Walsh Terence William v Peregrine Systems Pte Ltd
[2003] SGHC 117

Case Number : Suit 921/2002

Decision Date : 29 May 2003

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Govind Asokan (Rodyk & Davidson) for the plaintiff; Sean La' Brooy (Rodyk & Davidson) for the plaintiff; Dinesh Dhillon (Wong & Leow LLC) for the defendant; Karen Lim (Wong & Leow LLC) for the defendant

Parties : Walsh Terence William — Peregrine Systems Pte Ltd

Contract – Contractual terms – Construction of terms – Whether fixed term contract.

Contract – Mistake – Rectification – Whether should be granted.

Employment Law – Termination – Notice period – Whether reasonable.

1. The plaintiff, Mr Terence William Walsh ("TWW"), sued the defendant, his former employer, Peregrine Systems Pte Ltd ("PSPL"), for wrongful termination of his contract of employment. PSPL denied having breached the contract of employment and made a counterclaim against TWW with respect to sums disbursed to him.

A. BACKGROUND

2. PSPL is a company within the world-wide network of the Peregrine group. This group, which has its headquarters in San Diego, United States of America, is in the business of providing infrastructure management software for the purpose of reducing costs, improving profitability, releasing capital and generating a lasting and measurable impact on the productivity of assets and people.

3. TWW, an Australian, was initially employed by Peregrine Systems Australia Pty Ltd, another company within the Peregrine group. Towards the end of 2001, he discussed with Mr Dominic O'Riley, the then Vice-President for the Asia Pacific operations of the Peregrine group and a director of PSPL, the question of his transfer to PSPL. On 10 December 2001, PSPL sent him a letter of offer with respect to the position of Area Vice-President, Business Development. The final paragraph of this letter was in the following terms:

> We would be pleased to receive a formal acceptance of this offer below. Upon receipt, we will prepare a formal Employment Contract.

4. TWW accepted PSPL's offer and commenced work in Singapore on 2 January 2002. The company took quite some time to prepare the formal employment contract. According to PSPL, it was handed over to TWW in March 2002 but TWW said that he received it in April 2002. The formal employment contract, unlike the letter of offer, had a termination clause allowing either party to end the employment contract with notice of one month. It is common ground that this formal employment contract was not signed by TWW.

5. Shortly after TWW was transferred to Singapore, PSPL decided to drastically downsize its staff. The massive retrenchment exercise left more than 90% of PSPL's employees without a job. TWW's contract was terminated on 3 July 2002. In its termination letter, the company stated as follows:

> [I]n accordance with the terms of your employment, we hereby pay you one month's base salary in lieu of notice.

6. TWW commenced this action to recover damages for the wrongful termination of his employment contract. He attacked the company's decision to terminate his contract on three fronts. First, he claimed that he could not be retrenched as he had an employment contract for a fixed term of two years. Secondly, he said that if it is not clear from his employment contract that he had a fixed term of employment for two years, the contract should be rectified to ensure that he had such a fixed term of employment. Thirdly, he contended that even if PSPL had a right to dispense with his services, he was entitled to damages because he was not given reasonable notice of the termination of his employment contract.

7. During the trial, the parties reached a settlement in relation to PSPL's counterclaim. Under the terms of the settlement, PSPL agreed to withdraw its counterclaim with no order as to costs while TWW agreed to pay PSPL the sum of $924.81 by 31 December 2003. The parties also agreed that if TWW succeeds in establishing that his employment contract was for a fixed term of two years, the damages payable to him would be capped at $190,000 even though he had made a claim for $979,966.75.

B. WRITTEN TERMS OF TWW'S EMPLOYMENT CONTRACT

8. Attention will first be focussed on the written terms of TWW's contract to ascertain whether or not he had been offered an employment contract for a fixed term of two years.

9. TWW contended that the written terms of his employment contract are contained in PSPL's letter of offer dated 10 December 2001 and not in the unsigned formal employment contract. In contrast, PSPL contended that the written terms of TWW's employment contract are to be found in its letter of offer dated 10 December 2001 and in the unsigned formal employment contract. PSPL asserted that the terms of the formal contract are not inconsistent with those in its letter of offer and that TWW had promised to sign the formal contract when he was reminded to do so.

10. Even if the terms of the letter of offer dated 10 December 2001 are considered on their own, there is no proof that TWW was offered an employment contract for a fixed term of two years. The said letter has 9 clauses with the following headings:

(1) Appointment

(2) Salary

(3) Benefits

(4) Relocation expenses

(5) Annual flight home

(6) School fees

(7) Housing rental

(8) Car rental

(9) Repatriation

11. Clause 1 of the letter of offer is the most relevant clause for determining the period of TWW's employment contract as it specifically deals with the tenure of his appointment. It provides as follows:

> 1. Appointment
>
> Your transfer from Sydney, Australia, to the Singapore office is *expected to be for a period of two (2) years* starting January 1, 2002.
>
> (emphasis added)

12. PSPL submitted that it was obvious from the word "expected" in clause 1 that TWW did not have a fixed term of employment for two years. He had merely been given an indication of the period during which he might be employed in Singapore. The meaning of words such as "expected" and "anticipated" was considered by the Newfoundland Supreme Court in *Dawson v John Cabot 500th Anniversary Corp et al* (1997) 158 Nfld & PEIR 241 and 490 APR 241, which concerned a claim by employees that they had fixed term employment contracts. The relevant portion of the contracts in that case provided as follows:

> The Corporation *anticipates* that your services, subject to your satisfactory performance…, will be required until completion of the Cabot Anniversary celebrations, which is expected to be the end of 1997 or early in 1998.

13. It was held by the Newfoundland Supreme Court that the employees did not have fixed term contracts. Osborn J explained as follows:

> The word 'anticipates' is used in the sense of '*expect*' or 'look forward to' - that there is an expectation that the employee's services will be required until 1997…. The Corporation is doing no more than anticipating or expecting; the words used are not indicative of a fixed term contract.
>
> (emphasis added)

14. I agree with Osborn J's view and have no doubt whatsoever that the words "expected to be for a period of two (2) years" in clause 1 of the letter of offer are inconsistent with the notion of a fixed term employment contract.

15. Clause 4 of the letter of offer, which deals with expenses incurred by the company for relocating TWW to Singapore, is also relevant. It provides as follows:

> If you leave the company prior to one year from your move date …, all relocation costs incurred by the Company must be repaid by you. *If the Company terminates your employment within one year* from the move date, you are not required to repay relocation costs.
>
> (emphasis added)

16. If TWW's employment contract was for a fixed term of two years, clause 4, which provides that the company cannot claim relocation costs from TWW if it terminates his employment contract within one year from the date of his transfer to Singapore, would have been unnecessary.

17. Admittedly, clause 9 of the letter of offer, which relates to repatriation costs, may appear confusing if it is read on its own. It provides as follows:

> 9. Repatriation
>
> i. At the end of your *two (2) years contract*, the Company will reimburse the shipping expenses for you and your family's personal possessions to Sydney ….
>
> At the end of your *two (2) years contract*, the Company will also reimburse economy class air travel for you and your family back to Sydney, Australia.
>
> (emphasis added)

18. TWW asserted that it is evident from clause 9 that he had a fixed term of employment. He added that if this is not so, the terms of the letter of offer are ambiguous and the *contra proferentum* rule should be applied as the letter of offer was drafted by PSPL. The rationale for this rule, which is relevant where other rules of construction fail, is that "a person who puts forward the wording of a proposed agreement may be assumed to have looked after his own interests so that if the words leave room for doubt about whether he is intended to have a particular benefit there is reason to suppose that he is not" (*per* Lord Mustill in *Tam Wing Chuen v Bank of Credit and Commerce Hong Kong Ltd* [1966] 2 BCLC 69, 77).

19. Unfortunately for TWW, there is no room for the application of the *contra proferentum* rule in his case. Admittedly, the letter of offer of 10 December 2001, and especially clause 9, could have been better drafted. However, clause 9, which merely deals with repatriation costs, must be read in the context of clause 1, which outlines the period of appointment. In *Pacific Century Regional Development Ltd v Canadian Imperial Investment Pte Ltd* [2001] 2 SLR 443, 451, Chao Hick Tin JA, who delivered the judgment of the Court of Appeal, endorsed the following passage in *Halsbury's Laws of England*, Vol 13, 4th ed, Reissue, p 109:

> It is a rule of construction applicable to all written instruments that the instrument must be construed as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause must be so interpreted as to bring them into harmony with the other provisions of the instrument, if that interpretation does no violence to the meaning of which they are naturally susceptible. The best construction of deeds is to make one part of the deed expound the other, and so to make all the parts agree.

20. If the whole letter of offer of 10 December 2001 is looked at, clause 9, which only deals with repatriation costs does not alter the effect of clause 1, which deals specifically with the period of appointment. Neither does clause 9 render clause 4, which envisages that the company had a right to terminate the employment contract within one year, totally irrelevant.

21. I thus find that PSPL did not offer TWW employment for a fixed term of two years in its letter of offer of 10 December 2001. That being the case, there is no need at this juncture to consider the effect of the unsigned employment contract as the only clause therein relied on by PSPL is clause 11, which governs the period of notice, an issue which will be considered in the later part of this judgment.

C. RECTIFICATION

22. I now turn to TWW's alternative case that there was a mutual mistake when the letter of

offer of 10 December 2001 was prepared and signed and that it should be rectified to reflect that he had been offered a two-year fixed term of employment. When referring to the question of rectification of a contract, Denning LJ, as he then was, said as follows in *Frederick E Rose (London) Ltd v William H Pim Jnr & Co Ltd* [1953] 2 QB 450, 461:

> In order to get rectification, it is necessary to show that the parties were in complete agreement on the terms of their contract, but by an error wrote them down wrongly; and in this regard, in order to ascertain the terms of their contract, you do not look into the inner minds of the parties – into their intention- anymore than you do in the formation of any other contract. You look at their outward acts, that is, at what they said or wrote to one another in coming to their agreement, and then compare it with the document which they have signed. If you can predicate with certainty what your contract was, and this is, by common mistake, expressed in the document, then you rectify the document, but nothing less will suffice.

23. Denning LJ's view was endorsed by the Court of Appeal in *Kok Lee Kuen v Choon Fook Realty* [1997] 1 SLR 182. Chao Hick Tin J, as he then was, who delivered the judgment of the court, reiterated that "convincing" proof of the common intention of the parties is required to ensure that in granting rectification, the court is not making a new contract for the parties. In the present case, there is no convincing proof that it was intended by both parties that TWW was to have a contract of employment for a fixed term of two years.

24. TWW said that it was obvious from the circumstances surrounding the making of the contract that he was offered employment for a fixed term of two years and he referred extensively to his oral negotiations with Mr O'Riley. As far as the factual matrix of a contract is concerned, in *Management Corporation Strata Title Plan No 1933 v Liang Huat Aluminium Ltd* [2001] 3 SLR 253, 258, LP Thean JA, who delivered the judgment of the Court of Appeal, explained that "the court should place itself in the same factual matrix as that in which the parties were" at the time the contract was executed. He endorsed the following words of Lord Wilberforce in *Reardon Smith Line v Hansen-Tangen* [1976] 1 WLR 989, 995-996:

> No contracts are made in a vacuum: there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to is usually described as 'the surrounding circumstances' but this phrase is imprecise: it can be illustrated but hardly defined. In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating ….

25. TWW's case is that he would not have relocated to Singapore unless he had a fixed term employment contract because he had to incur expenses and put up with a measure of inconvenience by uprooting his family from Australia to Singapore. He said that he had to sell his house before coming to Singapore. Furthermore, such a fixed term was required if he was to properly carry out his job within PSPL and the Peregrine group of companies. He added that Mr O'Riley, who has since left the employment of the Peregrine group, took his concerns into account and agreed to offer him an employment contract for a fixed term of two years.

26. PSPL asserted that Mr O'Riley would not have promised TWW a fixed term employment contract as he, being a senior executive, knew that the Peregrine group had an "employment at will" policy, which enabled the company and the employee to terminate an employment contract without notice. It was also contended that TWW had good reasons for wanting to relocate to the Singapore office and that he was in no position to dictate terms to PSPL regarding the period of his transfer to Singapore. Mr O'Riley had moved the regional headquarters from Sydney to Singapore and TWW was

then the only member of the senior management team remaining in Sydney. TWW confirmed this when he stated in para 16 of his affidavit of evidence-in-chief as follows:

> During this time when the Asia-Pacific operations were expanding, I was the only member of the senior management team of the Peregrine group who was not based at the regional headquarters in Singapore and relocating to Singapore would therefore have the added benefit of enabling me to better execute my responsibilities and increase the overall speed and efficiency of the Asia Pacific operations of the Peregrine group.

27. PSPL added that if TWW did not relocate to the Singapore office, he ran the risk of becoming redundant. Furthermore, he was rewarded with perks that he did not have in Sydney, such as a monthly allowance of up to $10,000 for renting a house and up to $3,000 for hiring a car. As such, it was in his interest to move to Singapore.

28. Contrary to TWW's assertion, the alleged background of his employment contract did not advance his case in any way. Admittedly, he and his family may have been inconvenienced by a transfer to Singapore but the same may be said of PSPL's other expatriate staff. There is no evidence that a fixed term contract of employment had been offered to any other expatriate staff in PSPL. Neither Mr O'Riley nor his successor, Mr Andrew Wilkinson, had such an employment contract.

29. As for TWW's negotiations with Mr O'Riley, it is trite that while matters raised or discussed during negotiations may be relevant where the relief claimed is rectification, his case was not helped by the fact that Mr O'Riley, who is no longer working for the Peregrine group, was not called as a witness and PSPL's counsel was not given an opportunity to cross-examine the latter. Apart from the issue of hearsay evidence, it is important to note that Ms Wendy Low, PSPL's Director of Human Resources, who was ordered by Mr O'Riley to prepare the letter of offer of 10 December 2001, testified in no uncertain terms that she dealt with TWW from the very start on the basis that his contract of employment was not one with a fixed term of two years because Mr O'Riley did not inform her that TWW had been offered such a contract. Ms Low had no reason to gain from her testimony as she had been retrenched by PSPL during the massive retrenchment exercise in July 2002. She was a truthful witness although she was rather nervous and confused at times.

30. PSPL's position was also supported by Ms Wong Chih Hui, who was in the Human Resources Department at the relevant time. She testified that when she asked TWW to sign and return the formal employment contract, he assured her more than once that he would sign the contract. In para 6 of her affidavit of evidence-in-chief, she stated as follows:

> At no point in time did the Plaintiff express that he was dissatisfied with any of the standard terms in the employment contract. In fact, he has never indicated any objection to the terms of his employment and the termination provisions stated in the employment contract.

31. TWW claimed that what Ms Wong said was untrue because he never dealt with her as she was too junior. This prompted PSPL's counsel to say that TWW's attitude smacked of arrogance. TWW's counsel sought to discredit Ms Wong's evidence on the ground that she admitted that the formal contract could have been handed over to TWW in early April even though she had stated in her affidavit of evidence-in-chief that she personally handed over the contract to him in March 2002. It ought to be noted that Ms Wong made the concession only because TWW's counsel had insisted that it was evident from the entries in TWW"s passport that he could not have been in Singapore to receive the contract in March 2002. However, PSPL's counsel subsequently pointed out that TWW was in Singapore by 15 March 2002 and that Ms Wong claimed that she handed over the formal employment contract to him "on or about early March" was not discredited by the entries in his

passport. In any case, TWW is the last person who should complain about inaccuracies regarding the time he received the formal employment contract because, as will be discussed in more detail later on, he furnished three different dates on which he was given the said contract, namely 8 April 2002, late April 2002 and May 2002. Like Ms Low, Ms Wong is no longer employed by PSPL and she had no reason to lie to support her former employer's case. Apart from the confusion about when she handed TWW the formal employment contract, she gave her evidence in a clear and steadfast manner. Whether the formal employment contract was handed over to TWW in March or April 2002, I believe her when she said that he had assured her that he would sign the formal contract and that he had not complained to her about inconsistencies between the letter of offer of 10 December 2001 and the formal employment contract.

32. It should also not be overlooked that Mr Wilkinson, Mr O'Riley's successor, testified that the latter did not inform him that any employee's terms of employment had been varied to the extent claimed by TWW even though the latter was fully aware of the forthcoming retrenchment exercise and that TWW was on the retrenchment list. Having had the opportunity to observe his demeanour and assess his testimony, I found no reason to doubt his evidence in any way.

33. As for TWW, neither his evidence nor his conduct after receiving the formal employment contract convinced me that there had been a mistake regarding the tenure of his employment. Some of his answers were so vague or contrived that I had no doubt that he did not have a fixed term employment contract.

34. TWW's evidence regarding the time he received his formal employment contract and when he first read its contents left much to be desired. He clearly could not make up his mind as to when the formal employment contract was handed over to him for his signature. Although he claimed in his affidavit of evidence-in-chief that he found an envelope containing the said contract on his office table on 8 April 2002, he subsequently stated in an e-mail to Mr O'Riley on 30 June 2002 that he received the formal contract only in late April 2002. In an e-mail to Mr Andrew Cahill of the Peregrine group on 20 June 2002, a different date was provided as TWW declared that the formal contract was handed over to him in May 2002. During the trial, he claimed to have made a mistake in this e-mail and sought to correct the date to April 2002. I do not think that there was a mistake. In any case, TWW filed a supplementary affidavit on 12 March 2003 after the letter to Mr Cahill had been enclosed in his affidavit of evidence-in-chief on 24 February 2003. He thus had the opportunity to correct the alleged error at that time. PSPL's counsel thus had grounds for asserting that the amendment of the date in the said e-mail from May 2002 to April 2002 was merely an afterthought and was intended to ensure that TWW's evidence was consistent with that of Mr Stephen Jermyn.

35. As for when TWW first read the terms of the formal employment contract that he found on his table on 8 April 2002, he stated in para 60 of his affidavit of evidence-in-chief as follows:

> I did not have the opportunity to immediately read and consider the contents of the formal Employment Contract prepared by the Defendants as my attention was required for the re-organisation of the Asia Pacific operations of the Peregrine group which was taking place at that time. *I only managed to read the contents during a business related trip to Australia, San Diego and Hollywood, US which began on 13 April 2002* ….

36. TWW's assertion that he did not read the terms of his formal employment contract in his office on 8 April 2002 was contradicted by his own witness and colleague, Mr Stephen Jermyn, who said as follows in paragraphs 8 and 9 of his affidavit of evidence-in-chief:

> 8. On the morning of 8 April 2002, I met the Plaintiff …. We proceeded to the Plaintiff's office…. I

noticed an envelope on the Plaintiff's desk…. We started to discuss my remuneration issues concerning stock options and salary review. During the discussion, the plaintiff opened the envelope that was on his desk.

9. On the issue of my outstanding salary review, the Plaintiff acknowledged that it was due but there were many tasks backlogged that also needed attention. *He then as an example, held up the envelope that was open by now and showed me the contents. It was the Plaintiff's employment contract and he mentioned that he had only just received the employment contract. I distinctly remembered this conversation even now because after hearing what the Plaintiff stated and showed me, I was very surprised and thought that the Plaintiff was certainly in a worse position compared to me*.

(emphasis added)

37. When cross-examined, Mr Jermyn reiterated that on 8 April 2002, TWW had complained to him about the terms of his formal employment contract. He said as follows:

Q. Did you remember the incident regarding TWW's reading of his formal employment contract or was your memory jogged by him?

A. I recalled it. He said "I have just received my contract". *He was aggravated*.

Q. Did he say that the contract was wrong?

A. *That stuck in my mind*.

38. If Mr Jermyn, who claimed to have been shown TWW's formal employment contract, "distinctively" remembered that the latter was aggravated and had said that the formal employment contract was wrong, the truth of paragraph 60 of the latter's affidavit of evidence-in-chief is in doubt. When questioned by his counsel, TWW shed no light on the inconsistency between his evidence and that of Mr Jermyn. He merely said as follows:

Q. Did you remark to Mr Jermyn when you opened the envelope that the contract was wrong?

A. The exact words I can't remember.

39. More glaring than the inconsistencies in TWW's evidence is the fact that he did not act as if he had a fixed term employment contract after it became clear to him that the company did not regard him as an employee with such a contract. If he had such a contract, he would have protested the moment he received the letter of offer of 10 December as it did not provide that he was to be employed for a fixed term of two years and he would have taken immediate steps to safeguard his position as soon as he knew on 8 April 2002 that there was a termination clause in his formal employment contract. After all, he knew by the last week of April 2002 at the latest that Mr Wilkinson had proposed that he be retrenched.

40. Being a senior executive of PSPL, TWW would have known that the simplest and most obvious way to clarify the position as soon as he found out about the termination clause in his formal employment contract in early April 2002 was to sort out the matter immediately with Mr O'Riley, who was then still working for PSPL in Singapore. It is rather telling that there was no evidence that TWW approached Mr O'Riley directly in April 2002 or at any time before the latter left the company for assistance in sorting out what he perceived to be a major problem with his employment contract. He only contacted Mr O'Riley after the latter had left the company and was abroad. It is equally telling

that there was no satisfactory evidence that Mr O'Riley, who knew that TWW's name was on the retrenchment list, informed the company that the latter could not be retrenched because he had an employment contract for a fixed term of two years.

41. Instead of seeing Mr O'Riley to sort out the matter, TWW claimed that he waited until 16 May 2002, more than five weeks after he first set eyes on the formal employment contract, to inform the Director of Human Resources, Ms Low, during an evening social gathering at the Grand Hyatt Hotel in Hong Kong of his objection to some of the terms of his formal employment contract. In paragraphs 61 and 62 of his affidavit of evidence-in-chief, he explained why he took so long to complain to Ms Low about the tenure of his contract in the following terms:

> 61. Having read a copy of the formal Employment Contract, I sought to raise the issue of the inconsistency with the terms of the Agreement as contained in the Letter of Offer with the Defendants. As mentioned in paragraph 60 above, Monday 29 April 2002 was my first day back in the office after the business trip and during the week of 29 April to 6 May 2002, most of the time of the defendants' senior management was divided between normal operations and planning for [retrenchment] arising out of the re-organisation, which was to be conducted throughout the Asia Pacific operations in the week of 13 May 2002.
>
> 62. As there were pressing issues arising out of the re-organisation of the Peregrine group which required the attention of both Wendy Low and myself, it was not until the evening of 16 May 2002 at the Grand Hyatt Hong Kong that Wendy Low and I had the opportunity to sit down and have a lengthy and proper discussion on the issues affecting my employment with the Defendants ….

42. TWW's explanation for waiting from early April until 16 May 2002 to raise the issue of the tenure of his contract with Ms Low cannot be accepted. Instead of allowing more than a month to slip by without clarifying the position, he could easily have sent Ms Low a letter to state his case. When cross-examined as to why he did not act earlier to safeguard his position, he stated as follows:

> Q Why did you not raise your concerns before 16 May 2002?
>
> A. My normal mode is to talk to people face to face. So 16 May was the first time when [Ms Low's and my] schedules coincided to allow me to raise the issues.

43. TWW's answer was absurd. If his and Ms Low's schedules did not coincide on 16 May 2002, does this mean that he would have waited until much later to deal with what must have been uppermost on his mind, namely the tenure of his employment contract? I do not for one moment believe that he had more pressing issues than getting PSPL to confirm that he had a fixed term employment contract. After all, he managed to find time to write to Mr O'Riley's successor, Mr Andy Wilkinson, on 30 April 2002, more than two weeks before the dinner with Ms Low in Hong Kong, to warn the latter not to put him on the retrenchment list. In his e-mail to Mr Wilkinson on 30 April 2002, TWW stated as follows:

> …. I am also aware that you have … proposed my inclusion within the forthcoming [retrenchment exercise].
>
> I do not believe that your actions are in the best interests of Peregrine….
>
> Whatever your intentions are, be warned that this morning I have sought advice on this matter.

> If your actions to date prove to be injurious to my employment, position or character, then I will not hesitate to seek legal resolution.

44. It is rather surprising that TWW did not mention in his e-mail to Mr Wilkinson on 30 April 2002 that he had an employment contract for a fixed term of two years or that his formal employment contract was at variance with the terms of the letter of offer of 10 December 2001. This was an ideal opportunity for him to do so as he forwarded his e-mail to, among others, Mr O'Riley and Ms Mary Lou of the Human Resources Division of the parent company in the United States. TWW's deafening silence and Mr O'Riley's inaction upon receiving a copy of the e-mail while he was still in Singapore cannot but be unhelpful to the former's case.

45. Having not stated in his e-mail to Mr Wilkinson that he had an employment contract for a fixed term of two years, TWW expected the court to believe that a senior executive who was about to be retrenched would wait more than one month from the time he knew about the termination clause in his formal employment contract to stave off retrenchment by stating the obvious, namely that he had an employment contract for a fixed term of two years. He could not have chosen a less appropriate occasion, namely an evening social gathering in a hotel in Hong Kong, to talk about a serious subject. TWW admitted that he and Ms Low were at an "informal gathering" at the hotel in question but said that "the issues raised were formal". Although he claimed to have had a "lengthy and proper discussion" on his employment contract with Ms Low, the latter testified that she and TWW merely had a "social discussion" that evening and that she could not recall whether or not he mentioned anything about his employment contract.

46. If there had been a lengthy and proper discussion on TWW's employment contract, Ms Low would surely have remembered it. In any case, if such a lengthy discussion had really taken place on 16 May 2002, TWW would have pressed Ms Low for a reply to safeguard his employment contract after their return to Singapore as he knew by then that he was on Mr Wilkinson's proposed retrenchment list. He admitted when cross-examined that he did not send Ms Low any reminder. As has been stated earlier on, I found Ms Low to be a truthful witness and I accept her version with respect to what occurred at the Grand Hyatt Hotel in Hong Kong on the evening of 16 May 2002.

47. After the dinner with Ms Low in Hong Kong on 16 May 2002, TWW had yet another opportunity on 17 June 2002 to place on record that he had an employment contract for a fixed term of two years. On that day, he e-mailed Mr Wilkinson on the subject of downsizing of the company. In his e-mail, he merely stated as follows:

> Thank you for the phone call … to alert me to the requests by Peregrine Corporation for a downsizing of the Asia-Pacific operations. I appreciate our honesty of conversation and bluntness of the facts.
>
> …. *Let me summarise this conversation in order to put into perspective my actions*….
>
> Andy, while I have accepted your invitation to Thursday's management meeting, I have serious concerns as what will be the benefit to Peregrine and myself…. This would mean that all attendees and decision makers are possible [retrenchment] candidates ….
>
> At a personal level, I believe that Peregrine and I will be in an acrimonious position regarding a future career path, or, termination and compensation. Others at Thursday's meeting, including yourself, may be of the same dilemma – all of which I feel to be morally wrong as to be placed in such a situation. (emphasis added)

48. Instead of asserting in his e-mail of 17 June 2002 that he had an employment contract for a

fixed term of two years, TWW merely referred to an "acrimonious position regarding a future career path, or termination and compensation". If, as TWW said, this letter summarised his conversation with Mr Wilkinson, it appears that nothing was said during the telephone conversation regarding an employment contract for a fixed term of two years. The reason for TWW's failure to refer to a fixed term employment contract can only be that there was no such contract.

49. What is noteworthy is that TWW's assertion that he had an employment contract for a fixed term of two years was put in writing only on 20 June 2002 when he wrote to Mr Andrew Cahill, the Peregrine group's "executive vice-president global field operations" and a director of PSPL, in late June. When cross-examined, he confirmed this as he said as follows:

> Q You said that you disputed the terms of the formal employment contract on several occasions. *Apart from the alleged discussion with Ms Low in Hong Kong on 16 May 2002, what were the other occasions*?
>
> A. When I wrote to Andy Cahill on 20 June 2002. I also raised concerns when I was retrenched on 1 July 2002.

50. By the time TWW wrote to Mr Cahill, it had become quite clear that he had lost his fight against retrenchment. In that letter, he stated as follows:

> *I am in Singapore for a two-year term* with Peregrine of which only the first six months have passed…. My local contract was not given to me until May, was full of ambiguities relative to my letter of offer (which were reported to HR) – and therefore not signed. This is quite good in retrospect as I am still covered by Australian company and labour laws… So the net result is that Peregrine has to pay out the remainder of my period of tenure … (yes, I've had my [lawyers in Singapore and Australia check this out….).

51. TWW's claim in his letter to Mr Cahill that he received the formal employment contract in May 2002 is false and this has been referred to earlier on in this judgment. As for why TWW finally put in writing his claim that he had a fixed term of employment of two years just before his retrenchment appeared inevitable, PSPL's counsel stated as follows in his closing submissions:

> The Plaintiff's claim … is at best an opportunistic and orchestrated claim made by a disgruntled ex-employee….
>
> The Defendant submits that the Plaintiff saw an opportunity in the wording of his Letter of Offer after he knew he was being made redundant. He seized on this opportunity to file an exorbitant claim for damages expecting a windfall from a troubled company. The claim of a two year fixed term employment contract is false and fabricated after the Plaintiff realised that he was going to join many other Peregrine employees in seeking alternative employment or returning to Australia.

52. I am mindful of the fact that TWW asserted that in two letters written by Ms Low and Ms Wong, reference was made to his two-year term. The first letter, which was written by Ms Low to the Customs and Excise Department on 19 December 2001, was as follows:

> This is to certify that Mr Terry Walsh is employed by Peregrine Systems Pte Ltd in the capacity of Area Vice President, Business Development.
>
> He will be transferred to work in Singapore from our Australia office for *a period of two years* starting January 1, 2002.

(emphasis added)

53. Ms Low's letter was written in response to a request from TWW's wife for a document which, in her own words, stated the "expected duration" of her husband's employment in Singapore. TWW claimed that his wife knew that he had a employment contract for a fixed term of two years in Singapore. If so, a question arises as to why his wife asked Ms Low about the "expected duration" of his period of employment. She should have asked Ms Low for a letter certifying that her husband was to be in Singapore for two years. Ms Low, who made it absolutely clear that she did not regard TWW as an employee with a fixed term employment contract, could have been more accurate in her letter to the Customs and Excise Department but I accept her evidence that she had in mind the expected period of TWW's employment by PSPL and she did not intend in her letter to the Customs and Excise Department to confirm that TWW had a fixed term contract of employment.

54. The second letter relied on by TWW was written by Ms Wong Chih Hui, who was then in PSPL's Human Resources Department, on 2 April 2002 with respect to his stock options. It was in the following terms:

> I have made reference to your offer agreement for your *2 year assignment in Singapore*. There is no grant or stock [option] in the agreement. (emphasis added)

55. It will be recalled that TWW declared that he did not wish to deal with Ms Wong on employment matters as he considered her too junior a staff member. However, where it suited him, he was quite content to rely on her letter to bolster his case. Ms Wong testified that she was fully aware of the fact there was nothing in the company's records to indicate that TWW had such a fixed term year employment contract and that she had reminded him to sign the formal employment contract. I cannot hold that TWW's employment contract should be rectified merely because of the use of the words "2 year assignment" in Ms Wong's letter to him.

56. Apart from the above letters, TWW said that the fact that the company regarded him as an employee with a two-year contract may be inferred from the following e-mail which Mr O'Riley sent to his successor, Mr Andy Wilkinson, on the subject of retrenchment around the time the former left the company:

> Ok here are some issues.
>
> Lee does not really want a demotion so will probably be [retrenched] as well.
>
> *[TWW] will cost the company $* ….
>
> Also I will not have anything to do with the cull (apart from advice) or talk with [TWW] as [I have] left!!!!
>
> (emphasis added)

57. Mr Wilkinson explained that all that Mr O'Riley meant was that the company had to bear the cost of prematurely terminating the lease of the house and car provided by the company to TWW. Without Mr O'Riley's own explanation, it cannot be assumed that he was saying that TWW had an employment contract for a fixed term of two years. After all, as has already been mentioned, I accept the evidence of Ms Low and Mr Wilkinson that they were not informed by Mr O'Riley that TWW had such a contract even when it was apparent that he would soon be retrenched.

58. Finally, reference ought to be made to what TWW claimed was Mr O'Riley's reply to his e-mail of 30 June 2002. By then, TWW had lost his fight against retrenchment and Mr O'Riley had already left the Peregrine group. In his e-mail, TWW stated as follows:

> As you were the VP of Asia Pacific at the time, there are still a couple of things that need to be cleaned up in [regard] to my tenure and package.
>
> As you know, I received my letter of offer *two days before stepping on the plane to Singapore*. This was put together quickly by HR due to the need to have a working permit before entering. My contract was not presented to me *until late April*. This contract (while referring to the letter of offer) was a standard contract which contains clauses that are at odds with tenure etc (this was discussed with Wendy Low while we were both in Hong Kong).
>
> Just for the record:
>
> Our discussions and agreement for Singapore were:
>
> The move to Singapore was for a minimum tenure of two years …..
>
> An annual package of Sgn$200k base + Sng$200K commissions/bonuses (400K)
>
> This package was to be reviewed for increase to 450k 1st April.
>
> Plus an allowance of 10k a month for house rental.
>
> Plus an allowance of 3k per month for car rental.
>
> For each of the housing and car rentals (I would pay the difference if greater than the allowance - or - I would receive the difference if less than the allowance…..

59. A number of points ought to be noted about TWW's e-mail. First, a question arises as to why TWW waited until so late in the day to approach Mr O'Riley when this could easily have been done when the latter was still employed by PSPL in April or May 2002.

60. Secondly, TWW claimed to have been given the letter of offer of 10 December 2001 just two days before he stepped onto the plane and that he received his formal employment contract in late April 2002. Both the assertions are blatantly untrue. He admitted that he received PSPL's letter of offer very much earlier than alleged and tried in vain to contain the damage by saying that the phrase "two days before he stepped onto the plane" was merely his own figure of speech. As for his assertion in his e-mail that he received the formal employment contract from PSPL in late April 2002, this, as has already been mentioned, contradicted his own evidence that he opened an envelope containing his formal employment contract in front of his colleague, Mr Jermyn, on 8 April 2002.

61. Thirdly, TWW did not provide Mr O'Riley with the exact words of the letter of offer of 10 December 2001. Instead, he chose to paraphrase, not altogether correctly, the terms of the said letter and included matters which were not referred to therein. For instance, the letter of offer did not provide for an increase of his salary in April 2002 or for him to keep the difference if he rented a house for less than $10,000 per month or hired a car for less than $3,000 per month.

62. As for Mr O'Riley's reply, which was to the effect that "the 2-year deal etc was something I agreed to" and that he went through the deal with Ms Low, it has already been mentioned that Ms

Low and Mr Wilkinson testified that Mr O'Riley did not tell them that TWW had been offered such a deal even though he knew that TWW was going to be retrenched. Furthermore, the following passage from the defendant's closing submissions is worth noting:

> The Defendant has objected to the authenticity and admissibility of the alleged email from Dominic dated 1 July 2002 in paragraphs 23 to 25 of the Defendant's Supplementary Opening Statement filed on 31 March 2003. This email emanates from a personal email account … and is inadmissible as the alleged maker is not present in Court. Furthermore, the email is unreliable as evidence since the Defendant has no opportunity to cross-examine Dominic on its contents which were made out of court.

63. Apart from the question of unreliability of evidence, it should be borne in mind that the e-mail in question contains a statement that the sender never saw the letter of offer of 10 December 2001. This is untrue as Ms Low testified that she had sent Mr O'Riley a copy of the letter of offer. TWW claimed that Mr O'Riley was merely saying that he did not see the signed version of the letter of offer. This does not alter the position as the terms in the unsigned version of the letter of offer are exactly the same as those in the signed letter of offer.

64. Evidently, Mr O'Riley had a lot of explaining to do about his actions and words. As for why he was not called to testify in this case, TWW's counsel said during the trial that he was working in England with venture capitalists, who indicated that they would withdraw their support for him if he testified in this case. That was why no effort was made to have him testify in support of TWW's case. How the venture capitalists in question could have been affected by this case was not explained. Subsequently, when it became evident that Mr O'Riley ought to have been called as a witness, the court was informed that efforts would be made to persuade him to testify by means of video-conferencing. However, by the end of the trial, no such arrangements had been made. Without the benefit of cross-examination, it is improper and futile to speculate on Mr O'Riley's motives and what his position might have been if he had been a witness at the trial. In the light of overwhelming evidence that the question of the rectification of TWW's employment contract does not arise, I dismissed TWW's application to have his employment contract rectified to reflect that he had an employment contract for a fixed term of two years.

D. ADEQUACY OF THE NOTICE OF TERMINATION

65. The only remaining question relates to whether or not TWW was given adequate notice of the termination of his employment contract. As has been mentioned, he was given one month's salary in lieu of notice.

66. TWW claimed that the notice of termination in his case was manifestly inadequate. PSPL sought to rely on the termination clause in the formal employment contract, which provides for a notice period of one month. To get around the difficulty posed by an unsigned contract, PSPL contended that TWW accepted the formal contract by his conduct. I need not consider whether PSPL is right because I have come to the conclusion that whether or not the unsigned formal contract has any effect, the notice period of one month was adequate.

67. In the absence of any provision in an employment contract governing the notice period, an employee is entitled to reasonable notice of the termination of his employment contract. As for what is reasonable in each case, matters which are relevant include the nature of the employment, the period for which the employee was engaged, the employee's length of service and the periods at which the employee was paid his remuneration. TWW's colleague, Mr Stephen Jermyn, who was interviewed by TWW and Mr O'Riley in July 2001, half a year before TWW joined PSPL, said that TWW

told him at that time that a notice period of one month was standard practice for the company in Singapore. Like TWW, Mr Jermyn's letter of offer also did not contain a termination clause. TWW had worked for PSPL for only six months. As a matter of interest, prior to his transfer to Singapore, his employment contract with the Australian arm of the Peregrine group allowed for the termination of his services with notice of only one month. After all relevant factors have been taken into account, I hold that the notice period of one month was not unreasonable.

E. CONCLUSION

68. After considering all the circumstances of the case, including the testimony and demeanour of the witnesses, I hold that that TWW's claims against PSPL do not rest on solid ground. To sum up, I believe Ms Low's testimony that Mr O'Riley did not ask her to prepare TWW's letter of offer on the basis that there was to be a contract of employment for a fixed term of two years. I also believe Ms Wong's testimony that far from complaining about the terms of the unsigned formal contract, TWW told her that he would sign the formal employment contract. As has been mentioned, both Ms Low and Ms Wong are no longer PSPL staff and they had no reason to lie to support their former employer. I also accept Mr Wilkinson's evidence that when he and Mr O'Riley discussed the handing over of duties and retrenchment plans that envisaged the termination of TWW's contract, he was not told of any special contract for TWW. As for TWW, his testimony left far too many unanswered questions. As he clearly failed to establish that he had an employment contract for a fixed term of two years, his action is dismissed with costs.