

Singapore High Court affirms the existence of the implied term of mutual trust and confidence in employment contracts under Singapore law

[Employment contracts – Implied term of mutual trust and confidence]

As noted by the Appellate Division of the Singapore High Court in *Dong Wei v Shell Eastern Trading (Pte) Ltd and another* [2022] 1 SLR 1318 (“Dong Wei”), the question of whether the implied term of mutual trust and confidence exists in Singapore law remains an open one for the Singapore Court of Appeal to resolve in an appropriate case. In the recent case of *Prashant Mudgal v SAP Asia Pte Ltd* [2026] SGHC 15, however, the Singapore High Court boldly affirmed that the implied term of mutual trust and confidence does exist in employment contracts under Singapore law, and outlined the contours of this implied term.

Background Facts

In *Prashant Mudgal v SAP Asia Pte Ltd* [2026] SGHC 15 (“Judgment”), the claimant was a former employee of the defendant, SAP Asia Pte Ltd. His last held position was the “Head of Services Sales” for the Ariba line of business in the Asia Pacific and Japan region. Following a couple of incidents referred to in the Judgment as the “Wipro Incident” and the “Sesa Goa Incident”, the claimant’s relationship with his superiors within his direct reporting line (amongst others) became increasingly fraught. The defendant purported to place the claimant on a Performance Improvement Plan (“PIP”) which was stated to have been completed on 5 May 2019. The defendant subsequently terminated his employment on or around 21 November 2019 by giving to the claimant the required notice in accordance with his employment contract.

The claimant commenced the suit against the defendant, alleging that there had been a conspiracy to terminate his employment. The claimant also alleged that the defendant had breached the implied term of mutual trust and confidence in his employment agreement (amongst other things) and claimed damages amounting to approximately \$4.9 million.

Decision

The Singapore High Court readily dismissed the claimant’s claims for conspiracy, finding that the defendant had the contractual right to terminate the claimant’s employment and the termination was not wrongful.

The Judge, however, affirmed that the implied term of mutual trust and confidence existed in employment contracts under Singapore law, and the defendant had breached this implied term by placing the claimant on a PIP, when the outcome of the PIP was “pre-ordained” and the defendant had already made up its mind to terminate the claimant’s employment.

In affirming that the implied term of mutual trust and confidence existed in Singapore law governed employment contracts, the Judge made the following key points:

- There is ample precedent for the implied term of mutual trust and confidence existing in Singapore law, citing for example, *Cheah Peng Hock v Luzhou Bio-Chem Technology Ltd* [2013] 2 SLR 577
- The implied term of mutual trust and confidence is justified on principle, noting that under Singapore law, considerations of fairness and policy are central to the implication of terms in law, as opposed to a

- stricter standard of “*necessity*” applied by the Australian courts (which do not recognise the implied term of mutual trust and confidence).
- Policy considerations militate towards the implication of the duty of mutual trust and confidence. In this regard, the Judge noted that employment contracts stand apart from ordinary commercial contracts due to the power imbalance between employer and employee and the fundamental importance of employment to the employee’s life. The Judge also recognised that the increased pressure brought to bear on employees in the current global landscape justified an increased need to protect employees from harsh and unacceptable employment practices.
 - The Judge also highlighted that the implied term would not introduce an unacceptable level of uncertainty, for the following reasons:
 - The implied term cannot contradict any express term of the contract, and parties are free to modify or exclude its operation by express terms.
 - The implied term does not fetter or restrict the employer’s right to terminate the employment contract in accordance with the provisions of the employment contract. A distinction is to be drawn between losses flowing from the act of dismissal, and the losses flowing from the employer’s conduct which is said to be in breach of the implied term that took place *prior* to the dismissal.
 - The implied term must be consistent with the original formulation in the English House of Lords decision in *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* [1998] AC 20 (“**Malik**”), i.e., that an employer shall not “*without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee*”

Contours of the implied term of mutual trust and confidence

The Judge also emphasised 3 points regarding the formulation of the implied term of mutual trust and confidence as expressed in *Malik*:

- The threshold for an employer’s conduct to cross is a high one. The conduct must be “calculated and likely to destroy or seriously damage” the relationship of trust and confidence between the employer and employee. It would take quite extreme behaviour on the part of the employer to cross this threshold, and merely undermining the relationship of trust and confidence will not be sufficient.
- It is an objective test as to whether the employer’s conduct is such that it destroys or seriously damages the relationship of trust and confidence. The test is not whether the employee subjectively perceived the conduct to be so egregious, or that the employer did not intend to destroy or seriously damage the relationship of trust and confidence.

- There is no breach of the implied term if the employer is able to show that there was reasonable and proper cause for the employer to act in that manner. The employer will have the opportunity to justify its actions, and will not be held to be in breach if it had legitimate and proper reasons to act.

On the facts, the Judge held that the defendant had breached the implied term. By placing the defendant on the PIP with no genuine opportunity to improve and rectify his previous deficiencies, the defendant had acted in an intolerable and wholly unacceptable way that destroyed or seriously damaged the relationship of trust and confidence. Key evidence that led to this conclusion included the following:

- Email correspondence surfaced where the claimant's superiors had evinced a clear intention to terminate the claimant's employment regardless of the results of the PIP.
- The PIP was shoddily documented, with the claimant's superiors unable to produce documentation of the progress of the PIP.

As for the damages claimed, the Judge was not convinced that any of the claimant's alleged losses flowed from the breach of the implied term. The Judge therefore awarded the claimant nominal damages of \$1,000 and dismissed the remainder of the claimant's claims.



Comments

The Judgment is significant for being the first judgment after *Dong Wei* to expressly affirm the existence of the implied term of mutual trust and confidence in employment contracts under Singapore law. While it remains to be seen whether the existence of the implied term will go on to be affirmed by a higher court, it is the authors' humble view that the detailed analysis of prior jurisprudence set out in the Judgment will be persuasive in favour of an acceptance by a higher court of the existence of the implied term.

The Judgment also presents learning points for both employers and employees:

- When deciding to place an employee on a PIP, employers must have a genuine intention to allow the employee to improve with a view towards continued employment. If the employer has made up its mind to terminate the employee's employment, it would be more appropriate to proceed with the contractual right to terminate instead.
- Employees should also take note that any allegation of breach of the implied term must be carefully formulated, as the threshold for an employer to be found liable for breaching the implied term remains a high one. Where the employment contract expressly provides for the employer's right to terminate (as most contracts would), any conduct complained of must have taken place before and independently of the act of termination.

Please feel free to contact any of our employment law practitioners at their contact details below, if you would like more information.

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