

**STEPHANIE WONG CHAN SEE VS MAUVILAC INDUSTRIES LTD**

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Cause Number: 466/16

**THE INDUSTRIAL COURT OF MAURITIUS**

In the matter of:-

**STEPHANIE WONG CHAN SEE**

Plaintiff

**VS**

**MAUVILAC INDUSTRIES LTD**

Defendant

**JUDGMENT**

*Introduction*

The Defendant is now known as AkzoNobel (Mauritius) Ltd. The present case is about an alleged unjustified dismissal for which the Plaintiff is claiming remuneration and severance allowance in the total sum of Rs 11,513,288/-, together with interests and costs, against the Defendant.

*The facts*

The Plaintiff was in the continuous employment of the Defendant. She started employment as an accountant at MWT Paper Processing Limited on the 1<sup>st</sup> July 2000 and she duly produced a contract of employment in Court. (Document P1). MWT Paper Processing Limited was a part of group Roland Maurel. She was subsequently appointed as Financial Manager of the Defendant with effect from the 1<sup>st</sup> June 2009 pursuant to a contract dated the 5<sup>th</sup> May 2009 whereby the Defendant took over the Plaintiff's past services with MWT Paper Processing Limited. The contract dated the 5<sup>th</sup> May 2009 was produced in Court. (Document P2).

At the time of signature of the contract dated the 5<sup>th</sup> May 2009, there was no task list attached to the contract. The Plaintiff explained that when she joined the Defendant company,

the Financial Director informed her of her duties and responsibilities, including the process of payrolls, monthly accounts and reports of meetings. She received on the job training by the Financial Director, Mrs Tat Fong, which related to the preparation of the budget, files and templates as well as control of accounts, control of creditor's ledger, provisions of accruals, commissions, profitability, preparation of pay rolls, bank reconciliation, verification of accounts and cheques and acting as bank signatory. Same was addressed verbally to the Plaintiff and drafted through a request by mail. (Document P3). The Plaintiff produced the task list in Court which consisted of the daily, weekly, monthly, quarterly and yearly description of duties. In a nutshell, the Plaintiff's duties as Financial Manager comprised mainly the following:

- a. Preparation of annual budgets;
- b. Review monthly management accounts prepared by the accountant;
- c. Review the bank reconciliation statement;
- d. Review the creditors control accounts on a monthly basis;
- e. Prepare the financial performance report;
- f. Present a monthly statement of accounts to management;
- g. Effect payment of salaries on behalf of the Defendant and a related company namely Dulux (Mauritius) Ltd;
- h. Review the accounts of Dulux (Mauritius) Ltd; and
- i. Prepare and/or review statutory returns including VAT return, NPF return, PAYE return, TDS return, Income Tax return and return of employees.

It is the contention of the Plaintiff that she was at all material times, reporting to the Head of Finance and Accounts, who was previously known as the Financial Director or Chief Finance Officer, at the Defendant company. His name is Mr Roger Ng.

The Plaintiff testified that since 2009, there was an evolution in the finance department and she produced in Court an organigram presenting a visual aid of the internal changes at the Defendant company. (Document P4). History shows that in June 2009, the Plaintiff was reporting to Mr Roger Ng as Financial Director and Mr Ismael Badat was occupying the post of accountant/credit controller. Below Mr Badat, were the posts of accounts supervisor, accounts clerk and debtors' supervisor.

In 2012, Mr Roger Ng retired and he was replaced by the Chief Finance Officer, Mrs Chantal Tat Fong, a job equivalent to that of head of finance. The Plaintiff and Mr Badat were still in the same post. However, in August 2014, Mrs Shirley Lamette who was the accounts supervisor was promoted to the post of accountant to replace Mr Badat who resigned.

In or around July 2014, Adenia Partners, a private equity firm, acquired a majority stake in the Defendant company. The Plaintiff averred that following the said acquisition, there were changes in the management structure of the Defendant company as follows:

- a. In or around October 2014, Mr Jean Yves Koenig was appointed as the new Chief Operating Officer;
- b. In or around August 2015, Mrs Geean Palakdhari was appointed as the Financial Reporting Executive to manage the company's accounts department;
- c. In or around September 2015, Ms Chantal Tat Fong ceased to hold the position of Chief Financial Officer;
- d. In or around September 2015, Ms Nazeemah Joomun was appointed as Head of Finance and Accounts and took over the duties and responsibilities previously allocated to Ms Chantal Tat Fong;
- e. In or around September 2015, Mr Alexandre Roland Maurel ceased to hold the position of Chief Executive Officer; and
- f. In or around September 2015, Mr Jean-Yves Koenig was appointed as General Manager and took over the duties and responsibilities previously allocated to Mr Alexandre Roland Maurel.

It is the version of the Plaintiff that some time back, that is around 2014, whilst she was effecting salary payment of the staff, she noted that the Defendant company was operating a reduction of costs. People had started to retire and the posts were not filled. Existing posts were cut down. At the time, the Defendant company put in place a report of retrenchment which the Plaintiff was asked to revise. It was then that she came to know of the restructuring plan of the Defendant company and the uncertain nature of the post of the accountant. The Plaintiff explained as per the organigram that in January 2015, for example, the number of posts for accounts clerks was reduced.

Going back to August 2014, the Chief Finance Officer was Mrs Chantal Tat Fong, the Financial Manager was the Plaintiff, the Accountant was Mrs Lamette. In September 2015, Mrs Chantal Tat Fong was replaced by Mrs Nazira Joomun who left in December 2015 to be replaced by Mrs Roukian Toorawa in January 2016. The Plaintiff explained that when Mrs Nazira Joomun joined the Defendant company, she started a restructuration exercise. The debtor's supervisor came at the same level as the accountant and financial reporting executive.

In addition to the above, the Court was favoured with the Company Standards Procedure 302 upon which the Plaintiff relied to give a more accurate description of the task of the stakeholders at the Defendant company. This document was referred to as Document P5. In relation to this document, the Plaintiff averred that the document was last revised on

the 2<sup>nd</sup> and 17<sup>th</sup> September 2014 and her involvement consisted in updating the posting and status of people who were retiring and being replaced.

According to the Plaintiff, in view of the changes in the management structure of the Defendant, she felt that the Defendant was looking for a reason to terminate her employment or a means of pressuring her to resign. She added that in or around September 2015, the Defendant's auditors, namely BDO De Chazal du Mée, observed that the bank reconciliations included several outstanding deposits which could not be traced to bank statements. The Plaintiff further averred that in or around November 2015, the Plaintiff, Ms Joomun, Ms Palakdhari and an accountant, namely Ms Shirley Lamette, carried out an internal investigation to look into the manner in which the said mismatch between the bank reconciliations and bank statements, had occurred. Their investigation which consisted of retrieving the documents at source, revealed that a fraud had been committed by an accounts clerk, namely Mr Veden Balasoopramanien Allaghen.

According to the Plaintiff, Mr Allaghen was accountable to the accountant, being Mr Badat and subsequently Mrs Lamette. The money which was remitted to Mr Allaghen was done in the latter's capacity as account's clerk and he failed to bank the said money. According to the minutes of meeting held on the 28<sup>th</sup> January 2016, (Doc P11, page 2, sub paragraph 3), the amount of missing cash in relation to an audit completed as at June 2015 was Rs 9,012,724 and Rs 2.9 million for the period of 1<sup>st</sup> July 2015 to 30<sup>th</sup> September 2015.

The Plaintiff explained that Mr Allaghen was able to defraud the company because there was a delay between the time the money was received and the time it was banked. He could in this delay, remove money and fill the gap. It is the contention of the Plaintiff that the person in charge of controlling the flow of money was the Financial Director, being Mrs Tat Fong, at the time.

By way of letter dated the 01<sup>st</sup> December 2015, the Plaintiff was informed by the Defendant that "*Management has just uncovered a fraud at the Finance section and has decided to appoint an external audit and forensic expert in order to investigate and make recommendations. At this moment in time, only one person seems to have been the instigator of and/or involved in the fraud. However, it is only after the expert hands in the report that Management will be in a position to decide the way forward regarding others that may be involved, directly or indirectly, in this fraud. In the light of that report, Management may have to take disciplinary actions against those who have been involved in the fraud. In the meantime, you are specifically requested to help the ongoing investigation and report any matter which you think might help in identifying those behind this fraud*". The Plaintiff

collaborated with the investigative team only once over an informal meeting and was not forwarded with the report.

It is the contention of the Plaintiff that by 01<sup>st</sup> December 2015, the Defendant was aware that (i) the said fraud had been committed by Mr Allaghen; and (ii) how it had been committed. On the 12<sup>th</sup> February 2016, the Plaintiff was convened to a meeting with the General Manager of the Defendant, Mr Jean-Yves Koenig, the Human Resources Manager and the Head of Finance and Accounts of the Defendant. The Plaintiff averred that at the said meeting:

- a. Mr Koenig told the Plaintiff that he obtained a report from the external audit and forensic expert and the said report revealed that the Plaintiff failed in her duties as Financial Manager;
- b. Mr Koenig told the Plaintiff to resign or he would take disciplinary action against her;
- c. The Plaintiff requested a copy of the said report but the HR Manager refused to provide same;
- d. The Plaintiff refused to submit her resignation and stated that she would appear before a disciplinary committee upon the Defendant's request;
- e. Mr Koenig then handed the Plaintiff a letter dated the 12<sup>th</sup> February 2016 stating that Management considered that as Finance Manager, the Plaintiff failed to ensure that procedures and adequate controls were in place to prevent such a fraud from occurring and that the alleged total lack of supervision on the part of the Plaintiff had resulted in the said fraud and that such acts amounted to misconduct and/or poor performance on the part of the Plaintiff. The letter concluded by stating that Management decided to suspend the Plaintiff and required her to appear before a disciplinary committee after the final report would have been handed over to Management by the auditors; and
- f. Mr Koenig told the Plaintiff that she could think over her decision of whether to resign and that he was open to negotiate some kind of compensation to be paid by the Defendant to the Plaintiff in the event that the latter decided to resign.

The Plaintiff added that following her suspension from work, the HR manager called her on the 17<sup>th</sup>, 18<sup>th</sup> and 29<sup>th</sup> February 2016 respectively to ask if she would resign from her employment with the Defendant.

By way of letter dated the 10<sup>th</sup> March 2016, the Plaintiff was informed that "*Management is now in presence of the report of the external forensic auditors*". In the same

letter, the Plaintiff was convened to a disciplinary committee on the 23<sup>rd</sup> March 2016 to answer the following charges levelled against her:

1. In the course of your employment as Financial Manager, you failed to supervise and/or verify the tasks performed by a former employee namely Mr. Balasoopramanien Allaghen who was working under your direct supervision in your Department, so that cash sums received by the said Mr Balasoopramanien Allaghen on a number of instances, in the course of his employment, as evidenced by the 'daily collection sheets', were neither recorded on the lodgement sheet which was prepared by the said employee nor were those sums banked into the bank account of the Company as they should have been by him leading to a massive fraud to the tune of Rs. 10.9 million;
2. As Financial Manager, you failed in your duties to ensure that adequate procedures and controls were in place or set up within your department in order to prevent such a massive fraud amounting to Rs 10.9 million from occurring over the period July 2013 to September 2015.

The Plaintiff denied the charges against her at the disciplinary committee and by way of letter dated the 3<sup>rd</sup> June 2016, the Defendant informed the Plaintiff that the disciplinary committee had found that the charges levelled against her were established and consequently, the Plaintiff's employment was terminated forthwith. The Plaintiff averred that the allegations and charges set out in the letters of 12<sup>th</sup> February 2016 and 10<sup>th</sup> March 2016 respectively are not true and were fabricated by the Defendant to pressurise the Plaintiff to resign from her employment. She therefore claimed that the Defendant did not act in good faith by suspending and convening her to appear before a disciplinary committee and that the allegations set out in the 2 letters cannot and do not constitute valid reasons for termination of her employment by the Defendant.

The Plaintiff further averred that since the 1<sup>st</sup> December 2015, the Defendant was or ought to have been aware of the charges which were later set out in the letters of the 12<sup>th</sup> February 2016 and 10<sup>th</sup> March 2016 and the Defendant has thus failed to notify the Plaintiff of such charges within the statutory delay provided in section 38(2)(a)(iii) of the Employment Rights Act.

The Plaintiff averred that the Defendant has unfairly, unjustly and unlawfully terminated her employment and that such termination was without any good cause and justification. She further stated that her monthly remuneration over a period of 12 months ended 31<sup>st</sup> May 2016 amounted to Rs 236,170 and she claimed that the Defendant is liable to her for:

- a. The sum of Rs 236,170 representing the remuneration which the Plaintiff should have received in lieu of notice of termination of employment; and
- b. The sum of Rs 11,277,118 being severance allowance payable to the Plaintiff, together with 12% interest per annum on severance allowance as from the date of termination of the Plaintiff's employment to the date of final payment.

The Plaintiff prayed from the Court for a judgment condemning and ordering the Defendant to pay to the Plaintiff the total sum of Rs 11,513,288 together with 12% interests per annum, on severance allowance as from the date of termination of her employment to the date of final payment.

The Defendant denied being indebted to the Plaintiff in the sum claimed or in any sum whatsoever. The Defendant averred that in the course of the employment, in or about January 2016, the Plaintiff was requested by the new Head of Finance of the Defendant to submit a list of her duties which she did. The Plaintiff submitted the tasks description of the Finance Staff performed on a daily, weekly, monthly, quarterly and yearly basis.

Pursuant to the Company Standard Procedure No.302 (Accounts and Debtors Management) which was effective when the Plaintiff was the Financial Manager of the Defendant, one of her duties was to ensure that all procedures relating to the management of debtors were complied with. One of the procedures which the Financial Manager had to ensure compliance with as implemented by the Finance department pertained to the Daily Report which had to be sent to the Finance Manager summarizing the daily total receipts with total amount banked explaining any variation(s).

The Defendant averred that the Plaintiff was reporting to the Financial Director or Chief Finance Officer of the Defendant. The name of the Financial Reporting Executive is Ms Geeanuswaree Palakdhari. The Defendant acknowledged that in November 2015, discrepancies were noted in the company but the full extent of the fraud had not been detected such that it was decided that the matter had to be further investigated in order to establish the root cause of the problem and identify those who were responsible.

The Defendant further averred that it clearly informed the Plaintiff that it had decided to appoint an external audit and forensic expert in order to investigate into the matter and make recommendations. The amount of the fraud was unknown to the Defendant as at December 2015 but the Defendant contended that Mr Allaghen was a suspect, amongst others. The Defendant confirmed that on the 12<sup>th</sup> February 2016, the Plaintiff was convened to a meeting with the General Manager, the Human Resources Manager and the Head of Finance and Accounts of the Defendant. Thereat, the Plaintiff was handed a letter wherein she was informed of her suspension on the ground of misconduct and/or poor performance.

The Defendant denied having suggested the Plaintiff to resign but acknowledged having told her than in view of the findings of the report, there would be a disciplinary hearing and that the Plaintiff ought to think about her future, which the latter agreed to do. Following the suspension, the Defendant's representative, Mr Kevin Lennon called the Plaintiff in order to know what she had decided.

The Defendant agreed that the Plaintiff was informed by way of letter dated the 10<sup>th</sup> March 2016 that the Management was in presence of a report of the external forensic auditors. The Plaintiff was further informed that any of the charges levelled against her, if proved, may constitute act/s of misconduct and/or poor performance warranting the termination of her employment. The Plaintiff was further informed that she could be accompanied by a legal representative and/or a representative of the Union and/or a Labour Officer at the said disciplinary committee.

The Defendant explained that by virtue of letters from the legal advisor of the Plaintiff, the latter moved for particulars of the charges levelled against her and a request for postponement was favourably entertained. On the 31<sup>st</sup> March 2016, the Defendant informed the Plaintiff that her request for postponement was acceded to and the disciplinary committee was fixed to the 15<sup>th</sup> April 2016. The particulars of the charges were furnished to the Plaintiff and the latter was informed that she could have access to her laptop on the premises of the Defendant in the presence of the HR manager.

According to the Defendant, a further request for postponement was made and, on the 18<sup>th</sup> April 2016, the Defendant informed the Plaintiff that her request for a further postponement was acceded to and the disciplinary committee was reconvened for the 29<sup>th</sup> April 2016. On the 29<sup>th</sup> April 2016, the disciplinary committee was held. The Defendant averred that the Plaintiff, assisted by Senior Counsel, appeared before the disciplinary committee and denied the two charges levelled against her. The disciplinary committee which spanned over five sittings and ended on the 30<sup>th</sup> May 2016, and which was chaired by an independent barrister of experience found that the charges levelled against the Plaintiff were proved.

On the 3<sup>rd</sup> June 2016, since the acts, facts and matters complained of and subject matter of the two charges had been found proved and given the seriousness of the case, the Defendant informed the Plaintiff that it could not, in good faith, take any other course of action but to terminate the Plaintiff's employment with immediate effect.

The Defendant explained that in the light of the report of the external auditors in view of the status of the Plaintiff as the most senior officer of the finance department at the time, the Defendant suspended the Plaintiff and gave her an opportunity to give her explanations

on the facts and matter reproached of her. It is the version of the Defendant that in the course of the disciplinary committee, the Plaintiff admitted that she had specific duties under the Company Standard Procedure No. 302 to ensure that all procedures relating to the management of debtors were complied with. The Defendant further contended that the Plaintiff admitted during the disciplinary committee that she also had the duty to handle the management of procedures regarding debtors, and that the procedures pertaining to the daily report which had to be sent to the Finance Manager summarizing the daily total receipts with total amount banked explaining any variation, were never implemented. The Defendant averred that the Plaintiff finally admitted during the hearing that she had failed in her duties.

The Defendant stated that it acted all along with the parameters of the Law and the allegations of the Plaintiff are but lame attempts to cover up the fact that the facts complained of, had been proved leaving the Defendant with no alternative but to terminate her employment. According to the Defendant, the Plaintiff was in a position of trust and the Defendant could not be expected to continue to employ the Plaintiff in such a position of trust given the evidence available and the findings of the disciplinary committee.

The Defendant further averred that the monthly remuneration of the Plaintiff amounted to Rs 192,991 made up as follows:

Basic Salary	Rs 110,150
Average monthly allowances/benefits:	
Passage benefits (2 airline tickets in economy class to Europe every 3 years making approximately Rs 80,000 for 3 years namely Rs 27,000 per year	Rs 2,250
Taxable benefit for use of vehicle	Rs 9,500
Yearly health care benefit (Rs 10,000 Per year)	Rs 834
Authorised limits for cellular phone calls:	Rs 600
ACCA Membership fee (GBP 221) – Rs 11,897 per year	Rs 992
ACCA Continuous Programme Development RS 25,000 per year	Rs 2,083
End of year bonus (Rs 165,000)	Rs 13,750
Commission (as at Dec 2015 – Rs 633,979)	Rs 52,832
Total per month	Rs 82,841

Monthly remuneration	Rs 192,991
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The Defendant concluded that it was fully justified in the circumstances to terminate the Plaintiff's employment with immediate effect given the findings of the disciplinary committee and it was not indebted to the Plaintiff in the sum claimed or in any sum at all. The Defendant moved that the Plaintiff's action be dismissed.

### *Observations*

I have assessed the evidence on record. This is a case of unjustified dismissal whereby the Plaintiff must aver that her employment was unjustly terminated and the Defendant must prove that same was justified. It has been laid down in the case of **TAHALOOD. R. vs CONSOLIDATED ENERGY CO LTD (2021) SCJ 160** that:

*"it is trite law that in an action for unjustified dismissal the plaintiff need only aver that his employment was terminated without any cause or justification because the burden of proof on that issue rested on the defendant employer (vide Harel Frères Ltd v. Veerasamy [1968 MR 218])".*

I have therefore considered the versions of all the parties in this case to determine whether the employment was justly or unjustly terminated by weighing whether the evidence in this case is sufficient enough to prove the charges levelled against the Plaintiff at the disciplinary committee.

### THE RESPONSIBILITIES OF THE DIFFERENT STAKEHOLDERS

In a gist, the charges levelled against the Plaintiff is that she failed in her duties to supervise and/or verify the tasks performed by a former employee namely Mr. Balasoopramanien Allaghen who was working under her direct supervision in her department, so that cash sums received by the said Mr Balasoopramanien Allaghen on a number of instances, in the course of his employment, as evidenced by the 'daily collection sheets', were neither recorded on the lodgement sheet which was prepared by the said employee nor were those sums banked into the bank account of the Company as they should have been by him leading to a massive fraud to the tune of Rs. 10.9 million. She further failed as Financial

Manager, in her duties to ensure that adequate procedures and controls were in place or set up within her department in order to prevent such a massive fraud amounting to Rs 10.9 million from occurring over the period July 2013 to September 2015.

It was brought to light in cross-examination that the fraud which occurred within the Defendant company took place in the finance department where the Plaintiff was the manager. According to the audit exercise in the finance department, the external auditors have confirmed that the lodgements were not banked by the finance department, more specifically by one employee working under the direct supervision of the Plaintiff. This is apparent from a letter dated the 12<sup>th</sup> February 2016 emanating from the Defendant company to the address of the Plaintiff informing her that Management has initiated a specific audit exercise in the finance department wherein the Plaintiff was the finance manager. (Doc P 13). The audit exercise was to be carried out by RSM which emitted its final report on the 29<sup>th</sup> February 2016 (Doc P16).

The author of the audit report was examined and cross-examined before the disciplinary committee held by the Defendant company. It has been explained in Court that Document P 16 produced in Court was referred as Document Q at the disciplinary committee, the letter of charge being Document P 17 produced in Court is the letter of charge, Document P2 being the contract of employment was referred as Document C before the disciplinary committee, Document P3 produced in Court was referred to as Document D in the disciplinary committee, Document P4 produced in Court was referred to as Document O in the disciplinary committee, Document P5 produced in Court was referred to as Document J in the disciplinary committee. The Plaintiff averred that she produced Documents P2 and P3 before the disciplinary committee as well as Document P4 in Court.

In order to determine the issue of controversy between the parties, it is important to understand the delimitations of the responsibilities of the accounts clerk, the accountant and the Financial Manager, the reason being that the delimitation of responsibilities will shed light on whether the Plaintiff was dutybound to perform a duty which she ultimately failed to do.

I shall first start to consider the duties and responsibilities of the accounts clerk according to the Company Standard Procedure and they are as follows:

- (i) Updating the daily bank balance from information on the sales lodgement receipts listing and the reconciliation to the bank statement (part 5.2.4(h) of

- Document P5), meaning that the accounts clerk had to credit the money received after processing same on the system;
- (ii) Ensuring that no unallocated receipts or credit notes remain pending on the debtor's account (part 5.2.4(l) of Document P5), which means that the money received had to be allocated to an invoice or off set from the credit note.
  - (iii) Ensuring that total banking per sales lodgement receipts tally with total per Cash Sales Collection form (part 5.4.5(g) of Document P5), which means that the total money collected is banked;
  - (iv) The Accounts clerk D/S notifying the Head of Retail and Accountant cum Credit Controller of any discrepancy noted between amount banked and amount per sales listing and the Head of Retail ensuring prompt resolution of discrepancy within 24 hours (part 5.4.5(h) of Document P5).

In line with section 5.2.4(g) of Document P5, the accounts clerk in the debtors' section, herein after referred to as accounts clerk D/S, had to forward to the Accounts Clerk, the sales lodgement receipts listing of the day each afternoon or early the next working day and the accounts clerk would update the daily bank balance from information on the sales lodgement receipts listing and reconcile to the bank statement. This was thoroughly explained in cross-examination to mean that the money received from debtors has to be updated in the ledger cash back and the reconciliation was effected not by the accounts clerk D/S but by another accounts clerk. It was agreed that if the accounts clerk D/S wrongly inserts a figure, the accounts clerk would not have any visibility on what occurred before the filing of debtors' listings.

A bank reconciliation means the difference between the bank account balance in the accounting record of the company and the bank statement. This is a document which will show whether there is any discrepancy in the lodgement receipts. It is prepared by the accounts clerk, reviewed by the accountant to finally be sent to the Finance Manager who would oversee the bank reconciliation before giving the final authorisation.

The account's clerk was responsible for the handling of money transactions by crediting the money received after processing same on the system. The money received had to be allocated to an invoice or off set from the credit note. The accounts clerk was also responsible to ensure that the total money collected is banked and in the event of any discrepancy, the accountant had to be informed. The supervision of the work of the account's clerk was performed by the accountant.

It has remained undisputed that the accounts clerk was reporting to the accountant/credit controller, who was Ismael Badat and when the latter retired, the accounts

clerk reported to Shirley Lamette who held the post of accountant. It is to be remembered that Mr Allaghen was an accounts clerk.

In addition, I have considered the duties and responsibilities of the accountant. I have been favoured with the letter of appointment of an accountant, Mrs Lamette, as produced by the Plaintiff in Court. (Document P6). Mrs Lamette was responsible for the company's accounts department in line with the company policy and/or as directed to the Finance Manager. She was also responsible for the accounts of the companies whose accounting would be contracted to the company, in line with the company policy and/or as directed by the Finance Manager.

It could be read from the contract of employment of Mrs Lamette that she was responsible for the management and control of customer credit accounts in line with the company policy and agreed credit terms. Therefore, before giving a credit line, Mrs Lamette had to ensure that the form was duly filled, that the director and sales director would impose a signature, that the terms of credit was approved before feeding the information in the system. She was also responsible to monitor the cash sales and debtors' receipts ensuring that the receipts are properly recorded and banked on a timely basis. She had to certify the bank reconciliation statement and ensure proper control is in place for the cash, sales and debtors' receipts are processed and banked. At the end, after all verification, Mrs Lamette, the accountant had to hand over the documents to the Plaintiff for the latter to ensure that all figures and accounts were tallied.

Going back to the Company Standard Procedure of the Defendant company, one of the tasks of the accountant/credit controller was to ensure that all cheques processed as receipts be banked within 24 hours. It could not be held back from banking. (Section 5.2.4(d) of Document P5). The accounts clerk also had to notify the head of retail and accountant/credit controller of any discrepancy noted between amount banked and amount per sales listing and the head of retail had to ensure prompt resolution of discrepancy within 24 hours. (Section 5.4.5(h) of Document P5). The accountant/credit controller had a duty to investigate and take corrective action for any unresolved discrepancy (Section 5.4.5(i) of Document P5) as well as ensuring that the debtors control total per the general ledger tallies with the aged debtors analysis. (Section 5.5.9 of Document P5). This means that the list of all debtors should tally with the number of the general ledger.

The accountant had an oversight over the debtors control account which is a summary of all the individual accounts in the accounts receivable. It represents the sum of subsidiary accounts and the balance reflected in the control accounts. The responsibility was on the accounts clerk to record the transactions in the sub ledgers. The accountant had to monitor

numerous sales outlets within a system, specifically the cash sales of different showrooms so as to see the amount of money received and banked. Also, the control entailed that the debtors' receipts are processed and to investigate if there are discrepancies by asking the accounts clerk why an entry was not processed.

Finally, I have considered the duties and responsibilities of the Plaintiff in her post of Financial Manager at the Defendant company. The main duties were as follows:

- a. Preparation of annual budgets;
- b. Review monthly management accounts prepared by the accountant;
- c. Review the bank reconciliation statement;
- d. Review the creditors control accounts on a monthly basis;
- e. Prepare the financial performance report;
- f. Present a monthly statement of accounts to management;
- g. Effect payment of salaries on behalf of the Defendant and a related company namely Dulux (Mauritius) Ltd;
- h. Review the accounts of Dulux (Mauritius) Ltd; and
- i. Prepare and/or review statutory returns including VAT return, NPF return, PAYE return, TDS return, Income Tax return and return of employees.

It is important to consider Document P3 which the Plaintiff was referred to in cross-examination as this document reflects the daily, weekly, monthly, quarterly and yearly tasks description of the Plaintiff as Finance Manager. This is a document prepared by the Plaintiff herself in February 2016 and produced in Court. The Plaintiff explained in cross-examination that the document was prepared in 2016 as there was a new head of finance who had taken employment within the Defendant company and it was Mrs Toorawa. The fraud took place between July 2013 and September 2015, during which time, the Plaintiff was the Finance Manager, being second in hierarchy at the finance department. The first position was occupied by Mrs Tat Fong who had moved to another company before the disciplinary committee.

The responsibilities of the Plaintiff as Finance Manager have also been outlined in Document P5, wherein it is mentioned that the Finance Manager had to ensure that all procedures relating to the management of debtors are complied with.

The reporting line in the company established that the accounts clerk would report to the accountant who would report to the Finance Manager who would then report to the Chief Finance Officer who would ultimately report to the Chief Executive Officer. This means that in the year 2014, Mr Allaghen would report to Mrs Lamette who would report to the Plaintiff

who would then report to Mrs Tat Fong. According to the Plaintiff, the accountant would also report directly to the Financial director and Chief Financial Officer, that is Mr Roger Ng and later Mrs Chantal Tat Fong, for certain tasks, specifically for debtors' management which was under the control of the Chief Financial Officer.

#### WAS THE PLAINTIFF RESPONSIBLE FOR THE MANAGEMENT OF DEBTORS?

The scope of the management of debtors within the Defendant company is set out in Document P5 which was produced in Court by the Plaintiff. Document P5 was referred to as Document J in the disciplinary committee. It is the Company Standard Procedure which defines the management of debtors at the Defendant company. The document was revised in 2009, 2012 and 2014. The revision of 2014 falls within the fraud period at the Defendant company.

Document P5 is self-explanatory in as much as it establishes that the Plaintiff was responsible for the compliance of all procedures relating to the management of debtors, which to all intents and purposes, would include cash debts. It is a document which was not only produced in Court by the Plaintiff but was also relied upon by her to explain the responsibilities of the stakeholders at the Defendant company. It is also a document containing the continuous input of the Plaintiff as it was revised by her on the 2<sup>nd</sup> and 17<sup>th</sup> September 2014, such that the contents of the document were fully to the knowledge of the Plaintiff who never disputed the veracity of the document.

In line with Document P5, the Company Standard Procedure, I have examined the procedure for the management of debtors. Although I have not been favoured with any cash book or bank statement emanating from the Defendant company, I find the Company Standard Procedure to be comprehensive about the specific duty of the stakeholders. The procedure for the management of debtors kicks from the accounts clerks. In relation to the accounts clerks, the work was performed by accounts clerks D/S and other accounts clerks.

It was the duty of the accounts clerk D/S to verify the ledger cash back and to ensure that the debtors' account is correctly updated when money is received by the Defendant company from a debtor. The accounts clerk then proceeds to hand over the money to the attendant for the latter to encash at the bank.

We know from the explanations given by the Plaintiff in cross-examination that the accounts clerk D/S was the one to prepare the banking and fill the Sales Lodgement Receipts listing. Therefore, if the accounts clerk D/S receives Rs 1 million and decides to bank Rs 500,000, he will fill the Sales Lodgement Receipts Listing with the sum of Rs 500,000.

The person updating the daily bank balance from information on the Sales Lodgement Receipts Listing to be reconciled with the bank statement is different from the accounts clerk D/S. This new person is an accounts clerk who is not from the debtor's section. Therefore, according to the Plaintiff, if the accounts clerk D/S does not properly update the information on the lodgement receipts, this will be unknown to the accounts clerk who will not have a visibility on the amount previously listed by the accounts clerk D/S. Hence if the accounts clerk D/S has filled an amount of Rs 500,000 when in fact he received the sum of Rs 1 million, the accounts clerk will only see Rs 500,000 on the listing.

I find that this is where the pivotal role of the Plaintiff comes into play. It is to be remembered that at the head of the finance section, there was the Plaintiff in a position of high responsibility. The Plaintiff's involvement in the management of debtors included supervisory powers in relation to the tasks performed by the accounts clerk and the accountant and not excluding cash transactions. According to Paragraph 4 of Doc P5, the Finance Manager shall ensure that all procedures relating to the management of debtors are complied with.

On this score, I have paid special attention to the testimony of Mrs Toorawa who was called as a witness for the Defendant company. Mrs Toorawa joined the Defendant company in January 2016 and now holds the post of General Manager. She explained that it was the responsibility of the Plaintiff as the Finance Manager to ensure that money coming in the Defendant company was duly credited. The Plaintiff had a daily duty to collect a report which would show the amount of money collected in a day, and which ought to be reflective of the amount banked on the next day. Hence, once the accounts team did the daily cash collections, it had to be processed in the cash book and subsequently reflected in the bank statements.

Mrs Toorawa enlightened the Court that the Plaintiff also had a monthly duty. When the Plaintiff received the trial balance, she had to check all controls and effect a reconciliation. Therefore, if the cash book showed a balance of Rs 10 million and the bank statement portrayed a figure of Rs 8 million, the Finance Manager would have to explain the difference in view of the time lag between the administrative and banking process. Also, the Plaintiff had a yearly duty to update the financial procedures.

In view of the above and more specifically, in view of the responsibilities entrusted to the Plaintiff within the Defendant company as evidenced by the Plaintiff's testimony and through the Company Standard Procedure, I am satisfied that the Plaintiff as Finance Manager had to ensure that all procedures relating to the management of debtors were complied with, bearing in mind that she had to oversee and check all cash debts and transactions.

In addition, the Plaintiff has not impressed me as being a credible witness when she was cornered in cross-examination. Indeed, when she was questioned about the procedure for

cash payment in the Defendant company, the Plaintiff averred that although the written company procedure could establish a process, there were things done in the company which were not in compliance with the procedures. When she was asked whether she used to check the work in the debtors' section, she evaded a clear answer by trying to blow hot and cold to state that she could neither confirm nor deny such a query.

I find that the Plaintiff failed to satisfactorily respond to the questions put to her in cross-examination by failing to give a clear and precise answer in relation to any deficiency arising from her work standard. It is most surprising that the Plaintiff would herself input and revise a Company Standard Procedure mentioning that she was responsible to ensure the management of debtors and then state in Court that she was neither involved in the debtors' management nor did she comply with the requirement to receive the daily report summarizing the total daily receipts with the amount banked.

If the Plaintiff did her work contrary to the established procedures or if she failed to supervise the debtors' section, it adds water to the charges levelled against her at the disciplinary committee. I find that it was the Plaintiff who handled the Company Standard Procedure and in the event that there was a responsibility accrued to her which she was not performing, the Plaintiff would have reasonably caused an amendment to be made in the Company Standard Procedure.

Additionally, I have noted that the report of RSM has observed that the clearing accounts of the Defendant company as at the 30<sup>th</sup> June 2015 were not reviewed by a responsible officer. On this score, Mrs Toorawa has testified that the responsible officer was the Plaintiff. Conversely, the Plaintiff has averred that the responsible officer was Mr Roger Ng and subsequently Mrs Tat Fong.

It is the version of the Plaintiff that she was not responsible for the cash procedures pertaining to the debtors and she was not delegated this task as part of the practice of the Defendant company. She explained that according to the report of RSM the responsible officer for the clearing accounts would be the accountant in charge of the supervision of the accounts clerk. According to her, the Chief Finance Officer was responsible for ensuring that all receipts were properly accounted for, which means that all monies, receipts, cash received by the Defendant company were under the responsibility of the Chief Finance Officer, Mr Roger Ng followed by Mrs Chantal Tat Fong. She contended that she never assisted any meeting with the debtors because it was never her responsibility. This befell totally under the responsibility of Mr Roger Ng and subsequently Mrs Tat Fong.

The Plaintiff produced in Court a timeline of how cash transactions were effected at the Defendant company. (Document P7). She averred that, unlike cheques received which had

to banked within 24 hours, cash received was not necessarily banked but could be used for other purposes. All amount received, either through cash or cheque, are credited in a control account to be directed to the bank. In many cases, the accounts clerk was asked to keep the cash to be remitted to the Financial Director for alternative uses.

There would be a delay between the time the cash was received and the time the cash was banked. According to the Plaintiff, the person responsible to oversee the cash transaction was the Financial Director Mr Roger Ng, as the accounts clerk would keep the money to remit to the Financial Director. A document named IOU was produced in Court to show the dealings, namely that the accounts clerk would write the sum remitted to a given person and the latter would sign on the form. The document would be returned when the refund is made.

Basically, the version of the Plaintiff is that the debtors' management was under the responsibility of the accounts clerk and the accountant/credit controller who would report directly to the Chief Finance Officer also known as the Financial Director.

On this issue, I have paid special attention to Document P4 which was referred to the Plaintiff in cross-examination. It is to be noted that Document P4 is an organigram prepared by the Plaintiff herself and produced in Court and reflective of the line of reporting in the Defendant company. It is noteworthy that according to this organigram, there was no Chief Finance Officer in the Defendant company since April 2012 to August 2015. The fraud in the Defendant company, being the subject matter of the present case, took place during the period of 2013 to 2015. In cross-examination, the Plaintiff stated that Mrs Tat Fong was the Chief Finance Officer but at the relevant time, she had moved and was paid by Mauvilac & Co Ltd and not by the Defendant which was Mauvilac Industries.

In light of Document P4, I find that between the period of April 2012 to August 2015, there was no Chief Finance Officer within the Defendant company, such that the Plaintiff's version to the effect that the accountant was reporting directly to Mrs Tat Fong does not hold water. The Defendant company and Mauvilac & Co Ltd are 2 different entities and although there could have been an overlapping to some extent in the work performed by Mrs Tat Fong as she was heading different finance departments of many companies, there was no official Chief Finance Officer in post which could be claimed by the Plaintiff as being responsible in the midst of a reporting line from the accountant.

I therefore do not find credible the version of the Plaintiff that the accounts clerk was reporting to the Chief Finance Officer for cash transactions of debtors when in truth and in fact, there was no Chief Finance Officer in official post between 2012 to 2015 at the Defendant company. In fact, the Company Standard Procedure sheds another story with regards to the reporting line of the accounts clerk D/S (section 5.2.4(k) of Document P5).

In the circumstances, the Plaintiff was ultimately responsible to monitor the management of cash transactions and debtors through her reporting line from the accounts clerk and accountant and through a daily report as mentioned in the Company Standard Procedure. I have taken note of the testimony of the Plaintiff to the effect that if there were differences in the outstanding transactions, she would not be able to see same in the reconciliation as she was not in possession of all documents. I find that this is precisely why as head of the finance department, the Plaintiff should have exercised control over the lodgement sheets, the daily reports and the bank reconciliation.

I consider that it was the duty of the Plaintiff to ensure full compliance with the procedures relating to the management of debtors. I do not find any real evidence showing that there was a by-pass of procedures going from the accounts clerk to the Chief Finance Officer as the Plaintiff would have liked the Court to believe. I find that Document P4 and Document P5 clearly establish the duties of the Plaintiff for the management of debtors within the reporting line at the Defendant company.

If the Plaintiff did not monitor the daily report or failed to supervise the works of the accounts clerk and accountant, then she failed in her duties to ensure that all procedures relating to the management of debtors are complied with. I find that this would constitute evidence establishing the charges levelled against her at the Disciplinary Committee.

#### THE FIRST CHARGE AGAINST THE PLAINTIFF

The first charge levelled against the Plaintiff by the Defendant at the disciplinary committee read as follows:

In the course of your employment as Financial Manager, you failed to supervise and/or verify the tasks performed by a former employee namely Mr. Balasoopramanien Allaghen who was working under your direct supervision in your Department, so that cash sums received by the said Mr Balasoopramanien Allaghen on a number of instances, in the course of his employment, as evidenced by the 'daily collection sheets', were neither recorded on the lodgement sheet which was prepared by the said employee nor were those sums banked into the bank account of the Company as they should have been by him leading to a massive fraud to the tune of Rs. 10.9 million;

It is important, at this stage, to highlight paragraph 5.2.4(k) of Document P5. Paragraph 5.2.4(k) states that the Plaintiff should be in obtention of a daily report sent to her by the accounts clerk D/S (debtors' section) summarizing the daily total receipts with total

amount banked explaining any variations. This is a written duty in the Company Standard Procedure for the management of debtors.

The Plaintiff conceded, when she was re-examined, that she was under a daily duty to verify and check the bank statement. She was responsible for the bank reconciliation. However, she averred that she would only check the balance to see whether there were sufficient funds for payment. She did not check the debtors' receipts.

On this score, I have noted that the notion of bank reconciliation is multi-fold, based on the pertinent version of Mrs Toorawa in Court. For the Plaintiff to perform the bank reconciliation, she had to check the cash book and the bank statement. The figures contained therein should be reflective of each other. However, there are instances when the money coming in the Defendant company is not banked immediately after receipt and this is where the clearing accounts of the Defendant company come into play. The clearing accounts formed part of the debtors' bank reconciliation, as all cash coming in the Defendant company from debtors would go to the clearing accounts before being banked.

Mrs Toorawa explained to Court the procedure by which the Plaintiff ought to have supervised and verified the task performed by Mr Allaghen. All monies coming in the Defendant company are credited to the clearing account of the company. To understand the amount contained in the clearing account on any day, being given that there could be a time lag between the time the money reaches the clearing account and the time the money is banked, it is important to look at the daily report which would show how much money ought to have been credited on any given day. Therefore, the Plaintiff had a duty to supervise the daily report or collection sheet.

There can be another scenario, as explained by Mrs Toorawa, whereby a debtor owes a debt at the Defendant company and holds an account thereat. Money coming from that debtor would go in his account to clear his debt, with the remaining transiting in the clearing accounts before being banked. This goes through a process called I.O.U as evidenced by document P8 in Court. Therefore, a bank reconciliation has to take into account all monies coming in, transferred through I.O.U, kept in the clearing accounts and banked.

I find no reason to doubt her version that Mr Allaghen was under the direct supervision of the Plaintiff as the latter signed a warning letter to Mr Allaghen in the past in her capacity as the reporting officer. Having said that, it is undisputed that the Plaintiff as Finance Manager had to ensure that all procedures relating to the management of debtors were complied with (paragraph 4 of Document P5) including the duty to ensure that all monies coming in the Defendant company had to be credited at the bank.

The daily collection sheet would reveal how much cash was collected in a day. I find that it was the duty of the Plaintiff to supervise or verify the work of Mr Allaghen through a record of the amount of money received daily. To ensure that the money is administratively processed within the Defendant company, she had to verify the clearing accounts to see to it that the amount of money received tallies with the amount credited in the clearing accounts and ultimately sent to the bank. The responsibility of the Plaintiff over the bank reconciliation included an oversight of the daily report, the clearing account, the cash book and the bank statement. I find credence in the version of Mrs Toorawa, that if the Plaintiff had performed the duty of supervision and verification of the work of Mr Allaghen as the Finance Manager, she would have exerted a control over the cash flow and prevented the fraud.

It is the Plaintiff's own version that after the accountant, being Mrs Lamette, verified the bank reconciliation statement and ensured proper controls, the whole document was remitted to the Plaintiff to ensure that the numbers tally with the accounts and are monitored. The Plaintiff was the one to give the final authorisation whilst overseeing that the accounts clerks did the work and considered the outstanding transactions. She would ensure that the money is credited to the bank at a later date. Therefore, when the Plaintiff is at the end of the control line for bank reconciliation, it means that she was involved in the final leg of the debtors' management by giving a final say over documents pertaining to a reconciliation between the sales lodgement receipts listing and the amounts banked. The Plaintiff was involved through her supervisory powers, a task which she failed to execute.

## THE SECOND CHARGE AGAINST THE PLAINTIFF

The second charge levelled against the Plaintiff by the Defendant and which she had to answer at the disciplinary committee is as follows:

As Financial Manager, you failed in your duties to ensure that adequate procedures and controls were in place or set up within your department in order to prevent such a massive fraud amounting to Rs 10.9 million from occurring over the period July 2013 to September 2015.

It was the duty of the Plaintiff to be in obtention of a daily report sent to her by the accounts clerk D/S (debtors' section) summarizing the daily total receipts with total amount banked explaining any variations. Mrs Toorawa, representing the Defendant contended that if the Plaintiff had set up a system of being provided with a daily report, duly prepared and controlled the finances, the fraud would have been avoided as she would have known the amount of money coming in the Defendant company and being credited at the bank.

In addition, it was the duty of the Plaintiff to control that money received is being banked. She was the one in charge of the bank reconciliation. As rightly explained by Mrs Toorawa, given that the clearing account is an intermediate account pending a permanent destination of the Defendant's money to the bank, the amount of money in the clearing account should, at all times, be zero. I find that if the Plaintiff adequately controlled the process of money from the Defendant company to the bank, she would have found that the clearing account held an important sum of money which should have triggered an element of doubt in relation to the financial handling of debtors.

I am of the view that the evidence in this case clearly spells out the notion of control as being a pivotal element in the Defendant company. Everything has to be accounted for. On this point, I have paid special attention to the cross-examination of Mrs Toorawa by Learned Senior Counsel for the Plaintiff. It is beyond dispute that the Company Standard Procedure (Document P5) lays down the process and procedure in relation to debtor's management. A perusal of section 5.2 of Document P5 shows that the whole process of receipts by post, despatch, bank transfer or by sales personnel and activities of bank transfer pertain to the duties of the accounts clerk.

In addition to the company standard procedure (Document P5), I have also considered the letter of appointment of the accountant (Document P6), Mrs Lamette, referred to by Learned Senior Counsel for the Plaintiff to view the assignment of the monitoring duty. One of the duties of Mrs Lamette was to ensure debtors control through the management and control of credit accounts in line with the Company policy and agreed credit terms which may be reviewed by Accounts from time to time. She also had to verify the bank reconciliation statement, ensure controls for cash sales and debtors' receipts and monitor daily bank balances. It is to be noted that there were no proceedings brought against Mrs Lamette.

It has been brought to light that in the letter of appointment of Mrs Lamette, on page 2, it is laid down that Mrs Lamette would report to the Chief Finance Officer. However, I have perused the organigram witnessing the line of reporting at the Defendant company set out in the said letter and it is clear that Mrs Lamette was to report to the Finance Manager. This is accentuated by a description of a summary of her role at the company being that she would implement accounts procedures in coordination with the CFO and Finance Manager.

Hence, it is true to say that the duties of Mrs Lamette included debtors' control, verification of the cash and bank reconciliation. However, this does not exonerate the responsibility of the Plaintiff to whom Mrs Lamette had to report. The remained endowed with the responsibility to set up a system of control and procedures where she could review the cash book, the bank reconciliation on a daily and monthly basis, in line with the task list

prepared by the Plaintiff herself. (Document P3). Also, paragraph 5.2(k) of the Company Standard Procedure containing an exigency for the Plaintiff to obtain the daily report summarizing the daily total receipts with the total amount banked, remained applicable to the Plaintiff.

I have assessed with care the version of the Plaintiff as she conceded in cross-examination that since 2014, she was aware that the daily report which ought to have been sent to her was not being done, in line with the established practice. When questioned about same, she averred that she talked to the Chief Finance Officer who told her that the requirement for a daily report could not be removed from the Company Standard Procedure as the accounts clerk would refuse to perform the job ultimately. Hence, the Plaintiff confirmed the requirement for a daily report. If the daily report was not required, it would be most unlikely that the Plaintiff, who held a high position of responsibility in the management of the Defendant company, would allow such a requirement to exist in the Company Standard Procedure without the process being recognised at the company. To all intents and purposes, the requirement for an adequate system of control and procedures for the daily report to be sent to the Plaintiff has never been derogated against.

#### THE CHARGES AGAINST THE PLAINTIFF

In view of the version of the Plaintiff, it is clear that the requirement for a daily report remained an important part of the Company Standard Procedure, a requirement which the Plaintiff should have upheld. Like the clearing account, the daily report and the review of the bank reconciliation formed part of the control and procedure which should have been implemented and followed by the Plaintiff. I find that the Plaintiff should have exercised enough supervision, control and established procedures to ensure that she received the daily report from an accounts clerk summarizing the daily total receipts with the amount banked, including any variation, as well as monitoring the clearing account of the company and the cash book. This would have ensured adequate procedure and control in her department over the work of the accounts clerk.

Mrs Toorawa clearly explained the duties of the Plaintiff in her capacity as a Finance Manager in Court. She remained adamant that the Plaintiff was responsible for the management of debtors and the compliance of procedures in relation to debtors' management. She explained that the Plaintiff was dutybound to establish a procedure for the obtention of the daily report, the process of the money towards the bank, the trial balance, the bank reconciliation and the update of the financial process. According to Mrs Toorawa, it was the Plaintiff as the Finance Manager who had to monitor and verify the clearing accounts and the

cash flow. She was the responsible officer to verify the clearing account in line with the RSM report. She contended that it is the laches of the Plaintiff in failing to supervise and verify the tasks assigned to her department as well as her failure to put ensure adequate procedures and controls in place through the lodgement sheet and the daily report, that led to the fraud.

Mrs Toorawa struck me as a witness of truth. I have borne in mind that she joined the Defendant company in January 2016 as the head of finance and the alleged offence took place between the years 2013 and 2015. However, it is in this capacity as the head of finance that she came acquainted with the established practice and procedure at the Defendant company. She was made aware of the alleged fraud which occurred, she interviewed the team, she looked at bank reconciliation and came to know about the duties of the employees.

I find credence in her version that the Plaintiff as the Finance Manager was signing and checking the bank reconciliation and hence was responsible for same. Therefore, it is clear that the Plaintiff had the duty to supervise and verify and put in place adequate controls and procedures in her capacity as Finance Manager. It is to be remembered that it is "*the employer who keeps the last word as to how his business is to be run and managed*". (**RE: PLAINE VERTE CO-OPERATIVE SOCIETY LTD VS G.RAJABALLY (1991) SCJ 227**).

In relation to both charges against the Plaintiff, I find that sufficient evidence has been adduced to sustain the charges against her.

#### THE VERSION OF THE PLAINTIFF

It is the Plaintiff's version that she was not in charge or responsible for the management of debtors. However, for reasons enunciated above, specially taking into account the Company Standard Procedure, the fact that there was no Chief Finance Officer in official post in the Defendant company since April 2012 to August 2015 and the reporting line in the Defendant company, I find that the Plaintiff was responsible for the management of debtors.

In addition, it is the Plaintiff's case that she cannot be held accountable and responsible for not having been in possession of the daily report evidencing the cash received and which could have been tallied with the clearing accounts and bank reconciliation since such a procedure was never implemented at the Defendant company. I find that this goes to the very core issue of the present case as the Plaintiff, being in charge of the management of debtors had a duty of supervision and control through the verification of the daily report, the cash book, the clearing accounts and the review of the bank reconciliation. She was the one who had to implement, follow, supervise and control the procedure so that the fraud could have been avoided.

I have also considered the version of the Plaintiff that, though aware of her duties and responsibilities, she could not interrogate her superior officers who managed the cash, namely Mr Roger Ng and Chantal Tat Fong. In fact, she produced in Court an e-mail whereby Mrs Tat Fong reprimanded her for querying about a member of the staff pertaining to a cash sale transaction. However, I have noted that in Court, the Plaintiff held another version to the effect that she did inform her superior officer about daily bank receipts which were not forwarded to her, contrary to the established Company Standard Procedure. Therefore, even if she was or could have been reprimanded for an unrelated issue, the Plaintiff was in a position to question her written duties which, in truth and in fact, she should have executed.

The Plaintiff put forward a version to the effect that the Defendant looked for a reason to terminate her employment or pressurised her to resign. She stated that after the departure of Mrs Tat Fong, and the arrival of Mrs Joomun, she felt that the company started to look for a reason to terminate her employment. To support her averment, she produced an email dated the 12<sup>th</sup> September 2015 whereby she was invited to meet the new Finance Manager recruited by the Defendant Company when she held the post of Finance Manager.

She added that the attitude of General Manager of the Defendant Company, Mr Jean Yves Koenig, changed completely towards her as he stopped replying to her mail or would question her. At the same time, Mr Antoine de la Porte who is the majority shareholder of the Defendant company was passing comments about not trusting the staff. Mrs Joomun tried to outsource the pay roll and when Mrs Toorawa joined the Defendant company after the departure of Mrs Joomun, she talked about how she dismissed someone for not doing the bank reconciliation.

The contention of the Plaintiff with regards to her feeling of being pressurised to resign or being the subject of an eventual dismissal stems from a time when there was a restructuring exercise at the Defendant company, around September 2015 when Mrs Tat Fong left and Mrs Joomun came. However, in cross-examination, the Plaintiff held another version in relation to the timing of events. She averred that when Mrs Joomun came, she only saw big reforms and it was only in December 2015, when she was suspended from duty that she felt the pressure of dismissal or resignation. I find the version of the Plaintiff to lack consistency.

Moreover, it transpires from the cross-examination of the Plaintiff that in July 2015, she benefitted from an increase in salary. This would hardly show that the Defendant was exerting a pressure for the Plaintiff to resign. The evidence suggests that the Defendant company treaded carefully in the present offence. Indeed, as at the 1<sup>st</sup> December 2015, the Defendant company was still investigating and when the Plaintiff received a suspension letter

on the 12<sup>th</sup> February 2016, the Defendant company was waiting for a final report. I find credence in the defence version that when the Plaintiff received a letter of charges, she was faced with different options and the Plaintiff never elected to resign. Mrs Toorawa's version in Court is corroborative of the version of the Defendant to the effect that none of the representative of the Defendant company asked Plaintiff to resign. I therefore find no evidence to sustain the version of the Plaintiff that she was forced to resign or that the Defendant company looked for a reason to terminate her employment, the moreso that the offence was thoroughly investigated and all procedures duly followed.

#### THE DISCIPLINARY COMMITTEE

In the present case, the disciplinary committee was held in April and May 2016. It was presided over by Me. Bhanji Soni, a Barrister-at-Law, who was called as a witness in the case to file his findings.

It is trite law that: *"The aim of a disciplinary committee, as we have said, is merely to afford the employee an opportunity to give his version of the facts before a decision relating to his future employment is reached by his employer. It is no substitute for a court of law, nor has it got its attributes. Furthermore, the employer is not bound by the recommendations of the disciplinary committee and is free to reach its own decision in relation to the future employment of his employee, subject to the sanction of the Industrial Court". (RE: DE MAROUSSEM G PLANTEAU v SOCIETE DUPOU (2009) SCJ 287).*

In Court, Me Bhanji Soni confirmed that the Plaintiff conceded two essential points in the course of the disciplinary committee, namely that the Company Standard Procedure spelt out her responsibilities and that a specific procedure mentioned in that document was never implemented in her department.

Learned Counsel for the Plaintiff read out in Court the questions which were put to the Plaintiff and which led to the alleged admissions. They were to the effect that the debtors' management was the Plaintiff's responsibility and if it were her responsibility, she would have committed a fault by not following the procedure. To this, the Plaintiff agreed.

However, in Court, the Plaintiff upon being re-examined, qualified what was considered an admission before the disciplinary committee to mean that if it was her responsibility, she would be at fault for not following the procedure but in truth and in fact, she was not responsible for the management of debtors.

On this score, I have found that according to the Company Standard Procedure, the tasks assigned to the Plaintiff and all the evidence adduced, the Plaintiff was in charge of the

management of debtors through a duty of supervision, verification and procedural control of the daily report, the cash book, the clearing accounts and the review of the bank reconciliation. In this dimension where she faulted in the face of her responsibility, I find that the Plaintiff committed a breach of her duties.

I do not find the version of the Plaintiff in Court to be at variance with the version put before the Disciplinary Committee. (**RE: BERJAYA LE MORNE BREACH RESORT AND CASINO VS RAVINAND S (2011) SCJ 405**).

In light of the above, I find that the Defendant has adduced sufficient evidence to establish the charges as levelled against the Plaintiff at the Disciplinary Committee. I find that the gist of the charges against the Plaintiff, in view of the enormity of the fraud resulting from the Plaintiff's failure of supervision, verification and establishment of procedures and control, to amount to a gross misconduct. It constitutes 'des fautes graves'. I find it apt to cite the decision of the **Chambre Sociale of the Cour de Cassation (Soc. 26 février 199, 88-44.908, Bulletin 1991 V No 97 p.60)** where "*faute grave*" was defined as "*une faute résultant d'un fait ou d'un ensemble de faits imputable au salarié, constituant une violation des obligations du contrat de travail ou des relations de travail, d'une importance telle qu'elle rend impossible le maintien du salarié dans l'entreprise pendant la durée du préavis*".

In light of the above, I find the laches on the part of the Plaintiff at work, to amount to 'fautes graves'. In the circumstances, I have considered whether according to the evidence adduced, the Defendant could, in good faith, have taken any other course of action but to terminate the employment of the Plaintiff. (**RE: BATA SHOES (MAURITIUS) LTD VS MOHASSEE (1975) SCJ 146**). I have borne in mind what was said in the case of **UNITED DOCKS LTD VS DE SPEVILLE (2018) PRV 48** to that effect:

*"A question whether the company had a valid reason to dismiss the respondent is obviously different from a question whether it could not in good faith take any other course than to dismiss him. The former asks only whether the misconduct was a ground for dismissing him. The latter asks whether in all the surrounding circumstances the only course reasonably open to the employer was to dismiss him. In other words, was it, as the Board said in para 17 of its judgment in Bissonauth v The Sugar Fund Insurance Bond [2007] UKPC 17, "the only option"?"*

In the present case, I find that the Plaintiff held a high position in a managerial post with heavy responsibilities. With such responsibilities, she was expected and dutybound to exercise her supervisory powers to effect necessary verification and procedural control and lay

outs as per the established standard procedure within the company. This she failed to do. The misconduct in this case amounts to a “*cause reelle et serieuse*” which held a bearing on the employer-employee relationship to the extent that it brought “*un trouble profond dans le fonctionnement et la marche de l’entreprise*”. (**JURISCLASSEUR TRAVAIL, FASC 30, NOTE 163**). In the circumstances, I find that the Defendant could not in good faith take any other action, except than a dismissal. (**SBI (MAURITIUS) LTD VS ROUSSETY J B (2021) SCJ 420**).

#### STATUTORY DELAY

I have considered the version of the Plaintiff to the effect that the Defendant has failed to notify the Plaintiff of the charges against her within the statutory delay provided in section 38(2)(a)(iii) of the EMPLOYMENT RIGHTS ACT, based on the fact that since the 1<sup>st</sup> December 2015, the Defendant was or ought to have been aware of the charges which were later set out in the letters of the 12<sup>th</sup> February 2016 and 10<sup>th</sup> March 2016.

I deem it fit at this juncture to refer to section 38(2)(a)(iii) of the Employment Rights Act. It reads that no employer shall terminate a worker’s agreement for reasons related to the worker’s misconduct, unless he has within, 10 days of the day on which he becomes aware of the misconduct, notified the worker of the charge made against the worker.

The chronology in this case reveals that an internal investigation was started at the Defendant company in November 2015. The Defendant appointed an external audit in December 2015. On the 12th February 2016, the Plaintiff was convened to a meeting within the Defendant company, following which she was suspended. By way of letter dated the 10<sup>th</sup> March 2016, the Plaintiff was informed that the Management was in presence of the report of the external forensic auditors and she was convened to a disciplinary committee to the 23<sup>rd</sup> March 2016 to answer the charges levelled against her.

Basing on the above, it transpires that an investigation started in November 2015. In February 2016, the Plaintiff was informed that the Defendant was aware of a misconduct. At this point, the Plaintiff was suspended but the investigation was still ongoing. On the 10<sup>th</sup> March 2016 when the Defendant came in presence of the report of the external audit, the Defendant called upon the Plaintiff to answer the charges against her by giving her more than 7 days’ notice, in compliance with the provision of the law.

I do not find credence in the version of the Plaintiff that since the 1<sup>st</sup> December 2015, the Defendant was or ought to have been aware of the charges which were later set out in the letters of the 12<sup>th</sup> February 2016 and 10<sup>th</sup> March 2016. I deem it to refer to the case of **CIM**

**FINANCE SERVICES LTD PREVIOUSLY KNOWN AS CIM FINANCE v NAYANTARA RAMESSUR (2024) SCJ 453** where the Learned Judges referred to the case of **HAREL MALLAC TRAVEL & LEISURELTD V PELLEGRIN A M Y (2024) SCJ 95** and considered the purport of section 38(2)(a)(iii) as follows:

*“Section 38(2)(iii) of the Employment Rights Act provides that the employer has, within 10 days of the day on which he becomes aware of the misconduct, to notify the worker of the charge made against the worker. The Act does not define what amounts to the employer ‘becomes aware of the misconduct’.*

*In Bata Shoes (Mauritius) Ltd v Mohassee [1975 SCJ 146], the following observations were made:*

*What the employer must be aware of is the employee’s misconduct, that is to say, not merely of acts or omissions and circumstances that may constitute misconduct but of acts or omissions and circumstances that would allow an employer, upon a reasonable view, to reach the conclusion that the employee has been guilty of that type of gross misconduct which alone entitles him under the law to dismiss his employee summarily. The legal obligation for him to show good faith imposes upon him the duty to make certain that he is choosing the right course and one possibility of doing so is suggested by the law itself....*

*Some similarity with the words ‘aware of misconduct’ can be found in article 133-4 of the French Code du Travail wherein the word ‘connaissance’ is employed and it reads:*

*«Aucun fait fautif ne peut donner lieu à lui seul à l’engagement de poursuites disciplinaires au-delà d’un délai de deux mois à compter du jour où l’employeur en a eu connaissance, à moins que ce fait ait donné lieu dans le même délai à l’exercice de poursuites pénales.»*

*In a decision of the Cour de Cassation, Chambre sociale, du 17 février 1993, the French Court of Appeal observed that the employer must have ‘une connaissance exacte de la réalité, de la nature and de l’ampleur des faits reprochés...’. These terms have been enunciated and applied in CA Fort-de-France, c h. Soc., 17 mai 2019, no17/00144. They were reiterated by the Cour de Cassation, civile, Chambre sociale, 7 décembre 2016, 15-24, 420.*

*In Dalloz, Code du Travail, Chapitre II Procédure Disciplinaire, Section 2 Prescriptions des faits fautifs, the following terms ‘connaissance exacte et complète’ are mentioned: «Le délai court du jour où l’employeur a eu connaissance exacte et complète des faits reprochés»*

The Court found that although an employer may have been in presence of facts suggesting that the employee had committed a misconduct, it is only after the completion of the enquiry that it could level the first charge. In the present case, the evidence suggests that the Plaintiff was notified of the situation against her during the course of the investigation and for which she was suspended. There is no evidence that as at December 2015, the Defendant company was already aware of the charge against the Plaintiff since the investigation was ongoing. To all intents and purposes, the cut off time of the investigation suggesting the exact and complete reproached matters would arise after the obtention of the external forensic report in the present case, which would be in or around February 2016. In the face of any evidence to the contrary, once the enquiry has been completed after all investigations closed and reports received, the Defendant levelled the charges against the Plaintiff. Also, the Defendant was within the statutory delay to give enough time to the Plaintiff to answer the charges against her before a Disciplinary committee. Therefore, it cannot be said that the Defendant did not comply with the statutory delay requirements under the EMPLOYMENT RIGHTS ACT.

### *Conclusion*

In light of the above, I find that the Defendant has put forward justifiable reasons warranting the ultimate dismissal of the Plaintiff. For all the reasons given above, I do not find the dismissal to be unjustified. I find that the Plaintiff has failed to prove the case on a balance of probabilities and hence there is no need for the Court to delve in the computation of severance allowance. I dismiss the case against the Plaintiff.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Magistrate

Judgment delivered on: 20<sup>th</sup> August 2025