

Legal Update

The implied duty of mutual trust and confidence ("IDMTC") applied in Singapore. The consequences for employers. *Prashant Mudgal v SAP Asia Pte Ltd*¹

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Prashant is the first case in Singapore where the courts have made a finding that the employer breached the implied duty of mutual trust and confidence ("IDMTC") that exists in employment contracts between the employer and employee. Although the existence of the IDMTC has been accepted in several first instance decisions², the Court of Appeal have been more reticent³ stating that its acceptance as part of Singapore law remains an open question to be determined.

In *Prashant* the court has undertaken a robust review of this issue and concluded that the IDMTC is indeed part of Singapore law, and has considered the implications of this determination. This case is likely to be the *locus classicus*.

The Claim

The Claimant was a team leader with the Defendant. He had sent scathing emails attacking the professional competence of another team leader and of their common reporting senior. The HR department placed him on a Performance Improvement Plan ("PIP"), but soon after the completion of PIP, he was terminated. The court found that the PIP was a charade and that the management of the Defendant has already decided to terminate the Claimant even before he was placed on the PIP.

The Claimant sued alleging that this action of placing him on the PIP even though it was already "pre-ordained" that he was to be terminated amounted to a breach of 2 implied terms of his employment agreement:

- a. the implied term of mutual trust and confidence ("ITMTC"); and
- b. the implied term not to engage in a termination process that is arbitrary, capricious, perverse, irrational and/or in bad faith ("IT for Arbitrary Termination").

The Findings

Implied Term against Arbitrary Termination. The court rejected this implied term, as it would undoubtedly fetter the "golden thread" underpinning parties' freedom to enter and exit contracts.

Implied Term of Mutual Trust and Confidence. As mentioned above, the Court did accept the existence of the ITMTC. This was done on the basis of precedent, principle and on policy considerations, in particular the power in-balance between employer and employee. The Court noted that the ITMTC cannot contradict the express terms of the contract, so it cannot fetter the contractual right of an employer to terminate with notice.

¹ [2026] SGHC 15 ("*Prashant*")

² *Latham v Credit Suisse First Boston* [1999] SGHC 302, *Wong Leong Wei Edward v Acclaim Insurance Brokers* [2010] SGHC 352, *Cheah Peng Hock v Luzhou Bio-Chem* [2013] 2 SLR 577

³ *Dong Wei v Shell Eastern* [2021] SGHC 123, *The One Suites v Pacific Motor Credit* [2015] 3 SLR 695

The Court emphasised that the substance of the ITMTC was not amorphous but should be based on the rich body of case law which had already addressed its contents. In particular, the court identified the following duties:

- a. not to act in a corrupt manner;
- b. not to unilaterally and unreasonably vary terms;
- c. to redress complaints of discrimination;
- d. to provide a grievance procedure;
- e. to enquire into complaints of sexual harassment;
- f. to behave with civility and respect;
- g. not to reprimand without merit in a humiliating circumstance;
- h. not to behave in an intolerable or wholly unacceptable way.

The Court found that the Defendant has breached this last limb, the duty not to behave in an intolerable or wholly unacceptable way, in that the Claimant was prejudged and was not given a genuine opportunity to improve and rectify his previous deficiencies. One of the factors that led to the Court's finding was the shoddy documentation maintained around the PIP.

Having established the breach of the employment agreement, the next issue that the Court addressed was the remedy. The Claimant was seeking damages under the following heads:

- a. loss of earnings for 5 years amounting to S\$4.9 million;
- b. pain & suffering;
- c. injury to reputation, pride and dignity, humiliation, distress, insult and/or pain;

The Court rejected all these claims as the losses/ injuries were not caused by the breach (i.e. the conduct of the Defendant before termination in placing the claimant on the PIP when it was preordained that he was to be terminated) and were too remote. Instead, the court awarded the Claimant nominal damages of S\$1,000.



Prashant is only a first instance decision and technically the Court of Appeal's position that the existence of the ITMTC is an open question remains good law. But given the comprehensive review of the law on this issue, the Court's conclusions are very compelling and are likely to be followed by other lower courts until the Court of Appeal have an opportunity to authoritatively decide on the matter.

It should be noted that the ITMTC does not restrict an employer's right to terminate an employee in accordance with the terms of the contract. It addresses the conduct of the employer prior to termination. In the context of terminations, the existence of the ITMTC is only likely to be impactful in cases of summary termination and constructive dismissal (i.e. where an employee feels compelled to resign because of actions by the employer). In such cases, if a breach is found, the consequence is likely to be the award of a sum equivalent to the notice pay⁴.

⁴ *Wee Kim San Lawrence Bernard v Robinson & Co* [2014] 4 SLR 357 at [34]

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