

Yuki Afrina Binti Abdullah@ Goh Kiat Shee

AND

Royal Brunei Catering Sendirian Berhad

**(Intermediate Court of Brunei Darussalam)
(Civil Suit No.55 of 2019)**

Dk Hj Norismayanti binti Pg Hj Ismail, Judge
24th October 2023

Civil Law:

Claim - Wrongful termination – Allegation of dishonesty and mishandling of quotations – claim for loss of income – loss of future earnings - damages for loss of reputation - damages for emotional stress.

Counterclaim - Breach of implied terms of employment – claim for damages.

Plaintiff in person and unrepresented.

Pg Shahyzul Khairuddien bin Pg Abdul Rahman & Jordan Tiah (*M/S Pengiran Izad & Lee*) for the Defendant.

Cases cited:

Loh Nyuk Choi v Standard Chartered Finance (Brunei) Bhd (HCCS No.102 of 2003)

Loh Nyuk Choi v Standard Chartered Finance (Brunei) Bhd (Civil Appeal No.17 of 2008)

Mahadeer Mohamaed & Anor. v Ubayatyllah Haja Mohideen & Ors. (HCCS No.39 of 2021)

J U D G M E N T

DK Hj Norismayanti, Judge:

PLAINTIFF'S CLAIM

1. The Plaintiff is suing for wrongful termination. The plaintiff was working for the Defendant as an IT Controller from 5th December 2013 until the 19th April 2016. She was given notice of her termination vide a letter from the Defendant's General Manager which concluded her termination was as a result of her being found guilty of forging quotations. It is the Plaintiff's case that the allegation is false and malicious and has caused damaged to her reputation and also suffer from emotional distress. The Plaintiff also contends that as a result of her wrongful termination, she has yet to find gainful employment and hence has also suffered loss of salaries since May 2016.

Suspicion of mishandling of quotations

2. The suspicion of the Plaintiff's alleged mishandling of quotations came about in March 2016. According to Henyzan binti Hj Jamudin (DW1) the Assistant Human Resources Manager, she was informed by the new manager (Hjh Ratna Dewi binti Abdullah) of the Management Information System Department (hereinafter referred to as "MIS Dept") under the Defendant company of what appeared to her as suspicious quotations that were obtained by the Plaintiff in regards to IT equipment. The suspicions involve 3 of the same vendors that were repeatedly submitted by the

Plaintiff to the Defendant since 2015. The 3 vendors are: (a) Elite Computer Systems Sdn Bhd (Elite), (b) Perniagaan Dinamik Giat ("Dinamik"); and (c) E-ICT Systems ("e-ICT"). Out of the said 3 vendors, it was also discovered that Elite was always getting awarded with purchase requisitions since 2014. Based on the suspicious findings on these quotations, DW1 and Hjh Ratna decided to investigate further.

Report of the investigation

3. According to DW1, the investigation included (i) doing a search at the Registry of Companies and Registry of Business Names and (ii) making a site visit to the addresses of the vendors mentioned in the quotations. The findings made during the investigation were presented to the Defendant's General Manager and DW1 summarized the outcome of her investigation to show that the Plaintiff had acted dishonestly in the handling of quotations. The details of the investigation will be addressed further under the court's considerations below.
4. Based on the report, Hjh Ratna was instructed by the General Manager to lodge a police report and DW1 was to draft a suspension letter for the Plaintiff. The Plaintiff was subsequently suspended on the 4th April 2016 by way of the said letter signed by the General Manager. Following the Defendant's Employment Regulations, a disciplinary inquiry (DI) was held on the 13th April 2016 to further investigate the Plaintiff and the suspected mishandling of quotations. The DI panelists consisted of 3 staff of managerial positions (DW2, DW3 and DW4), DW1 and one former Human Capital Development Executive. At the DI, the Defence asserts that having shown the Plaintiff the findings of their investigation, the Plaintiff failed to provide a good explanation or reasons during the inquiry in respect of the suspected quotations and her choice of the same 3 vendors. Based on the investigation conducted during the DI proceeding, it was concluded that the Plaintiff had acted dishonestly in her handling or sourcing of the quotations for the Defendant. Following the Defendant's Employment Regulations, the act of dishonesty constituted gross misconduct which entitled the Defendant to terminate the Plaintiff.

Contentions and considerations

5. In considering the law in respect of claims for wrongful termination or unfair dismissal, the court refers to the case of *Loh Nyuk Choi v Standard Chartered Finance (Brunei) Bhd* (HCCS No.102 of 2003) where the High Court Judge held "*It is not in issue that there is currently no relevant Act/Statute in Brunei as in England, Malaysia and Singapore, that can be applied in this situation.....In the absence of such provisions, this court would however mainly refer to the terms, written or implied, governing the employer and the employee relationship in each particular situation and their rights under the Common Law.*" The court further relies on the case of *Loh Nyuk Choi v Standard Chartered Finance (Brunei) Bhd* (Civil Appeal No.17 of 2008) where the Court of Appeal held that employment contracts contained an implied term of mutual confidence and trust applicable to both the employer and the employee. On application, it was further held "*There will be no breach of the employer's obligation if there is "reasonable and proper cause" for its conduct further the conduct must be calculated to destroy or seriously damage the relationship of trust and confidence.*"
6. To begin with, it is important to state the exact cause for the Plaintiff's termination. With reference to the Plaintiff's letter of termination dated 15th April 2016, it states "*The DI panels has concluded that*

you were found guilty on the forged quotations and your case has been deliberated therefore the company has concluded that you are TERMINATED from your service effective 19th April 2016." Therefore, the court must assess whether the Defendant had sufficient evidence to support their assertion that the Plaintiff forged quotations as the grounds for her termination.

7. As mentioned earlier on, the Plaintiff was being investigated for mostly submitting quotations from 3 main vendors namely Elite, Dinamik and e-ICT. Before addressing her role in sourcing quotations, it is important to address the Plaintiff's main role and responsibilities. As IT Controller for the MIS Department, the Plaintiff asserts that she is the 2nd senior officer who was in charge of overseeing and supervising the IT structure of the Defendant company. Specific to the case at hand, the Plaintiff agrees that part of her responsibilities was also to oversee the company's network which included the firewall system, the domain controller server, disaster recovery server and the network access storage. In addition to this, the Plaintiff does not dispute that she was also tasked to source out quotations to procure IT peripherals for the Defendant despite the Defendant having their own procurement department. This part of the Plaintiff's evidence is not disputed.
8. It is the Plaintiff's case that she had no prior experience in handling quotations in her past employment history but nevertheless she complied with the directions given by Ms. Faridah Abdullah Teo, the manager of the Finance and MIS Department ("MIS Department") at the time. In respect of the allegation that she repeatedly submitted quotations from Elite, Dinamik and e-ICT, the Plaintiff explained that this was normally the case because the said companies were the usual vendors that submitted their quotations within time especially for urgent projects. She strongly denies that she knew anything about the alleged forged quotations.
9. On the issue of urgent projects, the Plaintiff admits that she would typically consider Elite, Dinamik and e-ICT as they were the three vendors that usually submit their quotations within time. The Plaintiff also claims that her request for the Tutong Hospital computers was also considered an urgent request. The defense however adduced evidence through the testimony of DW2 (Sabariah) who contradicted the Plaintiff's evidence by stating that the computer in Tutong Hospital were still working and functioning and there was no urgency in having them replaced. The court is of the view that the evidence of DW2 casts doubt on the evidence of the Plaintiff on this matter.
10. The Plaintiff also contends that she did not source quotations from only Elite, Dinamik and e-ICT but also from other vendors but she had kept obtaining quotations from Elite, Dinamik and e-ICT because they were fast in submitting their quotations. Further in the Plaintiff's evidence, she explained that she had no background in sourcing or handling quotations and this was the first time she was given such a task by the MIS Manager. She denied that she was required or ought to have prepared a comparison table of the three (3) quotations she received and submitting them with her reports containing her recommendations on the vendor to select for the purchase of IT peripherals. She further denies any knowledge of any requirement to check up on the company profile before making any recommendations. It is her evidence that she was recommended Elite by the manager of another vendor, One Tech Solutions and that she relied on the letterhead of the companies in deciding on whether the said companies were reliable and established companies.

11. The Plaintiff explained that it is her practice that after receiving the number of required quotations to proceed, the Plaintiff would then make a report for the MIS Manager Hjh Faridah providing her with a recommendation of the vendor to select for the project together with a purchase order only. It is the Plaintiff's stance that contrary to the Defendant's assertions, she did not have to submit together with her recommendations a comparison table to list out the different specifications and the different prices provided by the 3 vendors as well as the delivery time.
12. The court will now turn to the Defendant's reasons for suspicion on the quotations received and submitted by the Plaintiff for approval. It is the evidence of DW1 that Hjh Ratna informed her that she noticed that most of the quotations submitted by the Plaintiff were from Elite, Dinamik and e-ICT and that Elite would be the vendor who is always awarded the Defendant's projects. This led her to conduct a further investigation on the 3 vendors and found the following facts:
 - (a) Through the letterheads used by each company, it was discovered that both Elite and Dinamik use the same business address at *"Unit 60, BT Uthman Complex, Simpang 13, Jalan Berakas, Kg Jaya Setia, BSB BB2713 Brunei Darussalam"* and both Elite and e-ICT use the same P.O. Box address of *"P.O Box 791 Gadong Post Office, BSB BE3978 Brunei Darussalam"*;
 - (b) The address *"No.111 Simpang 462, Kg Sg Hanching, Jalan Muara, BC2115"* and telephone number (*" +673-242 5028"*) as stated on the quotation dated 12th January 2016 purported to be provided by e-ICT are both inaccurate and/or false in that no business was found with that name and the address and the telephone number provided was not in operation; and
 - (c) The address (*"Unit 60, 1st Floor, BT Uthman Complex, Simpang 13, Jalan Berakas, Kg Jaya Setia, BSB BB2713"*) and the telephone number (*" +673 234 2412"*) as stated on the quotation dated 7th March 2016 purportedly provided by Dinamik are both inaccurate and/or false in that no business under the name was carried out as it was the business address of Elite and the telephone number was not in operation.
13. Further to the above findings, it was further discovered that there appeared to be a connection in the directors of both Elite and Dinamik where one of the directors in Elite and Dinamik share the same family name i.e. *Thien Det Lin* and *Thien Yih En* respectively and they also share the same residential address at *"No.53, Chempaka Park, Jalan Tutong, BA1311, Tutong, Brunei Darussalam"*.

The Plaintiff's disciplinary inquiry

14. The Defendant's investigation yielded a series of findings that were subsequently presented to the Plaintiff during the disciplinary inquiry (DI). The Plaintiff was subjected to a rigorous line of questioning, with a particular focus on a numerous number of documents that were allegedly linked to the mishandling of quotations in relation to three vendors: Elite, Dinamik, and e-ICT. The Plaintiff's responses during the DI were largely non-committal and appeared to be evasive, with the majority of her answers indicating a lack of knowledge or understanding of the alleged connections between her actions and the three vendors in question. The Plaintiff's stance that she is unaware of the connections between the companies has remained consistent throughout the Defendant's investigation and throughout the court proceedings.
15. In her court testimony, the Plaintiff agreed that she did not provide substantial explanations or clarifications regarding the allegations. It is contended that this lack of clarity and consistency in her responses raised significant concerns about the veracity of her claims and the overall credibility of her

testimony. It is the Defendant's case that the Plaintiff's inability to provide a clear and consistent account of her actions and involvement with the three vendors, Elite, Dinamik, and e-ICT, was a significant factor in the panel's determination in the DI that the Plaintiff was guilty.

16. During the course of the trial, the Plaintiff presented her evidence, asserting that she had not observed the details specified in the letterheads issued by Elite, Dinamik, and e-ICT. She stated ignorance about the fact that Elite and Dinamik shared the same office address as indicated on their respective letterheads. Similarly, she claimed to have no knowledge that Elite and e-ICT utilized the same P.O. Box address in their letterheads. The Plaintiff also vehemently denied having any awareness that Dinamik did not maintain an office at Elite's office address and that the telephone number provided by Dinamik was non-operational. Furthermore, she denied any knowledge regarding the identities of the directors for Elite or of any connections between any of the vendors.
17. The Plaintiff's denial of knowledge about the shared office and P.O. Box addresses of Elite and Dinamik, as well as Elite and e-ICT, suggests a lack of due diligence on her part. It is generally expected that individuals involved in business transactions would take the time to verify the legitimacy of the companies they are dealing with, which includes checking their contact information. The fact that the Plaintiff did not notice these details could potentially indicate a lack of attention to detail or, at worst, a deliberate attempt to avoid acknowledging these facts.
18. Moreover, the Plaintiff's denial of knowledge about Dinamik not having an office at Elite's location and the non-functioning telephone number provided by e-ICT further raises questions about her credibility. These are significant details that would typically raise red flags about the legitimacy of a company. The fact that the Plaintiff claims to have been unaware of these details could potentially suggest a lack of thoroughness in her business dealings or, again, a possible attempt to avoid responsibility.
19. Finally, the Plaintiff's denial of knowledge about the directors of Elite is also a point of contention. It is generally expected that individuals would have some knowledge about the leadership of the companies they are dealing with, especially in a business context. The Plaintiff's claim of ignorance in this regard could potentially suggest a lack of interest or involvement in the business dealings with Elite.
20. In conclusion, the Plaintiff's evidence and responses during the DI raise several questions about her level of awareness and involvement in the matter at hand. While it is possible that she genuinely did not notice these details, the cumulative effect of these oversights could potentially suggest a pattern of negligence.
21. The Defense, in their submission, highlighted several inconsistencies in the Plaintiff's evidence that could potentially undermine her credibility as a witness. One such inconsistency that was particularly suspect is in relation to the Plaintiff's claim that she had communicated with a representative of e-ICT via telephone. This assertion was directly contradicted by the evidence presented by the Defense, specifically the testimony of one of the DI panelists, Hjh Sabariya Hj Salleh (DW2). According to DW2, she was informed by "Rafidah", a representative of e-ICT who she had called using a phone number

given by the Plaintiff, the telephone number for e-ICT was not in operation and had, in fact, been disconnected since 2007. This revelation raised a significant question regarding the veracity of the Plaintiff's claim. How could the Plaintiff have possibly made a call to a landline that had been disconnected for over a decade?

22. The Plaintiff's only response was a simple assertion that she had indeed made the call. This lack of a plausible explanation for the alleged inconsistency in her testimony could potentially cast doubt on the overall reliability of her evidence. On the other hand, despite DW2's credibility as a witness, the court finds it difficult to weigh the evidence due to the lack of confirmation of the information given by "Rafidah" who was not called to give evidence. The court finds that DW2's statement on this alleged information from Rafidah remains uncorroborated and the court is left with a void and a struggle to assess a piece of information that remains unsubstantiated and if proven could significantly affect the Plaintiff's overall credibility. But the fact remains, the information is unsubstantiated. The court is not prepared to accept this piece of evidence on the landline number being disconnected since 2007 without corroboration as to the truth of the information given. It is not for the court to make assumptions or reach a conclusion based on incomplete information.
23. After the conclusion of the DI, notes of all the panelists were gathered by DW1 who then prepared a report (HJ-8) dated 15th April 2016 with the final recommendation to terminate the Plaintiff's employment. Based on the said report, the recommendation was endorsed by the General Manager who made the final decision for the Plaintiff to be terminated.

Question of proper procedure

24. It is incumbent upon the court to take into consideration all the facts and circumstances of the case, including the role and responsibility of the superiors in ensuring that their officers and staff are well-guided and well-informed about their duties. The court, in fairness, cannot disregard the comments made by the General Manager in DW1's above-mentioned report (HJ-8), which stated that both Ms. Faridah and Ms. Aliza were also responsible for not adequately monitoring the situation. This assertion brings to light a crucial fact that, despite the allegations made against the Plaintiff for not obtaining quotations and making recommendations in a proper manner, such as not checking the background of the vendors and not creating a comparison table, there is an obvious absence of any evidence that suggests that at any point during her employment, her superiors, namely Ms. Faridah and Ms. Aliza, had taken the initiative to guide or advise the Plaintiff on the correct or proper procedures. In fact, there are numerous documentary evidence presented to show that the recommendations made by the Plaintiff were approved (reference is made to Purchase Request Forms, Request for Capital Expenditure Forms and Purchase Order Forms adduced by the Defendant) despite the absence of a comparison table and report justifying the selected vendor and the procurement proceeded regardless.
25. The comments made by the General Manager in DW1's report suggest a failure on the part of Ms. Faridah and Ms. Aliza to fulfill their supervisory roles effectively. The court is of the view that it is the responsibility of the superiors to ensure that the Plaintiff was given the proper guidance and advise on the correct procedures in order for her to be well equipped with the necessary knowledge and

skills to perform their duties effectively and efficiently. This failure resulted in the Plaintiff being accused of not performing her task properly in the purchase of IT equipment for the MIS Department.

Court's finding

26. Upon careful examination of the evidence presented by both the Plaintiff and the Defense, the court has reached a conclusion that there is a significant amount of evidence to substantiate the fact that the Plaintiff exhibited a lack of due diligence in her business dealings, particularly in her management of quotations. This lack of due diligence, as evidenced by the Plaintiff's procedure and often negligent handling of quotations, is a significant factor that has been taken into consideration by the court. However, it is crucial to remember that the crux of the Plaintiff's case for wrongful termination does not revolve around her negligence in sourcing and managing quotations. Instead, the primary basis for her claim is the assertion that her termination was unjust and was a direct result of the Disciplinary Inquiry's (DI) finding that she was guilty of forging quotations.
27. The letter of termination, which has been presented as a key piece of evidence in this case, clearly states that the termination was a consequence of the DI's finding of the Plaintiff's guilt in forging quotations. This is a serious allegation that carries significant legal implications. The act of forging quotations not only undermines the integrity of the business operations but also breaches the trust that is fundamental to any professional relationship and if proven, it provides a valid ground for termination. However, it is important to note that the court's role is not to merely accept the findings of the DI at face value but to scrutinize the evidence and the process through which the DI arrived at its conclusion. The court must ensure that the DI's investigation was thorough, unbiased, and adhered to the principles of natural justice. The court must also ascertain whether the Plaintiff was given a fair opportunity to defend herself during the DI and whether the evidence against her was compelling enough to warrant a finding of guilt.
28. The court has carefully examined the case at hand, taking into account all the evidence presented by both parties. The court acknowledges that there are indeed suspicious details concerning the vendors, as discovered by the Defendant. These details, as outlined in paragraph 10 above, raise questions about the legitimacy of the vendors' operations and their relationship with the Plaintiff. However, the court, does not believe that these details alone are sufficient to prove that the Plaintiff had forged the quotations received from Elite, Dinamik, and e-ICT.
29. The court has taken into consideration the evidence of DW1, DW2, DW3, DW4, all of whom were involved in the DI as panelists. Their findings are similar in nature and briefly stated they were all unanimous on their view that there were suspicious circumstances in the Plaintiff's handling of quotations and she was not able to come up with any reasonable explanation when questioned by the panel. The Defendant's argument that the discovery of the addresses of the said vendors is indicative of an element of dishonesty involved in her sourcing the quotations.
30. However, the court is of the view that the Defendant has failed to establish a clear and direct link between the facts discovered and their finding of guilt. The court believes that the discovery of the vendors' addresses, while suspicious, does not necessarily imply that the Plaintiff had forged the quotations purportedly to have been submitted by the said vendors.

31. The court recognizes that the Defendant has made a significant effort to uncover the truth behind the vendors' operations. However, the court also believes that the Defendant's argument lacks the necessary evidence to support the claim of forgery. The court refers to the written report made by DW1 consisting of the DI panelists' individual findings and the recommendations made. The court is of the view that after a full assessment of the finding by all the panelists, there is still a missing link or absence of evidence to prove that the Plaintiff was dishonest in presenting forged quotations. Again, the court reiterates that it is not for the court to make assumptions or draw conclusions in the absence of concrete evidence. Based on available evidence presented to the court, there is no evidence to show that the Plaintiff has any motive to present forged quotations, no concrete evidence to prove she is connected to any of the three (3) vendors other than in a professional capacity and no concrete evidence to prove that the quotations were not in fact issued and submitted to the Plaintiff by the said vendors.
32. The court finds that the DI's finding is based on speculation rather than concrete evidence. The court, therefore, cannot accept the Defendant's claim that the Plaintiff had forged the quotations based solely on the discovery of the vendors' addresses, the connection between the Directors of Elite and Dinamik and her lack of reasonable or acceptable responses during the DI.

Conclusion

33. In conclusion, based on the evidence presented, the court is satisfied that there is ample evidence to support the claim that the Plaintiff exhibited a lack of due diligence in her business dealings, particularly in her handling of quotations. However, the court stresses that the primary basis for the Plaintiff's wrongful termination claim is the allegation of forgery, which the court finds to be unsubstantiated by the evidence presented. Therefore, the court concludes that the Plaintiff's termination was wrongful and was an unjustified response to her unproven misconduct.

Claim for Damages

Loss of Earnings

34. The Plaintiff submits that as an IT Controller prior to her termination, she received a monthly salary of BND\$2,450.00 per month, a monthly travel allowance in the sum of BND\$50.00 as well as a one (1) month annual bonus of BND\$2,450.00. Based on the income she had received; the Plaintiff makes a claim for loss of income commencing from May 2016 up till her retirement age of 60. It is for the court to determine whether the Defendant should to be made liable for the Plaintiff's loss of income and/or loss of future earnings.

Defendant's Letter of offer

35. With reference to the Defendant's Letter of Offer/Agreement for the Plaintiff dated 2nd December 2013, the Plaintiff had accepted the terms and conditions of the Agreement as indicated by her signature signed on the 5th December 2013. The Agreement is an open-ended employment contract with a notice termination clause. Paragraph 3(ii) of the letter provides "*one (1) months' notice will be required from either party in respect of termination or salary in lieu...*". The Agreement also provides that where an employee is found guilty of misconduct, the company may terminate the Agreement

without notice, this can be found under paragraph 11 of the Agreement and this would be the term relied on by the Defendant in this present case. As the court has concluded that the Plaintiff was wrongfully dismissed, the court awards the Plaintiff with one (1) month salary (\$2,450.00) to which she would have been entitled to if the Defendant had terminated her under paragraph 3(ii) of the Agreement without the one months' notice. In addition to this, the court also awards the Plaintiff the sum of \$2,400.81 which was the Plaintiff's final pay cheque which was not collected upon the Plaintiff's termination.

36. For the claim under this heading, the court is required to determine on a balance of probabilities that the Plaintiff has been unable to secure any form of employment subsequent to her termination. This is a serious aspect of the claim, as it directly pertains to the Plaintiff's alleged loss of income and potential damages. The Plaintiff testified that despite her efforts to find employment, including attending numerous job interviews (11 interviews as stated in the Plaintiff's court testimony), she has been unsuccessful. She remains unemployed to this date, a fact that not only substantiates her claim but also stresses the severity of her situation.
37. Unfortunately, the court is unable to assess the contention made by the Plaintiff due to lack of documentation related to her job search efforts, rejection letters, and records of job interviews attended. Such records are essential to establish the reliability of her claims and to determine whether her inability to secure employment is directly connected to her termination or if there are other factors at play. In the absence of such records, the court has only the Plaintiff's own oral testimony to rely on and this is not much to go on.
38. The Plaintiff's professional qualifications, skills, and experience must also be considered. If the Plaintiff is highly qualified and possesses skills that are in demand, it could potentially weaken her claim of being unable to find employment. Conversely, if the Plaintiff's skills are outdated or irrelevant in the current job market, it could strengthen her claim. The court must also consider the Plaintiff's age, as age discrimination is a prevalent issue in many industries and could potentially impact her employability.
39. At the time of termination, the Plaintiff was 39 years of age and has a significant work history. Presently the Plaintiff would be about 47 years of age. With reference to the Plaintiff's curriculum vitae, she describes herself as having over 16 years of extensive experience in Finance, Information Communication Technology, Management and Operation Administration. She also has an extensive resume which lists out numerous employment history since March 2002 until her last position as IT Controller at the Defendant's company, specifically under the Finance and MIS Department. Hence the Plaintiff's employment background in itself shows that her qualifications and skills are much sought after in the employment market in the past but moving forward, any challenges that the Plaintiff had faced since her termination or will face in the future depends significantly on the preference and requirements of potential employers for example in their preference to hire an employee with the appropriate qualifications and past experience, valuing the knowledge and expertise that comes with years of experience or someone with similar qualifications but is fresh on the scene and can be trained and molded to fit the organisation's needs and culture.

40. Unlike in personal injury matters where there is a formula on how to assess damages to be awarded for loss of future earnings (provided that liability has been established) with the use of multiplicand and multiplier, there is however no set formula on how to assess damages in cases involving wrongful termination. Assessment of damages, if any, would be based largely on the facts and circumstances of each case. The Plaintiff claims that her inability to secure employment is attributable to Defendant who allegedly had tarnished her reputation by defaming her through a written statement.

Claim for Defamation and Loss of reputation

41. Indeed, when assessing the Plaintiff's claim for loss of earnings, the court must also consider the circumstances surrounding the Plaintiff's termination. The fact is the Plaintiff was terminated for reasons that could potentially tarnish her professional reputation or make her less attractive to potential employers, if the grounds of her termination was made known. The court will refer to the Plaintiff's own testimony on this issue.

Termination letter

42. The Plaintiff claims that the written statement that was allegedly used to defame her is the termination letter issued by the Defendant dated 15th April 2016. In her testimony, she states that she refused to accept the first letter of termination due to the finding of dishonesty and forged quotations mentioned in the said letter. Based on this refusal, the Defendant issued a second termination letter without the finding of dishonesty on the same date and this letter was posted to the Plaintiff. Under cross-examination by the defense counsel, the Plaintiff disagreed that no one else had seen the termination letter other than DW1 and Ahmad Husaini Bin Hassan, the General Manager. The Plaintiff further disagreed when it was put to her that the termination letter was not shown to other individuals until she chose to sue the Defendant and had to disclose the termination letter.
43. In assessing the Plaintiff's claim for loss of reputation, the court takes into account that during the course of the court proceedings, the Plaintiff admitted that she herself was uncertain whether her unsuccessful attempts at securing employment were directly linked to her termination by the Defendant. This admission is significant as it has cast doubt on the Plaintiff's claim that her termination by the Defendant has adversely affected her employability. The Plaintiff's uncertainty about the cause of her unsuccessful job interviews suggests that there may be other factors at play, unrelated to her termination from RBC, that have contributed to her inability to secure employment.
44. In addition to her own testimony, the Plaintiff also called upon four (4) witnesses namely Stanley Tham, Andrew Wong, Sylvia Shim Oi Ling, Nurul Nazihah binti Hj Abd Aziz, referred to in the court records as PW2, PW3, PW4 and PW5 respectively. Save for PW5 (former employee of Tech One Solutions previously attached to the Defendant company) who claims that she still was not aware why the Plaintiff was terminated, the witnesses, all of whom are acquainted with the Plaintiff in some capacity, testified that they were unaware of the reason behind the Plaintiff's termination from RBC until she herself had informed them. These testimonies suggest the cause of her termination from RBC has not tarnished her reputation and employability. If PW2 (former advisor to the RBC Board of Directors), PW3 (a businessman) and PW4 (Plaintiff's friend and ex-colleague at RBC), who are presumably part of the Plaintiff's social and professional network, were unaware of the reason for her

termination until she herself had informed them, it is reasonable to assume that potential employers would also be unaware of this information unless the Plaintiff herself chose to disclose it.

45. Further to the above, the court finds a lack of evidence to show that the Defendant had used the Plaintiff's termination letter to injure her reputation by making the contents of the letter known to others apart from DW1 and the general manager. The Plaintiff has failed to provide any concrete evidence, such as public statements, press releases, or internal communications, that would suggest that the Defendant had made the reason for her termination known to the public or third person. Without such evidence, the court cannot accept the Plaintiff's claim that the reason for her termination from RBC is publicly known and had resulted in injury to her reputation and thus has adversely affected her employability.

Police report

46. The court also refers to the Plaintiff's contention that the police report lodged by *Hjh Ratna* on behalf of Defendant in relation to her alleged misconduct has also contributed to her loss of reputation. Having considered the overall evidence presented, specifically the evidence of Sgt 3920 Mohd Arfendey bin Abu Bakar (PW6), the court finds insufficient evidence to prove that the details of the report were ever disclosed to the public or the fact that any investigation in relation to the report was done in a manner that would affect the Plaintiff's reputation negatively. Furthermore, according to PW6, there was limited investigation done on the report and it has officially been closed. Hence, the Plaintiff's claim lacks any supporting evidence to prove that the police report has directly or indirectly affected her reputation and has adversely affected her employability.
47. Based on the above considerations, the court finds that the Plaintiff's own testimony, coupled with the testimony of her witnesses and the lack of evidence supporting her claim that the Defendant had contributed to the spread of the cause of her termination casts significant doubt on her claim that her termination from RBC has adversely affected her employability or had directly or indirectly contributed to her loss of reputation.
48. The court also adheres to the decision made in the case of *Mahadeer Mohamaed & Anor. v Ubayatullah Haja Mohideen & Ors.* (HCCS No.39 of 2021), in which the Honourable Woolley, JC. affirmed that statements made in a police report are granted absolute privilege. In essence, this signifies that information or communication shared with the police is treated as confidential and shielded from disclosure in a court of law or to the general public. Therefore, the Defendant is granted full legal immunity in their report to the police, even if the report is deemed defamatory or subject to legal action. As a result, the Plaintiff's defamation claim is hereby dismissed.
49. The court would also like to further address the Defendant's contention regarding the Plaintiff's defamation claims, specifically related to the termination letter and the police report, being time-barred. It is not disputed that the termination letter was issued on 15th April 2016 and the police report was filed by *Hjh Ratna* on 29th March 2016. However, the defamation claims based on these two documents were not filed until 5th August 2019. It is evident that both claims exceed the statutory limitation period for initiating a claim against the Defendant, and therefore, they cannot be upheld.

50. Based on the above conclusion, the court is of the view that there is insufficient evidence to prove a correlation between the Plaintiff's termination to her inability to secure employment. The court finds no basis on for which the court should award loss of earnings from the date of her wrongful termination up to the age of 60. With reference to paragraph 33 above, the court only awards the Plaintiff a total sum of \$4,850.81 (\$2,450 + \$2,400.81). The Plaintiff's claim for defamation resulting in loss of reputation hereby dismissed.

Damages for emotional distress and anxiety

51. The Plaintiff also claims damages for the stress and anxiety that she claims to suffer as a result of her termination from the Defendant company. In her court testimony, the Plaintiff asserts that the police report lodged by the Defendant for mishandling of quotations had also caused her to suffer considerable distress and anxiety.

52. In support of her claim under this heading, the Plaintiff relies on the following:

- (i) A minute dated 27th May 2021 from Mr Yusri Haji Kifle (PW7), the Head of Clinical and Community Psychology Services, Ministry of Health, Brunei Darussalam.

The minute certifies the Plaintiff was referred to them and was evaluated by them on the 27th May 2021. Their evaluation found the Plaintiff is *"having psychological distressed with depression features due to her on-going stressors in her life that she been having and facing thus affecting her subjective well-being and quality of life."* PW7 also offers the Plaintiff continuous therapy sessions as a means of treatment and intervention for her.

- (ii) A Psychological Report of the Plaintiff dated 14th June 2021 prepared by PW7, Clinical Psychologist, Head of Clinical and Community Psychology Services.

Reference is made to two particular tests that was administered to the Plaintiff. Firstly, is the Strain questionnaire which is designed to assess stress symptoms in three (3) areas i.e. physical, behavioural and cognitive. According to the test, the Plaintiff scored indicative of a *"mild elevation in her physical and behavioural symptoms"* and her cognitive symptoms *"were found to be in moderately compromised range of functioning"*. The second test in the Depression Anxiety Stress Symptoms (DASS-21) which is described as *"A screening tool for identifying, differentiating and assessing depression, anxiety and stress in patients/clients"*. It is reported that based on her answers, the results of the test indicated the Plaintiff's symptoms of depression, anxiety and stress were *"all in the moderate to severe range"*.

53. In concluding his report, based on his session with the Plaintiff on the 27th May 2021, he found that the Plaintiff was distressed with on-going life stressors that affected her overall wellbeing and summarised his overall finding of the Plaintiff's condition as follows:

- *Mixed anxiety and depressive disorder with compromised subjective well-being and mood fluctuation where she was found to be psychologically highly in distressed with anxious and depression feeling. In addition, from observation, she showed evidence that she was also experiencing traumatic stress disorder.*

- *To do follow-up review session with our Clinical Psychology Services in ensuring her psychological mindedness and well-being are well taken care of.*

54. The court refers to PW7's court testimony. PW7's testimony is also of significant importance as it provides an explanation on the Plaintiff's mental and cognitive state. PW7 testified that despite the Plaintiff's emotional turmoil, her cognitive function remained unimpaired. The Plaintiff, according to PW7, was still capable of normal human functioning, including the ability to think, multitask, and process information in an appropriate manner. PW7 further elaborated on the Plaintiff's mental state, stating that it was her mood and subjective well-being that had been adversely affected. This was a critical point in the testimony as it highlighted the emotional distress the Plaintiff was experiencing. PW7's testimony emphasized the fact that the Plaintiff's emotional state was not a result of any cognitive impairment, but rather a consequence of her perceived mistreatment and accusations made against her.
55. The term "life stressors" was used by PW7 in his report, prompting the need to seek clarification on its meaning in the context it was made. PW7 in his court testimony stated that the term referred to the negative experiences and situations that the Plaintiff had encountered, which had caused her significant distress. Specifically, the Plaintiff felt that she had been treated unfairly and was being accused of wrongdoing. These "life stressors", as PW7 termed them, were the root cause of the Plaintiff's emotional distress.
56. Therefore, the crux of PW7's testimony is that the Plaintiff, despite her mental health challenges, retains the capacity to function as a normal person in terms of her physical abilities. This is a significant point to consider, as it emphasizes the fact that the Plaintiff's mental health issues do not impede her physical functionality.
57. Further to the above, PW7's evidence also states that the Plaintiff's condition does not in any way impact her ability to find a job. This is a significant point to consider, as it highlights the fact that the Plaintiff's mental health issues do not impede her employability. PW7's evidence thus paints a picture of a Plaintiff who, while grappling with mental health issues, is not hindered in her ability to secure employment. This is a significant point to consider, as it challenges the common misunderstanding that mental health issues necessarily equate to physical incapacity, cognitive impairment, and unemployability.
58. The court now turns to the Psychology Report (dated 27th February 2022) from Ms. Nasyhea Abdullah (DW7), a Clinical Psychologist working at Clarity Sdn Bhd. This is another psychological report requested by the Defendant to obtain a further expert report on the Plaintiff's mental health and to address any connection between her mental health and her alleged unlawful or unfair termination and other contributory factors, if any. Based on DW7's evidence, due to the limited time she had with the Plaintiff, she only conducted a clinical interview of the Plaintiff and also administered the Depression, Anxiety Stress Scale (DASS-21) assessment tool.
59. Based on the DASS-21 results, the Plaintiff scored: (i) for depression: 17 indicating extremely severe symptoms of depression; (ii) for anxiety: 11 indicating extremely severe symptoms for anxiety; and

(iii) for stress: 14 indicating severe symptoms of stress. DW7 explains that these findings however do not amount to a diagnosis of any mental health disorder. By way of her clinical interview with the Plaintiff, DW7 found the Plaintiff to “*endorse experiencing symptoms of anxiety and depression*”. She further reports that the likely precipitating factor is the “*unresolved issues*” stemming from her belief that she was wrongly terminated and her inability to secure employment since her termination and having to deal with questions relating to her termination in 2016. DW7 however could not rule out other psychosocial stressors that may also be affecting the Plaintiff.

60. The court draws particular attention to the following findings of DW7 at page 10 of her report: “... I am of the opinion that Ms. Yuki does experience some level of psychological and emotionally distress following her termination... However, I was not able to ascertain if she had suffered from mental distress markedly beyond what she would have experienced from being terminated”. The court also refers to the DW7’s report where she acknowledges that the Plaintiff’s termination from her employment did indeed have a negative impact on her emotional well-being but is however unable to establish a causal link between the Plaintiff’s termination and her mental distress. This is a crucial point for the court to take into consideration since it means that DW7 found that despite the fact that the Plaintiff may have experienced emotional distress, it cannot be definitely proven that her termination was the direct cause of this distress. In this regard, DW7’s report is in contrast to PW7’s report as DW7 does not share his view that the Plaintiff’s distressed state has a causal link with her ongoing life stressors affecting her overall well-being.
61. Having considered and assessed both the above-mentioned reports as well as DW7’s and PW7’s court testimonies, the court concludes that the Plaintiff does not suffer from any mental disorder or mental disability that would impair on her physical or her cognitive functionality resulting from her termination. This conclusion however does not mean the court does not recognize that the Plaintiff did suffer a profound effect from her termination causing her to suffer from stress, anxiety and depression. The court accepts that other life stressors cannot be ruled out, but the fact remains that the main “*precipitating*” factor that contributed to her suffering would appear to be the Plaintiff’s belief that she was wronged, not being able to find employment since her termination and having to deal with questions regarding her termination. Both PW7 and DW7 are both consistent on this, although at varying degrees. On the basis of this finding, the court finds that the Plaintiff should be compensated for the emotional distress and anxiety she suffered.
62. In determining the appropriate compensation for damages, the court will consider the entire duration of the Plaintiff’s distress, which has been calculated as a total of 90 months, or 7 years and 6 months. The court would like to stress that damages of this kind are discretionary and fundamentally compensatory. After a thorough assessment of the facts and circumstances surrounding the Plaintiff’s suffering, the court deems an annual sum of BND\$4,200.00 (BND\$350 per month) to be an appropriate amount. This decision takes into account the possibility that the Plaintiff’s termination may not be the sole contributor to her emotional distress and anxiety.
63. Based on the determined amount on an annual/monthly basis mentioned above, the total compensation to be awarded under this claim amounts to BND\$31,500. The court is of the view that

based on the court's consideration of the overall facts and circumstances under this claim, the sum awarded is both fair and just and awards it accordingly.

64. Total damages awarded to the Plaintiff under the main claim amounts to BND\$36,350.81 (BND\$2,450.00 + BND\$2,400.81 + BND\$31,500.00).

Order for Cost

65. Having made a finding in favour of the Plaintiff, the court makes an order that the cost for the main claim be paid to the Plaintiff, to be taxed if not agreed.

DEFENDANT'S COUNTERCLAIM

66. In respect of the Defendant's Counterclaim, the Defendant makes a claim for damages in the total sum of \$53,535.00 for the Plaintiff's breach of the obligations and duties owed to the Defendant under her contract. It is alleged that the Plaintiff breached the implied terms of the Plaintiff's employment and those implied terms are as laid out in paragraph 4(a) to (f) of the Defendant's Re-Amended Statement of Defence and Counterclaim which are as follows:

- (a) Act towards the Defendant with all good faith, fidelity and loyalty and/or not act to the detriment with the Defendant's interest;*
- (b) obey the reasonable and lawful directions of the Defendant;*
- (c) not to act as to damage or destroy the trust and confidence between the Plaintiff and the Defendant;*
- (d) not to act in a manner likely to cause loss and/or damage to the Defendant;*
- (e) act with all due skill, care and competence; and*
- (f) not neglect her duties to the Defendant.*

Contentions and considerations

67. It is the Defendant's case that as the IT Controller in the MIS Department, the Plaintiff recommended the purchase of IT peripherals and services to enhance the Defendant's IT system and network connections with its outlets. The Defendant agreed to make the purchases based on the said recommendations. In support of the Defendant's allegation of the Plaintiff's breach of her duties and obligations, the Defendant relies heavily of the evidence given by their witness Mohamad Arifazri bin Hj Sabtu (DW5), an IT Supervisor employed by the Defendant since 2012. It is DW5's evidence that during her employment, the Plaintiff had made several purchases from Elite which came into question under this suit and they are as follows:

- (a) Purchase of the Fortigate 100 and Fortigate 40C Bundles which provides firewall protection;
- (b) Purchase of the Domain Controller Server which is used to process requests for authentication from users within a computer domain;
- (c) Purchase of the Disaster Recovery Site which is an alternative backup facility that is used when a primary server location becomes unusable; and
- (d) Purchase of Network Access Storage devices used to store back up data.

The Fortigate Firewall Solution

68. It is Defendant's case that the Plaintiff recommended to the Defendant a quotation from Elite for the *"Supply, Delivery and Installation of Fortigate Firewall UTM Solution for RBC HQ and Outlets"*. The particulars of the quotation are for one (1) unit of Fortigate 100 Bundle for BND\$5,854.00 and fifteen (15) units of Fortigate 40C Bundle for BND\$1,209.00 per unit. It is not in dispute that the Defendant accepted and approved the recommendation and proceeded to make the purchase from Elite at the total cost of BND\$23,989.00.

69. The court was referred to several delivery orders which showed the Plaintiff had signed them indicating acceptance and receipt of the deliveries of the 22 units of Fortigate Bundles from Elite on the following dates:

29 th May 2014	Delivery order (no.25612) for 1 Fortigate 100D bundle and 2 Fortigate 40C bundle
27 th June 2014	Delivery order (no.25683) for 1 Fortigate 40C bundle
6 th August 2014	Delivery order (no.25748) for 1 Fortigate 40C bundle
6 th August 2014	Delivery order (no.25749) for 1 Fortigate 40C bundle
12 th August 2014	Delivery order (no.25786) for 1 Fortigate 100D bundle and 15 Fortigate 40C bundle

70. The Defendant asserts that notwithstanding the above-mentioned delivery orders and the Plaintiff signing receipt of the goods received, upon review by the Defendant, it was discovered that only one (1) unit each of the Fortigate 100 Bundle and 40C Bundle that were actually delivered rather than the total of 16 units for which payment has been made by the Defendant. By signing and confirming acceptance of the deliveries, the Plaintiff had in fact acknowledged receipt of 22 units of Fortigate Bundles (2 units of Fortigate 100D Bundles and 20 units of Fortigate 40C Bundles) which is more than that was ordered via the Defendant's Purchase Order form no.52562 dated 1st April 2014.

71. According to DW5, in acknowledging these multiple delivery orders (refer to paragraph 63), it can cause confusion as to the status of the deliveries and the repetition can cause problems in inventory tracking as it is not clear where and in what numbers the items were actually delivered. It also became clear to DW5 that the Plaintiff did not keep a proper inventory record. It is alleged that by signing all of these delivery orders, those very act constitutes a breach of the Plaintiff's duties and obligations.

72. Further, it is also important to highlight DW5's evidence that they discovered that fourteen (14) of the Fortigate 40C Bundles had yet to be installed and connected to the RBC infrastructure. By July 2016 when the discovery was made, the Fortigate Firewall software licenses purchased in 2014 was nearing expiry due to it 3 years validity period at the time of purchase. For this, it is alleged the Plaintiff had failed to ensure that all the Fortigate Bundles were installed in a timely manner.

73. In light of the Defendant's assertions, it is crucial for the court to examine thoroughly the overall circumstances surrounding the transactions i.e. the delivery and acceptance process of the Fortigate Firewall Bundles to determine the reliability of the Defendant's claim. In the Plaintiff's evidence, she explained what it meant when she signed a delivery order. According to the Plaintiff, once a purchase order is issued to the vendor, the vendor would then issue out a delivery order and the person

overseeing the project would have to sign the acknowledgement. The Plaintiff does not dispute that she signed the delivery orders no.25612 and no.25683 but clarifies that the signing only acknowledges the delivery but it did not mean the project was completed. In reference to the remarks made in the delivery order no.25683 stating "INSTALLATION AT FISH & CO.", the Plaintiff explained that it was just a remark and it did not mean that installation was done. After delivery, the Plaintiff states that an invoice will only be issued *once all works were done* (emphasis is mine) and as the person in charge, she would receive the invoice.

74. Despite her evidence in respect of the invoices, the Plaintiff signed the invoice issued by Elite on the 12th August 2014, even though the works/services were unfinished. However, the Plaintiff clarified that she signed the invoice for the goods delivered but not for services. This is an important part of her evidence as it verifies the Defendant's claim that the services due under the purchases were incomplete at the time she signed the invoice.
75. Moving on to the Defendant's contention that the Plaintiff had breached her duties and obligations by signing multiple delivery orders for more items than was actually received. According to the signed delivery orders mentioned under paragraph 63 above, the Plaintiff purportedly received two (2) Fortigate 100D bundles and twenty (20) Fortigate 40C bundles. The Plaintiff denies that she acted improperly by signing multiple delivery orders and denies that she signed for more than what the Defendant received. The Plaintiff further denies that the Defendant only received one (1) Fortigate 100D Bundle and one (1) Fortigate 40C bundle. As for payment of the invoices issued by Elite, the Plaintiff claims that she is unaware that if Elite was paid in accordance to the invoice issued.
76. The Plaintiff explained that the Fortigate bundles that were not installed were kept with the vendor Elite due to the lack of storage space available on the Defendant's premises. According to the Plaintiff, she got approval of this from Ms. Faridah and Ms. Aliza. The Plaintiff further explained that not all of the Fortigate Firewall bundles were installed because of some of the outlets were closed.
77. The main issue in contention is the Plaintiff's breach of her implied duties and obligations. Evidence was produced in the form of delivery orders (paragraph 63 above) to show that the Plaintiff signed for the receipt of all the items allegedly delivered. By signing the multiple delivery orders, the Plaintiff essentially admitted to the receipt of more than 16 units of Fortigate Bundles which the Defendant procured via its Purchaser Order Form no.52562 dated 1st April 2014. This not only confuses the court on the number of delivered products the Plaintiff actually received but more importantly it can cause confusion to RBC in their tracking of the deliveries. The court finds it difficult to accept the Plaintiff's evidence that she did not act improperly by signing multiple delivery orders even though the Defendant did not receive all the items. It makes the court question whether the Plaintiff knew or even kept track of what products she purportedly received when she signed the said delivery orders.
78. In the matter of the 14 remaining Fortigate Bundles yet to be installed, the court finds the Plaintiff's explanation unsatisfactory. The Plaintiff asserts that the remaining Fortigate Bundles were not installed at RBC and its branches due to the closure of some of the Defendant's outlets, resulting in the bundles being stored with the vendor. However, the court finds no corroborative evidence to support the Plaintiff's claim that the MIS Department was aware of the storage arrangement made

with despite the Plaintiff's assertion that Ms. Faridah and Ms. Aliza were informed. Furthermore, the court notes with concern that these bundles were kept in storage for a period of nearly two years with no explanation on what is to happen to these stored items.

79. Based on the evidence presented, the court also finds no clear explanation why the Plaintiff signed multiple delivery orders, accounting for the delivery of more items than actually ordered. Overall, there appears to be a lack of clear communication and proper documentation or record to show where the remaining Fortigate Bundles were kept and that the MIS manager or assistant manager were informed. In the circumstances, the court finds the Plaintiff's explanation lacks reasonableness and supporting evidence.
80. Further, the court finds no reason to doubt the evidence given by DW5. As an IT Supervisor, DW5 is part of the MIS department that were tasked with resolving any outstanding issues with the Plaintiff's work after her termination. It was during this time that they discovered that only two (2) Fortigate bundles were actually delivered, installed and connected at the Defendant's Headquarters and the fact that the remaining Fortigate Bundles were still with Elite and were only delivered upon request to Elite. The court finds that the Defendant's concerns about the remaining 14 Fortigate Bundles not being installed and connected as valid considering that the software as explained above was nearing expiry. The court finds that the Plaintiff's failure to ensure the installation of all the Fortigate Bundles up to time of her termination as a significant breach of her duties and obligations to the Defendant and further finds the Plaintiff's failure results in a potential financial loss, as the unutilized licenses, nearing their expiry, represent a wasted investment.

Domain Controller and Disaster Recovery Server

81. Under this heading, the Defendant claims that the Plaintiff had recommended and the Defendant agreed to, the installation of a domain controller for the purpose of managing and standardizing users and groups under the Defendant's domain. This implementation of the domain controller was intended to validate the user access and permissions under the Defendant's entire network. In addition, the Plaintiff also recommended the installation of a disaster recovery server to act as a back-up to the domain controller server, with the intention of ensuring the continuity of the Defendant's operations. For this project, the Plaintiff obtained two (2) quotations from Elite and Komputer Wisman Sdn Bhd (Komputer Wisman). The particulars of the quotations are as below:

ELITE		KOMPUTER WISMAN	
Details	Price per unit	Details	Price per unit
One (1) unit of HP Proliant ML310e Gen8 v2 NHP 4LFF server (domain controller server)	\$10,142.00	Two (2) units of HP Proliant ML350p Gen 8 server (for domain controller and disaster recovery site)	\$33,500.00
One (1) unit of HP Proliant ML8350pT08 SFF Server (disaster recovery site)	\$18,155.00		
Total:	\$28,297.00	Total:	\$67,000.00

82. Based on the recommendations made by the Plaintiff, the Defendant proceeded to purchase from Elite and paid BND\$28,297.00. With reference to the delivery order (no.25613) from Elite, the Plaintiff signed off on the receipt of the delivery for the domain controller server and the disaster recovery server on the 29th May 2014. It is the Defendant's claim that the recommended and purchased servers were in breach of the Plaintiff's implied duties and obligations under her employment.
83. The Plaintiff confirmed that the standard procedure for payment would be upon delivery and installation of the purchased items. The Plaintiff, having been presented with the invoice (no.24720 also dated 29th May 2014) related to this purchase, confirmed that the items were delivered and that payment had already been made. Payment was settled as evidenced by the "PAID" stamp found on the invoice showing payment was made on the 8th July 2014. On this basis, it is reasonable to conclude that not only were the purchased items delivered but also installed as this is what the Plaintiff had claimed to be the standard procedure.
84. In respect of the investigation done under this heading, DW5 refers to the report (ex.AS-4) prepared by Hjh Ratna who conducted the investigation of the purchase of the Domain Controller and Disaster Recovery Servers ("the servers"). DW5 states that according to the report, the servers were delivered and installed but they were not fully commissioned. In other words, the servers were not connected to the domain *RBC.com.bn* and the Kensoft application was not able to be connected to users and outlets. The results of the Defendant's investigation raised serious concerns about the Plaintiff's fulfillment of her duties and obligations as the person overseeing the project and admittedly the person acknowledging the deliveries and services rendered by Elite.
85. In response to the Defendant's allegations, the Plaintiff strongly denies the assertion that the project is incomplete. The Plaintiff, in her capacity as an IT Controller at the time, maintains that the users were connected to the domain controller and the Kensoft System, a system that was already operational within RBC prior to her appointment. She also claims that the servers were still operational at the time of her termination. The Plaintiff's contention is that the domain controller and the disaster recovery system are no longer in service due to the decision made by the Chief Operating Officer, Hj Mohd Salleh, to halt the Kensoft system in late 2015. The Plaintiff further denies the Defendant's claim that the domain controller and disaster recovery servers were not installed and operational. She asserts that these servers were fully functional and operational, and any perceived lack of functionality can be directly attributed to the cessation of the Kensoft system.
86. On the above-mentioned issue, the witness DW5 provided testimony that the Kensoft system, contrary to the Plaintiff's assertions, ceased operations in February 2016, not late 2015. This timeline suggests that the Kensoft System was decommissioned a couple of months prior to the Plaintiff's termination. It is noteworthy that a significant period had elapsed since 2014, yet the project remained incomplete.
87. Upon careful consideration of the evidence presented before the court, particularly the Plaintiff's claim that users were connected to the domain controller, the court finds this assertion hard to accept. As per DW5's testimony, the servers were not fully implemented and operational, which would inevitably impact users' connection to the domain *RBC.com.bn* and their ability to access the

Kensoft system. Despite the fact that the Kensoft system is no longer in use, the Domain Controller Server has been successful reinstalled and implemented by another vendor after the Plaintiff's termination. The court finds that the evidence provided by DW5 weakens the Plaintiff's defense and casts doubt on the Plaintiff's claim of fulfilling her responsibilities on the project in an efficient and timely manner.

Network Access Storage ("NAS")

88. Under this part of the project, the Defendant claims that the Plaintiff had recommended the supply, installation, configuration and commission of hardware for NAS. For this, the Plaintiff recommended the purchase of 2 (two) units of NAS for server (4TB) at \$3,350.00 per unit and 3 (three) NAS for server (2TB) at \$1,999.00 per unit. Based on the Plaintiff's recommendations, the Defendant made the purchase and paid the total price of \$12,697.00 on the 6th November 2015 (Elite invoices no.25855 and no.25857). Despite the full payment made, the Defendant asserts that the Network Access Storage were only delivered on the 3rd August 2016.
89. It is alleged that the Plaintiff breached her duties and obligations owed to the Defendant by failing to ensure the delivery and proper installation of the NAS. Based on the Plaintiff's own evidence, she would typically sign the delivery order showing receipt of the items delivered. In the present case, the Defendant alleges that the invoice was presented for payment prior to the delivery order being issued. This therefore led to an erroneous payment made to Elite on or about 6th November 2015. Furthermore, it is alleged that the Plaintiff's negligence led to the Network Access Storage being unsuitable for use, resulting in data corruption and loss. The damage suffered by the Defendant is claimed at the sum of BND\$12,697.00.
90. In the Plaintiff's defense, she claims not to know whether or not Elite has been paid and disagrees with the Defendant's assertion that there were no delivery orders issued by Elite. It is however important to note that the Plaintiff does not dispute the fact that she signed the said invoices and maintains that the NAS, which were the subject of the said invoices, were indeed delivered. However, despite the alleged delivery, it is the Plaintiff's evidence that the NAS were never installed during the period of her employment and the project was yet to be completed.
91. The Plaintiff further disputes the Defendant's allegation that the NAS were incompatible with the Defendant's IT infrastructure and resulted in corrupted data. The Plaintiff's evidence suggests that the NAS were compatible with the Defendant's infrastructure. Briefly stated, the Plaintiff's evidence is in direct contrast with the Defendant's allegations, particularly on the fact that the network access storage ordered from Elite were only delivered on the 3rd August 2016, sometime after the Plaintiff's termination.
92. When assessing the Defendant's claim, the court considers the chronological sequence of events and the Plaintiff's explanation regarding the delivery and acceptance of goods practiced during her employment with the Defendant. According to the Plaintiff's testimony, she issues a purchase order for items with the vendor (Elite), and upon receipt of the purchase order, the vendor issues a delivery order. The Plaintiff acknowledges the delivery by signing the delivery order. She further attests that, upon completion of all works, the vendor presents an invoice to the Defendant for payment. This is the process described by the Plaintiff.

93. According to the evidence presented before this court, there are two purchase orders issued by the Plaintiff for the supply of NAS i.e. purchase order no.54395 dated 24th March 2015 for two (2) units of 4TB NAS and purchase order no.54397 dated 24th March 2015 for 3 units of 2TB NAS. The next step would be to examine when the delivery was made based on the two purchase orders. The Defendant has adduced the delivery orders (no.26724 and no.26726) from Elite which were only issued on the 23rd December 2015. Based on the Plaintiff's evidence, payment would only be processed once delivery by the vendor was received. Nevertheless, contrary to the Plaintiff's evidence, Elite issued two invoices i.e. invoice no.25855 for BND\$6,700.00 and no. Invoice no.25857 for BND\$5,997.00, both of which were dated 6th November 2015. Below is a table showing the sequence of events:

Date issued	Items: 4TB NAS x 2	Items.: 2TB NAS x 3
24 th March 2015	Purchase orders No. 54395	Purchase orders No. 54397
6 th November 2015	Invoice no.25855 (paid)	Invoice no.25857 (paid)
23 rd December 2015	Delivery order no.26724	Delivery order no.26726

94. Based on the documentary evidence and the table referenced in paragraph 90 above, the evidence presented by the defense appears to be inconsistent with the Plaintiff's testimony. The Plaintiff's account, as presented in court, indicates a standard practice of forwarding an invoice to the Finance Department for payment processing once all goods have been delivered and work has been completed. However, a careful examination of the provided paperwork reveals a discrepancy that raises doubts about the reliability of the Plaintiff's statement. Notably, the Plaintiff had signed and acknowledged the invoices, requesting payment in November 2015, well in advance of the alleged delivery of the goods in December 2015. In reference to these documents, the Plaintiff failed to offer a reasonable explanation for why she signed the invoices before the issuance of delivery orders. The court deems this practice unusual, as it deviates from the conventional procedure of acknowledging and signing invoices following the actual delivery of goods and the completion of work.

95. Further to the above, the Defendant has made an assertion that actual delivery of the NAS from Elite was actually done on the 3rd August, 2016 despite the delivery order being signed by the Plaintiff in December 2015. This is not just a baseless claim but is attested to by Mohamad Arifazri bin Hj Sabtu (DW5). DW5 is an IT Supervisor employed by the Defendant and his role and responsibilities give us an insight into the record of transactions and investigation made into the handling of the overall IT project tasked to the Plaintiff. DW5 has stated that the NAS was indeed delivered after the Plaintiff's termination. This assertion is of particular importance as it directly contradicts the Plaintiff's claim that the NAS was delivered prior to her termination. The court finds DW5 as a credible and reliable witness and further finds that his evidence casts doubt on the veracity of the Plaintiff's claim.

96. The court now turns to the issue of installation of the NAS. The court reiterates that the Plaintiff agreed the NAS devices were not installed at the time of her termination. The court views this admission to further complicate the Plaintiff's position. It is unclear why the Plaintiff would agree that to this fact if she maintains that the NAS devices were delivered before her termination in April 2016. This evidence suggests that she left the NAS project in an incomplete status up until the date of her termination. In fact, the Plaintiff did not offer any explanation as to why the NAS were not installed

at time of her termination. This inconsistency raises doubts about the Plaintiff's credibility and the veracity of her claims. Clearly, the Plaintiff's claims on the delivery of the NAS is not supported by the documentary evidence adduced before the court.

97. The court also finds it difficult to accept the Plaintiff's testimony regarding the compatibility of the NAS with the RBC infrastructure. The Plaintiff's assertion of compatibility of the NAS devices was contradicted by the testimony of DW5. According to DW5, they did try to use one of the devices for a period of 3 months after its delivery but ultimately decided to stop utilizing it due to the resulting corruption of data. In light of the unsuitability of the NAS devices with the Defendant's infrastructure, it renders the NAS devices useless to the Defendant and is therefore unable to realise their full value. The court is of the view that as the IT Controller tasked to oversee the project and who had recommended the purchase of the NAS devices, the Plaintiff should have ensured that the devices were compatible with the Defendant's infrastructure before recommending them for purchase. The failure to do so suggests a lack of due diligence on the part of the Plaintiff, which further strengthens the Defendant's claim.

Conclusion

98. Based on the court's considerations and findings made above, the court is convinced that on the balance of probabilities, the Plaintiff indeed breached of the implied terms of her employment with the Defendant as set out in paragraph 4 of the Defendant's Re-Amended Statement of Defence and Counterclaim (refer to paragraph no.62 above). The court's conclusion is that the Plaintiff either failed to fulfill her duties and obligations or exhibited negligence in doing so. This includes her responsibilities concerning the complete installation of the 14 Fortigate Firewall bundles, the thorough implementation of the Domain Controller and Disaster Recovery Servers, and the successful installation of Network Access Servers.

Claim for Damages

99. As a result of the Plaintiff's breach, the Defendant asserts that the company suffered and claims the following damages:
- (i) BND\$18,155.00 for loss of use of the Disaster Recovery Server;
 - (ii) BND\$12,679.00 for the non-utilization of the Network Access Servers;
 - (iii) BND\$6,935.00 for the professional services of Ishajaya Technology Sdn Bhd
 - (iv) BND\$10,750.00 for Installation, Configuration and Implementation of VPN Firewall Systems
 - (v) BND\$4,998.00 for maintenance for Hardware and Software.

Claim for BND\$18,155.00 – Disaster Recovery Server

100. Due to the Plaintiff's failure to oversee the proper implementation of the disaster recovery server, the Defendant asserts that the Disaster Recovery Site has remained unused, resulting in losses and damages as detailed below:

- One (1) unused HP Proliant ML350pT08 SFF Server (Disaster Recovery Site), valued at BND\$18,155.00. The Defendant contends that this unutilized asset represents a financial loss incurred as a result of the situation.

101. According to the evidence given by DW5, despite its connection to the Domain Control Server, the Disaster Recovery Server has remained in a state of non-utilization. This is due to the absence of the requisite settings implementation. The fact that no network access storage is connected to it also contributed to the non-utilization of the said server. It is also noted that without the network access storage, the Disaster Recovery Server is essentially rendered useless.
102. The court concludes that the Plaintiff's negligence in ensuring the successful execution of the overall IT project has resulted in the non-utilization of the Disaster Recovery Server. Accordingly, the court is now tasked with deciding whether the Plaintiff should be held financially accountable for the damages amounting to BND\$18,155.00, which represents the initial cost of the Disaster Recovery Server.
103. In consideration of the above, the court accepts that the Plaintiff was tasked with the IT project by Ms. Faridah. The Plaintiff's professional hierarchy is such that she reports to Ms. Faridah, the Manager of the MIS Department, and Ms. Aliza, the Assistant Manager, who is her senior officer. Both Ms. Faridah's and Ms. Aliza's positions suggests that they are entrusted with the responsibility of overseeing the Plaintiff's performance, which includes her duties and obligations pertaining to the IT project. However, the court has not been presented with any evidence that suggests that any member of the MIS Department, other than the Plaintiff, was privy to the actual status of the project prior to the Plaintiff's termination. Given these circumstances, the court is of the view that the Plaintiff's superiors, Ms. Faridah and Ms. Aliza, should also share the responsibility of the incomplete implementation of the IT project.
104. The court's decision is based on the principle of accountability. It is essential that all parties involved in a project, especially those in leadership positions, are held accountable for their actions or lack thereof. This principle is particularly relevant in this case, where the failure to properly implement an IT project has resulted in significant financial loss. In conclusion, the court believes that the Plaintiff should not be made accountable for the 100% of the claim made for the non-utilization of the Disaster Recovery Server. As the employee and IT Controller charged to oversee the implementation of the IT project, the court will apportion 50% of the liability to the Plaintiff. Accordingly, the court awards the Defendant BND\$9,077.50 out of the claim made under this heading. The remainder of the claim is hereby dismissed.

Claim for BND\$12,679.00 - Network Access Servers (NAS)

105. The court refers to paragraph 93 above. As mentioned above, the use of NAS had resulted in corruption of data and thus the Defendant chose to stop the use of the servers. In this regard, the Defendant was unable to realise the full value of the NAS. Based on the court's finding against the Plaintiff, the court held that the Plaintiff did not practice due diligence prior to recommending the purchase of the NAS to be connected to the Defendant's IT infrastructure. The Plaintiff did not adduce any evidence to show that she has considered the existing IT infrastructure, the requirements and objectives of the NAS, checked on the specifications of the NAS and verified if the NAS hardware and software was compatible with the existing operating system of the Defendant's IT infrastructure. As a result, the use of the purchased NAS resulted in corruption of collected data.

106. The court however cannot disregard that neither Ms. Aliza, the Assistant Manager or Ms. Farida, Manager of the MIS Department who ultimately approved the purchase request also did not ensure that the above-mentioned requirements were covered prior to the purchase. In the circumstances, the court is not satisfied that the Plaintiff ought to be made fully liable for the damages claimed. After thorough consideration, the court awards the Defendant \$6,339.50 being 50% of the claim under this heading.

Claim for BND\$6,935.00 – Professional services

107. This claim relates to the reinstallation of the Domain Controller Server. According to the evidence of DW5, Ishajaya Technology Sdn Bhd (“Ishajaya”) were hired to activate the Active Directory and to connect the necessary users’ PCs to the IT system. Resulting from Ishajaya’s professional services, the Domain Control Server was successfully deployed. For their services, Ishajaya issued an invoice dated 10th of August 2016 for the sum of BND\$6,935.00. This invoice was fully settled as confirmed by DW6, the Accounts Payable Executive working for the Defendant.

108. In considering this claim, the court must determine whether or not the Plaintiff ought to be made liable for the additional expense the Defendant had incurred to fully implement the Domain Controller Server. The court is of the view that although it is the responsibility of the vendor to supply, deliver and install the Active Directory/Domain Controller Server, it is still the purchaser’s responsibility to make sure the full implementation of the Domain Controller Server. The court accepts that it was the Plaintiff who recommended the purchase of the servers from Elite but most importantly, it is the Defendant’s MIS department that approved the purchase of the servers. In this instance, there is no evidence before the court to show any issue of damage or incompatibility with the Defendant’s IT infrastructure. The main issue appears to be the need for reinstallation of the Active Directory and activation of the necessary settings.

109. Upon careful examination of the evidence presented, the court finds that Elite’s quotation dated 25th March 2014 includes a five-year warranty for the server. However, the Defendant's decision to hire professional services rather than relying on the warranty for the complete implementation of the Domain Controller Server suggests that Elite's warranty does not cover the reinstallation of the Domain Controller Server.

110. This decision also suggests a lack of necessary skills or ability within the Defendant's Management Information Systems (MIS) Department to successfully execute the implementation of the Domain Controller Server. After careful consideration of the facts and circumstances surrounding this matter, the court concludes that the Defendant would have inevitably sought the assistance of professional services to fulfill the required tasks.

111. Therefore, the court determines that the expenses incurred by the Defendant in hiring Ishajaya cannot be attributed to the Plaintiff. This conclusion is based on the understanding that the Defendant would have needed to engage professional services regardless of the circumstances, due to the apparent lack of necessary expertise within their own MIS Department. The Defendant’s claim for damages under this heading is therefore dismissed.

Claim for BND\$10,750.00 - VPN Firewall Systems.

112. Under this heading, the Defendant makes a claim for the Installation, Configuration, and Implementation of VPN Firewall Systems. The court draws attention to its previous findings concerning the outstanding 14 Fortigate Bundles that were yet to be installed in paragraph 74 above. The Plaintiff's failure to ensure the installation of the remaining 14 Fortigate bundles, which were close to expiration, compelled the Defendant to incur additional costs for licenses and engage another service provider for their installation. Consequently, after following the standard procedure for vendor selection, the Defendant chose Three Circle Integrated Solutions Sdn Bhd (hereinafter referred to as "CIS") for the task.
113. CIS was selected for the renewing the licenses for all the Fortigate bundles, installing the remaining 14 bundles, and providing on-site training on the operation of the Fortigate Firewall System. This decision was made in light of the Plaintiff's failure to fulfill her obligations, thereby necessitating the Defendant to seek alternative solutions to ensure the continuity and security of their operations.
114. In conclusion, the court acknowledges the Defendant's claim and recognizes the additional costs incurred due to the Plaintiff's failure to ensure the full installation of the Fortigate bundles. The court also appreciates the Defendant's efforts to rectify the situation by engaging CIS to complete the installation and provide necessary training. However, in relation to the training, the court does not believe that the costs should be claimable from the Plaintiff as it was not a service that was due under her tenure.
115. The breakdown of the Defendant's claim is based on the CIS's invoice (no.8808) which covers (i) installation, configuration and implementation of VPN Firewall system claimed at BND\$9,750.00 and (ii) on-site training for Fortigate Firewall system for BND\$1,000.00. Based on the court's decision above, the court will grant damages in the sum of BND\$9,750.00 (\$10,750.00 - \$1,000.00) accordingly.

Claim for BND\$4,998.00 - maintenance for Hardware and Software.

116. It is the Defendant's case that since the IT project had remained incomplete as of May 2014, there was essentially no need for additional maintenance services. Since the project was still unfinished, it is alleged that the Plaintiff breached her duties and obligations by recommending the purchase of maintenance services for Fortigate Firewall Solution, Domain Controller Server, Disaster Recovery Server and the Network Access Storage. Furthermore, the Plaintiff's continued acceptance of the maintenance services for 12 months from May 2014 to February 2015 was also in breach of her duties and obligations under the implied terms of her employment. Following the Plaintiff's recommendations, the Defendant suffered loss and damage in the sum of BND\$4,998.00 being the cost of maintenance services that were wrongly recommended and obtained by the Plaintiff.
117. In consideration of this claim, the court refers specifically to the quotation from Elite dated 21st April 2014 for "Network Maintenance of Royal Brunei Catering Sdn Bhd" and Elite's invoice no. 24677 dated 14th May 2014. In reference to the quotation, the maintenance services were to cover the following:

- *Quarterly Preventive Maintenance for Domain Controller Server, DR Server, RBC Existing Remote Desktop Server, Fortigate Firewall at HQ, RBC Airport Flight Kitchen and 15 sub outlets;*
- Curative Maintenance for Domain Controller Server, DR Server, RBC Existing Remote Desktop Server, Fortigate Firewall at HQ, RBC Airport Flight Kitchen and 15 sub outlets.

The terms provided under the quotation in respect of payment was for payment to be made quarterly in advance; 30 days from the dates of invoice.

118. Based on the Purchase Request Form no.28950 dated 22nd April 2014, the purchase request was submitted by both the Plaintiff and Ms. Aliza and was approved by the Ms. Faridah. The same argument in terms of accountability will be applied under this heading. The court accepts that according to the Plaintiff, the maintenance services was inclusive of maintenance for the Defendant's existing IT infrastructure and not just the Domain Controller Server, Disaster Recovery Server, and Fortigate Firewall. This assertion is reflected in the scope of work under the said quotation – referred to as *"RBC Existing Remote Desktop server"*. In the circumstances, the quotation corroborates the Plaintiff assertion that the maintenance services were also obtained for the Defendant's existing IT infrastructure.

119. The court further refers to the Purchase Request Form no.28950 dated 22nd April 2014 where the purchase was described as *"Maintenance of RBC Network Infrastructure for Hardware & Software for a period of 12 months."* The said Purchase Request Form also references the quotations from Elite and Sakam Enterprise, showing that the Assistant Manager and Manager was also aware that the maintenance were meant to cover the IT project as well. Furthermore, the Purchase Request Form was ultimately approved by the MIS Manager at the time. The court is therefore of the view that the Plaintiff cannot be made fully responsible for the entire claim made under this heading. Taking into the account the principle of accountability and the fact that the maintenance services purchased was also for RBC's existing IT infrastructure, the court will decrease the damages sought to BND\$1,874.25 (calculated with 50% accountability attributed to the Plaintiff, and a 25% reduction for the maintenance of existing IT infrastructure). As such, under this heading, a total of BND\$1,874.25 is awarded accordingly.

Total damages awarded

120. The total damages awarded to the Defendant under the Counterclaim amounts to BND\$27,041.25 (refer to Summary of Damages Awarded below for list of damages). The court orders that the Defendant is responsible for offsetting the payment owed to the Plaintiff, accounting for the damages awarded to each party.

Order for Cost

121. On the issue of cost, the court makes an order that cost of the Defendant's Counterclaim are payable to the Defendant, to be taxed if not agreed.

SUMMARY OF DAMAGES AWARDED

A. DAMAGES FOR THE PLAINTIFF

<u>CLAIMS</u>	<u>BND</u>
▪ Loss of earnings	\$4,850.81
▪ Defamation / Loss of reputation	Nil
▪ Emotional distress and anxiety	<u>\$31,500.00</u>
Total:	<u>\$36,350.81</u>

B. DAMAGES FOR THE DEFENDANT

<u>CLAIMS</u>	<u>BND</u>
▪ Disaster Recovery Server	\$9,077.50
▪ Network Access Storage	\$6,339.50
▪ Professional Services	Nil
▪ Installation, Configuration and Implementation Of VPN Firewall Systems	\$9,750.00
▪ Maintenance for IT infrastructure	<u>\$1,874.25</u>
Total:	<u>\$27,041.25</u>

DK HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court