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

[2021] SGHC 123

Suit No 373 of 2018

Between

Dong Wei

… *Plaintiff*

And

(1) Shell Eastern Trading (Pte) Ltd
(2) Lim Ming Way

… *Defendants*

GROUNDS OF DECISION

[Employment Law] — [Contract of service] — [Breach] — [Implied term of mutual trust and confidence]
[Tort] — [Negligence] — [Res ipsa loquitur]
[Tort] — [Conspiracy]
[Tort] — [Malicious falsehood]

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v
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27 May 2021

Aedit Abdullah J:

1 The plaintiff in this case has appealed against my decision to dismiss his claims against the first defendant, his former employer, and the second defendant, his former manager who was also in the employ of the first defendant at the material time. Brief remarks were conveyed earlier. These are my full grounds.

Background

2 By way of a contract of employment dated 28 July 2006, the plaintiff was employed as a Trading Operator by the first defendant.[1] He was later promoted to the position of Senior Freight Trader in or around 2012 to 2013,[2]

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1 Agreed Bundle of Documents dated 6 July 2020 ("ABOD") Tab 84 at pp 421–424.

2 Dong Wei's Affidavit of Evidence-In-Chief dated 8 July 2020 ("Dong Wei AEIC") at para 6.

with the second defendant as his line manager.[3] An incident between the plaintiff and Vitol Asia Pte Ltd ("Vitol") on 29 September 2017 kickstarted a series of events which ultimately culminated in the termination of the plaintiff's employment in 2018.[4] The plaintiff's various causes of action were largely related to the first and second defendants' conduct following the incident with Vitol.

The September 2017 incident concerning Vitol

The plaintiff's version of events

3 On 24 September 2017, the plaintiff found out that Vitol had "taken on subjects", a newly built vessel, SC Taurus, to carry a gas oil cargo (the "Cargo") along the transpacific route from Nanjing to the United States.[5] A broker from another company also discussed this Cargo with the plaintiff, but stopped giving updates after a while.[6] To gather more information about this Cargo, the plaintiff then decided to call Mr Jason Balota ("Mr Balota"),[7] an oil trader at Vitol who previously worked for the first defendant in the same team as the plaintiff,[8] on 29 September 2017.[9]

4 During the call with Mr Balota, the plaintiff asked Mr Balota who in Vitol traded gas oil. He also informed Mr Balota that he had heard about a gas

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3 Dong Wei AEIC at para 61; Lim Ming Wei's Affidavit of Evidence-In-Chief dated 8 July 2020 ("Lim Ming Wei AEIC") at para 1.

4 Dong Wei AEIC at para 7.

5 Dong Wei AEIC at paras 37–38.

6 Dong Wei AEIC at paras 41–45 and pp 193 and 195.

7 Dong Wei AEIC at paras 46–47 and 53.

8 Dong Wei AEIC at paras 48 and 50.

9 Dong Wei AEIC at paras 45–46.

oil cargo in Nanjing and asked if that cargo was Vitol's.[10] In response, Mr Balota confirmed that he traded gas oil, and that the gas oil cargo in Nanjing belonged to Vitol.[11] Thereafter, the plaintiff asked Mr Balota about a "cheap ship" which he heard Vitol had "taken on subjects" to ship that cargo, and then cancelled.[12] Mr Balota claimed that he was unaware of these matters, and that he thought that his charterer already had a ship for that cargo.[13] In his affidavit, the plaintiff explained that "cheap ship" meant a newly built vessel,[14] and that this was an implied reference to SC Taurus.[15] It was the plaintiff's position that he only wanted to gather more information about the Cargo; he did not attempt to offer or promote SC Taurus to Vitol.[16]

5 Shortly after the plaintiff's call with Mr Balota, Vitol's chartering manager, Mr Ben Jones ("Mr Jones"), contacted the plaintiff to demand an explanation as to why the plaintiff contacted Mr Balota instead of him.[17] Mr Jones appeared to be operating under the incorrect impression that the plaintiff was asking Mr Balota to charter a cheaper vessel for the Cargo, and was upset that the plaintiff did not approach him instead, given that he was the charterer for Vitol.[18] The plaintiff informed Mr Jones that he did not have a vessel to offer Vitol, and that he knew that Vitol already had a vessel "on subjects".[19]

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10 Dong Wei AEIC at para 49.

11 Dong Wei AEIC at para 50.

12 Dong Wei AEIC at para 51.

13 Dong Wei AEIC at para 54.

14 Dong Wei AEIC at para 52.

15 Dong Wei AEIC at para 53.

16 Dong Wei AEIC at para 53.

17 Dong Wei AEIC at para 56.

18 Dong Wei AEIC at paras 56–57.

19 Dong Wei AEIC at para 57.

6 The plaintiff then contacted the second defendant to inform him about the conversation he had with Mr Jones.[20]

The second defendant's version of events

7 The second defendant confirmed that on or about 29 September 2017, the plaintiff called to inform him about the run-in with Mr Jones.[21] The second defendant also alleged that the plaintiff had said that he, the plaintiff, contacted the Vitol products trader, Mr Balota, to "help a friend", one "Stone Sun", and that the plaintiff mentioned his friend's shipping company to Mr Balota when discussing a cargo.[22]

8 Subsequently, the second defendant met Mr Jones on 12 October 2017 in person.[23] During this meeting, Mr Jones allegedly informed the second defendant of two matters:

(a) In 2017, the plaintiff called a Vitol products trader and tried to market a third-party vessel to that products trader.[24]

(b) Back in 2016, First Fleet made an unsolicited attempt to market one of their vessels for a particular set of Vitol cargo, when at the material time, the existence of that set of Vitol cargo was disclosed only to the plaintiff. The second defendant understood this to be an insinuation that the plaintiff had improperly

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20 Dong Wei AEIC at para 61.

21 Lim Ming Wei AEIC at para 15.

22 Lim Ming Wei AEIC at para 16.

23 Lim Ming Wei AEIC at para 28.

24 Lim Ming Wei AEIC at para 28.

imparted exclusive information meant for the first defendant to First Fleet.[25]

9 Troubled by these matters,[26] the second defendant sent an email to Mr Stavros Kokkinis ("Mr Kokkinis") on 12 October 2017 (the "12 October Email"), providing contemporaneous minutes of his meeting with Mr Jones.[27] Mr Kokkinis was the General Manager, Freight & Oil Specialties, Trading & Supply Products with Shell International Trading and Shipping Company Limited, an affiliate of the first defendant.[28] Among other matters, the 12 October Email informed Mr Kokkinis of the two complaints that Mr Jones made against the plaintiff:[29]

> … Based on info from Vitol's chartering manager, here's a quick note.
>
> - [The plaintiff] tried contacting Vitol cargo trader and tried to market a 3rd party vessel** circumventing the proper channel of going through their Chartering manager.
>
> …
>
> - [The second defendant] was told about another incident last year that a Vitol cargo was shown to [the plaintiff] and the broker First Fleet/Link Global, contacted Vitol to offer vessel thereafter where this broker was not in Vitol initial communication chain.
>
> ** 3rd party vessel belongs to [the plaintiff's] friend company.

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25 Lim Ming Wei AEIC at para 29.

26 Lim Ming Wei AEIC at paras 30–31.

27 Lim Ming Wei AEIC at para 32.

28 Stavros Kokkinis' Affidavit of Evidence-In-Chief dated 2 July 2020 ("Mr Kokkinis AEIC") at para 1; Lim Ming Wei AEIC at para 13.

29 ABOD Tab 1 at p 13.

These complaints were then circulated to members of the Shell Group's management and compliance teams.[30]

Project Hudson

10 On 20 October 2017, the first defendant's Business Integrity Department ("BID") commenced an investigation against the plaintiff, codenamed Project Hudson.[31] The terms of reference ("TOR") for Project Hudson specified the following allegations against the plaintiff:[32]

> Concerns have been raised regarding the actions of [the plaintiff], a Freight Trader employed by [the first defendant]. It was alleged that [the plaintiff] offered/promoted the services of a friend's shipping company (Caesar Services Shipping) to a Vitol trader regarding a deal that [the first defendant] was not party to. Concerns were also raised that a similar incident occurred in 2016 involving First Fleet/Link Global and a Vitol deal.

First Fleet/Link Global was subsequently referred to as Firstlink Global Pte Ltd ("FLG") in the investigation report for Project Hudson.[33] For consistency, I will hereafter refer to this entity as "FLG". The investigation sought to establish the facts and circumstances concerning the allegations, in order to determine whether there had been any breaches of the first defendant's Code of Conduct ("CoC") and General Business Principles, and in particular, whether there had been conflicts of interest.[34] The TOR listed Mr Colin James Shanks ("Mr Shanks") as the case manager, Ms Sumitra Balasundaram ("Ms Sumitra") as the investigator, and Mr Kokkinis and Mr Greg Marten ("Mr Marten") as members

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30 ABOD Tab 3 at pp 17–19; ABOD Tab 4 at pp 21–23; ABOD Tab 5 at pp 25–27.

31 ABOD Tab 10 at pp 41–44.

32 ABOD Tab 10 at p 42, para 3.

33 ABOD Tab 42 at p 158, para 1.

34 ABOD Tab 10 at p 42, para 7.

of the distribution list.[35] The TOR also emphasised the need to keep the investigations confidential.[36]

11 On 23 October 2017, the plaintiff went down to the first defendant's premises for an interview with Ms Sumitra.[37] At the interview, the plaintiff described the conversations he had with Mr Balota and Mr Jones,[38] explained his reasons for contacting Mr Balota over Mr Jones,[39] and emphasised that his motive for calling Mr Balota was not to offer a "cheap ship", but to gather information about the Cargo.[40]

12 After the plaintiff's interview concluded, he was given a Notification of Mandatory Paid Leave of Absence and Investigation (the "Notification Letter"),[41] which essentially informed him that he was suspended from work. The Notification Letter also stated that the plaintiff would be informed of the outcome once the investigation was completed.

13 Apart from the plaintiff, BID also interviewed other persons in the course of its investigations: the second defendant, Mr Balota, Mr Jones, Mr Stephen Forsyth ("Mr Forsyth"), the Regional Team Leader for Freight, and Mr Philip Choi ("Mr Choi"), the General Manager for Trading.[42] The plaintiff's electronically stored information ("ESI"), which included the plaintiff's

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35 ABOD Tab 10 at p 41.

36 ABOD Tab 10 at p 41 and p 43, para 11.

37 Dong Wei AEIC at para 116.

38 Plaintiff's Bundle of Documents dated 9 July 2020 ("PBOD") Tab 10 at pp 27–28.

39 PBOD Tab 10 at p 30.

40 PBOD Tab 10 at pp 27–30.

41 Dong Wei AEIC at para 128; ABOD Tab 53 at p 197.

42 ABOD Tab 42 at p 161, para 16.

electronic correspondences with others, was also extracted and reviewed by BID.[43]

14 On 21 November 2017, BID released its investigation report ("BID Report") which summarised its key findings and concluded that the investigation was "inconclusive".[44] It was undisputed that even after the investigation had concluded, the investigation outcome was withheld from the plaintiff,[45] and the plaintiff continued to be suspended until the termination of his employment on 10 January 2018.

Events after Project Hudson

The Platts Query and Platts Article

15 On 29 November 2017, an editor from S&P Global Platts ("Platts") reached out to the first defendant, claiming that there was "a lot of chatter" that a few members of the first defendant's Singapore chartering team were under investigation for "corruption" and "receiving kickbacks from brokers". The editor further claimed that one of the employees under investigation was the plaintiff, and requested for "some details of this investigation and its findings" (the "Platts Query").[46] The first defendant's spokesperson, Ms Sonia Meyer ("Ms Meyer"), replied that "[i]t would not be appropriate to comment on personnel matters", and that "as a general matter", the first defendant's employees have to comply with the CoC and the first defendant investigates allegations of breaches of this code.[47]

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43 ABOD Tab 42 at pp 161 and 165–166, paras 16 and 24–31.

44 ABOD Tab 42 at pp 158–159, paras 3–5 and p 167, paras 35–37.

45 Dong Wei AEIC at para 248; Mr Kokkinis AEIC at para 36.

46 ABOD Tab 44 at p 172.

47 ABOD Tab 44 at p 172.

16 Shortly after, Platts published an online article on 12 December 2017 (the "Platts Article"), claiming that:[48]

> … [The first defendant] is investigating claims of unethical dealings including charges of corruption in its tanker chartering team in Singapore and at least one employee has been asked to take leave pending further investigation …
>
> It all started a few weeks ago when one member of the chartering team, acting as a whistleblower, made a complaint against a colleague for allegedly channeling a large part of the chartering business through a specific brokerage for pecuniary gains, sources said.

17 Platts confirmed that neither the first nor second defendant was the source of its information for both the Platts Article and Platts Query.[49]

Termination of the plaintiff's employment and events post-termination

18 On 10 January 2018, the plaintiff attended a meeting (the "Dismissal Meeting") at the first defendant's premises with Mr Kokkinis, Ms Leah Ng ("Ms Ng") from Human Resources ("HR") and Mr Leong Wei Hung ("Mr Leong"), who took over Mr Choi as the President of the first defendant.[50] During the Dismissal Meeting, the plaintiff was told that the first defendant had decided to exercise its contractual right to terminate his employment with three months' notice.[51] Mr Kokkinis explained to the plaintiff that the decision to terminate was not a direct consequence of the outcome of the latest investigation; rather, it was the events over the last few years that led the first defendant to conclude that the plaintiff and the first defendant could no longer continue working

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48 ABOD Tab 100 at p 617.

49 S&P Global Asian Holdings Pte Ltd's Answer to Interrogatories dated 23 June 2020 ("S&P Interrogatories") at paras 2 and 4.

50 Dong Wei AEIC at para 295.

51 ABOD Tab 62 at p 238, sub-page 2 lines 10–25.

together.[52] The plaintiff insisted that he wanted to know the investigation outcome, but his requests were denied repeatedly.[53] Towards the end of the Dismissal Meeting, the plaintiff was presented with a Notice of Cessation,[54] which he refused to sign without the benefit of legal advice.[55]

19 After the termination of his employment, the plaintiff claimed that he sought employment from other firms in the freight trading industry but was rejected by four companies.[56] The first rejected the plaintiff on the grounds that it came across newspapers reporting "something uncertain related to [the plaintiff's] previous job in [the first defendant]".[57] The other three companies allegedly rejected the plaintiff because the first defendant did not provide a letter clarifying the outcome of its investigations against the plaintiff.[58]

Summary of the plaintiff's case

20 The plaintiff launched the following causes of action against the first defendant:

(a) breach of the implied term of mutual trust and confidence found in his employment contract;

(b) tort of conspiracy, along with the second defendant;

(c) tort of negligence; and

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52 ABOD Tab 62 at p 238, sub-page 2 lines 1–9.

53 ABOD Tab 62 at pp 238–239, sub-page 3 line 7 – sub-page 8 line 18.

54 ABOD Tab 87 at pp 453–454.

55 ABOD Tab 62 at pp 249–250, sub-page 45 line 5 – sub-page 51 line 15.

56 Dong Wei AEIC at paras 309–323.

57 ABOD Tab 76 at p 402.

58 Dong Wei AEIC at paras 317–322.

(d) vicarious liability for the second defendant's tortious conduct.

21 With regards to the second defendant, the plaintiff claimed that he was liable for the following tortious conduct:

(a) tort of conspiracy, along with Mr Kokkinis and other members of the first defendant;

(b) tort of inducing breach of contract; and

(c) tort of malicious falsehood.

22 As against the first defendant, the plaintiff argued that the implied term of mutual trust and confidence contained in the plaintiff's employment contract, obliged the employer (*ie*, the first defendant) not to act in a manner which would undermine the plaintiff's current employment and future job prospects by damaging his reputation, as well as not to suspend the plaintiff without proper and reasonable cause.[59] However, the first defendant, by mismanaging investigations, suspending the plaintiff and refusing to inform the plaintiff of the investigation outcome,[60] caused reputational damage to the plaintiff and impaired the plaintiff's future job prospects.[61] The plaintiff also seemed to have pleaded in his Statement of Claim that the first defendant had breached this implied term by dismissing him arbitrarily, capriciously, and/or in bad faith, without proper and reasonable cause.[62]

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59 Plaintiff's Reply Submissions dated 9 November 2020 ("PRS") at para 19.

60 PRS at paras 7–8.

61 PRS at para 20.

62 Statement of Claim (Amendment No. 6) dated 25 August 2020 ("SOC") at para 5.

23 Secondly, it was argued that members of the first defendant had conspired with the second defendant to conceal the investigation outcome from the plaintiff, procure his continued suspension, and concoct various reasons to justify the plaintiff's dismissal.[63] A combination between the alleged parties could be inferred, amongst other matters, from the close confidence shared between Mr Kokkinis and the second defendant.[64] It was also contended that Mr Kokkinis and the second defendant intended to cause the termination of the plaintiff's employment,[65] and that the means employed in furtherance of this conspiracy were unlawful as they amounted to breaches of the implied term of mutual trust and confidence.[66]

24 Third, the plaintiff submitted that the first defendant was negligent in failing to take reasonable care to ensure that confidential information pertaining to the investigation would not be leaked to the public.[67] The first defendant owed the plaintiff a duty to ensure that the confidentiality of the investigation was protected, as this was one of the first defendant's investigation principles.[68] The plaintiff primarily relied on the doctrine of *res ipsa loquitur* to establish that there had been a breach of this duty.[69]

25 The plaintiff's final claim against the first defendant was that it was vicariously liable for the tortious conduct of the second defendant.[70] The

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63 Plaintiff's Closing Submissions dated 26 October 2020 ("PCS") at para 245.

64 PCS at paras 241–242 and 248; PRS at paras 70–71.

65 PRS at para 69.

66 PCS at para 244; PRS at para 72.

67 PCS at para 227.

68 PCS at para 229.

69 PCS at paras 231–239.

70 PCS at paras 354–357.

plaintiff contended that it was fair, just and reasonable to hold the first defendant vicariously liable.[71]

26 Turning now to the plaintiff's claims against the second defendant, the plaintiff first argued that the latter was liable under the tort of malicious falsehood for sending the 12 October Email which contained false statements.[72] The plaintiff mainly relied on what Mr Jones told BID during his interview to establish the falsity of these statements;[73] and as for the element of malice, the plaintiff pointed to circumstantial evidence demonstrating the second defendant's determination to establish some misconduct on the part of the plaintiff,[74] and his motive to get the plaintiff's employment terminated.[75] The plaintiff's second claim was that the second defendant had induced the first defendant to breach the implied term of mutual trust and confidence, by bringing the allegations to the first defendant's attention, prolonging the investigation, and influencing the investigations as an interested party.[76]

Summary of the defendants' case

27 The crux of the defendants' case was that the plaintiff's various causes of action were unsupported by evidence.[77] The plaintiff's misfortune, if any, could only be attributed to the publication of the Platts Article.[78] Despite

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71 PCS at para 357.

72 SOC at paras 5A(i) and 5A(ii).

73 PCS paras 58 and 62; PRS at paras 75 and 76.

74 PCS at paras 79–89.

75 PCS at para 107.

76 PCS at para 224.

77 Defendants' Closing Submissions dated 26 October 2020 ("DCS") at para 8.

78 DCS at paras 9 and 166–171; Defendants' Reply Submissions dated 9 November 2020 ("DRS") at paras 16–18.

asserting that the Platts Article had defamed him, the plaintiff had inexplicably chosen only to sue the first defendant, which undertook the investigation as any reasonable employer would have done, and the second defendant, who had acted according to his duties as an employee.[79]

28 The plaintiff's claim that there had been a breach of the implied term of mutual trust and confidence was legally unsustainable,[80] as a limited approach should be taken towards the implication of this term.[81] This claim was also factually unsustainable:[82] the investigation against the plaintiff had not been mismanaged,[83] and while it was not necessary to inform the plaintiff of the investigation outcome,[84] it was necessary to suspend the plaintiff pending investigations.[85] The termination of the plaintiff's employment was also supported by logic and reason.[86]

29 As for the plaintiff's claims in tort against the first defendant, the first defendant submitted that the plaintiff's claim in conspiracy ought to fail: there was no contemporaneous evidence showing any such agreement between the alleged parties to the conspiracy,[87] no proof an intention to cause damage or

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79 DCS at para 9.

80 DCS at para 8.

81 DCS at para 54.

82 DCS at para 8.

83 DCS at paras 91–97 and paras 109–114.

84 DCS at para 16.

85 DCS at para 77.

86 DCS at para 127.

87 DCS at paras 138 and 140.

injury,[88] and the means of the conspiracy, if any, were not unlawful.[89] The plaintiff's claim in negligence was also not made out as the first defendant had taken reasonable care in protecting the confidentiality of the investigation, and there was no evidence showing that the defendants had leaked information regarding the investigation to Platts, or to any third party.[90] Further, since the close connection test was not satisfied, the first defendant should not be held vicariously liable for the second defendant's tortious acts, if any.[91]

30 Finally, as against the plaintiff's claim in the tort of malicious falsehood, the second defendant submitted that the content of the second defendant's email was largely truthful, primarily because it was corroborated by BID's interview with Mr Jones (as summarised in the BID Report).[92] In so far as some parts of that email might not be true, the second defendant had an honest belief in its truth, and did not act with reckless disregard as to its truth.[93]

The decision

31 The plaintiff did not succeed in its claims against both the first and second defendants. I accepted that Singapore law recognised an implied term of mutual trust and confidence in employment contracts, but there was nothing of the nature here that would amount to a breach of this term. The plaintiff's other causes of action regarding conspiracy, negligence and tort of malicious falsehood, were not supported by sufficient evidence. Accordingly, neither

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88 DCS at paras 141–142.

89 DCS at paras 143.

90 DCS at paras 82–85.

91 DRS at para 59.

92 DCS at paras 150 and 152; DRS at para 53.

93 DCS at para 153.

vicarious liability nor liability for inducing a breach of contract could attach to the first defendant and second defendant respectively.

Analysis

Claims against the first defendant

Implied term of mutual trust and confidence

The law on the implied term of mutual trust and confidence: general principles

32 As regards the obligation of mutual trust and confidence, I accepted that this is implied by law in employment contracts, as has been recognised in a number of cases. The formulation of the implied term of mutual trust and confidence is as follows: an employer shall not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Part of the content of this broad obligation goes to anything that affects the continuation of the relationship, and thus may overlap or be related to constructive dismissal. Nonetheless, a breach of this implied term can support an independent cause of action separate from constructive dismissal.

(1) Plaintiff's arguments on the law

33 The plaintiff argued that the implied term of mutual trust and confidence is well-established in Singapore by the High Court in *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577 ("*Cheah Peng Hock*") and *Wong Wei Leong Edward and another v Acclaim Insurance Brokers Pte Ltd and another suit* [2010] SGHC 352 ("*Edward Wong*"), as well as by the Court of Appeal in *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte*

Ltd [2014] 4 SLR 357 ("*Wee Kim San*").[94] *Malik v Bank of Credit and Commerce International SA (in liquidation)* [1998] AC 20 ("*Malik*") has been cited with approval in these cases.[95] As a term implied in law rather than in fact, the "business efficacy" test does not apply to determine whether this term ought to be implied.[96] Moreover, the concept of constructive dismissal and the implied term of mutual trust and confidence are distinct but closely related, and the latter is independently actionable (*Wee Kim San* at [28]).[97]

(2) Defendants' arguments on the law

34 Applying the "business efficacy" test to the plaintiff's employment contract,[98] the defendants argued that it was unnecessary to imply a duty to inform the plaintiff of the outcome of the investigation or to provide the plaintiff with a letter "clearing him of the allegations",[99] nor was it necessary to imply a duty not to improperly suspend the plaintiff and not mismanage the investigation.[100]

35 The defendants were also of the view that it is not yet settled that Singapore has accepted UK's approach towards the implied term of mutual trust and confidence.[101] Hence, they took the opportunity to argue for a more limited approach towards the implied duty of mutual trust and confidence,[102] that is, the

94 PCS at para 130; PRS at paras 13–16.

95 PRS at paras 13–16.

96 PRS at paras 22–25.

97 PRS at para 10.

98 DCS at paras 11(b) and 14–19.

99 DCS at paras 10(a) and 11(b).

100 DCS at paras 10(b) and 11(b).

101 DCS at para 31.

102 DCS at para 11(c).

term should only be implied where the alleged trust-destroying conduct directly leads to wrongful dismissal or constructive dismissal, and the employer's alleged trust-destroying conduct must be seriously deplorable before it can give rise to an independent cause of action unconnected with dismissal.[103] It was submitted that this ought to be the position in Singapore because, among other reasons, *Malik* represents an unacceptably wide departure from the original purpose of the implied term.[104]

(3) Examination of English cases

36 In the seminal case of *Malik*, the House of Lords accepted that there is a term implied by law in all contracts of employment, that the employer shall not "without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee" (*Malik* at 45F per Lord Steyn). Otherwise known as the implied term of mutual trust and confidence, this term places a "portmanteau, general obligation" on the employer "not to engage in conduct likely to undermine the trust and confidence required if the employment relationship is to continue in the manner the employment contract implicitly envisages" (*Malik* at 35A per Lord Nicholls).

37 The purpose of the trust and confidence implied term is to facilitate the proper functioning of the employment contract and protect the employment relationship (*Malik* at 36E and 37H per Lord Nicholls). It seeks to strike a balance between "an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited" (*Malik* at 46D per Lord Steyn).

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103 DCS at para 54.

104 DCS at para 48.

38 The determination of whether there has been a breach involves an objective assessment of all the circumstances (*Malik* at 35C per Lord Nicholls). Proof of a subjective loss of confidence in the employer is not an essential element of the breach (*Malik* at 35E per Lord Nicholls). Similarly, the employer's intention and motives are not determinative or even relevant (*Malik* at 47G per Lord Steyn). The focus of the inquiry is on the impact of the employer's behaviour on the employee (*Malik* at 47B per Lord Steyn).

39 This impact, however, must not be trivial, as the court does not generally manage the employment relationship in detail (*Lu v Nottingham University Hospitals NHS Trust* [2014] EWHC 690 (QB) at [105]; *Gogay v Hertfordshire County Council* [2000] IRLR 703 ("*Gogay*") at [55]). The employee may rely on a series of actions on the part of the employer which can cumulatively amount to a breach of the term, even though each individual incident may not do so (*Lewis v Motorworld Garages Ltd* [1985] IRLR 465 at 469 per Glidewell LJ; *Omilaju v Waltham Forest London Borough Council* [2005] 1 All ER 75 at [15] and [19]).

(4) Examination of Singapore cases

40 The implied term of mutual trust and confidence can be said to have strongly taken root in local jurisprudence after *Cheah Peng Hock*: Ravi Chandran, *Employment Law in Singapore* (LexisNexis, 6th Ed, 2019) ("*Ravi Chandran*") at para 4.434. In *Cheah Peng Hock*, the High Court unequivocally held that unless there are express terms to the contrary, or the context implies otherwise, an implied term of mutual trust and confidence is implied by law into a contract of employment under Singapore law (at [59]). This implied term includes a duty of fidelity, *ie*, a duty to act honestly and faithfully (at [55]), but is limited to the manner of treatment within the employment relationship (at

[58]). Parties may exclude or modify the implied term to limit its content (at [59]). As for the breach of this implied term, an objective assessment must be undertaken (at [58]), and a cumulative series of acts taken together can result in a breach of this implied term (at [132]). The court in *Cheah Peng Hock* then applied these general principles to its facts, eventually finding that there was a breach of this implied term. As this breach amounted to a repudiatory breach, the court found that there had been constructive dismissal and awarded damages to the employee accordingly. The breach of the implied term of mutual trust and confidence thus formed part of the ratio in *Cheah Peng Hock*.

41 There was also recognition of this implied term in obiter by other High Court cases (see *Edward Wong* at [52]; *Brader Daniel John and others v Commerzbank AG* [2014] 2 SLR 81 ("*Brader Daniel John*") at [110]–[113]).

42 Thereafter, the Court of Appeal in *Wee Kim San* dealt with an application to strike out a claim for damages for constructive dismissal and alternatively, a breach of the implied term of mutual trust and confidence. In doing so, it analysed the types and extent of damages recoverable from a breach of the implied term. Notably, the court struck out the appellant's claim on the basis that the extent of damages he was claiming was legally unsustainable (at [22]), and appeared to have proceeded on the assumption that the implied duty of mutual trust and confidence was part of Singapore law, though this was not explicitly stated: Ravi Chandran at para 4.435; Dennis Ong & Steven Ang, *Singapore Employment Law* (Cengage Learning Asia Pte Ltd, 2017) at p 101.

(5) Conclusion on the general principles applicable to the implied term of mutual trust and confidence

43 An examination of Singapore authorities on this issue demonstrated that the implied term of mutual trust and confidence has been accepted into

Singapore law as a term implied by law in employment contracts. While the implied term of mutual trust and confidence has a broad scope that covers anything that affects the continuation of the employment relationship, its contents may be excluded or modified by express terms in the employment contract.

44 It is also clear that a breach of this implied term is independently actionable. The determination of whether there has been a breach involves an objective consideration of the impact of the employer's act(s), either individually or cumulatively, on the employee. The issue, specifically, is whether that impact is of a nature that is likely to destroy or seriously damage the relationship of trust and confidence required for the employment relationship to function. In this analysis, proof of a subjective loss of confidence in the employer is not an essential element of the breach, and the employer's intention and motives are not determinative or even relevant. Even if the employer's conduct has such a severe impact on the relationship of trust and confidence, the employer will not be in breach of the implied term if that conduct is supported by a reasonable and proper cause.

The law on the implied term of mutual trust and confidence: suspensions and investigations

45 I accepted that under the current state of our law the implied term of mutual trust and confidence would extend to stigma and analogous situations to some extent, and would within bounds regulate the employer's conduct in suspending and investigating employees. But I did not accept that the obligation extends to suspension of employees, the conduct of investigations, or inquiry in the broad manner advocated by the plaintiff's counsel.

(1) Parties' arguments on the law

46 The plaintiff argued that this implied term has a broad scope which includes the duty "not to suspend an employee for disciplinary purposes without proper and reasonable cause" (*Cheah Peng Hock* at [56]).[105] The implied term also requires the employer to conduct investigations in accordance to principles of natural justice.[106]

47 The defendants, on the other hand, argued that internal investigations conducted by an employer should not be subject to principles of natural justice, which are concepts of public law;[107] employers ought to have the latitude to design its own investigation procedures as long as general notions of fairness are observed.[108] There was also no duty not to improperly suspend the plaintiff,[109] as it is the employer's prerogative to decide whether it wants the employee to work, or not.[110] The defendants' submissions were on the basis that the implied term of mutual trust and confidence was an implied term in fact,[111] but I set it out here nonetheless, as it did have some relevance as to what the content of the implied term ought to be.

(2) Discussion

48 I did not accept that an employer's obligations under the implied term of mutual trust and confidence are as narrowly defined as the defendants argue

105 PRS at para 17.

106 PRS at paras 37–40.

107 DCS at para 61.

108 DCS at para 17.

109 DCS at paras 10(b) and 11.

110 DCS at paras 18 and 73.

111 DCS at paras 11(b), 14 and 19.

– this implied term does impose some obligations on the employer when it carries out investigations and suspensions. However, I did not conclude that the implied term is so broad as to import all the obligations contended for by the plaintiff.

49 Guidance on the degree of obligations imposed, in so far as investigations and suspensions are concerned, can be sought from English and local case law.

50 Two contrasting British cases, not cited by the parties, help illustrate the issue. On the issue of whether the employer had conducted investigations against an employee in breach of the implied term of mutual trust and confidence, the English court in *Hameed v Central Manchester University Hospitals NHS Foundation Trust* [2010] EWHC 2009 (QB) ("*Hameed*") found that the employer's failure to formally inform one of the allegations against the employee did not render the investigation unfair since the employee was given, and took, every opportunity to respond to that allegation (at [234]–[236]). The court also rejected the employee's complaint that it was unfair for the investigation team to refuse disclosure of all witness evidence that they have gathered, because the relevant matters had been put to her and she had the opportunity to deal with them (at [236]). The investigator's omission to obtain evidence from a particular witness also did not cause unfairness to the employee, given that the investigator had considered that evidence from that witness would cause further delay without adding anything to the investigation (at [238]). There was thus no unfairness in the investigation process, and consequently, no breach of the implied term (at [228] and [240]).

51 *Hameed* can be contrasted with *McNeill v Aberdeen City Council (No 2)* [2014] IRLR 113 ("*McNeill*"), where the Inner House of the Scottish Court of

Session upheld the Employment Tribunal's decision that the manner in which the employer carried out investigations amounted to a breach of the *Malik* duty of mutual trust and confidence (at [5], [9] and [83]). On the facts, the *Malik* implied term was breached for a number of reasons, including having a partial investigator (at [45]), extending investigations to cover new complaints which were so vague and unsupported by evidence that the employee had no real opportunity of dealing with them (at [46] and [74]), and uncritically accepting statements from a witness who clearly had a strong motive for implicating the employee in question and allowing that same witness to dictate the course of the investigations (at [47]).

52 While the Singapore High Court case of *Cheah Peng Hock* did not deal with a situation where an employer investigated complaints against an employee, it nonetheless stood for a proposition that has bearing on how investigations ought to be conducted. There, the founder and executive director of the company brought up problems with the employee's organisational changes at a meeting in the absence of that employee, and without bringing these concerns to that employee's attention (at [102]). In finding that this amounted to a breach of the implied term, the court held that "[a] relationship of mutual trust and confidence requires that the employer inform the employee of charges levelled against him, and give him the opportunity to rectify any problems or clarify any misunderstandings" (at [102]). This is sound in principle and should, I believe, apply equally in the context of investigating an employee where complaints about that employee have been raised.

53 Apart from unfairness in the investigation process, suspension of an employee for disciplinary purposes without proper and reasonable cause can amount to a breach of the implied term (*Cheah Peng Hock* at [56(d)] citing *Gogay*).

54 In *Gogay*, the court found that the suspension of an employee, by means of a letter stating that there had been allegations of sexual abuse made against the employee, breached the implied term. The severity of such an allegation clearly damaged the trust and confidence subsisting between the employer and employee (at [55]), and there was no proper cause for the employer to put that allegation to the employee since the source of the relevant information was a child who was so unclear in her communication that further inquiries should be made before the allegation can be characterised as one of sexual abuse (at [55]–[56]). It was also difficult to accept that there was no other useful work for the employee to undertake for the short time needed to make inquiries, or that a short period of leave was not contemplated (at [57]). On the whole, the employer's immediate "knee-jerk" reaction in response to a supposed allegation of sexual abuse breached the implied term of mutual trust and confidence (at [58]–[59]).

55 In contrast, *London Borough of Lambeth v Agoreyo* [2019] IRLR 560 ("*Agoreyo*") at [101]–[102] distinguished its facts from *Gogay*, and held that the suspension of the employee in its case did not constitute a breach of the implied term. In *Agoreyo*, the complaints which led the employee's suspension were made by two members of staff, whilst in *Gogay*, the only source of the complaint of sexual abuse was a troubled child who was the victim of the alleged abuse and whose account was contradictory at times. Furthermore, the complaints against the employee in *Agoreyo*, were that she had used force to secure behavioural compliance from the children on three separate incidents involving two different children. In these circumstances, court held that the employer had reasonable and proper cause to suspend the employee pending investigations. While it is perhaps not meaningful to compare the gravity of the allegations made in *Gogay* and *Agoreyo*, what is clear is that the key factor

distinguishing the facts in *Agoreyo* from *Gogay* was the credibility of the sources of the allegations.

(3) Conclusion on the implied term of mutual trust and confidence in respect of investigations and suspensions

56 These cases show that there is, within that obligation of mutual trust and confidence, a minimum content of fairness required of the employer when suspending and investigating allegations levelled against an employee. The fairness, to my mind, would certainly entail that the procedures adopted and the manner of investigations not amount to a hatchet job, meaning that the outcome was preordained against the plaintiff (see for instance, *McNeill* at [45] and [47]), or be so unfair that it went to destroy the basis of any expected continuation of the relationship of employment. The allegations put to the employee must also be sufficiently clear such that he understands the case that is made against him and has an opportunity to clarify his position (*Cheah Peng Hock* at [102]; *cf McNeill* at [46] and [74]). As for suspension of employees, this ought to be carried out on the basis of clear credible source(s) of information. Suspending an employee precipitately as part of a "knee-jerk" reaction to an unclear or unspecific allegation with dubious credibility may fall below the minimum level of fairness required (see *Gogay* at [55]–[59], contrasted with *Agoreyo* at [101]–[102]).

57 However, this implied term does not import all the obligations of natural justice, or due process obligations, that may apply in other contexts, including informing of investigation outcome, or suspending and investigating allegations against employees in a particular way. I do not find that case authority supports any such import of broad obligations.

58 To the contrary, Lord Steyn in *Malik* at 46D observed that the implied term strikes a balance between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited. Some leeway should thus be given to the employer to act upon practical considerations in the process of investigating and suspending employees. In *Agoreyo* (at [102]), for instance, suspension of an employee even before a full investigation has been completed was not a breach of the implied term because the credibility of the sources of the allegations and the gravity of the allegations made warranted the taking of this precautionary measure. Similarly, the court in *Hameed* (at [238]) gave some latitude to the employer to omit interviewing a particular witness when that would cause further delay without adding much to the investigation.

59 I would be wary of importing the broad obligations advocated for by the plaintiff into an employment contract as these obligations can be onerous if undefined, and unduly constrain the employer's interest in managing her business as she sees fit. Legislation should be the primary mode of bringing in such broad obligations.

Whether there was breach of the implied term of mutual trust and confidence

60 I will first set out the employer's conduct in question, before analysing whether they amounted to a breach of the implied term of mutual trust and confidence.

61 In his Statement of Claim and submissions, the plaintiff averred that the implied term of trust and confidence had been breached by the first defendant in many different ways,[112] which can be categorised in three broad categories:

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112 SOC at paras 5, 28–30 and 37; PRS at para 7–8.

(a) mismanagement of the investigation ("Issue 1");

(b) refusal to inform the plaintiff of the investigation outcome ("Issue 2"); and

(c) suspension of the plaintiff ("Issue 3").

62 As set out above at [56], there will only be a breach of the implied term of mutual trust and confidence in respect of employee investigations and suspensions, where the employer's conduct fall below the minimum standard of fairness required. There was nothing of that nature here. All of the conduct alleged did not breach the implied term of mutual trust and confidence under the contract of employment. There was no mismanagement of the investigations, and in particular, no improper influence by the second defendant. As for the suspension of the plaintiff and non-disclosure of the investigation outcome, there was sufficient explanation for what happened, which were reasonable or appropriate on the facts.

63 I also proceeded to consider two other issues which were not expressly dealt with as a breach of the implied term in the plaintiff's submissions:

(a) whether the plaintiff's dismissal was in breach of the implied term ("Issue 4"); and

(b) whether there was a breach of the implied term arising from the first defendant's omission to combat negative publicity and speculation in so far as the Platts Query and Platts Article were concerned ("Issue 5").

The fourth issue, though not argued in the plaintiff's submissions, seemed to be an issue that was disclosed in his Statement of Claim.[113] The fifth issue was not raised in the plaintiff's pleadings, but was relied upon as one of the causes for his damaged reputation.[114] I proceeded to analyse these issues as they raised interesting questions, but my findings on these issues did not affect my conclusion that the first defendant did not breach the implied term of mutual trust and confidence.

64 I noted that the plaintiff had pleaded in his Statement of Claim that the first defendant breached the implied term of mutual trust and confidence by failing to protect the fact of and general details about the investigation, which were confidential, from unauthorised disclosure.[115] However, in its closing submissions, the plaintiff did not make arguments on the breach of confidentiality as part of its claim for a breach of the implied term, but rather, as part of its claim that the first defendant had been negligent.[116] This issue of breach of confidentiality will thus be examined under the plaintiff's claim in negligence instead. In any event, I found that there had been no breach of confidentiality or any unauthorised disclosure on the part of the first defendant.

(1) The manner of investigations by the first defendant

65 The plaintiff alleged that the first defendant had conducted the investigation in breach of the implied term of mutual trust and confidence:[117] the first defendant failed to provide the plaintiff with a fair opportunity to respond

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113 SOC at para 5.

114 PCS at para 336.

115 SOC at paras 30 and 37.

116 PCS at paras 226–239; SOC at paras 39B(2)(ix) and 39B(2)(x).

117 PCS at para 129ff.

to the allegations made against him,[118] pre-judged the outcome of the investigations,[119] permitted the second defendant's improper involvement in and influence on the investigation,[120] and unnecessarily prolonged the investigation even though it was clear that the plaintiff was not culpable of any wrongdoing.[121]

66 On the other hand, the defendants contended that BID arrived at its conclusion independently, fairly and rationally,[122] without influence from the second defendant.[123] The second defendant's involvement was not improper,[124] and the plaintiff had the opportunity to put forward his version of events.[125] In any event, the plaintiff's allegations of procedural breaches and unfairness in the investigation did not impact the investigation outcome.[126]

67 The factual issues that had to be confronted were whether:

(a) there was improper involvement and influence by the second defendant;

(b) there was pre-judgment;

(c) the plaintiff had not been provided with a fair opportunity to respond to the allegations made against him; and

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118 PCS at paras 132–142.

119 PCS at paras 164–171.

120 PCS at paras 143–163.

121 PCS at paras 172–198.

122 DCS at paras 94–108.

123 DCS at para 93.

124 DCS at paras 109–111 and 113.

125 DCS at paras 115–117.

126 DCS at paras 108, 112, 114 and 118–119.

(d) the first defendant had unnecessarily prolonged investigations.

I was satisfied that these alleged misconduct in the investigation process were not established on the facts.

(A) PERMITTING THE SECOND DEFENDANT TO BE IMPROPERLY INVOLVED IN AND INFLUENCE THE INVESTIGATION

68 The defendants contended that it was natural for the second defendant to be involved in the investigation because he was able to provide necessary information: he was the plaintiff's line manager, was alerted to the incident with Vitol by the plaintiff, and subsequently reached out to Vitol for further information.[127] BID also carried out the investigation independently.[128] Interviews were conducted with a first-hand witness (*ie*, Mr Balota), the original complainant (*ie*, Mr Jones) and the plaintiff, and the plaintiff's ESI was also reviewed.[129] Ultimately, BID concluded that the plaintiff was not guilty of the alleged misconduct, and this was the best evidence of BID's independence.[130]

69 On the other hand, the plaintiff argued that the first defendant supplied the second defendant with information regarding the investigation,[131] thereby enabling his improper involvement in the investigation,[132] and allowing him to improperly influence the issues, direction and scope of the investigation.[133]

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127 DCS at para 109.

128 DCS at paras 93–97.

129 DCS at para 95.

130 DCS at para 94; DRS at paras 36 and 38.

131 PCS at paras 160–163.

132 PCS at para 152.

133 PCS at para 153–154.

(I) MR FORSYTH'S EVIDENCE

70 In particularising how the second defendant was improperly involved in and exerted influence on the investigation, the plaintiff first alleged that the second defendant influenced the evidence which Mr Forsyth gave to BID, so as to redirect the investigators' attention to issues that the second defendant believed should be investigated.[134]

71 Indeed, on 24 October 2017, prior to BID's interview with Mr Forsyth, the second defendant did send an email to Mr Forsyth expressing his view that Ms Sumitra should be focusing on the plaintiff's participation in a non-Shell freight clearance conversation, instead of investigating the propriety of a Shell freight trader calling an oil trader of another company.[135] However, I could not interpret the second defendant's email as expressly or impliedly requesting Mr Forsyth to redirect Ms Sumitra's investigation. The second defendant was merely expressing his view, and some degree of frustration, on the direction in which investigations were proceeding. The recipient of this email was also not a person who was in any way in charge of the investigations. The second defendant's involvement, in this respect, was not of an improper nature that tainted the fairness of the investigations.

72 The plaintiff then alleged that Mr Forsyth was influenced by the second defendant's framing of the issue, as seen from Mr Forsyth's email to Ms Sumitra on 24 October 2017 claiming that one of his real concerns was that the plaintiff was involved in a non-Shell ship.[136] Even if Mr Forsyth's email was influenced by what the second defendant said in his previous email, this statement by Mr

134 PCS at para 152(1).

135 ABOD Tab 24 at p 95.

136 PCS at para 27; ABOD Tab 18 at p 79.

Forsyth did not have the effect of redirecting Ms Sumitra's investigations. Shortly after this email from Mr Forsyth, Ms Sumitra still proceeded to call Mr Forsyth to learn about market norms regarding the lines of communication between a ship owner, charterer and trader.[137] She even interviewed Mr Choi on 26 October 2017 to understand market conventions on the same issue.[138] Hence, despite receiving Mr Forsyth's email on 24 October 2017, she did not abandon her original line of inquiry concerning the appropriateness of a freight trader contacting a Vitol oil trader. This demonstrated that she was not indirectly influenced by the second defendant through Mr Forsyth.

(II) DISCUSSIONS WITH MS SUMITRA

73 The plaintiff's second set of complaints related to the second defendant's communications with Ms Sumitra. One of these complaints was that the second defendant had offered his hypotheses on the plaintiff's possible breaches of the CoC to BID, thereby influencing the direction and scope of the investigation.[139] However, telling Ms Sumitra his view of what actually transpired ought not be regarded as improper given that she was in the midst of a fact-finding process. At most, the second defendant was being proactive and not much objection could be taken with that. In fact, the second defendant's inputs could be useful because he was alerted to the incident by the plaintiff himself, and he thereafter reached out to Vitol for further information on 12 October 2017. In any event, BID did not blindly pursue the line of inquiry raised by the second defendant's hypothesis. During cross-examination, Ms Sumitra

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137 ABOD Tab 18 at p 79; NOE 25 August 2020 at p 58 line 26 – p 59 line 7; ABOD Tab 42 at p 166, paras 32–34.

138 NOE 25 August 2020 at p 58 line 26 – p 59 line 7; ABOD Tab 42 at p 166, paras 32–34.

139 PCS at para 152(2); NOE 25 August 2020 at p 40, line 17 – p 41, line 11.

reiterated that she did not see a need to ask the plaintiff about the second defendant's hypothesis because there was insufficient evidence to back it up.[140] Thus, the second defendant's hypotheses did not have the effect of changing the course of investigations.

74 The plaintiff also took issue with the second defendant discussing the plaintiff's confidential work emails with Ms Sumitra.[141] Ms Sumitra did run through the plaintiff's emails and chat messages with the second defendant,[142] but she explained that her purpose for doing so was to enlist the second defendant's help in flagging up anything of relevance since he was the plaintiff's line manager and would have a better understanding of the context in which these conversations took place.[143] I found that this satisfactorily explained the second defendant's involvement.

75 Another matter raised by the plaintiff was that the second defendant emailed Ms Sumitra on 7 November 2017 to follow a line of inquiry outside the scope of the investigation.[144] This was not supported by the text of the email correspondence,[145] which pertained to matters closely related to allegations levelled against the plaintiff.

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140 NOE 25 August 2020 at p 44 line 24 – p 45 line 25, p 72 lines 18–26 and p 85 lines 16–22.

141 SOC at para 19A(2).

142 NOE 25 August 2020 at p 29 line 25 – p 30 line 3, p 82 lines 19–25 and p 84 lines 7–17.

143 Sumitra Balasundaram's Affidavit of Evidence-In-Chief dated 8 July 2020 at para 14.

144 SOC at para 19A(3).

145 ABOD Tab 38 at p 144.

(III) MR KOKKINIS

76 The third complaint was the issue of the second defendant sending an email to Mr Kokkinis on 4 November 2017, in which he suggested two possibilities of perceived conflict of interests.[146] It was unclear how this even amounted to an involvement in the investigations, since Mr Kokkinis was not the one conducting the investigations and there was no evidence that Mr Kokkinis placed the second defendant's hypothesis before the investigators.

(IV) MR JONES

77 Finally, the plaintiff alleged that the second defendant approached Mr Jones twice on 24 October 2017 to disprove the plaintiff's evidence.[147] In response, the defendants argued that there was nothing improper about calling Mr Jones on 24 October 2017 because the purpose was to gather more information for BID, namely, the name of the vessel allegedly referred to in the plaintiff's conversation with Mr Balota.[148] I agreed with the defendants as this was supported by email correspondences minuting the second defendant's phone call with Mr Jones.[149] In any case, BID did not solely rely on what the second defendant said about his conversation with Mr Jones – Ms Sumitra proceeded to conduct her own interview with Mr Jones on 3 November 2017 and independently gathered that the name of the ship was "SC Taurus".[150]

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146 PCS at para 31; ABOD Tab 36 at p 140.

147 PCS at para 152(3).

148 DCS at para 110.

149 ABOD Tab 24 at p 95.

150 ABOD Tab 42 at p 161, para 16 and p 165, para 23.

(V) CONCLUSION ON IMPROPER INVOLVEMENT AND INFLUENCE BY THE SECOND DEFENDANT

78 Hence, the suggestion that BID allowed itself to be unduly swayed by the second defendant's inputs was unsupported by evidence. In fact, as will be elaborated upon in the following section, BID had diligently conducted its fact-finding process by gathering information from various sources, and evaluating the materials independently.

(B) PRE-JUDGMENT

79 The plaintiff argued that from the start of BID's investigation, the first defendant's business was already of the view that the allegations against the plaintiff were substantiated.[151] In response, the first defendant argued that pre-judgment was highly improbable in light of the investigation outcome.[152] It also contended that it was natural for people to form initial impressions of events, but these impressions were irrelevant to the investigation.[153]

80 One of the emails relied upon by the plaintiff to establish pre-judgment was from Mr Shanks, the BID case manager.[154] However, I could not see how that email was anything more than an instruction to the second defendant to assist BID in gathering relevant evidence. The plaintiff also relied on emails sent by other members of the first defendant to show that there had been a pre-judgment of the plaintiff's guilt.[155] Read in context, these emails did not clearly

151 PCS at para 164.

152 DCS at para 94; DRS at para 39.

153 DRS at para 40.

154 PCS at para 169; ABOD Tab 8 at p 35.

155 PCS at paras 165–168 and 170.

show pre-judgment and even if there was some degree of pre-judgment, these views were held by people who were not conducting the investigation.

81 BID might have been aware of the opinions held by other members of the first defendant,[156] but there was no evidence that BID gave any weight to them in coming to their conclusion. Contrary to the plaintiff's allegations that BID's reasoning reflected the first defendant's intention to find fault with the plaintiff,[157] I found that there were no indications of pre-judgment in the reasoning behind BID's finding that the evidence was "inconclusive".

82 Ms Sumitra had sensibly explained that an investigation would be "inconclusive" where there was some doubt that the allegation might have been made out, such that it could not be said that the allegations were either substantiated or unsubstantiated by evidence.[158] No objection could be taken against this approach. On this premise, Ms Sumitra explained during cross-examination that BID could not conclude that the allegations were "substantiated".[159] She explained that Mr Balota was not sure whether the plaintiff was marketing a ship.[160] Indeed, it was stated in the BID Report that Mr Balota had only "assumed" that the plaintiff had a vessel for the cargo.[161] Meanwhile, Mr Jones was under the impression that the plaintiff had mentioned a non-Shell ship to Mr Balota.[162] Crucially, neither Mr Balota nor Mr Jones expressly said that the plaintiff was marketing a non-shell ship; and neither did

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156 NOE 26 August 2020 at p 15 lines 18–29.

157 PCS at paras 175–181.

158 NOE 25 August 2020 at p 14 lines 18–31.

159 NOE 25 August 2020 at p 55 line 17 – p 56 line 28.

160 NOE 25 August 2020 at p 55 lines 28–30.

161 ABOD Tab 42 at p 164, para 22.

162 NOE 25 August 2020 at p 55 line 30 – p 56 line 1; ABOD Tab 42 at p 165, para 23.

they say that the plaintiff was not marketing a non-shell ship.[163] BID thus found that the allegation could not be "substantiated". This reasoning was sound and logical.

83 As between "unsubstantiated" and "inconclusive", Ms Sumitra explained that the key reason for concluding that it was "inconclusive", was that the plaintiff took a huge risk to contact Mr Balota against proper communication channels just to obtain cargo information: this was inexplicable and illogical to some extent, as it was so strongly against market conventions and norms.[164] As expressed in the BID Report, the plaintiff's actions of speaking to a Vitol oil trader "[were] against market convention and it [was] unusual that he had gone to such lengths to obtain information on the cargo when he did not have a vessel for that cargo".[165] Implicit in Ms Sumitra's testimony and the BID Report, was that the plaintiff's inexplicable behaviour raised doubts as to whether his motive for contacting Mr Balota was really just to obtain cargo information, or whether he contacted Mr Balota for other purposes, such as but not limited to marketing a third-party vessel. Understandably, these doubts were insufficient to support a conclusion of "substantiated" but neither could they be dismissed, hence the finding of inconclusiveness.[166]

84 An examination of BID's reasoning, as set out above, revealed that BID reached its conclusion in a logical and sensible manner which did not betray indications of pre-judgment.

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163 NOE 26 August 2020 at p 29 lines 1–11.

164 NOE 26 August 2020 at p 30 line 1 – p 31 line 7, p 54 line 6 – p 55 line 7, and p 57 lines 12–15.

165 ABOD Tab 42 at p 159, para 4.

166 NOE 26 August 2020 at p 54 line 6 – p 55 line 7.

85 I noted, however, that BID did not provide separate conclusions for the allegation of marketing a third-party vessel to Vitol, and the allegation related to FLG in 2016. Ms Sumitra's explanations for the finding of inconclusiveness related only to the allegation of marketing a third-party vessel to Vitol but not the allegation related to FLG. She admitted during cross-examination that her conclusion did not draw a distinction between these two allegations.[167] A better job could have been done in this regard, but this issue, on its own, was not indicative of pre-judgment.

86 As a point of clarification, the purpose of this analysis is not to assess the correctness of BID's decision, but rather to determine whether BID reasoned in an objective and fair manner, or in a way that revealed its pre-judgment against the plaintiff.

87 Reasoning aside, BID's fact-finding process also did not show signs of pre-judgment. The review of the plaintiff's ESI and interviews with witnesses which were directly involved in the incident demonstrated BID's focus on uncovering the truth based on reliable and probative sources of information. This was consistent with what is expected of a fair investigation.

(C) FAIR OPPORTUNITY TO RESPOND TO ALLEGATIONS

88 The defendant argued that there was nothing left unsaid about the plaintiff's position in the investigation – he was heard and his version of events had been considered by BID.[168] On the other hand, the plaintiff submitted that he was deprived of a fair opportunity to respond to the allegations against him for three reasons. First, he was not given a chance to respond to the basis upon

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167 NOE 25 August 2020 at p 53 lines 26–30.

168 DCS at paras 115–116.

which the investigation was concluded as "inconclusive".[169] Second, the factual allegations against the plaintiff was not particularised in writing.[170] Third, his suspension prejudiced his ability to respond to the allegations.[171]

89 I found that the plaintiff had been afforded a fair chance to respond to the allegations made against him, and did in fact make use of the opportunity to put forward his side of the story and clarify his position.

90 On the first issue, the plaintiff argued that the reason for the "inconclusive" outcome was that BID regarded his behaviour of contacting Mr Balota against market conventions as illogical to some extent,[172] and this view was only formed after Ms Sumitra spoke to Mr Forsyth and Mr Choi about market conventions.[173] However, he did not have a chance to address Ms Sumitra's concern about the alleged illogicity of his actions, as well as those arising from her interviews with Mr Forsyth and Mr Choi.[174] Meanwhile, the defendant argued that the plaintiff gave his account of the facts during his interview on 23 October 2017, and by way of SMS messages on 27 October and 31 October 2017,[175] such that there was nothing left unsaid about the plaintiff's position.[176]

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169 PCS at para 133.

170 SOC at paras 29(3) and 29(4).

171 PCS at paras 137–140.

172 PCS at para 134.

173 PCS at para 135.

174 PCS at para 136.

175 DCS at paras 116–117.

176 DCS at para 115.

91 Indeed, it was only after the interviews with Mr Forsyth and Mr Choi that Ms Sumitra took the view that it was illogical for the plaintiff to go against market norms to obtain cargo information from Mr Balota.[177]

92 Nonetheless, the plaintiff was not deprived of a fair opportunity to respond to the allegations made against him. The crux of Mr Forsyth and Mr Choi's concern was why the plaintiff had gone against market convention to talk to Mr Balota instead of Mr Jones.[178] In this regard, during the plaintiff's interview, Ms Sumitra did suggest to the plaintiff that he ought to have called Mr Jones, the chartering manager, instead of Mr Balota, and the plaintiff responded accordingly:[179]

> **S** Maybe he thought that by right because you were enquiring about the cargo, you should be calling… what do you call Ben instead of…
>
> **DW** Ben Jones, no I don't call him, because he won't tell the truth
>
> **S** Regardless of whether he tells the truth, he's the chartering manager, no?
>
> **DW** It doesn't matter, right, so is the industry right, perhaps too many people counted past all these, and you are saying that I can't talk to my ex-trainee in Shell. I trained him up as a operator, I trust the information he give me, but in the end he lied to me, but anyway, so this guy I never really want to talk to and I can shake hands like how's your family, then we left, but this is the relationship with this guy.
>
> **S** So, you are saying basically because the relationship with Ben is not very good, alright…
>
> **DW** No relationship.
>
> **S** Which is why maybe why you were trying to find something out from Jason perhaps?

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177 ABOD Tab 42 at p 167, para 36; NOE 25 August 2020 at p 56 line 20 – p 57 line 15; NOE 25 August 2020 at p 58 line 26 – p 59 line 7.

178 ABOD Tab 42 at p 166, paras 32 and 34.

179 PBOD Tab 10 at p 30.

> **DW** I'm finding the information from Jason directly, because he's the trader, he's trading, that cargo, he trades that cargo, there are two ex-Shell guy in Vitol team… I know them for 10 years. This is first time information that you might get right.
>
> **S** Yah, but he might have traded that cargo, alright, but shouldn't the chartering manager be the right person to talk to?
>
> **DW** We have a rule that we can't talk to all these guys
>
> **S** I don't know…
>
> **DW** There's no rule… this is the industry, we need to talk to each other to find out what's going on right? I think our oil traders perhaps hard time finding information from Jason, but I will have more power over him to find out information, feedback to our oil traders in the end right?
>
> **S** Okay, so you are just basically saying that you are just trying to find the information out on the cargo, okay…

93 By suggesting that the plaintiff ought to have talked to Mr Jones instead of Mr Balota, Ms Sumitra had essentially put the nub of Mr Forsyth's and Mr Choi's concern to the plaintiff. As evident from the extract above, the plaintiff mounted three key points in response. First, he was of the view that there was no rule that he could not talk to Mr Balota, the oil trader, because people in the industry "need to talk to each other to find out what's going on". This dealt with Mr Forsyth's and Mr Choi's view that there were conventional lines of communication within this industry. Second, the plaintiff explained that he contacted Mr Balota instead because he had a relationship with Mr Balota but not with Mr Jones. The last reason was that he wanted to find out information from Mr Balota directly since Mr Balota traded the Cargo the plaintiff was interested in.[180] The plaintiff also emphasised, in other parts of his interview as well as in his SMS message to Ms Sumitra on 27 October 2017, that he contacted Mr Balota to gather information about the Cargo.[181]

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180 PBOD Tab 10 at p 30.

181 PBOD Tab 10 at pp 25 and 27–30; ABOD Tab 56 at pp 205–206.

94 The implied term of mutual trust and confidence required allegations to be clearly put to the employees so that the employee has a chance to clarify his position (see *Cheah Peng Hock* at [102]). This was already achieved, in substance, during the plaintiff's interview on 23 October 2017, such that there was no need for BID to conduct another interview with the plaintiff to clarify the apparent illogicality of his actions in view of market conventions.

95 In so far as the plaintiff's complaint pertained to the lack of opportunity to respond to BID's assessment that it was unusual for him to go against market norms just to obtain information on a cargo, the tasks of weighing the plaintiff's alleged motives for contacting Mr Balota against the force of market convention, and determining whether the former sufficiently explained acting against market norms, were a matter of value judgment which the BID was entitled to undertake independently without the plaintiff's input. Certainly, BID had to gather evidence, and in so far as the BID was conducting a fact-finding exercise, the plaintiff's position and account of what transpired had to be heard. In this regard, I accepted that the plaintiff had been given ample opportunity to put forward his position, via an interview on 23 October 2017 and multiple SMS messages to Ms Sumitra on 27 October and 31 October 2017. But upon the conclusion of its fact-finding exercise, BID could not be faulted for independently reviewing the evidence and making its own judgment calls.

96 As for the second issue of the first defendant not particularising the factual allegations against the plaintiff in writing,[182] I found that this did not fall below the minimum standard of fairness required by the implied term of mutual trust and confidence. In so far as the allegation of marketing a third-party vessel was concerned, Ms Sumitra had verbally asked the plaintiff to describe his

[182] SOC at paras 29(3) and 29(4).

conversation with Mr Balota, and explain his motives for contacting Mr Balota. The plaintiff responded by relaying his version of what had transpired, and clarified his motives.[183] When Ms Sumitra informed the plaintiff that FLG had quoted Vitol "out of the blue", and asked if the plaintiff had shared information regarding any Vitol trades with FLG in 2016, the plaintiff gave his reply accordingly.[184] Hence, even though the allegations were not formally put to the plaintiff, the questions asked by Ms Sumitra during the interview were clear and direct, such that the plaintiff had a fair chance to put forward his version of events and make clarifications. The circumstances of this case resemble the situation in *Hameed*, where the letter to the employee did not specify the allegation, but no unfairness was caused since the employee was given, and took, every opportunity to respond to that allegation (at [234]–[236]).

97 On the third issue of whether the plaintiff's ability to respond to the allegations was hampered by his suspension, I found that, even though the plaintiff's access to emails was blocked, BID did diligently comb through the plaintiff's ESI.[185] The implied term of mutual trust and confidence does not go so far as to stipulate the specific ways in which companies ought to conduct their internal investigations. BID had the latitude to run through the correspondences themselves and pick out what they deemed was relevant; the implied term did not require an opportunity to be given to the plaintiff to point to correspondences that supported his version of events.

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183 PBOD Tab 10 at pp 25–31.

184 PBOD Tab 10 at p 32.

185 ABOD Tab 42 at p 165.

98 The plaintiff also claimed that as a result of the suspension, he could not ask his colleagues (*ie*, the oil traders) to corroborate his account.[186] However, there was nothing stopping the plaintiff from telling BID the existence of these colleagues, and he did in fact tell Ms Sumitra during his interview that he had given information to the first defendant's oil traders.[187] BID did not proceed to verify with the oil traders if the plaintiff's version of events was true,[188] but this did not cause any unfairness to the plaintiff since the oil traders, at best, only confirmed what the plaintiff had already told Ms Sumitra.

99 I was thus satisfied that the plaintiff was afforded a fair opportunity to have his side of the story heard, and did in fact give his account of what transpired and his motivations.

(D) UNNECESSARY DELAYS TO THE INVESTIGATION

100 The plaintiff argued that the investigation should have concluded either on 24 October, 3 November or 10 November 2017, but BID repeatedly extended the investigations so as to search for additional evidence to prove some wrongdoing.[189] This was an unmeritorious complaint. BID could not have closed the investigation on 24 October 2017 or 3 November 2017 because on these dates, relevant persons had not been interviewed,[190] and ESI had not been reviewed.[191] In or around 10 November 2017, BID might have gathered all the

186 PCS at paras 138–139.

187 PBOD Tab 10 at p 29; ABOD Tab 42 at p 163, para 21.

188 NOE 26 August 2020 at p 55 line 10 – p 56 line 4.

189 PCS at paras 172–198.

190 ABOD Tab 25 at pp 99–100.

191 ABOD Tab 35 at p 138.

relevant information they needed,[192] but it still had to review the evidence, decide on a conclusion and produce a written report.[193] The time taken for the investigation was caused by BID's determination to leave no stone unturned and communicate its findings clearly; there was no *mala fides* of the sort alleged by the plaintiff.

(E) CONCLUSION ON THE INVESTIGATION PROCESS

101 Accordingly, I found the plaintiff's allegations of misconduct in the investigation process to be unsupported by evidence. The plaintiff had a fair opportunity to put forward his version of events and in the absence of evidence indicating that there had been pre-judgment by BID or improper influence by the second defendant, it could not be said that the investigation outcome was preordained against the plaintiff.

(2) Non-disclosure of investigation outcome

102 The plaintiff complained that the outcome was never relayed to him,[194] and this fact was not in dispute.[195] What was in contention was whether the first defendant ought to have informed the plaintiff of the investigation outcome. On this issue, the defendants argued that it was not necessary to do so since the employment relationship was nearing its end and revealing the outcome would serve no purpose other than to assuage the plaintiff, which is not the function of the employment contract.[196] The first defendant further contended that letting

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192 ABOD Tab 41 at p 153.

193 NOE 26 August 2020 at p 27 lines 7–16 and p 45 lines 16–31; NOE 25 August 2020 at p 95 line 25 – p 96 line 10.

194 PCS at paras 214–220.

195 NOE 1 September 2020 at p 6 lines 19–24.

196 DCS at para 16.

the plaintiff know the outcome just so that he could explain to prospective employers would be untenable as that would derogate from the confidentiality of the investigation.[197] In response, the plaintiff submitted that the implied term requires the first defendant to inform the plaintiff of the outcome of the investigation.[198] At the time investigations concluded, parties were expecting a continuing employment relationship; using the end of the employment relationship as a reason for not informing the plaintiff was an *ex post facto* reason by the first defendant to justify a breach of their duty to disclose.[199] Furthermore, the first defendant had informed the plaintiff in the Notification Letter that it would inform the plaintiff of the outcome.[200]

103 Indeed, it was understandable for the plaintiff to feel disgruntled, especially since the Notification Letter did say he would be informed of the investigation outcome.[201] However, proof of subjective loss of confidence in one's employer is insufficient. The inquiry of whether there has been a breach of the implied term of mutual trust and confidence looks at whether the employer's conduct is objectively likely to destroy or seriously damage the relationship of trust and confidence required for the employment relationship to function. Objectively, non-disclosure of the investigation outcome could not have disrupted the proper functioning of the employment contract or relationship, though it might disappoint the subjective expectations of the employee, as was the case here.

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197 DCS at para 16.

198 PRS at para 30.

199 PRS at para 27.

200 PRS at para 30.

201 Dong Wei AEIC at para 130; ABOD Tab 53 at p 197.

104 Furthermore, it was reasonable and appropriate for the first defendant to withhold the investigation outcome from the plaintiff on the grounds that it was inconclusive and irrelevant to its decision to terminate the plaintiff's employment.[202]

(3) Suspension of the plaintiff

105 On the issue of suspension, the first defendant contended that the suspension was not wrongful – an employer was not legally obliged to give work to an employee,[203] and an employer should be allowed to place an employee on fully paid leave provided that it was for a legitimate purpose.[204] Furthermore, it was necessary to suspend the plaintiff because this was the third time the plaintiff was subjected to an internal investigation, and a warning letter was issued against him following an investigation a year ago.[205] On the other hand, the plaintiff raised three main complaints which he said amounted to a breach of the implied term of mutual trust and confidence. First, his suspension was made prematurely without due consideration.[206] Second, suspension was an unnecessary and drastic measure.[207] Third, his suspension continued even after the investigation had concluded.[208]

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202 Mr Kokkinis AEIC at para 36; ABOD Tab 62 at p 238, sub-page 3 line 20 to sub-page 4 line 2 (Wei-Hung); ABOD Tab 62 at p 239, sub-page 5 lines 8–19 (Wei-Hung); NOE 2 September 2020, p 22 lines 1 to 12.

203 DCS at para 73.

204 DCS at paras 74–75.

205 DCS at para 77.

206 PCS at paras 199–202.

207 PCS at paras 203–206.

208 PCS at pars 210–213.

106 I did not find that the plaintiff's suspension was implemented in breach of the implied term of mutual trust and confidence. The plaintiff's first two complaints were without merit. The plaintiff's first allegation that he was suspended without due consideration, was based on two emails sent by Mr Kokkinis and the second defendant respectively,[209] before a scheduled discussion with the relevant stakeholders. However, Mr Kokkinis' email merely showed that he was finding out what steps had to be taken to implement a suspension. This was to prepare for the eventuality that a decision might be made to suspend the plaintiff, as explained by Mr Kokkinis during cross-examination.[210] As for the second defendant's email, it was just conveying HR's advice on what the proper procedures were. These emails did not unequivocally show that a premature decision had been made to suspend the plaintiff.

107 Next, the plaintiff's second allegation that suspension was an unnecessary and drastic measure, was a mischaracterisation of the situation. The plaintiff was previously investigated in 2016 and received a warning letter for a "perceived conflict of interest" concerning FLG.[211] The allegations made against the plaintiff in relation to the Vitol incident in 2017 raised the concern of a conflict of interest again. Hence, the plaintiff's repeated behaviour of placing himself in seemingly compromising positions made it reasonable for the first defendant to pre-emptively protect itself from any further reputational damage by suspending the plaintiff while investigations were carried out. Moreover, the decision to suspend was not a "knee-jerk" reaction to an unspecific allegation with dubious credibility. Rather, it was predicated on the second defendant's email, which contained clear and specific allegations, which

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209 PCS at paras 200–201; ABOD Tab 7 at p 32; ABOD Tab 6 at p 29.

210 NOE 1 September 2020 at p 11 line 21 – p 13 line 9.

211 Dong Wei AEIC at para 69; Mr Kokkinis AEIC at paras 19–20.

were said to originate from Vitol's chartering manager (see above at [9]). This, on its face, lends some credibility to the allegations made since it was Vitol's chartering manager with whom the plaintiff had a run-in.

108 An analogy can be drawn to the case of *Agoreyo*, where the suspension of an employee even before a full investigation has been completed was found not to be a breach of the implied term. There, the credibility of the sources of the allegations and the gravity of the allegations made warranted the taking of this precautionary measure. Similarly, in view of the gravity of the situation and credibility of the sources of information, the first defendant did not breach the implied term of mutual trust and confidence when it decided to suspend the plaintiff while conducting investigations in the meantime.

109 Finally, there was a proper explanation for the plaintiff's continued suspension even after the investigation had concluded: the first defendant was deliberating on whether the plaintiff's employment ought to be continued, and was arranging for a meeting to convey their decision to terminate. On 17 December 2017, Mr Kokkinis sent an email setting out the events relating to the plaintiff over the past two to three years, concluding that "it [was] impossible to accept [the plaintiff] back on the desk".[212] This was followed by a meeting attended by several members of the first defendant, where the decision to terminate the plaintiff's employment was reached.[213] From 19 December 2017 to 28 December 2017, HR and the second defendant liaised with the plaintiff to schedule the Dismissal Meeting,[214] which took place on 10 January 2018. A reasonable amount of time was taken for these matters. Hence, the plaintiff's

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212 ABOD Tab 47 at p 182.

213 Exhibit LP1; Dong Wei AEIC at para 294.

214 Dong Wei AEIC at paras 275–280; ABOD Tab 58 at pp 224–228.

continued suspension beyond the end of the investigation was not in breach of the implied term of mutual trust and confidence.

(4) Negative publicity and speculation

110 The plaintiff faulted the first defendant for not correcting the allegations made in the Platts Query and the Platts Article, thereby damaging his reputation.[215] His counsel argued that it was possible for the first defendant to have responded to Platts in a way that would still have allowed the confidentiality of the investigations to be upheld.[216]

111 The defendants pointed out that the plaintiff did not plead that his reputation was damaged by the first defendant's response to the Platts Query or its failure to correct the inaccuracies in the Platts Article.[217] Indeed, this conduct complained of was not expressly pleaded under any of the heads of claim against the first defendant. Nonetheless, I dealt with this issue for completeness.

(A) THE IMPLIED TERM OF MUTUAL TRUST AND CONFIDENCE DOES NOT IMPORT ANY DUTY TO COMBAT MISINFORMATION, OR TO TAKE REASONABLE CARE TO SAFEGUARD AN EMPLOYEE'S REPUTATION

112 Within the implied term of mutual trust and confidence, I found that there is, as submitted by the defendants,[218] no duty on the employer to combat misinformation pertaining to the employee, nor is there a more general duty to take reasonable care to protect employees from economic and reputational

215 PCS at pp 85–87.

216 PRS at paras 31 and 55.

217 DRS at para 25.

218 DRS at paras 19–24.

harm. Therefore, I found that there was no breach of the implied term for failing to correct factual inaccuracies in the Platts Query and Platts Article.

113 The plaintiff argued, relying on *Cheah Peng Hock* at [56], that an employer is obliged not to act in a manner which would undermine the plaintiff's current employment and future job prospects by damaging his reputation.[219] Hence, the plaintiff argued that the defendant's submission, that it is generally not in an employer's interest to promote or protect an employee's prospects of employment with another employer, is inconsistent with established case law.[220]

114 However, *Cheah Peng Hock* does not support the plaintiff's proposition, and neither does *Malik*. *Cheah Peng Hock* at [56(a)] stated that employers have a "duty not to act in a corrupt manner which would clearly undermine the employee's future job prospects". Crucially, the implied term is not breached by just any act which could undermine an employee's future job prospects – it has to be an act that is carried out in a "corrupt manner", such as a dishonest or corrupt business in *Malik*. As cautioned by Lord Nicholls in *Malik* at 42C:

> … [T]here are many circumstances in which an employee's reputation may suffer from his having been associated with an unsuccessful business, or an unsuccessful department within a business. In the ordinary way this will not found a claim of the nature made in the present case, even if the business or department was run with gross incompetence. A key feature in the present case is the assumed fact that the business was dishonest or corrupt. …

115 The UKSC in *James-Bowen and others v Commissioner of Police of the Metropolis* [2018] 1 WLR 4021 ("*James-Bowen*") at [17]–[20], a case cited by

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219 PRS at para 19.

220 PRS at para 18.

the defendants,[221] also observed that case law had refrained from imposing a duty of care on employers to protect the economic or reputational interests of employees.

116 One of the cases cited in *James-Bowen* was *Crossley v Faithful & Gould Holdings Ltd* [2004] 4 All ER 447 ("*Crossley*"), where the court refused to imply a term into an employment contract that the employer will take reasonable care for the economic well-being of his employee (at [33]) because such an implied term would impose an "unfair and unreasonable burden on employers" (at [43]). A reason raised by the court was that the content of a general duty to take reasonable care for the economic well-being of an employee is unclear, and it is not obvious what an employer is required to do or refrain from doing in order to discharge this duty (at [45]). This reason applies with equal force to refuse finding a duty to safeguard an employee's reputational interests. Such broad obligations can be onerous if undefined, and it is for legislation to import such broad obligations into an employment contract.

117 More fundamentally, the court in *Crossley* observed that it is simply not part of the bargain comprised in the employment contract that an employer had to function as his employee's financial adviser (at [44]). Similarly, it can be said that the employment contract does not envisage the employer as a protector of its employee's reputation, including his professional reputation. The purpose of the trust and confidence implied term is to facilitate the proper functioning of the employment contract by preserving the employment relationship (*Malik* at 36E and 37H per Lord Nicholls), and the employment relationship can still function even if an employee does not have the best professional reputation.

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221 DRS at para 20.

118 A narrower duty to combat misinformation is similarly not part of the bargain under the employment contract – the employer-employee relationship can still work even with untrue rumours about an employee circulating in the market. An employer could be in a better position than his employee to dispel such untruths, but the same could be said for many things, such as the supply of employment references or caring for an employee's financial well-being. To impose a duty on the basis that an employer is in a better position to do so than his employee would open the floodgates. Any additional duties must be imposed on a principled basis. In balancing an employer's and employee's interests as described by Lord Steyn in *Malik* at 46D, an employer should be allowed to focus on managing its business proper without being saddled with the burdensome task of correcting market rumours about its employees. An employee, in any case, cannot be said to be unfairly treated by his employer for failing to correct market rumours and misinformation, especially when such rumours and misinformation do not originate from the employer. There is thus no principled reason for obliging an employer to dispel false rumours concerning an employee even if they had a bearing on the employee's professional reputation.

119 It follows, from the foregoing analysis, that an employer ought not be obligated to dispel misinformation pertaining to his employee, nor does he have to take reasonable care to protect his employees from economic and reputational harm.

(B) EVEN IF THERE WAS SUCH DUTY, THERE WAS NO BREACH OF THE IMPLIED TERM OF MUTUAL TRUST AND CONFIDENCE

120 Even assuming that the implied term of mutual trust and confidence requires the first defendant to dispel misinformation pertaining to the employee,

or take reasonable care to protect employees from economic and reputational harm, there was no breach of this implied term on the facts.

121 The plaintiff speculated that Mr Kokkinis did not point out the falsity of the allegations in the Platts Query and Platts Article because he wanted to have the plaintiff's employment terminated.[222] This was unsupported by evidence, which instead showed that the first defendant had proper and reasonable causes not to correct the untruths by Platts.

122 The first defendant had a company-wide practice not to comment on personnel matters. Ms Sonia Gail Meyer ("Ms Meyer"), the first defendant's spokesperson, explained that the rationale for this was so that the first defendant could avoid creating the expectation that the first defendant would provide sensitive information that may compromise its employee's privacy. Furthermore, any provision of further information in itself could become newsworthy.[223] A similar view was echoed by Mr Kokkinis.[224] These reasons applied equally to both the omission to correct the factual inaccuracies in the Platts Query as well as the Platts Article[225] – any attempt to correct Platts' factual inaccuracies would entail revealing internal personnel matters to the media. I found these justifications proper and reasonable in light of the first defendant's commercial interests and its interests as an employer.

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222 PCS at paras 324 and 335.

223 NOE of 17 July 2020 at p 19 lines 12–25.

224 NOE of 1 September 2020 at p 42 lines 4–9; NOE of 2 September 2020 at p 22 line 16 – p 23 line 3; ABOD Tab 62 at p 241, sub-page 16, lines 12–20.

225 NOE of 1 September 2020 at p 42 lines 4–9 and p 44 lines 23–26; NOE of 17 July 2020 at p 19 lines 7–9.

(5) Termination

123 The plaintiff seemed to have pleaded in its Statement of Claim that the first defendant breached the implied term of mutual trust and confidence by dismissing the plaintiff arbitrarily, capriciously, and/or in bad faith, without proper and reasonable cause.[226] In particular, it was averred by the plaintiff that the first defendant had no factual basis to support its assertion that the plaintiff did not fit in with the first defendant's culture,[227] and that Mr Kokkinis had mischaracterised key events in the plaintiff's employment history to the first defendant's senior management personnel.[228] The first defendant's main response was that its reasons for terminating the plaintiff's employment were irrelevant[229] – it was at liberty to terminate in accordance with the contractual provisions in the employment contract, and an implied term cannot override its express right to terminate on the provision of notice.[230]

124 I found that the plaintiff's termination was properly made under the contract, and it was noteworthy that the termination was not for cause, but just in the exercise of the first defendant's express contractual right to terminate.[231] This was a decision that they were entitled to make and must modify any implied obligation including that of mutual trust and confidence.

125 In this regard, the decision of the High Court in *Cheah Peng Hock* provides useful guidance as to how this implied term of mutual trust and

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226 SOC at para 5.

227 Reply (Amendment No. 4) dated 23 July 2020 at para 3A.

228 PCS at paras 266–267.

229 DCS at para 122; DRS at para 43.

230 DCS at paras 120–121.

231 ABOD Tab 62 at p 238, sub-page 2, lines 14–18.

confidence should interact with express provisions in the employment contract. The court must ensure mutual compatibility amongst the terms in a contract (*Cheah Peng Hock* at [82]); where inconsistencies between the express terms and implied term of mutual trust and confidence arise, the content of the latter must be modified by the former since the implied term merely operates as a default rule: *Cheah Peng Hock* at [59]. In particular, express termination provisions can vary the content of the implied term: *Cheah Peng Hock* at [60] and [65].

126 Consistent with the primacy accorded to express terms, the court must ensure that the implied term of mutual trust and confidence does not operate in manner that undermines the express bargain agreed to by the parties. By way of illustration, in *Cheah Peng Hock*, this implied term governed the manner in which the employer exercised its discretion to appoint a joint-CEO under an express clause, such that the joint-CEO's appointment must not make the plaintiff's CEO position redundant. The court held that this limitation imposed by the implied term did not undermine the full effect of the express clause, because in the first place, that clause did not provide for an absolute and unqualified right for the employer to replace the plaintiff in all his functions as CEO. Such an interpretation was not supported by the literal meaning of "joint" in "joint-CEO" and would be incompatible with other express clauses: *Cheah Peng Hock* at [79]–[82]. Subsequently, the court also held that the employer's power to reverse the plaintiff's changes to the company, was subjected to the implied term of mutual trust and confidence which limited the manner in which any overriding of changes might be done. This again, was compatible with the full effect of the express terms of the contract, because the operation of the implied term in this manner was reinforced by another express clause which provided that the employer's power to reverse these changes should be exercised properly and reasonably: *Cheah Peng Hock* at [123].

127 Turning to the facts of this case, the termination provision in the plaintiff's employment contract stated that the first defendant has the right to terminate the plaintiff's employment by giving the plaintiff three months' notice in writing. The plain wording of that clause and other parts of the contract did not place any fetter on the first defendant's discretion to terminate once three months' notice in writing is given. Hence, the bargain expressly provided for in the employment contract was that the first defendant had the full discretion to terminate the plaintiff's employment once the plaintiff was given three months' notice in writing. This would be undermined by an implied term that obliged the employer not to damage the relationship of trust and confidence without "proper and reasonable cause", as that would effectively require termination to be on the basis of "proper and reasonable cause", in addition to the three months' notice period. To ensure compatibility between the express and implied terms of the employment contract, this express termination provision must thus modify the content of the implied term of mutual trust and confidence, such that this implied term did not apply where this express termination provision was relied upon to end the employment relationship.

128 As a result, the plaintiff in this case could not rely on a breach of the implied term of mutual trust and confidence, since the first defendant had invoked the express termination provision in the employment contract.

129 Before leaving this point, I make two observations. First, English authorities do not speak in unison on how the implied term of mutual trust and confidence ought to interact with express terms in an employment contract. Lord Hoffmann in *Johnson v Unisys Ltd* [2003] 1 AC 518 ("*Johnson*") at [37] held that this implied term cannot override what parties have expressly agreed. This accords with the approach taken in *Cheah Peng Hock*. However, in a dissenting judgment, Lord Steyn in *Johnson* at [24] held that this implied term

of mutual trust and confidence is an "overarching obligation implied by law", that requires at least express words or a necessary implication to displace it or to cut down its scope. Reliance was placed on *Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd* [1991] 1 WLR 589 and *United Bank Ltd v Akhtar* [1989] IRLR 507 ("*Akhtar*") for the propositions that the employer's express contractual rights are subject to the implied obligation that they should not be exercised so as to destroy the relationship of trust and confidence, and that the employer's express rights may be qualified by this implied obligation. *Stevens v University of Birmingham* [2016] 4 All ER 258 at [88] also interpreted *Akhtar* as standing for the proposition that that the overriding obligation of trust and confidence may qualify behaviour which might otherwise appear to be justified because it falls within the literal interpretation of those express terms. This line of authority raises the question of whether the employer's exercise of its express right to terminate ought to be qualified by an "overriding obligation of trust and confidence", even where a literal interpretation of the express provisions gives employers the full discretion to terminate save for the issuance of notices. This issue was not raised in the course of submissions, and I leave this point to be decided in another case. It sufficed to state, at this juncture, that it is doubtful whether this line of authority is sound in principle. Principles of contract law apply to employment contracts as well (*Piattchanine, Iouri v Phosagro Asia Pte Ltd* [2015] 5 SLR 1257 at [115]), and it is trite that an implied term cannot contradict an express term of the contract (*Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308 at [60]). Making the implied term of mutual trust and confidence an "overriding obligation" such that it could cut back on the full effect of the contractual right expressly provided for, does not sit well with this trite principle in contract law.

130 Secondly, if there had been no express termination provision in the plaintiff's employment contract, this court might have to confront the issue of

whether the House of Lords' decision in *Johnson* ought to apply in Singapore. By a majority decision, the House of Lords held that the implied term of mutual trust and confidence does not apply to the manner of dismissal, mainly because an implied term that covers the manner of dismissal will overlap, and even be inconsistent, with the statutory right not to be unfairly dismissed under the Employment Rights Act 1996 (c 18) (UK) (*Johnson* at [2] per Lord Nicholls, at [58] per Lord Hoffmann and at [80] per Lord Millett). It remained an open question as to whether *Johnson* ought to apply in Singapore (see *Chan Miu Yin v Philip Morris Singapore Pte Ltd* [2011] SGHC 161 at [44]–[45]; *Cheah Peng Hock* at [61]; *Wee Kim San* at [34]).

(6) Conclusion on whether there was a breach of the implied term of mutual trust and confidence

131 Summing up my findings thus far, the facts did not reveal any misconduct in the investigation process as alleged by the plaintiff and even though the plaintiff was suspended and the investigation outcome was not disclosed to him, these were for proper and reasonable causes. The implied term of mutual trust and confidence does not extend so far as to place an obligation on the first defendant to combat misinformation about its employee, or take reasonable care to protect employees from economic and reputational harm, and neither did this implied term apply to the termination of the plaintiff's employment on the facts of this case. Hence, I found that the first defendant had not breached the implied term of mutual trust and confidence contained within the plaintiff's employment contract.

Conspiracy with the second defendant

132 The plaintiff's case for conspiracy was that the second defendant, along with Mr Kokkinis and other members of the first defendant, had conspired to

conceal the investigation outcome from the plaintiff, procure his continued suspension, and concoct various reasons to justify the plaintiff's dismissal.[232] It was argued that a conspiracy can be inferred from the breaches of the implied term of mutual trust and confidence, close confidence shared between Mr Kokkinis and second defendant (in the form of extensive communications relating to the plaintiff's investigations and suspensions), as well as Mr Kokkinis' contribution to the plaintiff's termination by way of an email which was false in a material regard.[233] It was contended that Mr Kokkinis and the second defendant intended to cause damage to the plaintiff by causing his employment to be terminated,[234] and that the means employed in furtherance of this conspiracy were unlawful as they amounted to breaches of the implied term of mutual trust and confidence.[235] On the other hand, the defendant argued that there was no contemporaneous evidence showing any such agreement between the second defendant, Mr Kokkinis or any other member of the first defendant.[236] There was no proof an intention to cause damage or injury,[237] and the means of this conspiracy, if any, were not unlawful.[238]

133 The plaintiff's claim for conspiracy was not made out on the evidence. It is trite law that a key ingredient of the tort of unlawful means conspiracy is a combination of two or more persons to do certain acts (*Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal*

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232 SOC at para 20B.

233 PCS at paras 241–242; PRS at paras 70–71.

234 PRS at para 69.

235 PCS at para 244; PRS at para 72.

236 DCS at paras 138 and 140.

237 DCS at paras 141–142.

238 DCS at para 143.

[2018] 2 SLR 655 at [310]). The evidence did not show the existence of any combination at all. Direct evidence of any actual agreement would be of course rare, and a finding of any such combination would have to be made out on inferences from evidence of the conduct and communications between the parties. What was before me fell far short of establishing such inferences on the balance of probabilities.

134 The communications that occurred between the second defendant and others, such as Mr Kokkinis, did show strong feelings about what they perceived to be the plaintiff's behaviour, but did not show any action or any activity that could have been the foundation of any sufficiently strong inference chain that would lead to the conclusion that they were in any combination or conspiracy of the sort alleged by the plaintiff. There was certainly no evidence of any such combination between the second defendant and other persons within the company or group.

Negligence in protecting the confidentiality of the investigation

135 Aside from the question of whether the employer could owe a duty to not negligently disclose information to third parties, or whether there was a duty to keep the information confidential, there was no evidence showing a breach of these duties, even if they were owed.

136 The plaintiff pleaded two ways in which these duties were breached. First, the first defendant failed to take reasonable care to ensure that confidential information pertaining to the investigation would not be leaked by any of its employees to the public.[239] Second, the first defendant failed to take reasonable care to ensure that such information would be kept confidential from its

[239] SOC at para 39B(2)(ix).

employees who were not part of the first defendant's BID and/or senior management.[240] In particular, the second defendant was privy to and possessed confidential information regarding the investigation.[241] However, in its submissions, the plaintiff appeared to have abandoned the second breach, and focused on the first, *viz*, the leakage of confidential information to the public.[242] I thus focus the analysis on whether the first defendant had leaked confidential information about the investigations to the public, and found that a breach had not been established.

137 The plaintiff's case primarily relied on *res ipsa loquitur* to prove that it was the first defendant's negligence to protect the confidentiality of the investigation that enabled the information to find its way to Platts.[243] In response, the defendants' main arguments were that the doctrine of *res ipsa loquitur* only apply to cases involving personal injury or physical accidents,[244] and that Platts' answers to interrogatories rebutted any *prima facie* case of negligence by the first defendant.[245]

138 I found that the present case did not call for the application of *res ipsa loquitur*. *Res ipsa loquitur* is a rule of evidence that enables a plaintiff to establish a *prima facie* case of negligence in the event that there is insufficient direct evidence to establish the cause of the accident in a situation where the accident or injury would not have occurred in the ordinary course of things had proper care been taken, *ie*, absent any negligence (*Grace Electrical Engineering*

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240 SOC at para 39B(2)(x).

241 SOC at para 39B(2)(vi).

242 PCS at paras 227, 236 and 239.

243 PCS at paras 231–238.

244 DCS at para 182; DRS at para 31.

245 DRS at para 34(e).

Pte Ltd v Te Deum Engineering Pte Ltd [2018] 1 SLR 76 ("*Grace Electrical*") at [39]). That said, the question before the court at all times remains whether the defendant was negligent on the balance of probabilities. For this rule to apply, the plaintiff must prove that the explanation resting on the defendant's negligence is that which is more probable than not, before the evidential burden shifts to the defendant to rebut the *prima facie* case of negligence (*Grace Electrical* at [40] and [64]).

139 It follows that *res ipsa loquitur* can only be used as a presumption to ascribe an incident to the defendant's negligence where no other equally, or more probable competing cause could exist. That is a far cry from the situation here, where other sources outside the first defendant were readily apparent and which could not be excluded at all. In particular, as Mr Jones and Mr Balota from Vitol did not testify at trial, it could not be ruled out that they did not share the existence and details of the investigation to others, including Platts. After all, they were the ones who had the run-in with the plaintiff and were interviewed by the first defendant's BID team. They would thus be privy to the existence and some details of the investigation, as well as allegations against the plaintiff. Furthermore, Platts confirmed, in their answers to interrogatories, that it was not the first defendant who had provided it information.[246] Platts' answers did not point to Vitol as being the source of its information, but it did strengthen the probability that Platts' sources lay outside the first defendant. At the very least, therefore, it was equally plausible that people outside the first defendant, including people from Vitol, had revealed the existence and details of the investigation to Platts, such that it could not be said that the explanation resting on the first defendant's negligence was more probable than not.

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246 S&P Interrogatories at paras 2, 4 and 6.

140 Apart from the issue of *res ipsa loquitur*, I was satisfied that the plaintiff had generally taken reasonable care to prevent confidential information from leaking to the public. The first defendant's response to the Platts Query was effectively a refusal to comment on personnel matters or reveal any information about the investigation. It was so general that no confidential information pertaining to the fact or detail of the investigation could be implied from that message. Further, when the second defendant prepared a draft external holding statement which mentioned that the plaintiff "is on extended leave due to an internal inquiry",[247] Mr Kokkinis was careful to point out that there should not be a reference to an ongoing investigation and told the second defendant to simply state "[no] comment".[248]

141 In sum, *res ipsa loquitur* could not aid the plaintiff here and in the absence of evidence pointing to a breach on the part of the first defendant, negligence was not made out.

Vicarious liability

142 The plaintiff's claim that the first defendant was vicariously liable for the tortious conduct of the second defendant[249] failed on the basis that these alleged tortious conduct by the second defendant was not established. This will be elaborated upon further.

Claims against the second defendant

143 The plaintiff argued that the second defendant ought to be liable under the:

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247 ABOD Tab 29 at p 114.

248 ABOD Tab 29 at p 113.

249 SOC at para 39D.

(a) tort of conspiracy, along with Mr Kokkinis and other members of the first defendant;

(b) tort of inducing breach of contract, namely, for inducing the first defendant to breach the implied term of mutual trust and confidence found within the plaintiff's employment contract; and

(c) tort of malicious falsehood.

Tort of conspiracy and tort of inducing breach of contract

144 I found that these causes of actions against the second defendant were not made out. As set out at [133] above, the tort of conspiracy was not established due to a lack of combination between the alleged parties to the conspiracy. The finding that the first defendant did not breach the implied term of mutual trust and confidence (see above at [131]) was sufficient to dispose of the plaintiff's claim on inducing breach of contract. While there were aspects of the plaintiff's conduct that perhaps showed an overzealousness in pursuing his version of events, I did not find that there was anything that showed that he possessed an intention to cause the first defendant to act in breach of the implied term of mutual trust and confidence, below the base level of fairness required.

Tort of malicious falsehood

145 One of the elements that must be proven for the tort of malicious falsehood to be established, is that the defendant had published to third parties words which are false (*Lee Tat Development Pte Ltd v Management Corporation Strata Title Plan No 301* [2018] 2 SLR 866 at [169]). It is thus important to first identify what these statements are, before determining whether they were true or false.

146 In his Statement of Claim, the plaintiff founded this cause of action on the second defendant's 12 October Email to Mr Kokkinis,[250] in which the second defendant said that "[b]ased on info from Vitol's chartering manager",[251] the plaintiff had tried to market a third-party vessel belonging to his friend's company to Vitol (the "First Allegation") and there was an incident involving FLG in 2016 (the "Second Allegation"). In his Statement of Claim, the plaintiff alleged that this email was false in these two respects, that is, the second defendant was not told that the plaintiff tried to market a third-party vessel belonging to his friend's company to Vitol,[252] and the second defendant was not told about any matter involving FLG.[253] The truth, or falsity, of these statements thus turned on whether Vitol's chartering manager, Mr Jones, did inform the second defendant of the First and Second Allegations.

147 I noted that in Closing Submissions, the plaintiff added a third allegedly false statement found in an email sent by the second defendant to Mr Forsyth on 16 October 2017.[254] As rightly pointed out by the defendants,[255] this third allegation was not found in the plaintiff's pleadings. Hence, I disregarded this third allegedly false statement in my findings.

148 As for whether the second defendant had committed the tort of malicious falsehood in relation to the First and Second Allegations, it must be borne in mind that even if the second defendant's version of what transpired might have been different from what appears to have been uncovered by the investigation,

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250 SOC at para 5A(i).

251 ABOD Tab 1 at p 13.

252 SOC at paras 5A and 5A(ii).

253 SOC at para 5A(ii).

254 PCS at para 53.

255 DRS at paras 55–56.

this did not necessarily show that the second defendant committed any wrong as pleaded. The first element requires the plaintiff to prove that the second defendant was not told of the First and Second Allegations, and this turned on what Mr Jones had conveyed to the second defendant prior to the 12 October Email, not the outcome of BID investigations.

149 Parties, however, primarily relied on what Mr Jones told BID during his interview,[256] to ascertain whether the second defendant was told of the First and Second Allegations prior to the 12 October Email. This was unsatisfactory. Firstly, what Mr Jones told BID during his interview might have been different from what Mr Jones informed the second defendant prior to the 12 October Email. As Mr Jones was not called as a witness, it could not be safely said that Mr Jones had no motive to change his account between the time he relayed the information to the second defendant and his interview with BID. It would be a matter of speculation as to whether he had such a motive.

150 Secondly, even if BID had attempted to summarise its interview with Mr Jones as accurately as possible in its report, its summary would inevitably be coloured by BID's own interpretation of what Mr Jones said during the interview. Again, Mr Jones was not called as a witness to testify that BID's summary was a fully accurate representation of what he had conveyed to BID, or whether BID's summary had fully captured certain nuances which he attempted to convey during the interview.

151 In these circumstances, little weight ought to be placed on BID's summary as it had little probative value in determining what Mr Jones told the second defendant prior to the 12 October Email. As Mr Jones was not called as

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256 PCS paras 58 and 62; PRS at paras 75–76; DCS para 150; DRS at para 53.

a witness by either party, there was no direct evidence of whether Mr Jones had, or had not, told the second defendant about the First and Second Allegations. There was thus inadequate evidence proving what Mr Jones had told the second defendant prior to the 12 October Email. The first element of falsity was not made out, and consequently, the tort of malicious falsehood was not established against the second defendant.

Damages

152 The question of damages would be touched on briefly. I did not find that the plaintiff had made out his case as to the measure of damages sought, and preferred the evidence of the defendants' witness, Ms Stine Martinussen ("Ms Martinussen"). In particular, the measure of damages ought to be reduced to the extent that the plaintiff failed to undertake reasonable efforts to seek alternative employment in the industry. After his dismissal, he only contacted four companies in the shipping industry when there were at least 10 to 15 jobs in freight trading or chartering that were posted on LinkedIn in the year of 2018.[257] There was also insufficient effort to search for vacancies through word-of-mouth in the industry. Had reasonable efforts been taken to contact a wider range of companies and apply for more jobs in the industry, he could have landed himself a job in the shipping industry.[258] It may or may not pay as well, but it would have greatly mitigated his losses.

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257 Dong Wei AEIC at paras 309–323; Ms Stine Martinussen's Affidavit of Evidence-In-Chief dated 5 August 2020 ("Ms Martinussen AEIC") at para 7 and p 78.

258 Ms Martinussen AEIC at para 13; NOE 27 August 2020 at p 13 line 8 – p 14 line 31.

Declaratory relief

153 I declined to grant the declaratory relief that the plaintiff sought, that is, a declaration that the first defendant dismissed the plaintiff on 10 January 2018, and/or otherwise acted, arbitrarily, capriciously, and/or in bad faith.[259]

154 To have necessary standing, the plaintiff must be asserting the recognition of a right that is personal to him, and contested (*Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 at [15] and [19]). Yet, the plaintiff had not shown that he had a right not to be treated arbitrarily, capriciously, and/or in bad faith by his employer (*ie*, the first defendant) in respect of his dismissal or other aspects of his employment, choosing instead to focus his arguments on breaches of the implied term of mutual trust and confidence. This implied term is not the same as a duty to act in good faith: whilst the former has been accepted into Singapore law in so far as employment contracts are concerned, the latter has not (see *Cheah Peng Hock* at [45] and [55]). The right not to be treated arbitrarily or capriciously by an employer is also conceptually different from the implied term of mutual trust and confidence: the former concerns the employer's reasons (or lack thereof) in acting in a certain manner, while the latter looks at the effect of the employer's conduct on the trust and confidence underpinning the employer-employee relationship. As the plaintiff had not addressed me on why the first defendant ought to be under a duty not to act arbitrarily or capriciously, or why the first defendant ought to be under a duty to act in good faith despite authorities to the contrary, I declined to grant the declaratory relief sought.

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259 SOC at para 40(a).

Costs

155 I ordered the plaintiff to pay costs of S$113,200 to the first defendant, S$69,320 to the second defendant, and S$11,000 to both defendants jointly. These included costs payable for the various summonses and applications made prior to and during trial. I also ordered the plaintiff to pay disbursements of S$36,312.01 to both defendants jointly.

Conclusion

156 I would note that the real impact suffered by the plaintiff appears to flow from the publication of the Platts Article. On the evidence before me, the plaintiff's losses could not be laid at the door of the defendants, and it may be that the plaintiff should be left to pursue his remedies against persons other than the defendants.

Aedit Abdullah
Judge of the High Court

Choo Zheng Xi and Wong Thai Yong (Peter Low & Choo LLC) for the plaintiff;
Goh Seow Hui and David Marc Lee Yaowei (Li Yaowei) (Bird & Bird ATMD LLP) for the first and second defendants.