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Sameer Rahman
v
Nomura Singapore Ltd

[2020] SGHC 176

High Court — Suit No 507 of 2019 (Registrar's Appeal No 90 of 2020)
Andre Maniam JC
23 June, 13 July 2020

Civil Procedure — Pleadings — Striking out

Employment Law — Unfair dismissal

24 August 2020

Andre Maniam JC:

Introduction and summary of decision

1 The plaintiff was formerly employed by the defendant, a financial institution regulated by the Monetary Authority of Singapore ("MAS"). On 14 March 2018, the defendant summarily terminated the plaintiff's employment on the grounds of alleged breaches of client confidentiality by the plaintiff.

2 The plaintiff sued for wrongful dismissal. He asserted that the summary termination of his employment was invalid, and that the defendant was in breach of contract for not giving him two months' notice or payment in lieu thereof. The plaintiff thus claimed premature termination losses for two months' lost

earnings. But he also claimed, *inter alia*, loss of bonus and aggravated and/or punitive damages.

3 The plaintiff had a separate claim for loss of job opportunities. That claim was based on what the *plaintiff* himself had told prospective employers. The plaintiff's case was that the defendant had told him (in the Termination Notice) that it "had filed" a misconduct report against him (per para 59 of the Statement of Claim ("SOC")); he then not only repeated that to three prospective employers, but also told them the category of misconduct under which the report had supposedly been filed. The plaintiff contended that this was a foreseeable repetition and republication of what the defendant had told him in the Termination Notice, for which he sought to hold the defendant liable. Thus, in addition to his claim for wrongful dismissal, the plaintiff also pleaded the following causes of action: breach of an implied term of trust and confidence, breach of a duty of care in tort, and libel.

4 The plaintiff's problem is this: in the Termination Notice, the defendant did not say it "*had* filed" a misconduct report against the plaintiff; the defendant merely said it "*will* also notify the Monetary Authority of Singapore regarding the cessation of [his] employment as required by law. A misconduct report *will* also be filed with the MAS …" [emphasis added]

5 These words plainly did not mean that a misconduct report *had* been filed with the MAS. To the contrary, they meant that a misconduct report *had not* yet been filed. When the plaintiff told prospective employers that a misconduct report *had* been filed against him, he was not repeating what the defendant had said; indeed, he was saying the opposite. The misinformation provided by the plaintiff to prospective employers was not republication for which the defendant was liable. Accordingly, I struck out the plaintiff's claim

for loss of job opportunities, and consequently his claims for breach of an implied term of trust and confidence, breach of a duty of care in tort, and libel.

6 I decided to allow the plaintiff to continue with his claim for wrongful dismissal – he can continue to contend that his summary termination was not justified (and in particular, he can dispute the alleged breaches of client confidentiality, and whether these justified summary termination). He can therefore continue to claim compensatory damages for premature termination losses.

7 However, I struck out: the plaintiff's references to his belief that he was dismissed for certain "collateral reasons"; his claim for a bonus that he acknowledged he was not entitled to; his claim for aggravated and/or punitive damages, which was not justified in law or in fact; and his claim for declaratory relief.

8 The plaintiff has appealed against my decision, and these are my written grounds.

Background

9 The defendant appealed (by way of HC/RA 90/2020) against the first instance decision dismissing its application (by way of HC/SUM 671/2020) to strike out the plaintiff's claim.

10 I allowed the appeal in large part.

11 The defendant had summarily terminated the plaintiff's employment for alleged breaches of client confidentiality. The plaintiff asserted that these were not valid reasons for his dismissal.[1] He further said he had strong reasons to

believe that he was not terminated on that basis, but for certain "collateral reasons" instead.[2]

12 The plaintiff claimed that in terminating his employment as it did, the defendant breached its contractual obligation to give him two months' notice or to pay him his salary in lieu thereof.[3] For this wrongful dismissal claim, the plaintiff claimed two months' earnings, loss of bonus (in the sum of $230,000), and aggravated and/or punitive damages.

13 The plaintiff also claimed damages for alleged loss of job opportunities, seeking the difference between his previous salary with the defendant, and that for a new job he started in September 2018. He quantified this for the rest of his working life, totalling some $5,264,284.94. Additionally, he claimed aggravated and/or punitive damages. I note in passing that in paras 76–77 of the SOC, the plaintiff pleaded that the first two lost job opportunities would have paid him roughly the same monthly salary as he had earned with the defendant; but this was not pleaded in relation to the third lost job opportunity described at para 78 of the SOC.

14 In addition to his wrongful dismissal claim, the plaintiff thus pleaded the following additional causes of action: (a) breach of an implied term of trust and confidence (as between employer and employee); (b) a duty of care in tort; and (c) libel. All these causes of action were based on what the plaintiff himself had told three prospective employers. The plaintiff claimed to have repeated to these prospective employers what the defendant had conveyed to him in the Termination Notice. The plaintiff asserted that this was a repetition/republication for which the defendant was liable.

My decision

The plaintiff can continue with his wrongful dismissal claim

15 I allowed the plaintiff to proceed with his wrongful dismissal claim in so far as he contends that breaches of client confidentiality were not valid reasons for his dismissal (as pleaded in para 13 of the SOC). He can continue to dispute the defendant's position that it was entitled to summarily terminate his employment for the reasons pleaded in paras 5–15 of the Defence (and I use the term "client confidentiality" to encompass the defendant's full position in that regard). As such, he can still contend that his employment ought not to have been terminated summarily, but only with two months' notice or payment in lieu thereof (as pleaded in para 50 of the SOC, save for the portions that I struck out).

16 Although I had difficulties with some aspects of the plaintiff's factual and legal case in this regard, I did not consider that the high threshold for striking it out was reached. I thus agreed with the Assistant Registrar that whether there had been breaches of client confidentiality justifying summary termination is a matter that ought to proceed to trial.

17 However, I did not agree with the Assistant Registrar that the remaining aspects of the plaintiff's claim were intertwined with the claim for wrongful dismissal such that none of them could be struck out.

It was an abuse of process for the plaintiff to plead that he believed his employment was terminated for "collateral reasons"

18 If the defendant establishes that it had a right to terminate the plaintiff's employment for breaches of client confidentiality, it does not avail the plaintiff merely to prove that there were "collateral reasons" for his termination. The

plaintiff would still need to show that the defendant did not have a valid basis for dismissing him, and in particular, that the alleged breaches of client confidentiality were not a valid basis (as per para 13 of the SOC). Even if the plaintiff were allowed to persist with his allegations of "collateral reasons", he would still fail in his wrongful termination claim if the defendant established that its stated basis of breaches of client confidentiality justified termination. On the principle in *Boston Deep Sea Fishing and Ice Company v Ansell* (1888) 39 Ch D 339 at 352, an employer can rely on grounds justifying termination other than those relied upon at the time of termination. It goes without saying that an employer can rely on the *stated* ground for termination if that does justify termination.

19 The plaintiff's reference to "collateral reasons" did not add anything viable to his wrongful dismissal claim. Indeed, the plaintiff did not even plead that his employment *had* been terminated for collateral reasons. What he pleaded (in para 14 of the SOC) was that he had "*strong reasons to believe* the [d]efendant terminated his employment not for the reasons stated by the [d]efendant, but for collateral reasons" [emphasis added]. Whatever the plaintiff believed, and whatever the reasons for that belief, his wrongful dismissal claim would still fail if the defendant could justify summary termination. I agreed with the defendant that the pleaded references to the plaintiff's belief about collateral reasons were scandalous, frivolous and vexatious, embarrassing, and would tend unnecessarily to expand the dispute and add to the time and costs of litigation. It was an abuse of process for the plaintiff to have pleaded this, and as such I decided to strike out these references.

20 Submissions were made as to whether the law might recognise an implied term that a right to terminate employment can only be exercised in good faith, but that has not been pleaded (and the plaintiff's counsel accepted that in

his submissions). Indeed, such a restriction on the defendant's right to terminate the plaintiff's employment would run counter to the plaintiff's case as pleaded, which is that the defendant ought to have given him two months' notice or salary in lieu thereof, as pleaded in para 50 of the SOC. His claim was that the defendant breached the obligation to give him notice or salary in lieu thereof, by summarily terminating his employment without valid reasons. Put another way, he was arguing that if the defendant wished to terminate his employment, the defendant was obliged to (and entitled to) do so by notice or payment in lieu. That would be irrespective of whether the defendant did so in good faith. The plaintiff's "collateral reasons" complaint amounted to no more than this: he had reasons to believe that the defendant had terminated his employment for collateral reasons; those collateral reasons were not valid reasons for summary dismissal, and so he ought instead to have been terminated with two months' notice or payment in lieu thereof.

21 In any event, I doubt whether such a "good faith" term can be implied where the termination is summary dismissal for misconduct, and even more so if there is an express contractual right to terminate on that basis.

22 More fundamentally, such a claim would add nothing of substance to the plaintiff's present claim that the defendant could only terminate with notice or payment in lieu thereof, as pleaded in para 50 of the SOC, with damages being what he has lost for being denied two months' notice or payment in lieu.

The plaintiff did not have a viable claim for bonus

23 The plaintiff's claim for loss of bonus in para 50 of the SOC was pleaded on a contractual basis, *ie*, as part of the plaintiff's claim that the defendant had breached an express obligation to give notice or pay salary in lieu. However,

counsel for the defendant pointed out that whether the plaintiff were terminated summarily, or with notice or payment in lieu, he was not entitled to bonus. In turn, counsel for the plaintiff conceded that the plaintiff could not maintain his bonus claim as a contractual claim. Instead, he asked for leave to amend so that the plaintiff could still claim the bonus as part of damages to be assessed for other claims. However, I decided that his other claims should be struck out. In any event, as it was common ground that the plaintiff was not entitled to any bonus, whether he were terminated summarily or with notice or payment in lieu, I did not see how he could still maintain a claim to bonus just by housing it under some non-contractual cause of action.

The plaintiff did not have a viable claim for aggravated and/or punitive damages

24 Nothing in the pleadings justified a claim for aggravated or punitive damages for wrongful dismissal (and specifically for failure to give notice or payment in lieu). This is especially so bearing in mind the Court of Appeal's observations in *PH Hydraulics & Engineering Pte Ltd v Airtrust (Hong Kong) Ltd and another appeal* [2017] 2 SLR 129 on punitive damages, as well as in *Alexander Proudfoot Productivity Services Co S'pore Pte Ltd v Sim Hua Ngee Alvin and another appeal* [1992] 3 SLR(R) 933 at [13] and *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] 4 SLR 357 ("*Wee Kim San*") at [25], on the normal measure of damages for wrongful dismissal being the amount the employee would have earned under the contract for the period until the employer could lawfully have terminated it, less the amount he could reasonably be expected to earn in other employment; in this case, ordinarily two months' earnings for failure to give two months' notice or payment in lieu thereof. This was implicitly recognised in para 50 of the SOC,

save that the plaintiff went further in alluding to aggravated and/or punitive damages.

25 In *Wee Kim San*, the Court of Appeal stated at [38]: "… if the parties have agreed that the employer has a right to terminate the employment contract upon notice or payment of salary in lieu of notice, it would be inconsistent with that contractual right to say that the employer nevertheless has to pay an employee who has been wrongfully dismissed damages that extend beyond the amount of salary payable for the contractual notice period".

26 The plaintiff's claim for aggravated and/or punitive damages on top of two months' lost earnings was thus obviously unsustainable and I struck it out.

The plaintiff did not have a viable claim for loss of job opportunities

27 The plaintiff's other causes of action related to his telling three prospective employers that the defendant *had* filed a misconduct report with the MAS on a certain basis. The context to these pleadings is that the defendant is a financial institution regulated by the MAS, and the MAS had to be satisfied that the plaintiff in his role with the defendant was a "fit and proper" person, having regard to the MAS Guidelines on Fit and Proper Criteria (Guideline No: FSG-G01). Pursuant to Notice No FAA-N14 under the Financial Advisers Act (Cap 110, 2007 Rev Ed) ("FAA") and Notice No SFA 04-N11 under the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("SFA") (collectively, the "Notices"), the defendant was required to report misconduct of persons such as the plaintiff to the MAS, if the misconduct fell within the following categories (as further described in para 4 of the Notices):

(a) Acts Involving Fraud, Dishonesty or Other Offences of a Similar Nature;

(b) Acts Involving Inappropriate Advice, Misrepresentation or Inadequate Disclosure of Information (under the FAA Notice), as well as Acts Relating to Market Conduct Provisions under Part XII of the SFA (under the SFA Notice);

(c) Failure to Satisfy the Guidelines on Fit and Proper Criteria; and

(d) Other Misconduct (which includes misconduct resulting in, *inter alia*, "a serious breach of [the defendant's] internal policy or code of conduct which would render [the plaintiff] liable to demotion, suspension or termination of [the plaintiff's] employment or arrangement with [the defendant]").

28 The plaintiff's claim for breach of an implied term of trust and confidence and/or duty of care in tort was focused on the alleged breach pleaded in para 59 of the SOC – that "the [d]efendant erroneously informed the [p]laintiff that they *had* filed the Misconduct Report under the category of 4(c), relating to a breach of the Fit and Proper guidelines" [emphasis added]. The plaintiff relied on the Termination Notice dated 14 March 2018 to substantiate the alleged breach as pleaded in para 59 of the SOC. In the Termination Notice, however, the defendant only said that a misconduct report "*will* also be filed with the MAS" [emphasis added]. The misconduct report was filed some five days later on 19 March 2018. Contrary to what the plaintiff told prospective employers, the defendant in fact filed the misconduct report under category 4(d), relating to "Other Misconduct". The defendant was provided with a copy of the report on 15 June 2018.

29 The plaintiff pleaded in para 75 of the SOC that "[a]s a result of the [d]efendant's breach of its implied term of trust and confidence to the [p]laintiff

and/or its duty of care in tort to the [p]laintiff, the [p]laintiff is to date suffering from the loss of opportunity to get hired in a similar role with a similar pay as he had whilst being employed in the capacity of Vice President of the [d]efendant". Paragraph 75 of the SOC is particularised in paras 76–87 of the SOC. His claim for loss of job opportunities only relates to what he had misinformed three prospective employers between 14 March 2018 when he was terminated, and 15 June 2018 when he received a copy of the misconduct report.

30 In line with para 59 of the SOC, the plaintiff pleaded the following:

(a) In his interview with Credit Suisse SG, "[a]s required by MAS policy, the [p]laintiff informed Credit Suisse that the [d]efendant had filed a Misconduct Report against him under the category of breach of the Fit and Proper guidelines".[4]

(b) In an interview with ANZ SG, "[a]s required by MAS guidelines, the [p]laintiff, once again, informed ANZ SG about the category under which the [d]efendant had claimed they had filed the Misconduct Report against him".[5]

(c) In an interview with Citigroup Private Bank SG, "[t]he [p]laintiff informed them as well about the Misconduct Report filing under the category of breach of the Fit and Proper guidelines".[6]

31 I struck out the plaintiff's claim for loss of job opportunities, for which he had asserted breach of an implied term of trust and confidence, breach of a duty of care in tort, and libel. I found that the plaintiff's claim for loss of job opportunities was bound to fail for two key reasons. First, all that the defendant said in the Termination Notice was that it "*will*" file a misconduct report and not that it "*had*" filed such a report. Second, what the defendant said in the

Termination Notice did not mean that the plaintiff was not a "fit and proper" person.

*The defendant did not say it **had** filed a misconduct report*

32 I turn to the first point. The fundamental flaw in the plaintiff's case is this: contrary to what was pleaded in para 59 of the SOC, the defendant did not say in the Termination Notice that it *had* filed a misconduct report. What the Termination Notice stated was: "Nomura *will* also notify the Monetary Authority of Singapore regarding the cessation of your employment as required by law. A misconduct report *will* also be filed with the MAS in accordance to the MAS Fit & Proper Guidelines." [emphasis added] In saying to the plaintiff that "a misconduct report *will* also be filed with the MAS" [emphasis added], far from saying that a misconduct report had been filed, the defendant was in fact saying that a misconduct report had *not* been filed yet. That is reinforced by the earlier part of the same statement, that the defendant "*will* also notify the Monetary Authority of Singapore regarding the cessation of your employment" [emphasis added].

33 Besides the inaccuracy in para 59 of the SOC, para 60 of the SOC also misquotes the Termination Notice: that the defendant would "be notifying" was not the language used in the Termination Notice, which was "will also notify". Ironically, para 60 of the SOC accurately quotes that "[a] misconduct report *will* also be filed …" [emphasis added], which contrasts sharply with "*had* filed" in para 59 of the SOC.

34 The actual language used in the Termination Notice thus does not support what was asserted in para 59 of the SOC. Neither does it support what the plaintiff told prospective employers that the defendant *had* done.

35 When the plaintiff informed prospective employers as pleaded in paras 76–78 of the SOC about the misconduct report that the defendant supposedly had filed, or had claimed that it had filed, or about the filing thereof, he was not repeating what the defendant had said in the Termination Notice. He was saying something else altogether – indeed, the very opposite. Moreover, at the time of the events pleaded in paras 76–78 of the SOC, the plaintiff did not even know whether the misconduct report had been filed – he only received a copy of it on 15 June 2018 (as acknowledged in para 63 of the SOC) – yet he had already told prospective employers that the misconduct report had been filed, and even that it had been filed under category 4(c). He then sued the defendant for the loss of job opportunities that his own statements had supposedly caused him.

36 In para 5 of his submissions, the plaintiff clarified that he was not claiming in respect of jobs allegedly lost after he became aware of the actual category under which the Misconduct Report was filed, *ie*, the relevant job losses were only those in paras 76–78 of the SOC. The plaintiff did not mount a claim based on the Misconduct Report that was actually filed under category 4(d) of "Other Misconduct" (as acknowledged in para 63 of the SOC), but only for what he had told prospective employers.

37 In the course of submissions, the plaintiff asked to make certain amendments to the SOC. I will return to this later.

38 As things stood, the pleading as to the alleged breach (at para 59 of the SOC) and the alleged loss suffered as a result thereof (at para 75 of the SOC) was defective. The same flaws permeated the libel claim, which was based on it being "foreseeable and the natural, ordinary and probable consequence of the publication of the Words in the [d]efendant's Termination Notice, that the Words would be repeated by the [p]laintiff in future interviews".[7]

39 What the plaintiff said to prospective employers as pleaded in paras 76–78 of the SOC was relied upon as actionable republication for which the plaintiff sought to hold the defendant liable. The allegedly defamatory "Words" are defined in para 88 of the SOC as "the false statement made by the [d]efendant in its Termination Notice that 'a report would be filed in accordance to the Fit and Proper Guidelines' (the "Words")" [emphasis in original omitted].

40 The quote in para 88 of the SOC, purportedly from the Termination Notice, is however inaccurate. The defendant said that a misconduct report "will also be filed", and not that it "would be filed", in accordance to the Fit and Proper guidelines. But even the inaccurate quote in para 88 of the SOC (that a report "would" be filed) does not support the meaning that the defendant *had* filed a misconduct report, let alone under a particular category, which was what the plaintiff told prospective employers as pleaded in paras 76–78 of the SOC.

41 The words used in the Misconduct Report were: "A misconduct report will also be filed with the MAS in accordance to the MAS Fit & Proper Guidelines." The plaintiff argued that this was a reference to category 4(c) in the reporting framework, for "Failure to Satisfy the Guidelines on Fit and Proper Criteria";[8] the defendant disputed this. But even if it *were* a reference to category 4(c), it would merely be a statement of *intent*. The defendant could still decide to file the report under a different category (in the event, the report was filed under category 4(d)). Unless the defendant told the plaintiff that it had filed a category 4(c) report, or the plaintiff otherwise ascertained this, he should not have told prospective employers that the defendant had filed a category 4(c) report against him, and then sued the defendant for the loss supposedly caused by those statements of his. What the plaintiff told prospective employers was not a repetition of what the defendant had said in the Termination Notice, and it was not republication for which the defendant could be liable.

42 The supposed error and falsity of what the defendant said in the Termination Notice (per paras 59 and 88 of the SOC) were based on the same false premise. If paras 59, 60 and 88 of the SOC were corrected, there would then be nothing "false" in the defendant saying in the Termination Notice of 14 March 2018 that "[a] misconduct report will also be filed", and then making the Misconduct Report in the terms it did on 19 March 2018.

43 I also had difficulty understanding the plaintiff's references in paras 76–77 of the SOC to his being "required" by some MAS policy or guidelines to inform prospective employers that the defendant had filed a misconduct report against him under a particular category – the MAS Guidelines on Fit and Proper Criteria (Guideline No FSG-G01) do not appear to have required that of him, nor did the Notices. In any event, at the time of the Termination Notice no misconduct report had been filed, nor did the defendant say that it *had* filed one.

The defendant did not say that the plaintiff was not a "fit and proper" person

44 I now address the second critical flaw in the plaintiff's claim for lost job opportunities. The plaintiff asserted in para 89 of the SOC that the Words meant and/or were understood to mean that he was not a "fit and proper" person. The misquoting of the Words aside, that is not what the Words mean. Their natural and ordinary meaning in the context of the Termination Notice was simply: dismissal of the plaintiff for breaches of confidentiality had to be reported to the MAS, and was a matter which the MAS could take into account in assessing if the plaintiff was still a "fit and proper" person.

45 Under the Fit and Proper guidelines, the MAS (and not the defendant) is the party that is to be satisfied that relevant persons are "fit and proper".[9] The defendant's stated intention to file a misconduct report to the MAS was not a

statement by the defendant that the plaintiff was not a "fit and proper" person; this was an assessment that only the MAS could make and that the MAS had yet to make (because the plaintiff's dismissal and the grounds thereof had yet to be reported by the defendant).

46 The MAS might still be satisfied that the plaintiff was a "fit and proper" person despite his dismissal for alleged breaches of confidentiality. Whether a person has been dismissed from employment is *relevant* to an assessment of his honesty, integrity and reputation (see para 13(o)(iv) of the Fit and Proper guidelines)[10] but is not *decisive* of whether he is "fit and proper". The latter assessment ultimately remains one for the MAS to make, and a person who fails to satisfy the criterion of "honesty, integrity and reputation" may nonetheless satisfy the MAS that he is "fit and proper" (see paras 8–9 of the Fit and Proper guidelines).[11]

47 In the end, all that could be gleaned from the Termination Notice was that the defendant would be filing a misconduct report in respect of the plaintiff's breaches of client confidentiality (which was the stated basis for his dismissal), and this would be relevant to the MAS' eventual assessment of whether the plaintiff was still "fit and proper".[12] The defendant never said that the plaintiff was not a "fit and proper" person. If that was what the plaintiff conveyed to prospective employers, he has only himself to blame.

48 Indeed, even if the defendant had filed a misconduct report under category 4(c), it would only be saying thereby that the plaintiff had failed to satisfy the Fit and Proper guidelines, and *not* that he was not a "fit and proper" person.

49 It is telling that the plaintiff's claim for loss of job opportunities was based solely on what he had misinformed prospective employers in the period of some three months before he found out that the Misconduct Report had been filed and the contents thereof. He was not claiming based on what was actually said in the Misconduct Report, *ie*, under category 4(d) of "Other Misconduct", regarding breaches of confidentiality leading to dismissal. This was despite such misconduct (and indeed all of the categories of misconduct for which a misconduct report is required) being relevant to the MAS' assessment of whether a person is "fit and proper". Put another way, the plaintiff was not claiming for loss of job opportunities on account of the defendant's summary dismissal of him for breaches of confidentiality and the defendant's then informing the MAS of that.

50 I considered whether the plaintiff should be afforded an opportunity to amend his claim for loss of job opportunities, but concluded that the claim could not be saved by amendment. If the plaintiff now sought to amend paras 59 and 60 of the SOC to accurately describe and quote what was said in the Termination Notice, there would still be an inconsistency between that and what he had told prospective employers as pleaded in paras 76–78 of the SOC. Adopting the language of para 91 of the SOC, it was *not* foreseeable, and it was *not* the natural, ordinary and probable consequence of the Termination Notice, that the plaintiff would tell prospective employers that the defendant *had* filed a misconduct report under a particular category, when what the Termination Notice said was that the defendant *will* notify the MAS regarding the cessation of the plaintiff's employment and that a misconduct report *will* also be filed.

51 The inconsistency between the meaning of what the defendant had conveyed to the plaintiff in the Termination Notice, on the one hand, and what

the plaintiff then told prospective employers, on the other hand, could not be cured by amendment.

The plaintiff did not have a viable claim to declaratory relief

52 Finally, prayer 4 of the relief sought in the SOC was: "A declaration that the [p]laintiff's employment was not terminated by the [d]efendant pursuant to a breach of the Fit and Proper guidelines that are '*applicable to all relevant persons in relation to the carrying out of any activity regulated by the MAS under any written law*' as stated in MAS Guideline No. FSG-G01".

53 It was however never the defendant's case that the plaintiff's employment was terminated "pursuant to a breach of the Fit and Proper guidelines". What the defendant stated in its Termination Notice, and in the Misconduct Report, was that the plaintiff's employment was terminated for breaches of client confidentiality (as the plaintiff acknowledges in paras 9–13 of the SOC). Moreover, it is inappropriate to speak of a *breach* of the "Fit and Proper" guidelines: they are merely a list of non-exhaustive criteria which the MAS will consider in determining whether relevant persons are "fit and proper".[13] If relevant persons do not meet the criteria, they do not thereby "breach" the guidelines. The declaration sought did not pertain to any dispute between the parties, and accordingly I struck out that prayer.

54 I also made costs orders in favour of the defendant, and consequential orders in relation to the pleadings.

Andre Maniam
Judicial Commissioner

Eugene Singarajah Thuraisingam, Chooi Jing Yen and Hamza Zafar Malik (Eugene Thuraisingam LLP) for the plaintiff;
Yam Wern-Jhien, Lim Tiong Garn Jason, Ong Tun Wei Danny and Ng Hui Ping Sheila (Rajah & Tann Singapore LLP) for the defendant.

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1 Para 13 of the SOC.
2 Para 14 of the SOC.
3 Para 50 of the SOC.
4 Para 76 of the SOC.
5 Para 77 of the SOC.
6 Para 78 of the SOC.
7 Para 91 of the SOC.
8 Para 59 of the SOC.
9 Carli Ho-Yee Yung's affidavit dated 12 February 2020, exhibit CHY-11, at, *eg*, paras 3, 4 and 9.
10 Carli Ho-Yee Yung's affidavit dated 12 February 2020, exhibit CHY-11, at pp 161–162.
11 Carli Ho-Yee Yung's affidavit dated 12 February 2020, exhibit CHY-11, at pp 157–158.
12 Para 35(b) of the Defence; Carli Ho-Yee Yung's affidavit dated 12 February 2020, at para 34.
13 Carli Ho-Yee Yung's affidavit dated 12 February 2020, exhibit CHY-11, at para 4.