GYC Financial Planning Pte Ltd and Another v Prudential Assurance Company Singapore (Pte) Ltd
[2006] SGHC 71

Case Number : Suit 960/2004

Decision Date : 28 April 2006

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Alvin Yeo SC and Ameera Ashraf (Wong Partnership) for the plaintiffs; K Shanmugam SC, Christopher Tan and Edwin Tong (Allen & Gledhill) for the defendent

Parties : GYC Financial Planning Pte Ltd; Goh Yang Chye — Prudential Assurance Company Singapore (Pte) Ltd

Contract – Formation – Certainty of terms – Plaintiff alleging breach of oral agreement – Defendant denying existence of such agreement – Whether oral agreement in fact existing

Employment Law – Contract of service – Termination with notice – Contract allowing termination by either party with 14 days' notice – Whether giving more than 14 days' notice constituting giving proper notice – Whether employer needing to have good reason for termination where termination with notice given

Financial and Securities Markets – Financial advisors – Company purporting to be "representative" of exempt financial adviser – Whether necessary for "representative" of exempt financial adviser to be natural person – Sections 6(1), 7(1) Financial Advisers Act (Cap 110, 2002 Rev Ed)

8 April 2006 ***Judgment reserved***

Judith Prakash J:

Introduction

1 The defendant, Prudential Assurance Company Singapore (Pte) Ltd ("Prudential"), is a well-known company carrying on the business of providing, *inter alia*, life and general insurance. For many years, the second plaintiff, Goh Yang Chye ("Mr Goh"), was one of Prudential's top agents. In 1998, Mr Goh and his wife incorporated the first plaintiff, GYC Financial Planning Pte Ltd ("GYCFP"), to accept an appointment as a corporate manager from Prudential.

2 This action arises out of the termination of the Corporate Manager Agreement ("CMA") in March 2003 between Prudential and GYCFP and certain discussions that took place a year later between Prudential and Mr Goh concerning the future relationship between the parties. The plaintiffs allege that the termination was wrongful and that GYCFP is entitled to damages for that termination. They further allege that, in February 2004, there was an oral agreement between Prudential and Mr Goh whereby Prudential appointed Mr Goh to market its products and that Prudential wrongfully resiled from this agreement thus causing loss to Mr Goh.

3 Shortly before the trial was scheduled to begin, Prudential filed an application asking for two issues to be tried as preliminary issues. These issues arose from the claim made by GYCFP. This application was heard on the first day of the trial and I granted it. Thereafter, there were arguments on the preliminary issues. When these were completed, I reserved my decision since the preliminary issues were discrete issues and my decision on them would not affect the remaining issue that had to

be tried, that being the sole issue arising out of the claim made by Mr Goh personally. Oral evidence was then adduced by the plaintiffs in relation to this issue. At the end of the plaintiffs' case, Prudential submitted that there was no case for it to answer. I then heard submissions on the third issue.

4 This judgment deals with the two preliminary issues and the one issue that went to a full trial. These are the issues that I have to determine:

(a) Whether Prudential wrongfully terminated the CMA.

(b) Whether as a matter of construction of the terms of the CMA, GYCFP is entitled to further payment of commission and other sums from Prudential after termination of the CMA.

(c) Whether an oral agreement was made on 11 February 2004 ("the oral agreement") between Mr Goh and Prudential.

Background

5 The following account of the facts is taken from the affidavit of evidence-in-chief filed by Mr Goh (to the extent that these were not disputed) and from the documents found in the agreed bundles.

6 The story began in 1987 when Mr Goh became an agent of Prudential's predecessor. His duty was to sell policies of life assurance in Singapore. Mr Goh was a successful agent and, over the years, he rose through the ranks to become a trainer, a unit organiser, a unit manager and then a field manager. As field manager, Mr Goh recruited suitable persons as insurance agents for Prudential and thereafter managed them.

7 In 1991, Prudential took over its predecessor's business and all Mr Goh's subsequent contracts were made with Prudential. On 29 December 1992, Mr Goh and Prudential entered into a Field Manager Agreement ("the FMA").

8 When Mr Goh first became a field manager in January 1990, the remuneration structure was such that once an insurance contract was secured by an agent reporting to Mr Goh, an overriding commission payable to the field manager would be computed on the sum assured and paid in the same year as the insurance contract was secured. In May 1990, the Monetary Authority of Singapore ("MAS") directed a change in such payments. Thereafter, payment of overriding commission, based on first-year premium, was spread over a period of three years. Some years later, Prudential changed its computation of overriding commission again from that based on first-year premium to that based on the earned commission of the agents. Further, payment was spread over six years.

9 In 1998, Mr Goh decided to set up GYCFP to act as a corporate manager. From December 1993, Prudential had permitted corporate entities to act as field managers. The duty of the corporate manager was the same as that of a field manager, *ie*, to recruit and manage agents for Prudential. Each corporate manager functioned as a business unit, with tiers of agents reporting to it. The agents, however, remained agents of Prudential rather than agents of the corporate manager.

10 Prudential was willing to make GYCFP a corporate manager and, in late 1998, it sent Mr Goh a draft CMA. The material terms of this agreement were:

Authorisation

1.(a) The Corporate Manager is hereby appointed as a corporate manager of the Company to provide the services set forth herein in the Territory but the Corporate Manager shall have no exclusive rights to do so. Except with the express consent of the Company, the provision of the services hereunder by the Corporate Manager shall be confined to the Territory.

(b) …

Payment

2.(a) As consideration for the services to be provided by the Corporate Manager hereunder, the Company shall pay to the Corporate Manager during the continuance of this Agreement such sums as shall be determined in accordance with and subject to the terms of the attached Schedule or such other terms as may from time to time be agreed between the parties hereto or determined upon and notified in writing to the Corporate Manager by the Company. Save as provided in Clause 2(b) no revision shall operate to reduce the sums accrued and payable to the Corporate Manager prior to the notification of such revision.

…

Termination

14.(a) This Agreement shall automatically terminate forthwith upon:-

…

(ii) a sale, assignment or transfer of all and not part only of the Corporate Manager's rights, benefits and interests under this Agreement in accordance with Clause 13; or

…

(c) Any party may terminate this Agreement by giving to the other parties fourteen (14) days notice of termination in writing.

…

(e) Save as provided in this Agreement, termination of this Agreement shall be without prejudice to the rights of any party hereto accrued prior to termination.

Payments After Termination

15.(a) Subject to Clause 15(b), (c) and (d) no production overrider, Group Term Assurance or Death Benefits or other sums of any kind whatsoever shall accrue to the Corporate Manager in connection with this Agreement after the termination hereof save as otherwise agreed in writing by the Company.

(b) There shall be paid to the Corporate Manager all production overriders and other sums of any kind already accrued and becoming due and payable to the Corporate Manager under this Agreement after the termination hereof.

(c) The Company may, by notice in writing to the Corporate Manager, pay to the Corporate Manager from time to time any Group Term Assurance and Death Benefits notwithstanding the termination of this Agreement.

11 Apart from these terms, attached to the draft was a schedule setting out the commission payable to GYCFP in respect of:

(a) Production Overriding Commission – these were to be paid on business secured by the agents appointed to work through GYCFP at rates set out in the schedule.

(b) Buyout Overriding Commission – these were to be paid on the business secured by agents who had been promoted from senior unit organisers to senior unit managers and thus ceased to work under the field manager/corporate manager.

I should note at this stage that the rather complicated remuneration structure adopted by Prudential in respect of its field managers and corporate managers was always set out in a schedule to the relevant field or corporate manager agreement and that from time to time during the life of such contracts Prudential would change the remuneration terms and would do so by issuing a replacement schedule that contained the new terms.

12 Whilst Mr Goh had certain concerns about the draft CMA, Prudential managed to deal with these in a manner satisfactory to him and he then accepted the draft. Subsequently, however, Prudential sent him an addendum ("the Addendum") to the draft which provided that cl 6 of the CMA was to be deleted in full and replaced by the following provision:

> The Corporate Manager shall observe and comply with all Company's rules, regulations and agency instructions which are currently in force and applicable to the field managers and corporate managers of the Company on the subject matter of this Agreement, whether included in the Agent's Rates Book or otherwise and the Corporate Manager shall further observe and comply with all Company's rules, regulations and agency instructions which may be declared by the Company and notified to the Corporate Manager from time to time subsequently to be in force and applicable to the Corporate Manager as a field manager/ corporate manager of the Company on the subject matter of this Agreement.

13 According to Mr Goh, he was not happy about the inclusion of the Addendum because he found it unacceptable that new rules or agency instructions could come into force and alter his agreement with Prudential. He therefore refused to sign the draft CMA. According to Mr Goh, notwithstanding this refusal, the parties subsequently conducted themselves on the basis of the draft CMA without the Addendum. Prudential opened a new account in the name of GYCFP and recognised GYCFP as a corporate manager. Mr Goh himself continued to be an agent for Prudential. In its defence, Prudential agreed that a CMA was entered into with GYCFP. Its stand was that the terms of this agreement were those set out in the draft CMA forwarded to Mr Goh as amended by the Addendum. It pleaded that although neither GYCFP nor itself had signed the draft CMA, the parties had at all material times conducted themselves according to the terms of the draft CMA including the Addendum.

14 The next development took place because of a change in the law initiated by the Government. It enacted legislation to govern financial advisers. In 2001, the Financial Advisers Act (Cap 110, 2002 Rev Ed) ("the Act") was passed but most of the Act was not to come into force until October 2002. Prudential believed that once s 7 of the Act took effect, corporate agencies such as GYCFP providing financial advisory services would no longer be able to do so.

15 In that context, in April 2002, Mr Goh met with various officers of Prudential to discuss how

the parties' relationships would change. According to Prudential's defence, what was discussed was the termination of the CMA between GYCFP and Prudential and also whether and how, once the CMA was terminated, the parties could continue working with each other. However, Prudential said, no agreement was reached. Mr Goh's evidence was that at this meeting, he was offered the opportunity of being an exclusive financial adviser with Prudential. He had indicated that GYCFP would be willing to be such an exclusive financial adviser and asked for the exact terms of such arrangement.

16 There were further discussions between Mr Goh and Prudential in the months that followed. Mr Goh also took steps to make an application to the MAS for permission to start up a financial advisory firm. Nothing had been finalised, however, by 23 December 2002 when GYCFP received the following letter from Prudential:

> **Termination of Corporate Manager Agreement and replacement with Field Manager Agreement**
>
> With the implementation of the FAA [the Act], PACS [Prudential] has been granted an Exempt Financial Adviser's licence and Corporate Agencies can no longer be allowed to operate under this new regime.
>
> The Corporate Manager Agreement between [Prudential] and [GYCFP] will therefore have to be terminated together with all rights attached thereto.
>
> In view of the good performance, co-operation and goodwill that we enjoy with [GYCFP], we are pleased to invite your Managing Director, Mr Goh Yang Chye, to be our Field Manager and will extend all the rights enjoyed by your entity to him. Kindly note that this is purely granted on a ex-gratia basis and should not be interpreted as a right granted to any corporate entity that is terminated and replaced by a Field Manager Agreement.
>
> If Mr Goh Yang Chye is agreeable to this offer, please have him signify acceptance by signing and returning to us the attached letter.

17 Mr Goh was taken aback by this turn of events. He considered that there was no reason for Prudential to terminate GYCFP as a corporate manager. In this connection, he referred to certain correspondence between MAS and Prudential which he considered supported his argument that MAS had not prohibited a corporate entity from representing Prudential. On 17 February 2003, Mr Goh informed Prudential in writing that he did not agree that there was a reason for the termination of the agreement with GYCFP. Thereafter, there were further discussions between him and officers of Prudential but Prudential did not retract its termination of the CMA. As from 1 April 2003, Prudential treated the CMA as terminated and acted as if Mr Goh himself was, personally, a field manager for Prudential in respect of business done from that day onwards.

18 According to Mr Goh, after April 2003, he was repeatedly told by Mr Ed Navarro, the chief executive officer of Prudential, that Mr Navarro was working on a deal by which Mr Goh could continue working for Prudential as a financial adviser but under a corporate structure. However, almost a year passed without anything concrete emerging. GYCFP was not sure whether it would be made an exclusive financial adviser and its business suffered as a result. Mr Goh then decided to start up his own financial advisory entity and applied for a licence for the same. In January 2004, after receiving in-principle approval for the issue of the licence, Mr Goh told Mr Navarro that he would be relinquishing his position with Prudential. By Mr Goh's account, Mr Navarro responded that he was "very close to sealing a deal" for Mr Goh as an exclusive financial adviser for Prudential.

19 On 4 February 2004, Mr Goh wrote to Prudential informing it that he would be relinquishing his duties at Prudential. He stated that he had been appointed as a chief executive officer of GYC Financial Advisory Pte Ltd which had a financial adviser's licence from MAS. He also said that he was looking to a positive development regarding the parties' future business relationship as had been proposed by Mr Navarro. Shortly thereafter, Mr Navarro telephoned Mr Goh and arranged a meeting between himself, his superior, Mr Dan Bardin, and Mr Goh on 11 February 2004.

20 The account of this meeting that follows is taken from Mr Goh's affidavit of evidence-in-chief. Mr Goh said that at the meeting, Mr Navarro informed him that he and Mr Bardin had just had a board meeting in Hong Kong and they had the blessing of the board to offer Mr Goh a deal. Mr Goh repeatedly asked them if there was a confirmed deal on the table as they had in the past made offers to him but failed to carry these offers through. Mr Navarro and Mr Bardin assured Mr Goh that there was a deal on the table. Mr Bardin said that Prudential was agreeable to working with Mr Goh in his new corporate structure (*ie*, GYC Financial Advisory Pte Ltd). They proposed, and Mr Goh agreed, that he would continue to market Prudential's products as a non-exclusive financial adviser under the new corporate entity.

21 Mr Goh stated that the material terms of the oral agreement were as follows:

(a) He would market Prudential's products through his new corporate entity.

(b) Prudential would continue to pay him, as well as other managers and advisers who resigned from Prudential to join his new corporate entity, their commissions including all payments due from business done prior to GYCFP's resignation.

(c) These commissions would be paid 60 days after his official departure from Prudential (Mr Bardin had at first suggested 30 days but they agreed on 60 days).

(d) While Prudential would have the right to appoint any financial adviser to represent it, Mr Goh would be given a head start of two to three years over the other financial advisers.

(e) He would not recruit advisers from Prudential except with its agreement.

(f) There would be a strategic partnership between Prudential and Mr Goh both locally and regionally.

(g) As an independent financial adviser, he would be able to market products from other product providers without accounting to Prudential.

(h) These terms would be reduced to writing by the end of February 2004.

22 On 12 February 2004, Mr Goh sent Mr Navarro an e-mail in which he set out an outline of some of the matters that had been discussed during the previous day's meeting. Soon thereafter, Mr Goh heard from another field manager that several senior managers had met with Mr Navarro and asked about the deal Prudential had made with Mr Goh. He understood that many of the managers were upset as they thought Mr Goh was getting a deal that was not offered to all managers. Prudential then started to back away from the deal. Instead of affirming the new partnership, it disputed payments that were rightfully due to Mr Goh and GYCFP and claimed that it was not obliged to pay either of them anything after Mr Goh's last day with Prudential.

23 Mr Navarro's letter to Mr Goh dated 17 February 2004 was, to the latter, evidence that

Mr Navarro was trying to wriggle out of the deal that he had made. Material parts of this letter read:

> Thank you for your letter of 4 February 2004.
>
> Prudential is sorry to hear that you intend to relinquish your duties with us.
>
> We have had a good conversation concerning the various possibilities of our future business relationship last week and hope that parties would continue to work towards these possibilities. However, it may not be possible to forward the mentioned proposal to you by end February 2004. In that event, I will forward a proposal at the earliest timeframe.
>
> To facilitate the relinquishing of your duties, I would need your help in working through some issues, as we did not reach a consensus on the specifics during our discussion last week:
>
> …
>
> Yang Chye, let's work through these issues as soon as possible so that we can move forward. Hopefully, it will not take too long. …
>
> If you can respond to the above quickly, we can start our discussions.

Whilst further correspondence between the parties followed, there was no written agreement concluded thereafter. In December 2004, the plaintiffs filed this action by which they make the following claims:

(a) In the case of GYCFP:

(i) a declaration that the CMA was wrongfully terminated;

(ii) payment of all benefits, allowances, commissions and other payments to which it is entitled under the CMA; and

(iii) further or alternatively, damages for wrongful termination.

(b) In the case of Mr Goh:

(i) specific performance of the oral agreement; and

(ii) further or alternatively, damages for breach of the oral agreement.

Issues

Whether Prudential wrongfully terminated the CMA between it and GYCFP

24 This is the first preliminary issue. The submission made by Prudential was that the determination of this issue is purely a question of construction of cl 14(c) of the CMA set out in [10] above. By that clause, either party could terminate the agreement at any time by giving the other 14 days' written notice. Prudential argued that there was no doubt that cl 14(c) of the draft CMA sent to GYCFP in December 1998 applied because:

(a) the plaintiffs in their statement of claim specifically pleaded cl 14(c) of the CMA and confirmed that it was their case that the parties conducted themselves on the basis of the CMA without the Addendum; and

(b) Mr Goh stated in his affidavit of evidence-in-chief that he accepted the CMA (without the Addendum) and the parties had conducted themselves on the basis of the CMA without the Addendum.

Further, all written agreements entered into between Prudential and Mr Goh himself had included a clause that provided for an express right of termination based on 14 days' notice to be given by either party. In law, the effect of such a clause was that Prudential had the absolute right to terminate its employment of GYCFP as long as it gave the requisite notice. Prudential cited *Ridge v Baldwin* [1964] AC 40 for the proposition that a contract of service could be terminated by the employer at any time and for any reason or for none. It said therefore that it did not need to give any reason for the termination as long as it gave at least the minimum amount of notice specified by the contract. In this case, it had given more than that notice because the termination letter was issued on 23 December 2002 and the contract actually terminated on 31 March 2003.

25 GYCFP did not dispute the applicability of cl 14(c). Its argument was that the CMA had been terminated by the letter dated 23 December 2002 (see [16] above) from Prudential to GYCFP and that that termination was wrongful because the contractual provisions had not been strictly followed. It noted that the letter gave no indication of the period of notice given to GYCFP as provided for in cl 14(c). There was no indication even that Prudential was purporting to invoke cl 14(c). Instead, Prudential had claimed in the letter that the CMA arrangement had become impossible to perform, that the CMA arrangement was frustrated by a supervening illegality and that Prudential was thus discharged from performance of the CMA arrangement. In GYCFP's view, such grounds of termination were without merit.

26 Before I consider whether there was a valid ground for termination, I must consider whether proper notice of termination was given. In *Goh Kim Hai Edward v Pacific Can Investment Holdings Ltd* [1996] 2 SLR 109, I opined, albeit in a slightly different context, that a termination clause must be precisely observed by a terminating party. GYCFP seems to have interpreted that observation to mean that if a termination clause provides for 14 days' notice of termination to be given, then exactly 14 days' notice must be given and even if the notice in fact given is more than 14 days, the purported termination would be wrongful. I do not agree. A proper construction of a clause like cl 14(c) would be that either party is entitled to terminate the agreement by giving to the other party at least 14 days' notice of termination in writing. That means that if the notice of termination is given more than 14 days before the actual termination occurs, it would be a valid termination. It would also not be necessary for the notice of termination to specify the number of days notice being given as long as the party receiving the notice has 14 or more days' notice that the agreement is to end.

27 Looking at the termination letter of 23 December 2002, it is true that it did not state that the CMA would be terminated in 14 days. However, it was plain from the wording of the letter that the CMA was being terminated and that that arrangement would be replaced by a field manager relationship between Mr Goh personally and Prudential. When Mr Goh received this letter, he realised as much. It was also clear from the letter that the termination was intended to take effect from the date on which Mr Goh took up the proffered field manager position. That was why no specific termination date was mentioned. As matters turned out, Mr Goh was not at first willing to do this because he considered that GYCFP could continue to be a corporate manager despite the provisions of the Act. There continued to be discussions between the parties and Mr Goh and GYCFP were at all material times aware of the position taken by Prudential that GYCFP could no longer act as corporate manager once the Act was implemented. They were also aware of the date when this would occur. Prudential did not treat the CMA as terminated until 31 March 2003, the last possible date on which it

considered GYCFP could legally act as a corporate manager. As it turned out, therefore, GYCFP had much longer than 14 days' notice of termination. In my judgment, Prudential's termination of the CMA was valid.

28 I also agree with the submission that as long as proper notice is given, an employer does not need to have a good reason for termination. In this case, however, as an alternative, Prudential also submitted that it had a good reason for this action. It submitted that the relevant provision of the Act that MAS was strictly enforcing from 1 April 2003 prohibited the continuation of the corporate manager arrangement. This was because Prudential was considered an "exempt financial adviser" under the Act. As an exempt financial adviser, it was obliged to carry on its business through "representatives" as that term is defined in the Act. Prior to 2003, s 2 of the Act specified that a "representative" must be "an individual". It was therefore clear that the Act required representatives of Prudential to be individuals. This requirement was reinforced by amendments made to the Act in 2003. At that stage, although s 2 was amended to remove the word "individual" from the definition of "representative", s 7 which dealt with the licensing of representatives was amended to insert a specific condition that a representative had to be an individual.

29 GYCFP disagreed with Prudential's interpretation of the Act. In its view, it was clear from the terms of the Act that while representatives of financial advisers had to be individuals, Prudential could continue to work with GYCFP if GYCFP also obtained a financial adviser's licence.

30 In order to decide the point, I must have regard to the relevant provisions of the Act. These are:

> **6**.—(1) No person shall act as a financial adviser in Singapore in respect of any financial advisory service unless he —
>
> (*a*) is authorised to do so in respect of that financial advisory service by a financial adviser's licence; or
>
> (*b*) is an exempt financial adviser.
>
> …
>
> **7.—**(1) No person shall act as or hold himself out to be a representative of a financial adviser unless the following conditions are satisfied:
>
> (*a*) that person is an individual;
>
> (*b*) where the financial adviser is a licensed financial adviser, that person holds a representative's licence that is related to that financial adviser; and
>
> (*c*) where the financial adviser is an exempt financial adviser, that person is a representative of that financial adviser.

31 Also relevant are the definitions of "financial adviser", "financial advisory service" and "exempt financial adviser". When these are read together with s 23 of the Act and the Second Schedule, the effect is that because Prudential, *inter alia*, arranges contracts of insurance in respect of life policies, it offers a financial advisory service and would have to be licensed as a financial adviser were it not for the provisions of s 23(1)(c) which exempts companies registered under the Insurance Act (Cap 142, 2002 Rev Ed) from holding a financial adviser's licence. This exemption makes

Prudential an "exempt financial adviser" within the definition of that term in s 2 of the Act. Going one step further, a "representative" is defined as a person who performs for a financial adviser any of the functions of a financial adviser.

32 Looking at s 7 of the Act, Prudential contended that the conditions in s 7(1) were clearly conjunctive in the sense that sub-s (*a*) had to be read with sub-s (*b*) in the case of a financial adviser and sub-s (*a*) had to be read with sub-s (*c*) in the case of an exempt financial adviser. It added that this interpretation was the interpretation that Parliament had intended that the legislation be given. This was shown when Mr Lim Hng Kiang (then Second Minister for Finance) stated in Parliament on 2 September 2003 that the amendment clarified that only natural persons could act as representatives of financial advisers to ensure proper accountability by the principal for the conduct of the representatives. The minister also said that corporate entities would not be permitted to act as representatives of financial advisers.

33 I agree with the submission that a representative of an exempt financial adviser must be an individual. This is the only reasonable way in which the relevant legislation can be construed although the drafting of s 7(1) is not as precise as it might be. It is also the interpretation that meets the purpose for which the legislation was enacted. However, whether or not GYCFP could continue to render services as a corporate manager would depend on whether these services as set out in the CMA would fall within the functions of a representative as defined by the Act.

34 Prudential drew my attention to cll 2, 3(a), 3(b), 3(c), 3(d), 6, and 18(d) of the CMA. To paraphrase, under the various sub-clauses of cl 3, the corporate manager has to seek out and nominate for appointment suitable persons to be agents of Prudential, it can also recommend the termination of any such appointment, it has to manage the agents and endeavour to increase their quality of service and new business production, and, finally, must take reasonable action to ensure that the agents adhere to Prudential's terms and conditions. Prudential could not carry on business if it did not have agents and if these agents were not trained and properly managed. It is an essential part of Prudential's business therefore to recruit, train, pay and manage agents and, if the corporate manager was not there, Prudential would have to carry out all these functions itself. Under cl 6, the corporate manager itself has to adhere to Prudential rules and regulations thus indicating its place as an integral part of the Prudential scheme of business and, under cl 2(a), it is clear that Prudential must remunerate the corporate manager for all its activities.

35 By the Act, a representative is a person who performs for a financial adviser any of its functions and who is remunerated for doing so. Going by that very wide definition and the functions of a corporate manager as detailed, I do not see any escape from the conclusion that the functions that GYCFP performed for Prudential before 31 March 2003 qualified it to be regarded as a "representative" as that term is defined in the Act. Accordingly, once the Act was fully effective, GYCFP, not being an individual, could no longer perform those functions for Prudential since the latter was an exempt financial adviser. There was, therefore, good reason for Prudential to terminate the CMA and GYCFP cannot complain that the termination was unlawful. Indeed, it would have been unlawful for the arrangement contemplated by the CMA to continue after 31 March 2003.

Whether as a matter of construction of the terms of the CMA, GYCFP is entitled to further payment of commission and other sums from Prudential after termination of the CMA

36 This is the second preliminary issue. In order to decide it, I must first decide what the terms of the CMA were. Before I do this, I should note that the claim in the statement of claim was that GYCFP had suffered loss in the form of commissions and business allowance that it would have received but for the wrongful termination of the CMA in March 2003. The particulars of the loss set

out in the statement of claim, however, acknowledged that subsequent to 31 March 2003, Prudential had made payments of commission and overriders due under the CMA to Mr Goh as a field manager and stated that Mr Goh had accepted these payments without prejudice and without waiver of GYCFP's rights. Payments of such commission had been made up to 18 February 2004. Therefore, the loss sustained by GYCFP was in respect of payments that it alleged should have been made after 18 February 2004.

37 GYCFP took the position that the terms of the CMA were those set out in the draft CMA document sent to Mr Goh in late 1998 (without the Addendum that was sent later) or alternatively, those in the FMA signed by Mr Goh in 1992. In either case, the terms of the agreement did not include any of the various schedules that were issued by Prudential from time to time.

38 It was GYCFP's position that the terms of the CMA or that of the FMA must be construed without the schedules for the following reasons. First, in GYCFP's view, it was clear that the schedules were not entitled to alter GYCFP's contractual entitlement. In support of this, GYCFP pointed out that Prudential's own position was that agency instructions (which was the mode by which new schedules were introduced) could not alter the terms or conditions of the agreement between the parties. Thus, it argued, in so far as the terms of the schedules purported to alter the terms or conditions of the agreement between the parties, they could not do so. Any changes to the agreement would have to be, and indeed were, agreed to between the parties. One example of this was the letter that Prudential wrote to Mr Goh on 8 February 1994. There, Prudential referred to cl 11(a) of the FMA and proposed that it be amended by the deletion of sub-para (ii) of that clause. The letter asked him to confirm his agreement to this change by signing and returning to Prudential a duplicate copy of that letter. In my view, whatever might have been the point of asking Mr Goh whether he agreed to any particular change, that was not relevant to my consideration as the preliminary issue constrained me to determine GYCFP's rights purely as an issue of entitlement on the true construction of the contractual documents.

39 GYCFP submitted that all the schedules were supposed to do was to set out the rates and time period for the commission payments by Prudential. These were agreed separately with the field and corporate managers. The schedules were not supposed to alter the managers' entitlement through alterations in the language of "accruals". If Prudential contended that it could make changes to the remuneration structure, not only unilaterally but also retrospectively, through the various schedules, then taking that argument to its logical conclusion, Prudential would be able to reduce the managers' entitlement to zero or close to zero. Such a right would fly in the face of the mutual agreement that founds any contract. Secondly, GYCFP said, as the various documents and evidence showed, the schedules were frequently replaced and rephrased. Including the schedules as part of the contract would mean that there would be no certainty as to the terms of the agreement between the parties. In GYCFP's view, Prudential was picking and choosing which schedule needed to be construed by the court. On its own case, only the last schedule should be construed but that schedule was being conveniently ignored.

40 If the court held that the corporate manager arrangement between GYCFP and Prudential was governed only by the terms set out in the draft CMA without the Addendum or schedules or, alternatively, the FMA without any schedules, then, GYCFP submitted that the clauses that fell to be considered under both these documents with respect to payment after termination would be similar. In the case of the draft CMA, the relevant clauses were cll 15(a) and 15(b) (see [10] above) and in the case of the FMA, the relevant clauses were cll 12(a) and 12(b). GYCFP submitted that the true and correct construction of these clauses favoured the further payment of commission and other sums to it despite the termination of the corporate manager arrangement.

41 Before I go on to consider the arguments of Prudential, I should state that it is my finding that the basic document governing the corporate manager relationship between Prudential and GYCFP was the CMA. It was not the FMA. I make this finding on the basis of the plaintiffs' own case. In the statement of claim, GYCFP pleaded that the parties had conducted themselves on the basis of the CMA excluding the Addendum. Mr Goh himself testified that he had accepted the CMA although he did not sign it and that the parties conducted themselves on the basis of the CMA. The reason why Mr Goh did not sign the CMA was that he did not agree to the Addendum. The Addendum, however, has nothing to do with remuneration and can therefore be ignored in the determination of the present issue. Since both parties accepted and treated the CMA as the governing document, it would fly in the face of legal principle and good sense if I were to hold otherwise.

42 Prudential's submission was that on the proper construction of the CMA with the schedule, it was not obliged to pay GYCFP any commission or overriders on policies incepted before 31 March 2003 (which was the termination date) where premiums on such policies were received and accepted by Prudential after 31 March 2003. This argument was founded on cll 15(a) and 15(b) of the CMA.

43 In this submission, Prudential also relied on cll 2.1, 2.2 and 2.3 of the schedule to the CMA. These clauses provided that the various overriders would accrue and be payable to GYCFP only upon receipt and acceptance of payment by GYCFP of various premiums from the customers. This would mean that if premiums were received after 31 March 2003, albeit on business incepted before that date, as of 31 March 2003, the overriders would not have accrued on those premiums. Further, the beginning of cl 2 itself stated that Prudential had to pay the corporate manager the various sums specified "during the continuance of [its] appointment" under the CMA. Thus, if the appointment ceased, the obligation to pay would cease. Prudential therefore said that in any case, GYCFP's claim for further commission beyond 18 February 2004 must fail since premium received by Prudential after that date would not have accrued or been due to GYCFP as of the date of termination, *ie*, 31 March 2003.

44 Prudential also made submissions on GYCFP's claim for buyout commission. It argued that that claim must fail since cl 3.1 of the schedule to the CMA provided that the payment of any buyout commission would be at Prudential's discretion and was subject to written notification from Prudential. Clause 3.2 of the same schedule provided that the obligation to make payment (even if there was such a written notification) only applied "during the continuance" of GYCFP as a corporate manager. Thus, the obligation to make payment, if it arose at all, would have ceased when GYCFP ceased to be corporate manager.

45 Both parties are agreed that if the CMA is the governing document, then the clauses to be considered are cll 15(a) and 15(b). Looking at those clauses, it seems plain to me that Prudential's arguments are correct. Under cl 15(a), no production overrider, group term assurance or death benefits or other sums of any kind whatsoever are to accrue to the corporate manager after the termination of the CMA. Under cl 15(b), the corporate manager is protected to the extent that it will be paid all production overriders and other sums of any kind which had already accrued before termination but become due and payable after termination. The meaning of accrual is, however, more clearly defined in cl 2 of the schedule. In this respect, I accept the submissions of Prudential on the meaning of the various provisions of this clause. GYCFP did not really disagree with the interpretation. It was more concerned to convince me that the schedule was not part of the CMA and thus not binding on it.

46 I must now consider whether or not the schedule is part of the CMA. In this respect, it is significant that cl 2(a) of the CMA provides for Prudential to pay the corporate manager "such sums as shall be determined in accordance with and subject to the terms of the attached Schedule or such

other terms as may from time to time be agreed by the parties hereto or determined upon and notified in writing to the Corporate Manager by the Company". The schedule was attached to the draft CMA when it was sent to Mr Goh. It was thus part of the document that he accepted and acted on. In my judgment, when Mr Goh accepted the CMA, he accepted the schedule and it did not lie in his mouth to later contend that that schedule was not part of the CMA. Clause 2(a) also made clear that Prudential could, if it wished, unilaterally change the terms of remuneration of the corporate manager except that (apart from the situation set out in cl 2(b)), no revision could operate to reduce the sums accrued and payable to the corporate manager prior to the notification of the provision. Whilst after the FMA was concluded, Prudential had, pursuant to similar language in the FMA, provided Mr Goh with new schedules containing revised methods of calculating remuneration, as far as the CMA was concerned, Prudential was not relying on any schedule issued subsequent to the conclusion of the CMA. Instead, the schedule that it referred to was the original one.

47 In my judgment, on the true construction of the terms of the CMA, GYCFP was not entitled to further payment of commission and other sums from Prudential after 31 March 2003.

Whether there was an oral agreement made on 11 February 2004 between Mr Goh and Prudential

48 This issue involves only Mr Goh, the second plaintiff. As I have stated, oral evidence in support of his claim was heard and at the end of his case, Prudential elected not to call any evidence but to submit that there was no case to answer. In such a situation, the established law is that the court can only find that a defendant has no case to answer if one of two situations exists. The first is that the plaintiff's evidence at face value did not establish a case in law. The second is that the evidence led by the plaintiff was so unsatisfactory or unreliable that his burden of proof had not been discharged (see *Bansal Hermant Govindprasad v Central Bank of India* [2003] 2 SLR 33). At first instance in the same case (*Central Bank of India v Hemant Govindprasad Bansal* [2002] 3 SLR 190 at [21]), Rajendran J observed that as long as there is some *prima facie* evidence that supports the essential limbs of the plaintiff's claim, then failure by the defendant to adduce evidence on his own behalf would be fatal to the defendant. Bearing these principles in mind, I turn to consider the evidence adduced by Mr Goh.

49 The background to the meeting of 11 February 2004 was that prior to the implementation of the Act, Mr Goh was one of Prudential's top agency managers and earned considerable income for Prudential. The Act was enacted, *inter alia*, to enable persons such as Mr Goh to set themselves up as independent financial advisers offering potential investors advice on a range of investments without being limited by exclusive agency arrangements with just one financial investment provider. Thus, Mr Goh submitted, Prudential was concerned to find a way to keep him working with them. There was a possibility that his leaving Prudential would not only have a financial impact on the company but also affect its image. Mr Goh pointed to studies conducted by management consultants employed by Prudential that indicated that it was possible that up to 120 advisers/agents would leave with Mr Goh. From May 2002 onwards, Prudential had explored ways and means to ensure that Mr Goh would continue to work with it even after the Act came into force. As far as this part of the case goes, I accept that there was ample evidence to establish that Prudential had a high regard for Mr Goh and his abilities and was concerned to try and keep him in its fold. As a result, it considered creating an exclusive relationship with him in order to retain him.

50 In 2002, Prudential started discussions with Mr Goh in relation to his acting as its exclusive financial adviser. These discussions continued into 2003. Nothing substantive came of them. In November 2003, Prudential took the view that it must move towards a financial adviser distribution model involving a partnership with persons like Mr Goh in the role of exclusive financial advisers. At

about this time, Mr Goh decided to obtain his own financial adviser's licence as he believed that that would make it easier for Prudential to appoint him as an exclusive financial adviser. After obtaining in-principle approval for the licence, he informed Mr Navarro in early January 2004 that he would have to relinquish his duties. Mr Navarro replied that he was very close to sealing a deal for Mr Goh to be made an exclusive financial adviser. An internal meeting of Prudential officers in January 2004 noted that Prudential was geared up for the swift implementation of the exclusive financial adviser arrangement and had set up a project team to propose the strategy to be adopted to deal with the Act and this strategy was to be completed by 20 February 2004. The intended strategy was to make a few select agency units financial advisers under an exclusive relationship with Prudential. It was in these circumstances that the meeting of 11 February 2004 took place.

51 Mr Goh's submission was that at that meeting, the parties entered into an oral agreement on the terms that I have set out in [21] above. He submitted that it was clear from the conduct of both parties that they intended to be bound by the terms of the oral agreement. It was his resignation that had galvanised Prudential into action as it wanted to lock Mr Goh in with this agreement before he could establish links with a competitor. There was no time to wait any longer as Mr Goh had already resigned. Otherwise, there was no reason for the regional chief executive officer for Prudential Asia, and the regional chief operating officer who was also the country manager for Singapore to meet with Mr Goh merely because he had requested a meeting with them without stating the agenda. Further, when Mr Goh wrote to Mr Navarro on 12 February 2004 and subsequently to Mr Bardin on 20 May 2004 stating the terms of the oral agreement, neither of them refuted these terms.

52 Other significant conduct was cited by Mr Goh. First, after 11 February 2004, Mr Goh had sent a list of his managers and advisers to Prudential in accordance with the oral agreement. There was no reason for him to do so if there was no agreement. Secondly, on 19 February 2004, Philip Seah of Prudential wrote a letter to Mr Goh personally informing him of the changes in the use of the "Prudential fact finder", a tool for carrying out a financial needs analysis. This letter was consistent with the position that Prudential was continuing its relationship with Mr Goh. Thirdly, when Mr Navarro met with the other field managers in mid-February, instead of confirming that Mr Goh had resigned, he stated that Mr Goh was considering resigning. This was also consistent with an agreement having been reached and the details being worked out.

53 As for the oral agreement itself, Mr Goh submitted that its essential terms were clear and certain. First, his relationship with Prudential was specified – he was to be a non-exclusive financial adviser, able to market products from other product providers, but would still be a preferred provider of Prudential's products. Secondly, it was agreed that Mr Goh and his agents and managers would be paid all their commissions for business done prior to their resignation from Prudential. Thirdly, it was agreed that such payment would be on condition that the majority of Mr Goh's turnover had to be from Prudential's products. Whilst it was not specified exactly what percentage of the turnover had to come from this source, Mr Navarro had mentioned 70% and Mr Goh had not disagreed. Fourthly, it was agreed that Mr Goh would not recruit advisers from Prudential except with its consent. Thus, all the concerns that Prudential had were addressed by the terms of the agreement.

54 The stand taken by Prudential was that there were several issues in dispute between it and Mr Goh prior to the meeting of 11 February 2004. There was, Prudential submitted, no agreement reached on the outstanding issues during or after the meeting. Prudential gave three reasons for this contention. The first was that what was discussed on 11 February 2004 was too uncertain and inchoate. The second was that the parties had not come to a total settlement of the outstanding issues between them. Thirdly, the contemporaneous documentary and other evidence was also inconsistent with an agreement having been reached.

55 In relation to the first reason, Prudential's detailed submissions were based largely on the evidence given by Mr Goh himself. There were two aspects to this evidence. The first was his evidence on the terms of the e-mail that he sent out on 12 February 2004 and as to what had happened at the meeting established the lack of agreement. The second was his evidence on what the parties had intended should be included in any contract.

56 Turning first to the e-mail of 12 February 2004, the material parts of this read:

> Subject: Business partnership with Pru (meeting with Ed and Dan dated 12th Feb 2004)
>
> …
>
> Just want to be sure that what we discussed is clearly understood by all of us, I will try to outline some of the matters discussed in the following pointers.
>
> 1. Prudential is positive towards the FA [financial adviser], namely GYCFA that I have formed. This matter has also been discussed at Dan's and Jonathan Bloomberg's level.
>
> 2. Prudential has agreed that GYCFA will continue to market PRU's products.
>
> 3. Prudential will continue to pay GYC, managers, and advisers (a small number) their renewals. This will include all renewals and all payments due to the businesses done prior to our resignation (it will be as tho we are still in PRU). This will of course subject to certain conditions set and to be discussed asap. Example as indicated by Ed, provided that certain revenue are brought in. Payments will start to roll in 30 days after our official departure.
>
> 4. Though PRU has a right to appoint any FA to represent them, PRU will give GYCFA a headstart (like 2-3 years) so that we can recruit top advisers from the market place.
>
> 5. GYCFA will strive to recruit advisers from the market place. GYCFA's intention is to grow the business by attracting top agents from the industry. These agents wants to pursue the career from a FA route. We will not seek to recruit advisers from PRU. However, we will serve as a 'collection ground['] for Pru advisers who otherwise will be recruited by other FA. There will be mutual covenant and trust.
>
> 6. There will be possible strategic partnership with PRU both on a local scene and on a regional basis. Yang [C]hye will be called upon for possible advisory level to the PRU with regards to agency business[.]
>
> 7. GYCFA will continue to be independent corporation and will market other products from other products providers. Our relationship with PRU will be commercial without "control" from PRU. However, GYCFA will want to have a meaningful partnership with PRU.
>
> 8. All details will be worked out by end Feb.
>
> 9. I will be allowed to comment about our future business partnership to the PRESS. However, this will be done with discretion.
>
> The above are the gist of the things we discussed tonight. Please let me know if any of the points are out of line or any points that I have missed out.

This is going to be fun and exciting and I believe that GYCFA will be a worthy partner to the Big Pru. Looking forward to an existing 2004.

57 In court, Mr Goh confirmed that the e-mail contained everything that was important that had happened at the meeting and he had not omitted from it anything that was material or important. Subsequently, he admitted that many of the matters that were raised in his e-mail had not been finalised, were uncertain and required further discussion.

58 One of these was the issue of remuneration dealt with in para 3 of the e-mail. Under cross-examination, Mr Goh stated that this paragraph covered two aspects of remuneration. First, for business already done before his resignation date ("old business"), Prudential would continue to pay renewal commission to Mr Goh and some of his managers and advisers provided that a certain percentage of the new business of GYCFA comprised Prudential products. Second, Prudential would pay GYCFA commission on the new business that it brought in. On the first point, Mr Goh admitted that the conditions yet to be discussed and agreed upon included important matters such as the percentage of Prudential business that would have to be brought in by GYCFA before the payments for the old business would be made, and the numbers and names of managers and advisers who would be paid. On the second point, Mr Goh admitted that the amount of commission that GYCFA would get on new business brought in had yet to be discussed and agreed.

59 Another point that was not discussed was the remuneration for the proposed strategic regional partnership. Mr Goh alleged in para 6 of his e-mail that there was to be a possible strategic partnership with Prudential and said in court that he would receive remuneration for this. He admitted that he expected to get paid but that the amount of such payment was not discussed.

60 Paragraph 5 of his e-mail dealt with recruitment which was an important issue for both parties. One of the other witnesses, Mr Ho Ming Heng, told the court that Prudential had concerns that if Mr Goh left, not only would the agents in his unit (about 70 persons) leave but also agents in other units would want to leave as well to join Mr Goh. There was a possibility of as many as 50 other agents leaving which would mean that Prudential would lose 120 agents altogether. Prudential submitted that this was a vital issue from its point of view and therefore Prudential wanted to specify the conditions under which Mr Goh's agents and agents from other units could join him. Such conditions would include how recruitment by Mr Goh would take place, the terms that Mr Goh could offer to the agents, when he could approach them and what he could say to them and how he should treat agents who belonged to other units. No such complexity was disclosed in the e-mail. All that was said there was that there would be a simple "mutual covenant and trust" on the issue of recruitment. Prudential submitted that all that had taken place therefore was an in-principle discussion giving an idea as to the philosophy that would guide how the clauses relating to recruitment would be drafted. It pointed out that during cross-examination, Mr Goh confirmed that he would expect Prudential to put clauses restricting poaching in the final agreement that was to be drafted.

61 Prudential also submitted that para 4 of the e-mail which contained Prudential's alleged agreement to give GYCFA a "head start" was vague. It asked what "head start" meant. Mr Goh's response was that "head start" meant that he was given a particular deal to sell Prudential products and then he was given some time to enjoy this deal before others were given the same deal. However, whilst in the e-mail Mr Goh had been imprecise about the duration of the head start, stating it would be two to three years, under cross-examination, he said that he would have a head start for at least two years. When asked specifically whether Prudential had told him that it would give him a deal and no one else the same deal for at least two years, Mr Goh's reply was, "That's what they said." When pressed whether he expected to see that in an agreement which Prudential would send

to him, Mr Goh's reply was that there had already been an agreement and "the rest were [*sic*] just small details that have to be worked out".

62 Prudential submitted that it was clear from Mr Goh's evidence that the proposed strategic partnership had been raised but no details had been worked out. Mr Goh had admitted that matters such as the countries involved were not discussed, his remuneration for the strategic partnership was not discussed and the extent to which and the way he would be reimbursed for any travel to countries in the region for the purpose of the strategic partnership was not discussed. He said that he did not know whether it was up to Prudential to come back to him and inform him which countries would be involved in the strategic partnership.

63 Next, para 8 of the e-mail stated precisely that, "All details will be worked out by end Feb." Mr Goh admitted that what that meant was that all details had to be discussed and agreed before the documentation could be finalised. Prudential submitted that this admission was fatal to Mr Goh's case on the oral agreement.

64 Mr Goh also admitted that any agreement between him and Prudential would have included more terms than the matters enumerated in the e-mail. During cross-examination, he was shown certain slides, referred to as the Marakon slides, which had been presented to the management of Prudential in January and March 2004. The January 2004 slide was headed "Contract Framework" and its contents were:

> PACS to negotiate a contract with potential partners that stipulates
>
> - Stretch performance targets
>
> - Offer training and back end support
>
> - Enter into a long term contract
>
> - Restrict poaching of PACS agents
>
> The contract should ensure that PACS is protected should the EFA not deliver business goals, by
>
> - Withholding renewable commissions subject to achievement of sales targets
>
> - Ensuring API is 60% of overall sales
>
> - Holding the right to [withdraw] products
>
> - Bonus Incentive for exceeding sales targets.

65 The March 2004 slide listed the following as "Stipulations to be included in the contract":

- "Master Agreement; Distribution Agreement, Technology Licence, Support Services
- Stretch performance targets – minimum of

> - 110% of overall PACS growth target or
>
> - proportional growth over previous years business written in line with PACS's goals
>
> - Growth targets to be agreed upon annually based on analysis of past performance

- Renewable overrides to be released conditional upon achieving 90% of the years target
- Renewable commissions to be paid to EFA/EFA Rep (tbd)
- Lump sum commission including bonus, allowances, overrides and basis comm payable for new business (tbd)
- EFAs to be restricted from poaching of PACS agents
- PACS to offer training and SFA. SFA components (RAMS/CM/FP/e-Sub/RASIe) to be determined.
- PACS to hold the right to withdraw products incase the EFA fails to meet the performance criteria for two years consecutively.

66 Prudential submitted that it would never have entered into an oral agreement on 11 February but, as the evidence showed, was considering an agreement that would have included the matters covered in the slides and that such an agreement would have been a written one. It submitted further that Mr Goh knew that that was how Prudential would proceed. It pointed to his admissions that he expected Prudential to put forward performance targets; that he expected Prudential to put in clauses to restrict poaching; that he would expect Prudential to put in clauses on the withholding of renewable commissions unless certain sales targets were achieved; that he would expect it to ask him to sign supporting documents like a technology licence agreement and a support services agreement; and that he would expect to see clauses containing conditions imposed on the renewable overriders.

67 Prudential submitted that it was clear that what had happened on 11 February was that the parties held a preliminary discussion and did not approach an agreement. A whole host of issues including important terms like the compensation structure were not agreed, in particular, the amount of new Prudential business that had to be done in order for Mr Goh to qualify for payment on old business. This need not be inferred but could be gathered from Mr Goh's own admissions. He had expected Prudential to include certain terms which he had not mentioned in his 12 February e-mail.

68 Turning to its second reason for the submission that no agreement had been concluded on 11 February 2004, Prudential set out a list of the issues that were in dispute between Mr Goh and itself which had not been resolved as at that date. These were:

(a) Whether the CMA between GYCFP and Prudential had been wrongfully terminated.

(b) Whether post-termination payments under the CMA were due.

(c) Whether, if Prudential was making those payments out of goodwill, they should be paid to GYCFP or Mr Goh himself.

(d) The status of the threatened legal action that Mr Goh had said he was going to take against Prudential.

(e) The date that Mr Goh's resignation from Prudential would take effect from.

(f) Whether Mr Goh could transfer his advisers and down-line managers to his brother after he left Prudential.

69 I note that, when he was being cross-examined, Mr Goh was asked whether during the meeting of 11 February, anything had been discussed about all the problems that Prudential had with

him and the issues on his personal status. Mr Goh's reply was that Mr Bardin and Mr Navarro had said that everything would be settled after that date. He then emphasised that the discussion was a total and complete settlement of all issues and would settle the payment issues that arose from termination of the CMA. When, however, Mr Goh was asked whether the agreement would settle the issues about how payment ought to be made and to whom, his response was that these matters had not been discussed. He also agreed that it was not discussed whether the payments that were due in the course of the year 2003 were to be paid to GYCFA. Mr Goh agreed that as of March 2004, Prudential still "showed resistance" to his suggestion that he transfer his advisers to his brother. This matter therefore had not been settled at the 11 February meeting. It was also clear from Mr Goh's letter of 23 February 2004 to Mr Navarro that the issue of the alleged wrongful termination of the CMA had not been settled on 11 February 2004.

70 Prudential also relied on Mr Navarro's letter of 17 February 2004. That is set out in part in [23] above. It submitted that in this letter Mr Navarro was saying that all these issues relating to Mr Goh's resignation had to be settled before they could start discussing future business. Mr Goh himself admitted that Mr Navarro was setting out in the letter what needed to be settled before discussions on the parties' future relationship could take place.

71 The third reason, Prudential submitted, that no agreement was made, was that the contemporaneous documentary and other evidence was inconsistent with the alleged oral agreement. In this respect, it relied on Mr Navarro's letter of 17 February and particularly, the third paragraph of the same in which Mr Navarro referred to the "possibilities" of the parties' future business relationship and his intention to forward a "proposal" to Mr Goh at the earliest possible time. Mr Goh had agreed in cross-examination that Mr Navarro was to send him a proposal which still needed to be worked on. Then, there was the letter of 5 March 2004 from Mr Navarro which ended with the sentence, "Yang Chye, good luck in your future endeavours and I sincerely hope that we will be able to work together again."

72 Finally, it cited the evidence of Mr Leong Sow Hoe, a senior financial services director at Prudential, the plaintiffs' last witness. He testified that in February 2004, there were rumours flying around that Mr Goh was planning to leave Prudential and that a special deal had been arranged for him, between him and Prudential, that would be detrimental to the agents who were remaining with Prudential. The field managers were upset and sought clarification from Mr Navarro. They told him that there was a rumour that Mr Goh and his agents would be allowed to leave Prudential to join Mr Goh's new entity, GYCFA, and would nevertheless continue to receive renewal commissions from Prudential. The field managers felt threatened because if that was the set-up, they thought their own agents would be tempted to join Mr Goh in his new organisation to sell both Prudential and non-Prudential products and that would affect the income of the field managers. According to Mr Leong, Mr Navarro went to great lengths to tell the field managers that there was no special deal with Mr Goh and that if he were to leave, he would leave clean and would not get any compensation. The same would apply to agents who decided to leave to join Mr Goh.

73 Having considered the evidence as a whole, both oral and documentary, it appears to me that no concluded agreement was arrived at between the parties on 11 February 2004 as to Mr Goh's future relationship with Prudential. Mr Goh has not been able to adduce sufficient credible evidence for me to make a finding of a concluded oral agreement. Whilst it was clear that for some time Prudential, being aware of the likely consequences of the passing of the Act, wanted to find some way in which it could maintain a relationship with agents who left it to form their own financial advisory entities, the various options that Prudential had explored over the months had not crystallised into a set of terms that it offered Mr Goh at the February 2004 meeting. There were many things still to be worked out at that meeting and although both sides were desirous of having a future

relationship, the discussions were not specific enough to constitute a contractual relationship between them, particularly, as both parties would be exploring new territory instead of simply continuing a well-established relationship with boundaries that both were familiar with. In addition, the old disputes were not resolved and both sides recognised that these had to be settled in order that they could start a new relationship.

74 Mr Goh's e-mail served as a useful *aide memoir* of the things that had been discussed and that needed to be elaborated. It was not a contract. It was clear from his evidence that he was expecting follow-up in the form of both proposal and legal documentation to be forwarded to him by Prudential for his consideration. It was only when these did not materialise that Mr Goh had to fall back on the terms of the e-mail to try and establish a contract. It was also plain both from Mr Navarro's letter of 17 February 2004 and his reassurances to the other field managers that Prudential did not consider itself bound to a particular contract with Mr Goh at that time. Mr Goh himself could have written back to Mr Navarro on receipt of that letter to allege that a contract had already been concluded but he did not. That omission was, to my mind, significant. Further, Mr Goh's own concessions during cross-examination about the number of matters that were not discussed at the meeting and his recognition of the various items that Prudential would want to include in any agreement but had not discussed with him at the meeting, undermined his case. Whilst Mr Goh attempted to argue that these matters were matters of detail that would be worked out subsequently and that the main terms had been agreed, I cannot accept that submission. There were too many vital details left hanging for an agreement to have been concluded.

75 Although Mr Goh sued Prudential in his personal capacity, it was not disputed that, in fact, if any contract had been concluded between the parties on 11 February 2004, it would have been between Prudential and a corporate entity represented by Mr Goh. In the light of the legal environment created by the Act, such a relationship would have had to be carefully delineated so as to ensure that the provisions of the Act were not infringed in any way. To my mind, it is not probable that Prudential could have agreed orally to such an arrangement when both it and Mr Goh knew that sophisticated drafting would be required. Mr Goh's previous contractual arrangements with Prudential had been governed by complex legal documentation. He admitted that he expected such documentation to be concluded in this case too. In my judgment, this was not simply a matter of working out details. The whole framework had to be properly organised and reviewed by both parties, with legal advice, so both would know what they were getting into. The discussion on 11 February could not, and was never intended, to result in a concluded contract.

Conclusion

76 In the event, the respective claims of the first and second plaintiffs fail and must be dismissed. I will hear the parties on costs.