IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 216

Suit No 1350 of 2014

Between

Joseph Ramanathan

… *Plaintiff*

And

Stratech Systems Limited

… *Defendant*

(consolidated with Suit No 18 of 2015)

JUDGMENT

[Employment Law] — [Pay] — [Computation]

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Joseph Ramanathan
v
Stratech Systems Ltd

[2016] SGHC 216

High Court —Suit No 1350 of 2014 (consolidated with Suit No 18 of 2015)
Choo Han Teck J
19 – 20 July 2016; 29 August 2016

7 October 2016 Judgment reserved.

Choo Han Teck J

1 The defendant is a public company incorporated in Singapore and listed on the main board of the Singapore Exchange. By an employment agreement dated 5 April 2012 ("the Employment Agreement"), the plaintiff was employed as a regional sales manager of the defendant from 5 April 2012 until 20 October 2014 when he was summarily dismissed by the defendant. The plaintiff was responsible for selling two of the defendant's products, namely, the Intelligent Vehicle Access Control System (iVACS) and the Intelligent Airfield/Runway Surveillance and Foreign Object and Debris Detection System (iFerret). The plaintiff's claim against the defendant in this action is for unpaid commission in the amount of $314,610. The plaintiff's claim for $999,999 against the defendant for unfair termination was withdrawn during the trial.

2 Under cl 2 of the Employment Agreement, the plaintiff was paid a fixed monthly salary of $5,000, which comprised a fixed basic salary of $4,500 and a monthly variable component of $500. The plaintiff was also given a transport allowance of $450 and a mobile phone allowance of $80 per month. Beyond this, the plaintiff was entitled to commission based on the defendant's commission scheme.

3 The plaintiff claims that he was entitled to $314,610 of commission at the time the defendant terminated his employment. The defendant does not dispute that the plaintiff was entitled to commission but contends that the amount is significantly less than the $314,610 he claims. The defendant had paid the plaintiff $27,122 in commission to date; an amount based on what the defendant says is the applicable commission scheme. In its counsel's closing submissions, the defendant revised this figure to $20,532.76 stating that $27,122 was calculated incorrectly. The difference between parties' calculations is attributable to first, the different methods adopted in calculating the plaintiff's commission ("the methodology issue") and, secondly, the figures used to calculate his commission ("the quantum issue"). These two issues form the subject matter of this judgment.

4 Parties accept that during the time that the plaintiff worked for the defendant there was a change in the commission scheme but they disagree as to the effective date of that change and the mechanism of the commission schemes. The document representing the first commission scheme ("the First Commission Scheme") was signed by the plaintiff and defendant on 16 April 2012. The effective date stated on the First Commission Scheme was 1 January 2011. The First Commission Scheme applied to the plaintiff when he joined the defendant on 5 April 2012.

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5 The First Commission Scheme sets out the applicable commission rates and the corresponding sales target that the plaintiff had to achieve in order to be eligible for the payment of commission. The quarterly sales target of the plaintiff was $750,000 and his annual sales target was $3,000,000. The following table was exhibited on the First Commission Scheme:

****Commission Scheme**					
Quarterly Revenue Quota:	**1Q**	**2Q**	**3Q**	**4Q**	Max. [Annual] Pay-out
	$750.000	$750,000	$750,000	$750,000	
100% - 150% of Sales Target: 1.5%	$11,250.00	$11,250.00	$11,250.00	$11,250.00	$45,000
151% - 200% of Sales Target: 2.0%	$18,900.00	$18,900.00	$18,900.00	$18,900.00	$75,600
>200% of Sales Target: 3%	$30,150.00	$30,150.00	$30,150.00	$30,150.00	$120,600

The First Commission Scheme also states the following terms and conditions:

<u>Terms and Conditions</u>**

1) Commission is payable on a *quarterly* basis.
2) Commission will be paid subject to the following conditions:
   a. *achievement of 100% personal target*
   b. *collection of revenue*
   c. entitlement to commission shall cease immediately upon notice of termination of employment by either party (howsoever arising)
3) For purpose of Target Revenue recognition, sales is defined as sales:
   a. revenue personally closed by incumbent;
   b. confirmed maintenance contract;
   c. does not include Option payment of contract
4) If deals are secured by more than one party, bills are to be apportioned, and parties may not claim wholly for the same project resulting in multiple billing.

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> 5) Variable Bonus is not recommended to avoid double rewarding of performance.
>
> 6) Commission payable is subject to net profit margin of at least 15% AND Stratech value-add of at least 40%
>
> 7) Commission payable is subject to annual review.
>
> 8) Commission payable includes both employer and employee CPF contributions. After the deduction of the employer and employee CPF amount, the net commission will be paid to you.
>
> 9) Quarterly sales targets should be achieved. Unachieved sales target is allowed to roll over to the *next quarter only*.
>
> [emphasis added]

6 Under the First Commission Scheme, the plaintiff was to be paid his commission on a quarterly basis provided that his sales revenue exceeded $750,000 and have been paid by the customers. The commission rate structure was as follows:

> (a) If the plaintiff achieved 100% to 150% of his sales target, he would be eligible to 1.5% of commission on that amount;
>
> (b) For the amount of sales by the plaintiff between 151% to 200% of his sales target, he would be eligible to 2.0% of commission on the amount between 151% and 200%; and
>
> (c) For the amount of sales by the plaintiff above 200% of his sales target, he would be eligible to 3.0% of commission on the amount that exceeds 200%.

7 The First Commission Scheme also provides that if the plaintiff does not achieve the sales target of $750,000 for any quarter, he will not receive any commission for that quarter and the shortfall in revenue will be rolled over to the next quarter. If the plaintiff fails to achieve the shortfall again, he will

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not be able to roll over the unachieved target to another quarter and also not be eligible to receive any commission for the rest of the financial year (as he would not have achieved "100% personal target" as required under cl 2(a) of the First Commission Scheme which comprises of quarterly targets and an annual target).

8 On 2 May 2012, the parties executed a document entitled "Key Performance Indicators – Joseph Ramanathan, Regional Sales Manager" ("the 2 May 2012 document"). The 2 May 2012 document states that the period under review is from 5 April 2012, the day the plaintiff joined the defendant, until 31 March 2013 and provides details of the key performance indicators (KPIs) and their corresponding weightage in the assessment of the plaintiff's performance. I note that the 2 May 2012 document does not mention the impact of the plaintiff's performance on his commission entitlement. The following table is an extract from the 2 May 2012 document showing the breakdown of the key performance indicators:

Key Performance Indicators	**Completion Target Date**	**Weightage**
Target Revenue		
Achieve: i) quarterly target revenue of S$750k; ii) annual target revenue of S$3.0 mil	Monthly Review	
(For details of target revenue, please see attached)		
Distribution of percentages on achievement of target revenue:		
- 1st Quarterly delivery of target revenue		10%
- 2nd Quarterly delivery of target revenue		10%
- 3rd Quarterly delivery of target revenue		10%
- 4th Quarterly delivery of target revenue		10%
- 1st half yearly delivery of target revenue		10%
- 2nd half yearly delivery of target revenue		10%
Sub-total		60%

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Sale of iVACs		
Sale of 2 iVACs per month or 24 iVACs per annum	Monthly Review	20%
Channel Network		
Appointment of 2 channels per month of 24 channels per annum	Monthly Review	20%
Total		100%

9 On 2 September 2013, the plaintiff and defendant signed another document entitled "Terms and Conditions of Commission Scheme" ("the 2 September 2013 document"). Both parties accept that the 2 September 2013 document encapsulates the terms of the second commission scheme ("the Second Commission Scheme"). At the top of the 2 September 2013 document, the "effective date of the scheme" was stated as 1 July 2013. The terms of the Second Commission Scheme are similar to the First Commission Scheme with two salient differences:

(a) Under cl 2.4 of the Second Commission Scheme, any unachieved quarterly revenue targets could be rolled over to the next quarter indefinitely; and

(b) Under cl 3.1 of the Second Commission Scheme, the plaintiff's entitlement to commission was to be discounted according to the plaintiff's performance on his KPIs (see [8] above).

10 These changes meant that:

(a) If the plaintiff fails to meet the quarterly sales revenue target of $750,000, the shortfall in revenue will be rolled over to the next quarter, and unlike the First Commission Scheme, this rollover can go on indefinitely. Thus, if the plaintiff fails to meet the accumulation of

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the shortfall and his quarterly sales target, he will not be eligible for any commission for that quarter and the accumulated shortfall would be carried over to the next quarter; and

(b) Calculation of commission now involves a two-step process. The applicable commission rates as stated on the First Commission Scheme (see [6] above) are first applied to the sales amounts achieved by the plaintiff. The resulting amount is then discounted according to the plaintiff's performance on the KPIs (see [8] above). For example, if the plaintiff achieves 60% on the KPIs, through fulfilling all the KPIs relating to target revenue but fails to achieve the KPIs relating to the sale of iVACS and channel partners, he will only be eligible to 60% of the amount calculated in the first step of the process.

11 The plaintiff does not dispute that in the period from 16 April 2012 to 31 March 2013, he did not make achieve any sales revenue. The parties disagree as to how much sales revenue attributable to the plaintiff was made and collected from 1 April 2013 to 20 October 2014 when he was summarily terminated.

The methodology issue

12 The methodology issue concerns the effective date of the Second Commission Scheme. The plaintiff claims that the effective date of the Second Commission Scheme was 1 July 2013 as shown on the face of the 2 September 2013 document. The defendant asserts that the effective date of the Second Commission Scheme was on or around 2 May 2012 and that the 2 May 2012 document superseded the First Commission Scheme. The defendant also claims that the 2 September 2013 document was only meant to serve as a

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clarification of the Second Commission Scheme after the plaintiff had sought clarification. In support of this, the defendant avers that:

(a) The terms of the Second Commission Scheme had been communicated by the defendant's founder and executive chairman, Dr David Chew ("Dr Chew") to the sales team, which included the plaintiff, during numerous sales meetings from 2 May 2012;

(b) Despite numerous explanations during the meetings, the plaintiff continued to query the manner in which commissions were calculated under the Second Commission Scheme, and personally initiated a clarification of the terms of the Second Commission Scheme with the defendant's management;

(c) In response to the plaintiff's request for clarification, the defendant produced the 2 September 2013 document, which provided the plaintiff with clarifications on the terms of the Second Commission Scheme in writing;

(d) Dr Chew had made it expressly known to the plaintiff, via emails dated 14 August 2013, that the 2 September 2013 document was not a new scheme, but merely a clarification of the terms of the Second Commission Scheme; and

(e) The effective date of 1 July 2013 was simply the date which the 2 September 2013 document was processed and entered into the system. It was not indicative of the effective date of the Second Commission Scheme that had come into effect on or around 2 May 2012.

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13 It is stipulated in the 2 September 2013 document that the effective date of the scheme was "1 July 2013". In the First Commission Scheme, the "effective date of scheme" was 1 January 2011 and the defendant relies on this date in its closing submissions at [27] to argue that the "[First Commission Scheme] bound the [p]laintiff the moment he joined the [d]efendant's employ on 5 April 2012".

14 Further, no evidence has been given apart from the defendant's Chief Corporate Officer Ms Leong Sook Ching's ("Ms Leong") assertion that 1 July 2013 was merely the date which the 2 September 2013 document was processed and entered into the defendant's document control system. No explanation or evidence has been furnished by the defendant on how its document control system worked and no other documents were produced by the defendant to demonstrate the date recording pattern asserted by it.

15 The defendant has also not proved that the effective date of the Second Commission Scheme was on or around 2 May 2012 instead of 1 July 2013. First, the claim that Dr Chew had communicated the terms of the Second Commission Scheme to the sales team during numerous sales meetings that took place over the course of each financial year from 2 May 2012 onwards is unsupported by evidence. No member of the sales team was produced as a witness to give evidence on this and no contemporaneous documentary evidence such as the minutes of these sales meetings have been produced to the Court to support the defendant's claims.

16 Secondly, I do not agree with the defendant that the 2 May 2012 document represented the framework of the Second Commission Scheme. The 2 May 2012 document only shows the plaintiff's KPIs and their relevant

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weightage on the plaintiff's overall performance. It does not state that the manner of the plaintiff's performance has any effect on his commission. Furthermore, the phrase "for details of target revenue, please see attached" on the 2 May 2012 document that the defendant relies on to say that there was another document attached to the 2 May 2012 document is unhelpful as it only makes reference to the details of target revenue, *ie*, how much revenue the plaintiff had to achieve to meet his KPIs. It does not indicate any impact on the plaintiff's commission entitlement under the Second Commission Scheme. I therefore find that the 2 May 2012 document has no relevance to the commission scheme.

17 Finally, the 14 August 2013 emails which Dr Chew relies on do not show that he had communicated to the plaintiff that the 2 September 2013 document was not a new scheme but merely a clarification of the terms of the Second Commission Scheme. There were a total of four emails sent by Dr Chew to the plaintiff on 14 August 2013. Although the emails from Dr Chew show that certain clarifications relating to the KPIs had been given to the plaintiff and that he was supposed to sign on a clarification document, none of the emails show that Dr Chew informed the plaintiff that the Second Commission Scheme had been in place since 2 May 2012. The closest reference to such a message is found in the phrase in Dr Chew's email to the plaintiff at 1.32pm that stated the following:

> Joseph,
>
> To be clear, all the 4 (four) KPIs for Sales have always been there even before you joined the Company...
>
> - Annual Target Revenue
> - Quarterly Target Revenue
> - Sale of at least 2 (two) iVACS® systems per month

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> - Establish channel network by successful appointment of at least 2 (two) performing channels per month
>
> You are your colleagues in Sales (both past and present) keep flouting the second, third and fourth KPIs and as a result fail miserably even for the first KPI. Consequently, the Company had to *put together an integrated formula shortly after you joined* and at the time you did not have any semblance of a Hit List as defined by our Hit, Probable and Possible Criterion.
>
> If you are not committed to deliver and if you will not even sign off the KPI clarifications that you personally initiated, how can the Company literally bank on you to deliver when after 17 (seventeen) months your score is still zero?
>
> Many thanks.
>
> David
>
> [emphasis added]

18 To say that "the Company had to put together an integrated formula shortly after [the plaintiff] joined and at the time [the plaintiff] did not have any semblance of a Hit List as defined by our Hit, Probable and Possible Criterion" is not sufficient evidence of the defendant's case. It is not clear what this "integrated formula" entailed, when it was actually implemented, or whether it was even linked to the commission scheme in the first place. Furthermore, the "Letter of Warning" referred to in Dr Chew's email at 2.24pm on 14 August 2013 and exhibited on Ms Leong's affidavit only states that the defendant's management had noted that the plaintiff had not met his key performance indicators since joining the defendant on 5 April 2012. The letter did not once again make reference to any consequence or impact on his commission. It also did not mention the Second Commission Scheme.

19 I therefore find that the plaintiff has proved on a balance of probabilities that the Second Commission Scheme only came into effect on 1 July 2013. Accordingly, the First Commission Scheme was the applicable scheme from 6 April 2012 until 30 June 2013 and the Second Commission

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Scheme applied from 1 July 2013 until the plaintiff's termination on 20 October 2014.

20 There is a separate issue raised by the defendant in relation to the mechanism of the First Commission. The defendant asserts at [13] of Dr Chew's first affidavit dated 31 August 2015 that "under the [First Commission Scheme], at the end of any financial year, any deficit remaining (unachieved sales targets) would form part of an employee's target for the subsequent financial year". That cannot be right. There is no clause on the First Commission Scheme for such a rolling over of unachieved targets from one financial year to another. In fact, such a term would have contradicted cl 9 of the First Commission Scheme which states that unachieved revenue can only be carried over to the next quarter. Allowing the accumulated backlog from one financial year to be carried over to the next financial year would effectively mean that unachieved targets are carried over beyond the next quarter. Nonetheless, I accept that the unachieved target from the final quarter of a financial year can be rolled over to the first quarter of the next financial year under the First Commission Scheme. This would be consistent with cl 9 of the First Commission Scheme. The maximum amount of unachieved revenue target that can be rolled over between financial years under the First Commission Scheme is thus limited to $750,000.

The quantum issue

21 The parties' main disputes on the quantum issue were:

(a) The amount of revenue that should be considered in the calculation of the plaintiff's commission from 1 April 2013 until 20 October 2014; and

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(b) The KPIs that were achieved by the plaintiff from 1 July 2013 until 20 October 2014 under the Second Commission Scheme.

The plaintiff avers that he acquired 6 sales projects with the contract value of $13,924,500 in the period of 5 quarters from 1 April 2013 to 30 September 2014. On this basis, he submits that he is entitled to commission amounting to $314,610 based on the 100% receipt of $13,924,500. The $13,924,500 of revenue claimed by the plaintiff comprises the following projects as exhibited in [31] of his closing submissions:

Project Description	**Contract Value**
2 iVACS to Modern Times Technical Systems	$105,000
1 iVACS to Etechsco	$73,000
iFerret to Dubai Airport	$12,400,000
5 iVACS to Blackarrow	$267,500
28 iVACS to Oger Systems	$1,079,000
Total	**$13,924,500**

22 The plaintiff's calculation of the commission of $314,610 is made by applying the commission rates directly onto $13,924,500. He does not apply any discount to this amount as he claims to have achieved 100% of his KPIs. According to the plaintiff, the sales amount of $13,924,500 was more than 200% of the target revenue of the five quarters between 1 April 2013 and 30 September 2014 which translates to $3,750,000. The plaintiff claims according to the following calculations:

Commission = 3% of ($13,924,500.00 - $7,500,000) +
2% of ($7,500,000 - $5,625,000) +
1.5% of ($5,625,000)
= $192,735 + $37,500 + $84,375
= $314,610

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23 The defendant avers that the plaintiff only secured contracts amounting to $11,058,481.16 and that the total amount of payment received by the defendant during the course of the plaintiff's employment was $10,734,625.15. The defendant also claims that the plaintiff failed to achieve most of his KPIs. Finally, the defendant claims that the plaintiff failed to consider the rolling over of unachieved sales targets for certain quarters where the company did not receive sufficient revenue for him to meet his quarterly target amount of $750,000. The sales revenue table put forth by the defendant in Dr Chew's affidavit at page 103 shows the following:

Project Description	**Period**	**Revenue Recognised**	**Payment Received**
2 iVACS to Modern Times Technical Systems	Apr 2013 to Jun 2013 Jul 2013 to Sep 2013	$0 $104,576.27	$51,827.63 $51,748.64
1 iVACS to Etechsco	Jul 2013 to Sep 2013	$74,160.45	$74,160.45
iFerret to Bayanat + Dubai Airport	Jan 2014 to Mar 2014 Apr 2014 to Jun 2014 Jul 2014 to Sep 2014	$3,136,041 $2,892,823 $4,436,692.20	$5,888,318.98 - $4,253,381.21
2 iVACS to Oger Systems	Jan 2014 to Mar 2014	$76,861.58	$76,861.58
4 iVACS to Blackarrow	Jul 2014 to Sep 2014	$217,432.50	$217,432.50
2 iVACS to Oger System	Jul 2014 to Sep 2014	$73,017.70	$73,017.70
1 iVACS to Blackarrow	Jul 2014 to Sep 2014	$46,876.46	$46,876.46
Total		**$11,058,481.96**	**$10,734,625.15**

According to the defendant's calculations, the plaintiff is only entitled to $52,074.29 as set out in detailed calculations in Annex F of its closing submissions.

24 Most of the projects and details exhibited on the parties' lists are the same save for two differences:

(a) The number of iVACS units sold to Oger Systems; and

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(b) The amount recognised and received for the iFerret project at the Dubai Airport.

I find the defendant's list to be more reliable than the plaintiff's because it exhibits information that is relevant to the calculation of commission such as the amounts recognised and received for projects and the period of the recognition and receipt of these amounts. Furthermore, the defendant's list is substantiated by sales documents such as purchase orders, invoices, and account statements that broadly correspond to what is recorded on the list. Even though the some of the documents represented the amounts in foreign currencies such as US dollars, these amounts, when converted, accord with the figures recorded in Singapore dollars on the defendant's list and no objections have been raised by the plaintiff on the currency conversions. On the contrary, the plaintiff's list only exhibits the contract value of the projects, information that is not relevant to the commission calculation process.

The sale of iVACS to Oger Systems

25 With regard to the number of iVACS units sold to Oger Systems, the plaintiff claims to have sold 28 units of iVACS to Oger Systems. In support of this, the plaintiff relies on an irrevocable letter of credit opened by Oger Systems in favour of the defendant and email correspondence between Oger Systems and the defendant stating that the delivery of 22 iVACS units would be completed by the end of June 2014. The defendant claims that the plaintiff only sold four iVACS units to Oger Systems. It states that although it had originally received orders for 28 iVACS units in January 2013, Oger Systems could only pay and takes delivery of four iVACS units in 2014. Ms Leong testified to this during cross-examination and said that the sale of the iVACS units to Oger System did not materialise because "after taking the few

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systems, the [Letter of Credit] lapsed and they wrote us an apology to cancel the order". She claimed that there were emails to that effect but added that those emails were not in the agreed bundle of documents.

26 Even without the evidence of the email correspondence referred to by Ms Leong, I find that the plaintiff has not proved that 28 units of iVACS were sold to Oger Systems. The irrevocable letter of credit and email correspondence stating that the delivery of 22 iVACS would be completed by the end of June 2014 is insufficient evidence to show the recognition and receipt of the amounts. There are still many steps after the issuance of a letter of credit and the preparation of goods for delivery before any revenue is recognised and payment is received. I therefore find that the plaintiff has not discharged his burden of proof in showing that there was a sale of 28 iVACS units to Oger Systems that should be considered in the calculation of his commission and agree with the defendant that only four should be considered.

The iFerret project at the Dubai Airport

27 With regard to the amount received for the iFerret project at the Dubai Airport, the plaintiff asserts that the full contract sum of $12,400,000 had been received. To prove this, the plaintiff relies on the acceptance of the weekly sales report submitted and presented to Dr Chew which showed the contract value of $12,400,000. The defendant claims that it only received $10,141,700.19 in payment for the iFerret Project at the Dubai Airport and relies on account statements in its Citibank account to show that it had only received $10,141,700.19 in payments for the Dubai Airport project.

28 The plaintiff cannot rely on the sales report to prove the amount for the purpose of commission calculation. The sales report only records the total

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contract value of the project and does not take into account the revenue recognition of the project and receipt of payment from customers, which are important factors in the calculation of commission. Furthermore, the account statements produced by the defendant accord with the amounts recorded and the timing of the payments correspond to the dates recorded by the defendant on its list. Since the plaintiff has not produced any evidence to the contrary, I accept the amount received by the defendant for the iFerret Project at the Dubai Airport to be $10,141,700.19. Accordingly, I accept the defendant's list of projects and find that the amount of revenue achieved by the plaintiff from 1 April 2013 to 30 September 2014 is $10,734,625.15.

Channel partners KPI

29 The plaintiff's KPI achievement concerning channel partners was also disputed. The plaintiff submits that he had achieved the channel partners KPI because he had secured 46 channel partners as exhibited on a sales report submitted by him to the defendant with a list of 46 channel partners. He also claims that pursuant to a verbal agreement with Dr Chew, unofficial channel partners could be considered for the fulfilment of the channel partners KPI. The defendant denies this and Dr Chew asserts that he had not made such an agreement with the plaintiff.

30 In my view, the plaintiff cannot rely on the sales report to establish that he had achieved the KPI for the channel partners. First, the sales report the plaintiff relies on is a document wholly prepared by the plaintiff and no other documentary evidence has been adduced to substantiate the plaintiff's claims on the channel partners he had acquired. Further, I find that the plaintiff has only made a bare assertion that there was verbal agreement between Dr Chew and himself that unofficial channel partners could be considered channel

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partners for the purpose of KPI assessment. Accordingly, I find that the plaintiff has not proved that he had achieved the channel partners KPI.

The plaintiff's commission under the First Commission Scheme

31 It is not disputed that the plaintiff failed to achieve his targets from April 2012 to 31 March 2013. Given my findings at [20], his targets from the financial year of 2013 are not rolled over to the financial year of 2014. From 1 April 2013 to 30 June 2013 (1st quarter of Financial Year 2014), the First Commission Scheme continued to apply and the plaintiff's quarterly target was $750,000. The plaintiff did not have any revenue recognised and received in this quarter. Accordingly, no commission is due to the plaintiff for this quarter.

The plaintiff's commission under the Second Commission Scheme

32 The defendant's calculations of the plaintiff's commission under the Second Commission Scheme did not allow for rolled over unachieved targets that were achieved in subsequent quarters to form part of the revenue eligible for commission calculation. I do not think that this is a proper interpretation of the Second Commission Scheme and I find that the rolled over unachieved targets that are achieved in subsequent quarters form a part of the revenue eligible for commission calculation. The Second Commission Scheme does not provide that unachieved targets that are rolled over but achieved in subsequent periods are not to be counted into the revenue eligible for commission. In fact, cl 2.4 of the Second Commission Scheme clearly envisages that Quarterly Target Revenues and Annual Target Revenues, which affect KPIs as well as the commission formula directly, are adjusted based on

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the unachieved revenue targets. Clause 2.4 of the Second Commission Scheme states the following:

> Unachieved Targets will be rolled over to the next period. For instance, if you fail to meet the [Quarterly Target Revenue] for [Quarter 1], the [Quarterly Target Revenue] for [Quarter 2] will be $1,500,000; if you achieve only $2,500,000 of your [Annual Target Revenue] for this year, your [Annual Target Revenue] for the following year will be $3,500,000 and your 4 [Quarterly Target Revenues] will be increased pro rata accordingly.

Accordingly, rolled over unachieved targets that are achieved in subsequent quarters form part of the revenue eligible for commission calculation.

33 From 1 July 2013 to 30 September 2013 (2nd quarter of Financial Year 2014), the Second Commission Scheme became the effective commission scheme and the plaintiff quarterly target was $750,000. Although there was a backlog of $750,000 from the previous quarter under the First Commission Scheme which could have been carried over to this quarter (see [20] above), the defendant has not included this in its calculations and the plaintiff does not contend otherwise. I therefore accept that no backlog was carried over from the previous quarter. $178,737 was recognised and received in this quarter. This is below his sales target of $750,000. Accordingly, the quarterly revenue KPI is not met.

34 From 1 October 2013 to 31 December 2013 (3rd quarter of Financial Year 2014), the plaintiff had an accumulated target of $1,321,263 comprising $571,263 of backlog and his quarterly target of $750,000. The plaintiff had no revenue recognised or received during this quarter. The KPI for that quarter was not met.

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35 From 1 January 2014 to 31 March 2014 (4^{th} quarter of Financial Year 2014), the plaintiff had an accumulated target of $2,071,263 comprising $1,321,263 of backlog in addition to his quarterly target of $750,000. The plaintiff had $3,212,903 of revenue recognised and received in this quarter. The plaintiff's KPIs for the 4^{th} quarter of the Financial Year and the second half of the Financial Year were met as the revenue recognised and received in this quarter exceeded his target for the quarter and the 2^{nd} half of the Financial Year.

36 I accept the defendant's approach in Annex F of its closing submissions to pro-rate the plaintiff's revenue targets to $2,250,000 instead of $3,000,000 for Financial Year 2014 as the Second Commission Scheme only took effect in the 2^{nd} quarter of Financial Year 2014. On that basis, the calculation for the plaintiff's commission for the Financial Year of 2014 are:

(a) Base amount of commission

(i) Total amount of revenue eligible for commission calculation is $3,391,640

(A) Amount of commission under Tier 1: $3,375,000 x 1.5% = $50,625

(B) Amount of commission under Tier 2: $16,640 x 2% = $332.80

(ii) Base amount of commission = $50,957.80

(b) The plaintiff achieved 20% of his KPIs for the Financial Year of 2014.

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(i) The plaintiff achieved the 4th quarter target revenue KPI (10%) and 2nd half target revenue KPI (10%). This gave him a 20% KPI score.

(ii) The plaintiff did not achieve the iVACS KPI as he only sold two IVACS units to MTTS, 1 IVACS unit to Etechsco, and two iVACS units to Oger Systems. This fell short of the 24 iVACS that he was required to sell in the Financial Year of 2014.

(iii) The plaintiff did not achieve his channel partners KPI for the year (see [30] above]).

The plaintiff's 20% KPI score is out of a possible 80% in Financial Year 2014 because of the Second Commission Scheme only became effective in the 2nd quarter of Financial Year 2014 (see [19] above). This means that the 1st quarter revenue target KPI and the 1st half revenue target KPIs were not assessed under the Second Commission Scheme. In the absence of contrary submissions from counsel, I apply the plaintiff's KPI score on a pro-rata basis (20% out of a possible 80%) in discounting his commission for Financial Year 2014.

(c) Total commission for Financial Year 2014 based on 20% out of a possible 80% KPI score = $12,739.45

37 From 1 April 2014 to 30 June 2014 (1st quarter of Financial Year 2015), the plaintiff's quarterly target was $750,000. $2,752,278 of revenue was recognised and received in this quarter. This is above the quarterly sales target of $750,000. The plaintiff's quarterly revenue target KPI was met. From 1 July 2014 to 30 September 2014 (2nd quarter of Financial Year 2015), the

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plaintiff quarterly target was $750,000. $4,590,708 of revenue was recognised and received in this quarter. This is above the quarterly sales target of $750,000. Accordingly, the quarterly revenue KPI is met. The plaintiff's half year revenue KPI was also met.

38 Although the plaintiff was only dismissed on 20 October 2014, no evidence on the revenue recognised and received in the period from 1 October 2014 to 31 December 2014 was adduced. I excluded this period from the calculation of the plaintiff's commission for Financial Year 2015 and made the appropriate pro-rata adjustments to his target revenue, as was done in Financial Year 2014 by the defendant (see [36] above).

39 Accordingly, the calculation for the plaintiff's commission for the Financial Year 2015 are:

(a) Base amount of commission

(i) Total amount of revenue eligible for commission calculation is $7,342,986.

(A) Amount of commission under Tier 1: $2,250,000 x 1.5% = $33,750

(B) Amount of commission under Tier 2: $750,000 x 2% = $15,000

(C) Amount of commission under Tier 3: $4,342,986 x 3% = $130,289.58

(ii) Base amount of commission = $179,039.58

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(b) The plaintiff achieved 30% of his KPIs for the Financial Year of 2015.

(i) The plaintiff achieved the 1st and 2nd quarter target revenue KPIs (10% each) and 1st half target revenue KPI (10%). This gave him a 30% KPI score.

(ii) The plaintiff did not achieve the iVACS KPI as he only sold six IVACS units to Black Arrow and 2 IVACS units to Oger Systems. This fell short of the 24 iVACS that he was required to sell in the Financial Year of 2015.

(iii) The plaintiff did not achieve his channel partners KPI for the year (see [30] above]).

The plaintiff's 30% KPI score is out of a possible 70% that he could have achieved in Financial Year 2015. This is because he left the employ of the defendant on 21 October 2014, in the 3rd quarter of Financial Year 2015. Thus, the revenue KPIs for the 3rd and 4th quarter as well as the second half of Financial Year 2015 could not be assessed (see similar approach at [38] for Financial Year 2014). In the absence of contrary submissions from counsel, I apply his KPI score on a pro-rata basis (30% out of the possible 80%) in discounting his commission for Financial Year 2015.

(c) Total commission for Financial Year 2015 based on 30% out of a possible 70% KPI score = $76,731.25

40 For the abovementioned reasons, the total amount of commission due to the plaintiff for Financial Year 2014 and 2015 is $89,470.70. Since $27,122

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has already been paid to the plaintiff, the defendant is liable to pay the plaintiff the remainder of $62,348.70.

41 I will hear parties on costs if not agreed.

- Sgd -
Choo Han Teck
Judge

Plaintiff in-person;
Suhaimi Bin Lazim and Chow Jian Hong (Mirandah Law LLP) for the defendant.

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