealt with the provisions of Malaysia's Industrial Relations Act, it is the principled reasoning of the court that is noteworthy as the court recognised that the formality of a dismissal may not be necessary to validly effect an employee's dismissal.

30 Using the principle enunciated in *Ang Beng Teik*'s case, the plaintiff submits that even if the Termination Letter did not amount to a valid termination for whatever reason, by virtue of the fact that the defendant's agreement with Julphar had been terminated, the plaintiff would have been "made redundant by the employer" and as such would have been dismissed. Therefore, as she had been dismissed expressly by the Termination Letter or had been constructively dismissed, the plaintiff would be entitled to the remainder of what was due to her under the Contract.

31 The plaintiff also submits that the facts of her case are similar to those of the plaintiff in *Apollo Hotel*. In that case, the employee alleged that his employment had been terminated because of redundancy and he was entitled to retrenchment benefits. The defendant employers disagreed, and alleged misconduct as the basis for his sacking for which no payment to the employee was due. Lee Seiu Kin J observed in the course of his judgment (at [17]):

> The law in England is therefore as follows. If an employee is dismissed in circumstances where a redundancy results and that employee is [*sic*] entitled to redundancy payments were he retrenched on account of redundancy, there is a presumption that the dismissal is on that ground. The onus then shifts to the employer to show that it was not solely or mainly due to redundancy. I see no reason why the same position should not obtain in Singapore.

On the facts of *Apollo Hotel*, the judge found that the employee had been dismissed because his position had been made redundant and not because of misconduct on his part. The defendant there was experiencing severe economic difficulty and engaging in severe cost cutting measures and the fact that the plaintiff's redundancy payment was a substantial sum provided the motive for the defendant to resort to sacking the plaintiff for misconduct.

32 In the present case, the plaintiff submits that the defendant was in poor financial shape and

due to the termination of the agreement with Julphar, her job had become redundant. Yet, terminating the plaintiff's employment with the defendant without cause would result in a substantial payment under the Contract. It was not surprising therefore that Ms Low and Mr Allerhand had resorted to fabricating reasons to dismiss the plaintiff with cause so that the defendant need not pay her the amounts due under the Contract.

33 Whether or not the defendant's reasons for dismissing the plaintiff on 29 May 2009 were fabricated is something that I will examine later. As far as the assertion of unemployment by reason of redundancy is concerned, however, I am not convinced. First, there is no question here of the plaintiff being entitled to rely on constructive dismissal. The plaintiff's statement of claim contains no averment at all that the conduct of the defendant in November/December 2008 amounted to constructively dismissing her. She is therefore not entitled to maintain this contention now.

34 Second, as far as the termination of the plaintiff's employment on 1 December 2008 is concerned, if the Termination Letter was genuine, then the plaintiff's employment would have been properly terminated with notice and such termination would allow her to claim the benefits provided by the Contract in such a situation. The plaintiff might have been so terminated because her job was no longer needed but there would be no necessity to look into the law of redundancy since the Contract already contains provisions protecting the plaintiff in such an event. Generally speaking, issues of redundancy arise when a worker's employment is terminated on a pretext in circumstances where the law would provide for retrenchment benefits had the worker lost his job due to redundancy. This is not the case here since both sides recognise that under the Contract if the plaintiff's employment is prematurely terminated (except for cause) she is entitled to the benefits that it provides. So the issue is not whether the plaintiff was redundant but whether she was terminated with notice on 1 December 2008. If that did happen, then the purported termination on 29 May 2009 would be ineffective and the plaintiff would still be entitled to her contractual benefits. If it did not, then the plaintiff would still have been an employee on 29 May 2009 and the issue of whether she was correctly terminated at that stage would arise. The circumstances here are quite different from those in *Apollo Hotel* notwithstanding that the defendant here also had financial problems.

Was the plaintiff's employment terminated on 1 December 2008?

35 In her closing submissions, the plaintiff says that her case is that she did receive the Termination Letter by courier on 1 December 2008 and that it was clear from this letter that the defendant had terminated the only project that she was working on and therefore she had no further role to play in the defendant. The plaintiff understood from the Termination Letter that she did not have to perform any more duties as an employee but the defendant would pay her monthly in accordance with the Contract until 30 April 2011 or until she found a new job. She explained that she continued to receive these monthly payments because the defendant was going through a financial crisis and could not pay her a lump sum as it was obliged to under the Contract. Mr Mashaal explained that to her and told her that she would have to accept the monthly payments instead of the lump sum. It can be seen that the plaintiff's case is based squarely on the authenticity of the Termination Letter.

36 Although the plaintiff formulated an issue as to whether Mr Mashaal had the capacity to terminate her employment on 1 December 2008, this is not a significant point in the case. The defendant impliedly accepts that prior to 18 December 2008, Mr Mashaal would have had the capacity in his position as CEO of the defendant to terminate the plaintiff's employment. The defendant says in its closing submissions that the date in which the notice of termination was given was significant for two reasons, the first being that at the directors' meeting on 18 December 2008, a resolution was passed stating that the execution of any contract or document on behalf of the defendant which

resulted in the defendant undertaking an obligation exceeding US$50,000 would require the prior written consent of the board of directors. Since terminating the plaintiff's employment with notice would result in the defendant being liable to pay her more than that sum, after 18 December 2008, Mr Mashaal could not have done so without the written consent of the board. This argument accepts that before that date Mr Mashaal could have taken such action and bound the defendant thereby. The second reason for the date 1 December 2008 being significant, in the defendant's view, was that Mr Mashaal's employment was itself terminated on 20 April 2009, after which he would have no authority to issue any notice of termination of the plaintiff's employment on the defendant's behalf.

37 The defendant's case is that the plaintiff's employment was not terminated in December 2008. It says:

(a) There is no contemporaneous documentary evidence of any notice of termination being issued to the plaintiff; and

(b) The plaintiff and Mr Mashaal fabricated evidence to support her claim that she had been given notice of termination on 1 December 2008.

Contemporaneous evidence of termination

38 Regarding the first point, the defendant does not accept the Termination Letter as being contemporaneous evidence of the plaintiff's termination. It relies on the evidence of the defendant's witnesses that the defendant had no record of any termination being issued to the plaintiff. Prior to May 2009, none of the defendant's employees had seen the Termination Letter. Further, Mr Mashaal had not notified the defendant's finance department about the alleged termination or made any provision in the defendant's accounts for the payment of the plaintiff's employment benefits under the Contract.

39 Mr Mashaal testified that contrary to what the defendant said, Ms Low knew as early as the end of November 2008 that he had terminated the plaintiff's employment with notice but simply chose to ignore it. He testified that he had had a directors' meeting in Poland at which it had been decided to terminate the agreement with Julphar and that shortly thereafter, he had mentioned to Ms Low that two things were going to happen: he was going to terminate Julphar and also terminate the plaintiff's employment. He further asserted that on that occasion, Ms Low had reminded him that under the Contract, he had to give the plaintiff 30 days' notice of termination.

40 The evidence that Mr Mashaal gave in court was not wholly consistent with an email which he had sent Ms Low on 25 May 2009. In that email he stated:

> I understand from Sanae Achar that you do not have a record on the termination of her position with SciGen.
>
> I remember having it on my tray in the Singapore office but it may not have been forwarded to you, was misfiled or accidentally discarded. It was together with a copy of Gulf Pharma termination of the same date.
>
> ...

41 The defendant submits that if Mr Mashaal had indeed informed Ms Low of his termination of the plaintiff's employment in November 2008, he would have pointed this out in his email of 25 May 2009. Instead, in that email, he accepted that Ms Low did not know about the termination of the plaintiff's

employment and suggested that the notice of termination may not have been forwarded to her or may have been misfiled or accidentally discarded. In any case, Ms Low testified that she only came to know about the alleged termination on 13 May 2009.

42 Having considered the evidence, I agree that if the Termination Letter and other documents dated December 2008 produced by the plaintiff are disregarded, there would be no contemporaneous evidence of the termination. It is odd that there are no intra-office memoranda indicating the decision taken in relation to the plaintiff and the steps that needed to be followed in order to secure her new employment and thus end the defendant's obligation to pay her as soon as possible. I am sure that if such documents existed, they would have been found during the discovery process. Mr Mashaal testified on the plaintiff's behalf and both his and her evidence made it apparent that he had been helping her in April and May 2009 to deal with the defendant's queries. It was also plain that he supported her case. Thus, if any contemporaneous document had existed within the defendant which would have helped the plaintiff establish her case, I am sure that Mr Mashaal would have pointed it out to her and helped her give instructions to locate such documents on discovery. The fact that nothing was found therefore must mean that nothing exists. I should also add that in this respect, I accept the evidence of the defendant's witnesses on this point as being truthful.

Fabrication of documents

43 There are various documents which the defendant says were fabricated by the plaintiff with the help of Mr Mashaal to support her claim. I will consider these in turn.

44 The first such documents are the Termination Email and the Leave Email. In her original statement of claim, the plaintiff referred to these documents in paras 4 and 5 as follows:

> 4. On behalf of the Defendants, Mr Mashaal further confirmed such notice of the Plaintiff's termination by way of an email dated 1 December 2008 ("the Termination Email") stating *inter alia*:-
>
> > "Further to my communication dated December 1st, 2008 **I hereby give you thirty (30) days notice of termination of employment effective December 1st, 2008**. As per my letter addressed to you of the same date we shall honour the employment agreement."
>
> 5. On or about 11 December 2008, the Plaintiff informed Mr. Mashaal of her intention to utilize her annual leave for the period of 20 April 2009 to 15 May 2009. On 15 December 2008, Mr. Mashaal replied by email ... and informed the Plaintiff that "you need not apply for leave as **you have been terminated from your employment on December 1st, 2008** as per our letter of that date." Be that as it may, Mr. Mashaal approved the Plaintiff's leave: "You (sic) request for a leave of absence starting April 20th thru May 15th, 2009 is hereby approved."
>
> [Emphasis as per original statement of claim]

45 In the course of the proceedings, the defendant sought inspection of these documents and the plaintiff forwarded to it copies of two emails which she claimed were the two in question. Although the text in the bodies of these two emails ("the redacted emails") corresponded to that described in the relevant paragraphs of the statement of claim, the portions of the emails which would usually indicate the date and time when emails were received (the "headers") were redacted and replaced with the dates "01/12/08" and "15/12/08". When pressed to produce un-redacted copies of the emails, the plaintiff amended her statement of claim and deleted all references to the Termination

Email and the Leave Email. Subsequently, the defendant obtained an order for specific discovery of these documents but the plaintiff did not produce them. Instead, she filed an affidavit claiming that she did not have access to the originals of these emails because they were saved on a laptop which she had since returned to the defendant and that printouts of the emails did not exist because she had never printed them out.

46 The defendant does not accept the plaintiff's explanation. It argues that if printouts of the emails do not exist and the electronic copies were no longer in the plaintiff's possession when the defendant asked for the same, it would have been impossible for her to have produced the redacted emails. The defendant suggests that instead the Termination Email and the Leave Email had not been sent to the plaintiff on the alleged dates of 1 December 2008 and 15 December 2008. Instead, Mr Mashaal had sent them to her on 11 May 2009 but she had tampered with them in order to make it look as if they had been sent in December 2008.

47 In support of this contention, the defendant refers to documentary evidence which it had uncovered which showed that:

(a) On 11 May 2009 at 5.30pm, Mr Mashaal sent an email to the plaintiff. The contents of this email were identical to those of the Termination Email which had allegedly been sent five months previously.

(b) A few minutes later on 11 May 2009 at 5.37pm, Mr Mashaal sent another email to the plaintiff. The contents of this email were identical to those of the Leave Email which had also allegedly been sent five months previously.

(c) That same day, on 11 May 2009 at 7.30pm the plaintiff sent an email to Mr Mashaal. The email was blank save for a jpeg file attached to it. The attachment appeared to be a scanned copy of a printout of an email which appeared to be identical to the Leave Email except that the portions which would usually indicate the sender and the recipient of the email and the date and time on which they were sent were missing and replaced by the date "01/12/2008".

(d) On 13 May 2009 at 5.1am, the plaintiff sent two emails from her email account with the defendant to her web-based email account. One of the emails forwarded the earlier email from Mr Mashaal which was identical to the Leave Email. The other email also contained the same text as the Leave Email but had the date "01/12/2008" typed above the text.

The defendant contends that these emails show that the plaintiff had attempted to fabricate documentary evidence to support her claim that she had been given notice of termination by the defendant on 1 December 2008.

48 In court, the defendant cross-examined the plaintiff at length on the emails. As a result, the plaintiff finally admitted that the redacted emails that she had furnished to the defendant were not in fact the same emails which she had received from Mr Mashaal on 1 December 2008 and 15 December 2008 respectively. She was also asked to explain how she had created the redacted emails and, in response, the plaintiff at first maintained that she could not remember how she had done so. However, after she was shown the documentary evidence, she admitted that maybe she had tampered with the emails which she had received on 11 May 2009 in order to create the redacted emails which were passed off as the Termination Email and the Leave Email. After more pressing, she agreed that the truth was that she had covered up the headers of the emails and had typed in the dates and given them to the defendant through her lawyers. Mr Mashaal was also asked about the redacted emails but he maintained that he did not recall anything about them.

49 In the light of their testimony, the defendant submits that the plaintiff fabricated the redacted emails and had even sent her work to Mr Mashaal for his approval. When shown the evidence all that the plaintiff could say was that she could not remember. The defendant suggested that both she and Mr Mashaal had simply feigned amnesia when faced with incriminating evidence.

50 The plaintiff had explained during cross-examination that when Mr Mashaal sent her what she called "a notice for termination", she did not keep it with her. Later, when Mr Allerhand asked her several times for the notice, she had called Mr Mashaal and asked him if he could resend her the notice so that she would have "proof". Then she had put in the new dates in the document in order to remember what happened. In her closing submissions, the plaintiff relies on this testimony and contends that she had openly admitted that she did not have the Termination Email and that the redacted emails were simply a record of the events. On that basis, it was not fair for the defendant to characterise her passing off the redacted emails as the Termination Email and the Leave Email as untrustworthy or dishonest behaviour.

51 I note the plaintiff's point. However, the plaintiff's conduct in regard to the redacted emails does not really stand up to scrutiny. When copies of the redacted emails were furnished to the defendant's solicitors, they were described as being the documents that the defendant had asked for in its notice to produce. There was no explanation that they were merely copies of original documents that had been lost. The plaintiff did not tell the defendant at that stage about the deletions and about having obtained copies in order to keep a record and have "proof" of her position. The testimony of the plaintiff on this issue is one of the areas in which I think she was not completely frank with the court. It is also telling that after the plaintiff amended her statement of claim to delete references to the Termination Email and the Leave Email, her lawyers had then written to the defendant's lawyers to say that the latter were not entitled to inspect the original copy of the Termination Email because it was no longer referred to in the pleadings. When asked about this, the plaintiff claimed that she could not remember giving such instructions to her lawyers. This claim of being unable to remember was one that the plaintiff made quite often during the course of her testimony.

52 Quite apart from the unsatisfactory nature of the plaintiff's evidence in relation to why she was only able to produce the redacted emails and not copies of the original unredacted versions, I agree with the defendant that the plaintiff's and Mr Mashaal's account of how the Termination Email and the Leave Email was sent contained many inconsistencies.

53 In court, Mr Mashaal said that he did not remember sending the Termination Email on 1 December 2008. Instead, he stated that he had issued two letters to the plaintiff each dated 1 December 2008. The first of these was the Termination Letter and other was a letter which expressly gave her 30 days' notice of termination and was delivered to her by courier. Mr Mashaal agreed that the Termination Letter did not give the plaintiff 30 days' notice of termination as required by the Contract. He was asked why not and his responses were interesting:

Q: Why didn't you put the 30 days notice inside this letter on 1 December 2008?

A: Because Jenny Low reminded me that I needed to give 30 days notice.

Court: No, that's not the question. The question is why didn't you mention it in this letter?

A: I didn't because I didn't mention it.

Court: You did not mention it?

A: Why? Because I did not think of it quite frankly.

...

Court: When did you subsequently think of it?

A: About – almost the same day, or the day after that, I realised that, hey, we have to – in Singapore you are obligated to give 30 days notice, so I wrote a 30 days notice letter and I sent it by court to her, amongst other things. There were other things that I needed to send as well.

This extract shows how Mr Mashaal was frequently evasive in his answers in cross-examination and also how he could give insensible answers like "I didn't because I didn't mention it" which seemed to me to be something said simply to buy time while he thought of a better explanation.

54 The extract also shows that in court Mr Mashaal maintained that he had given the plaintiff her 30 days' notice by a letter which he had sent out by courier. In his affidavit of evidence-in-chief, signed less than two months before he testified, he said something different. There he stated (at para 8) that after issuing the Termination Letter, he realised that he had to give one month's written notice and he therefore sent an email to the plaintiff on 1 December 2008 from his office email account giving her 30 days' notice of termination. There was no mention at all in his affidavit of this second letter sent to the plaintiff by courier. There was thus a major inconsistency between his affidavit evidence and his oral evidence.

55 As regards the Leave Email, the plaintiff claimed that she had received this on 15 December 2008. There is considerable doubt about this. On 11 May 2009, the plaintiff sent an email to Mr Mashaal attaching a scanned copy of a printout of another email ("the printout"). The printout is identical to the Leave Email except that the email header is missing and instead the date "01/12/2008" appears on it. Two days later, the plaintiff sent an email from her office email account to her web-based email account. The said email contained the same text as the Leave Email but had the date "01/12/2008" typed out above the text.

56 It is odd that the plaintiff should have chosen to re-date the Leave Email as 1 December 2008 when her story was that she had received it on 15 December 2008. There was no reason for her to do such a re-dating. She was questioned about this and was not able to give an explanation. All she said was "I can't remember". Part of the evidence reads:

Q: Earlier you told this court that you applied for leave on 11 December and Mr Mashaal approved your leave on 15 December. Now, at page 724 –

A: Not all. I told 15. I never told 11.

Q: Let me finish my question. Now, at page 724 is a completely different date – whether it is the 11th or the 15th – it is 1 December 2008.

A: The most important that every event in December, when I received my termination letter.

Q: I beg to disagree. We are not talking about the month, we are talking about the days in the month. You gave evidence just now – and I asked you twice – you gave evidence that you applied for leave on 11 December and Mr Mashaal emailed you back on 15 December. Now, at page 724, you cover up Mr Mashaal's email and you put there 01/12/2008. Even on your own evidence, that is completely false; correct?

A: I can't remember why.

Q: Can I suggest to you that you are unable to give an explanation simply because the 15 December 2008 email does not exist at all?

A: Yes, exist.

57 There are also doubts about the authenticity of the Leave Memorandum. First, the plaintiff claimed that she had received this document by courier but she was not able to produce the original document and only produced a fax copy. Second, between 21 April 2009 and 4 June 2009 when she was corresponding with the defendant on, *inter alia*, her leave, she made no reference to the Leave Memorandum. The first time this document was mentioned was in the statement of claim filed on 31 March 2010.

58 The third matter that gives rise to doubt about the Leave Memorandum having actually been prepared and sent out on 15 December 2008 is that the first two sentences of the Leave Memorandum are identical to an email which Mr Mashaal sent the plaintiff on 11 May 2009, almost five months later. Both the Leave Memorandum and the email of 11 May 2009 begin with the following sentences:

> You [*sic*] request for a leave of absence starting April 20th thru May 15th, 2009 is hereby approved. I wish to remind you that you need not apply for leave as you have been terminated from your employment on December 1st, 2008 as per our letter of that date.

As the defendant points out, the two sentences are identical, right down to the typographical error. Mr Mashaal explained this by saying that the 11 May 2009 email was a reproduction, to the best of his recollection, of the Leave Email he had sent the plaintiff on 15 December 2008. Mr Mashaal is not a person who has difficulty with the English language. His evidence showed that he was aware that the correct form is "Your request" and not "You request". Whilst he could have made a mistake in one document, it is impossible to believe that he would have committed the same typographical error in both the Leave Memorandum and the Leave Email and then again five months later even if he was trying consciously to remember what he had said previously. It appears to me that in trying to remember what he had said before, he would have used the correct form because he would not have remembered making a typographical error. In this connection, it should be pointed out that the wording of the Leave Email, the Leave Memorandum and the email of 11 May 2009 are all identical right down to the typographical error except that in the Leave Memorandum, there is an additional sentence which does not appear in the two emails. The last sentence of the Leave Memorandum reads "Furthermore, employees need only request authorization from their immediate supervisor for a leave of absence".

59 If the plaintiff's case is accepted, it would mean that the sequence of events was as follows:

(a) On 15 December 2008, Mr Mashaal prepared the Leave Memorandum approving the plaintiff's leave application, notwithstanding that he had already terminated her employment.

(b) At the same time, on 15 December 2008, Mr Mashaal sent the Leave Email to the plaintiff in identical terms, except for the reference to authorisation from the immediate supervisor.

(c) Almost five months later, on 11 May 2009, the plaintiff asked Mr Mashaal re-send her the Leave Email and he then does so "to the best of [his] recollection".

(d) While Mr Mashaal denied having a photographic memory, the email of 11 May 2009 has identical wording to that of the Leave Email and of the first two sentences of the Leave Memorandum.

Mr Mashaal's only explanation for this puzzling coincidence of errors was "Because I was essentially, I knew the subject, I knew what it was, I knew what I have written, and what needs to be written, which is quite known to me, in my mind I know exactly what needs to be said". At an earlier stage, he asserted that he kept on making the same typographical errors all the time.

60 There are other documents that Mr Mashaal sent to the plaintiff which indicate that he did not terminate her employment on 1 December 2008. On 7 May 2009, he sent an email to her which contained a draft email for her to send to Mr Allerhand with an attachment explaining her side of the story. A few minutes later, Mr Mashaal sent another email to the plaintiff in which he said:

> I sent you the letter you need to send to Adam Allerhand on May 17th together with a scanned copy of the letter of termination I gave you and dated December 1wst [*sic*] 2008.

The second email appears to show that Mr Mashaal had sent a scanned copy of "letter of termination" to the plaintiff on or about 7 May 2009. If Mr Mashaal had issued the Termination Letter to the plaintiff on 1 December 2008, then there would be no need for her to send a scanned copy of the same on 7 May 2009.

61 Further, it was Mr Mashaal's evidence in his affidavit that he had sent the Termination Letter to the plaintiff on 1 December 2008. Under cross-examination, however, he said that he had sent it to her around 27 November 2008 by courier "because [he] wanted to make sure that [the plaintiff] gets it on 1 December 2008". This was another material change in his evidence.

62 In the course of preparing for the hearing, the defendant discovered numerous emails between the plaintiff and Mr Mashaal from 6 May 2009 onwards. These emails showed that Mr Mashaal had been helping the plaintiff with her responses to the defendant and also, according to her version, been supplying her with copies of the Termination Email and Leave Email which she had deleted so that she could show these to the defendant. The plaintiff did not, however, disclose any of these emails during the discovery process. When she was asked about this omission in court, the plaintiff could not explain why she had not complied with the court order to disclose the emails. When pressed, she said that she did not know what she had been thinking at that time when the order was made.

Other evidence relating to continuation of the plaintiff's employment

63 Quite apart from the doubts that the correspondence between the plaintiff and Mr Mashaal raised as to the authenticity of the Termination Letter, the Termination Email, the Leave Email and the Leave Memorandum, there was other evidence which indicated that these documents were probably not created on 1 December 2008 and 15 December 2008 as asserted by the plaintiff.

64 First, Ms Low testified that on 21 April 2009, the day after Mr Mashaal's employment was

terminated, she had entered his office and seen in his in-tray a letter post-dated to 31 December 2009 which was signed by Mr Mashaal. This letter was printed on his personal letterhead but purported to give notice of termination to the plaintiff on the defendant's behalf. Ms Low did not take any action in respect of the letter as it was post-dated and Mr Mashaal no longer had any authority to act on the defendant's behalf. Sometime later, she handed over the letter to Mr Mashaal's son, David. She did not keep a copy of the letter.

65 If Ms Low's evidence is accepted, it would cast doubt on the assertion that the plaintiff's employment had been terminated on 1 December 2008. There would be no reason for Mr Mashaal to prepare a letter terminating the plaintiff's employment on 31 December 2009 if her job had already ended. The plaintiff tried to downplay the effect of this evidence by asserting that the account in Ms Low's affidavit was inconsistent with her account of the incident under cross-examination. I am, however, satisfied that there were no direct contradictions between the two. In addition, Ms Chng testified that Ms Low had told her that Mr Mashaal had left a letter of termination which was post-dated to December 2009. Further, on 11 June 2009, Ms Low sent an email to Mr Mashaal setting out her account of her discovery of the 31 December 2009 letter and stating that:

> (b) The said letter in your in-tray was dated 31 December 2009, and was printed under your personal letterhead. It purported to terminate the employment of [the plaintiff]. I did not accept the letter for filing in [the plaintiff's] personnel file maintained by me.
>
> (c) About 1 day or two later, you called me various times. During one of our conversations, you mentioned that the said letter in your in-tray was for me. I replied that I would not file or take any action upon the letter as it was post-dated till 31 December 2009. You answered something to the effect that "*whatever its* [*sic*] *up to you*".

Mr Mashaal did not respond to Mr Low's email which was a nearly contemporaneous account of what had occurred. In his affidavit of evidence-in-chief, he did not address this point either. Overall, therefore, I am satisfied as to the truth of Ms Low's evidence on the letter of 31 December 2009.

66 Next, the conduct of the parties after 1 December 2008 was consistent with a belief that the plaintiff was still employed by the defendant. First, the plaintiff has adduced various emails exchanged between the plaintiff and the defendant's officers which show that after 1 December 2008, the plaintiff was still performing tasks for the defendant. The plaintiff sought to play down these activities but I find her explanation is not convincing. She also resorted to the pretext that she could not remember that she had done these tasks after 1 December 2008. The tasks that she was given may have been minor but there was no indication from the plaintiff that she was carrying them out simply because she was doing the defendant a favour. At one stage, the plaintiff stated in relation to this work during cross-examination that since she was working with the defendant, she followed its instructions.

67 In early 2009, the plaintiff applied to renew her Singapore employment pass and she also applied for a Canadian business visa. Additionally, on 6 April 2009, she applied for a personalised employment pass in Singapore. In all the forms signed and submitted by the plaintiff, she declared herself to be an employee of the defendant and described herself as a business development manager. The plaintiff sought to escape from the natural inferences that would be drawn from these documents by arguing that all the forms were prepared by the defendant's employees and she signed them when she was asked to do so without understanding the nature or the purpose of the forms. I do not accept this explanation as being true. Since her employment had, according to her, been terminated on 1 December 2008, she had no obligation to sign any forms at the request of the defendant. Secondly, her command of the English language was more than adequate to enable her to

understand what she signed. She also admitted under cross-examination that she knew the application forms were for the renewal of her employment pass.

68 The defendant contends that the plaintiff's planned business trip to Singapore in May 2009 was evidence that she was still employed by the defendant at that time. The plaintiff disagrees. Her explanation is that this trip had nothing to do with employment because it was for the purpose of her attending interviews to secure alternative employment. This explanation, however, was not found in the contemporaneous emails that the plaintiff sent to the defendant between 21 April 2009 and 13 May 2009. The emails that the defendant sent to the plaintiff clearly demonstrate that Mr Allerhand and Ms Chng thought that she was still an employee of the defendant and that her intended trip was a business trip. Instead of correcting this misperception, the plaintiff repeatedly told these officers that she was on leave. When she was asked in court why she did not inform Mr Allerhand that the trip was for the purpose of attending interviews, she initially claimed that she did not do so because she did not know the purpose of the trip at the material time. When it was pointed out that this explanation was not consistent with her earlier evidence, she claimed that she was just trying to "buy time" so that Mr Mashaal could respond to Mr Allerhand's email on her behalf. This explanation is also inconsistent with the plaintiff's position that the defendant was "responsible" for complying with its obligation undertaken by the Termination Letter to find alternative employment for her. In the witness box, she explained that originally Mr Mashaal had told her that she would be attending some interviews in Singapore but when his employment was terminated, he was no longer responsible for this and instead the defendant had to be responsible to take care of the situation regarding the plaintiff.

69 As the defendant points out, however, if it was true that the plaintiff's employment was terminated on 1 December 2008 and that the defendant was supposed to secure alternative employment for her, she would have had every reason to inform the defendant in May 2009 about her job interviews in Singapore. The plaintiff, however, did not do so at the material time. It was only later that she came up with the explanation that the trip was intended for job interviews so that she would not contradict her case that her employment had been terminated on 1 December 2008.

70 The story about the job interviews was also difficult to believe in that the plaintiff wanted me to accept that originally Mr Mashaal had himself arranged these interviews. None of the other witnesses for the defendant who worked closely with Mr Mashaal before his termination knew anything about any interviews lined up for the plaintiff. I find it hard to believe that in a situation where an alternative job is being sought for a relatively junior employee, the CEO of the company would arrange these interviews himself and would not involve any of his subordinates in the company in making the arrangements. This kind of task is not usually performed by the CEO of a substantial company.

71 Another incongruous fact was that the plaintiff did not inform Mr Allerhand from the outset that her employment had been terminated. She exchanged more than ten emails with the defendant's officers and instead of mentioning this fact kept insisting that she was on vacation. This email correspondence started on 21 April 2009 when Ms Chng wrote to the plaintiff asking for the travel approval form for the proposed trip on 3 May 2009. The plaintiff responded the same day stating that she had cancelled the trip. Mr Allerhand then wrote to her the next day asking for information regarding the purpose of the trip and for a status report on her projects. In her reply the plaintiff stated that she was on vacation. The correspondence continued and at various times the plaintiff repeated that she was on vacation. The last of these occasions was on 10 May 2009 and it was only after Mr Allerhand sent an email on 11 May 2009 demanding that the plaintiff provide a status report on her projects and copies of her approved leave form failing which the defendant would consider that she had resigned, that the plaintiff stated (on 13 May 2009) that her employment had been

terminated on 1 December 2008.

72 The plaintiff's excuse for this delayed disclosure was that the defendant ought to have known about the termination already and also that she was trying to buy time for Mr Mashaal to respond on her behalf. This explanation, however, is inadequate since it was clear from the emails that Mr Allerhand did not know what was going on. It would not have been difficult for the plaintiff to set the record straight from the beginning. She did not do so because she was trying to work out the strategy that would suit her best.

Conclusion

73 On a consideration of all the evidence, I am satisfied that the plaintiff's employment was not terminated on 1 December 2008. Instead, the Termination Letter and Leave Memorandum can only have been created and signed by Mr Mashaal after his own employment was terminated on 20 April 2009. The backdating of the documents took place because Mr Mashaal had no authority to issue them after 20 April 2009 or, for that matter, after 18 December 2008.

74 I should also state that in my judgment, neither the plaintiff nor Mr Mashaal were truthful witnesses. Their evidence was full of inconsistencies. They were frequently forgetful and evasive and Mr Mashaal was argumentative as well.

Was the plaintiff's employment validly terminated on 29 May 2009?

75 I have found that the Termination Letter and the Leave Memorandum were fabricated. This means that the plaintiff was putting forward a false case to the defendant that her employment had been terminated on 1 December 2008 when nothing of that kind had occurred. This was dishonest conduct and therefore the defendant was fully entitled to terminate her employment for cause. The termination notice given on 29 May 2009 was valid and the plaintiff has no cause for complaint in respect thereof.

Conclusion

76 For the reasons given above, the plaintiff's claim fails and must be dismissed. There remains the question of costs. I have found that the plaintiff deliberately put forward a false claim. There may, therefore, be a basis to award costs against her on the indemnity basis. Additionally, it is clear to me that the prime mover of this scheme that the plaintiff perpetuated was Mr Saul Mashaal. He was the one who thought it up and who supported the plaintiff at every turn. Although he is not a party to the claim, I would like to consider whether an order that he should pay the defendant costs (whether on the indemnity or standard basis) should be made. I would therefore like the parties to address me on costs. For this purpose, the plaintiff's solicitors shall inform Mr Mashaal of my decision and shall notify him that he may appoint a lawyer to represent him at the hearing on costs.