Chia Ee Lin Evelyn v Teh Guek Ngor Engelin nee Tan and Others
[2004] SGHC 193

Case Number : Suit 1250/2002

Decision Date : 02 September 2004

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : K Shanmugam SC, Christopher Anand Daniel and Edmund Eng (Allen and Gledhill) for plaintiff; Davinder Singh SC, Harpreet Singh and Nicholas Tang (Drew and Napier LLC) for first to third defendants; Fourth defendant in person

Parties : Chia Ee Lin Evelyn — Teh Guek Ngor Engelin nee Tan; Kau Yong Meng; Chen Lai Fong Tracy; Koh Lee Kheng Florence

Contract – Breach – Defendants alleging oral agreements varying written agreement – Whether defendants in repudiatory breach of consultancy agreement

Contract – Formation – Whether parties had intention to enter into binding oral contracts – Whether parties had intention to create compromise agreement – Applicable test of intention

2 September 2004 *Judgment reserved.*

Lai Kew Chai J:

1 The plaintiff is and was at all material times an advocate and solicitor of the Supreme Court of Singapore. The first defendant ("Ms Teh") was at all material times the managing partner of M/s Engelin Teh & Partners ("ETP"), a Singapore law firm. She alone dealt with the plaintiff directly in respect of the plaintiff's consultancies with the earlier partnerships and eventually with ETP. The defendants are all advocates and solicitors of the Supreme Court of Singapore and were partners of ETP at the relevant times.

2 The plaintiff's claim is for an account of all sums due to her under the relevant written consultancy agreement and payment to her of all sums found due. Alternatively, the plaintiff claims damages arising out of the defendants' repudiatory breach of the last consultancy agreement dated 13 April 2000 ("the April 2000 agreement").

3 The second to the fourth defendants were initially not sued by the plaintiff but they were joined as defendants on the application of Ms Teh. As it turned out, the fourth defendant ("Ms Koh"), in giving evidence, supported the plaintiff's case in some material aspects.

4 Ms Teh, the second defendant ("Mr Kau") and the third defendant ("Ms Chen") asserted the following counterclaims against the plaintiff. First, they asserted that the plaintiff was obliged to refund to ETP the additional 15% profit share which the plaintiff received pursuant to the April 2000 agreement. Secondly, they counterclaimed that they were entitled to a refund of all the overpayments made by mistake to the plaintiff. In monetary terms, they counterclaimed against the plaintiff the sum of $112,142.56 in respect of the refund and the further sum of $22,308.07 on account of the alleged overpayments made to the plaintiff by mistake. Alternatively, they claimed damages for breach of the oral agreements.

The facts

5 I now set out the facts based on the evidence, both oral and documentary, the intrinsic probabilities underlying each issue of fact and my assessment of the oral evidence, the credibility and reliability of the parties and their witnesses. As will be readily appreciated, this action would have been far less complicated and would have centred in the main on the true and natural construction of a written agreement, but for the five oral agreements alleged by Ms Teh as having been verbally agreed to by the plaintiff. According to Ms Teh, the first four oral agreements were agreed to between her and the plaintiff. In respect of the agreement to compromise, which depended on the oral evidence of Ms Teh, the plaintiff and Ms Dorothy Chia ("Ms Chia"), Ms Teh relied on the evidence of Ms Chia who was the intermediary. Unavoidably, I have to visit the evidence in some detail.

6 The plaintiff was called to the Singapore Bar in 1987. She practised with a classmate. In 1992 she became a legal assistant in the law firm of M/s Ang, Ng and Lee. A subsidiary of a leading bank, which was very active in the development of land and condominiums (hereinafter referred to as "the land developer"), was its largest client. The plaintiff obtained the retainer for her employers by asking the chief executive officer ("the CEO") of the land developer to give her an opportunity to act as a solicitor of a particular property development. At that time, both the plaintiff and the CEO were divorcees. They had a personal relationship. It should at once be stated that such relationship during later and material times no longer existed.

7 As events confirmed, the plaintiff satisfactorily discharged her duties as the solicitor for the land developer. There were no complaints from the client. She acted in its Ashley Green development, Bukit Sedap Road, Singapore. Legal completion of that development project, a condominium comprising 14 strata units, was brought to a satisfactory conclusion. According to the evidence of the plaintiff, which I accept, the general manager and other members of the management of the land developer were happy with her work and with her turn-around time. She also said that from the positive responses from the management of the land developer, she reckoned that it would engage her for further development or property work in the future. I accept her evidence that she proved herself as a good conveyancer to the management of the land developer, in view of the legal intricacies and timelines connected with the legal process and legal completion of condominium projects. Title clearances, title subdivisions of a condominium and co-ordinated time-frames of option documents, sale and purchase agreements and financing arrangements had to be skillfully organised. Coupled with her considerable experience in handling conveyancing for wealthy clients at Ang, Ng and Lee, I am satisfied that the plaintiff at the material times was a very good conveyancer. I also accept that her assessment of her chances of further retainers from the land developer based on her track record was amply and reasonably well-founded.

8 In 1994, her employer, Ang, Ng and Lee was dissolved following the retirement of its sole proprietor. The plaintiff was in the market for employment. Ms Teh, who was then a partner in the firm of M/s Colin Ng & Partners ("CNP"), was informed by her friend, Ms Chia, an advocate and solicitor, that the plaintiff was looking for a medium sized law firm in which to practise. Ms Chia is the first cousin of the plaintiff. Ms Chia informed Ms Teh that the plaintiff could obtain the retainer of the land developer to CNP, provided CNP paid her a profit share for bringing in such work.

9 Ms Teh maintained in evidence that the plaintiff had told her that she was getting work from the land developer through the CEO and that the latter wanted her to move to a larger firm because it was difficult for him to direct major conveyancing projects to the plaintiff as the law firm in which she was practising was too small. This reason for wanting to move to a larger firm, as alleged by Ms Teh, does not sit well with the undisputed fact that the plaintiff was looking for practice with another firm because her employer was ceasing practice.

10 Ms Teh further mentioned that during their first meeting, she had asked the plaintiff how CNP

could be assured that the work from the land developer and its associated companies would be assigned to CNP if the plaintiff were to join CNP. According to Ms Teh, it was then that the plaintiff in response told her of her (the plaintiff's) personal relationship with the CEO. The plaintiff, she claimed, further assured her that the CEO had promised to retain the plaintiff in major conveyancing projects if she joined a larger law firm. Ms Teh added that the plaintiff also indicated that she could "persuade" the CEO to direct the litigation and corporate work of the land developer and its associated companies to CNP, provided CNP paid her a profit share for bringing in such work. Whilst the plaintiff would naturally have promoted herself at a job interview, by mentioning the strength of her goodwill in connection with work done for clients including the land developer, I accept the plaintiff's point that it was a commercial negotiation, and her further assertion that she did not discuss her personal social life with Ms Teh. It was unlikely, in my view, that in the circumstances Ms Teh would have sought any assurance from the plaintiff about the work coming in. It was also highly unlikely that the plaintiff had mentioned her relationship with the CEO to advance her prospects. In my view of her, she was simply not that kind of person, even if she had to fend for herself. Further, I would assume that Ms Teh herself no doubt would welcome work based on professional merits, and certainly not on any unmeritorious consideration.

11 The plaintiff joined CNP in 1994 as a junior partner. In 1995 she was appointed as a consultant on the basis that she had a pre-determined share of the fees likely to be earned from her introduction of clients. In the event, she brought in quite a lot of work and fees to CNP and her "rain-making" abilities were well regarded. In mid-1994, Mr Colin Ng and Ms Teh had an acrimonious partnership dispute. That the partnership's name had been changed to Colin Ng & Engelin only months earlier did not avoid the acrimony between the two of them. Ms Teh left the firm which was reconstituted as CNP. After that most unfortunate encounter, Ms Teh went on to form her new firm, then known as M/s Engelin Teh & Young ("the first partnership").

12 The plaintiff stayed on in CNP until 1996 when she left to join the first partnership. The plaintiff had received retainers for new conveyancing projects and she found in the first partnership a quick and suitable "base" to continue her practice. The plaintiff joined the first partnership in September 1996 as a consultant. It is material to note that by that time, her relationship with the CEO had ended.

13 The terms of the plaintiff's appointment as a consultant were set out on the letterhead of the first partnership dated 9 September 1996. She had a profit-sharing arrangement with the first partnership. She was neither an employee nor a partner. The material terms of the 9 September 1996 agreement are as follows:

(a) The plaintiff was engaged as a consultant of the first partnership on a profit-sharing basis and was not deemed to be an employee (cl 1).

(b) The term of the agreement was three years from the commencement date, with an extension to be agreed upon (cl 3).

(c) The basic fee payable to the plaintiff would be $7,000, payable at the end of each month (cl 4).

(d) In relation to the profit-sharing arrangement, the terms were:

(i) In addition to the fee, the plaintiff would receive in respect of all files directly brought in by the plaintiff, 30% of the legal fees billed and collected (for each year) for each file brought in directly and handled by the plaintiff, and 15% of the legal fees billed and

collected (for each year) for each file brought in directly, but not handled, by the plaintiff, after deducting the plaintiff's annual costs for that year (cl 5(a) and Schedule to cl 5).

(ii) Payment of the percentage share of the legal fees would be made to the plaintiff at the end of each six-month period, subject to the bills being collected (cl 5(b)).

(iii) The plaintiff's annual costs were $130,000, comprising her annual fee of $84,000, her secretary's annual salary (calculated on a 15-month basis of $33,000 plus Central Provident Fund contributions) and annual administrative charges of $12,000 (cl 5(c)).

(iv) The profit-sharing was to extend to interest retained by the firm on stakeholder's funds in respect of the relevant files (cl 5(e)).

(e) The plaintiff would ensure that all files brought in by her would remain with the first partnership notwithstanding any termination or cessation of the plaintiff's appointment. The plaintiff would ensure that, for all files brought in by her which did not remain with the firm, the firm would be paid for legal services rendered up to the date on which the files left the firm (subject to the sharing of fees pursuant to cl 5) (cl 6).

(f) Except by mutual consent, neither party could terminate the plaintiff's appointment for a period of two years, commencing from the commencement date. After the two-year period, termination could be effected by one month's notice or the monthly fee in lieu (cl 8(a)).

(g) Upon termination of the plaintiff's appointment, the plaintiff would be entitled to her share, in accordance with cl 5, of the relevant legal fees for work done up to the date of the termination (cl 8(b)).

14 In late 1997 and early 1998, the plaintiff and Ms Teh discussed the terms of the 9 September 1996 agreement in relation to how the plaintiff's costs were to be apportioned from her billings. The first partnership had apportioned the plaintiff's costs from the conveyancing bills on which the plaintiff was entitled to a 30% share. On any view, it was clear that the first partnership adopted the method most disadvantageous to the plaintiff. The plaintiff felt, and quite properly, that it would be fairer if her costs were apportioned from the non-conveyancing bills too, in respect of which she was entitled to a 15% share. Alternatively, she thought the costs could be apportioned from all bills collected in a chronological manner. At the discussions, the plaintiff also asked for reimbursement of (a) Commissioner for Oaths fees for 1997 and (b) Central Business District ("CBD") charges, car park fees and Commissioner for Oaths fees for 1998.

15 A compromise was reached. The plaintiff and Ms Teh agreed that the costs should be deducted from the plaintiff's total billings and the remainder should be split at 22.5% to the plaintiff and 77.5% to the first partnership. Ms Teh also agreed to the reimbursement requests of the plaintiff. Ms Teh, as she stated in evidence, prepared a written memorandum recording the variations as agreed. Both parties signed the memorandum.

The 25 February 1998 variation

16 As the 9 September 1996 consultancy agreement was being worked out, the plaintiff saw certain features of unfairness to her. Her concern was this. Should her consultancy be terminated by the first partnership by the giving of one month's notice, she would only be entitled to her share of the fees generated on her files until the date the consultancy was terminated, and that 100% of any fees generated on those files after her departure would accrue to the first partnership, without giving

her the share of 30% or 15%, as the case might be. Obviously, she was vulnerable to being short-changed. In February 1998, in the second year of her consultancy, the plaintiff discussed with Ms Teh her concerns. The upshot was that Ms Teh agreed to delete the right to termination in the 9 September 1996 agreement. It was clear that it was in the commercial interest of her firm to have agreed.

17 On 25 February 1998 the first partnership sent to the plaintiff a letter cancelling the right to terminate whilst noting that all other remaining clauses would be applicable. The other material terms of the 25 February 1998 variation letter are as follows:

(a) The right to terminate the 9 September 1996 agreement was cancelled with immediate effect.

(b) The plaintiff was given the option to extend her appointment to 23 September 2000, which in the event she did.

(c) The off-setting of the annual costs from the bills collected would be done in chronological order.

(d) The plaintiff would be reimbursed for CBD charges, car park fees and Commissioner for Oaths fees for 1998;

(e) All other terms of the 9 September 1996 agreement would continue to apply.

The Ardmore Park property development

18 I now turn to a retainer, which was taken over midstream from another law firm and which is one of the factual disputes between the plaintiff and Ms Teh. Marco Polo Property Development ("Marco Polo"), through its subsidiary, MP-Bilt Pte Ltd ("MP-Bilt"), was developing the Ardmore Park development, which was by far the most expensive condominium development in Singapore at the time. Ms Teh had heard that Marco Polo was not entirely happy with the services of their existing lawyers and she asked the plaintiff to arrange a meeting with Mr David Lawrence, the managing director of Marco Polo. The plaintiff knew Mr Lawrence, who had agreed to consider the plaintiff for legal work in any development and property work when the opportunity arose.

19 In late 1998 or early 1999 the plaintiff fixed up a lunch appointment with Mr Lawrence and introduced Ms Teh to him. A positive impression was left on Mr Lawrence. Sometime in January 1999 they made a presentation of their legal services at the office of Marco Polo. Mr Lawrence, his administrative manager, Amy Teo, and her two assistants were there. The prospects were that the plaintiff would handle the conveyancing aspects of the Ardmore Park property development and that Ms Teh would take care of the litigation aspects of the development. Mr Lawrence left the presentation after a while, to let his staff handle the meeting. But before he left, he indicated that his decision was to change the lawyers and go with the plaintiff and Ms Teh.

20 Following the presentation, the development work was taken over by the first partnership. The litigation files were transferred with ease. The files were handed over individually. In relation to the conveyancing files, there were 330 files involving each unit within the condominium and four volumes of master files where a myriad of legal matters had to be handled.

21 The fees earned on the Ardmore Park development, for both conveyancing and litigation, were divided in accordance with the 9 September 1996 consultancy agreement as varied by the

25 February 1998 variation letter. First, in respect of the Ardmore Park conveyancing files, the plaintiff received 30% of the fees, and the firm received 70% of the fees. Secondly, in respect of the litigation files, the plaintiff received 15% of the fees, and the firm received 85% of the fees and, thirdly, the plaintiff also received 15% of the "General Advice" bills rendered for other developments of the Marco Polo group, such as Parc Oasis Development and Wheelock Place.

22 Notwithstanding what has been recited above, the first to third defendants amended their Defence and Counterclaim in May 2003, just one month before the trial originally scheduled for June 2003, which in the event was heard this year. They allege that the plaintiff was never entitled to be paid for the Ardmore Park litigation files, and that she was only entitled to be paid 20% of the fees on the Ardmore Park conveyancing files. Ms Teh alleged that she had orally agreed with the plaintiff on those terms. I shall return later in this judgment to this issue of fact with my analysis of the evidence and findings of facts.

The 6 October 1999 agreement

23 In mid-1999 Mr Young Chee Foong, a partner in the first partnership, left the partnership. Ms Koh joined as a partner. The first partnership was dissolved and ETP was formed. By an agreement in writing dated 6 October 1999 the plaintiff's consultancy contract with the first partnership was taken over by ETP on the same terms. The plaintiff opted to extend the term of the consultancy and end it on 23 September 2001 "subject to any extension to be mutually agreed on terms acceptable to both parties".

The 13 April 2000 agreement

24 In March or April 2000, the plaintiff was appointed solicitor for the land developer. The retainer involved acting for five new development projects, namely the proposed condominium developments at choice sites or projects known as the First Mansion, Meyer Tower, ANA Hotel, the Balmoral at Farrer Road and Casabella ("the five projects").

25 The estimated fees which the plaintiff could bring into ETP were about $3m. Naturally, this was welcome news to Ms Teh. Mr Andrew Aathar, the then Director of Residential Trading of the land developer, gave evidence and confirmed that he made the decision, after consultation with his colleagues, to award the five projects to the plaintiff. He told the court that his decision was based on merit as he regarded the plaintiff as a good lawyer. I accept his evidence, and it means accordingly that the CEO did not decide to award the retainer to the plaintiff.

26 In view of the award of the retainer, which enhanced the position of the plaintiff in ETP, she reconsidered her position. At this time, she was in fact considering leaving ETP, following an unhappy experience with Mr Kau. He had attended meetings with Keppel Land, a client brought into ETP by the plaintiff, purporting to have done work which the plaintiff had done. He did so to secure more work in relation to the Sunset Way Project of Keppel Land. If he had succeeded, he would have taken work away from the plaintiff. The plaintiff was quite properly annoyed by this. The whole attempt was furtively done. Mr Kau did not inform the plaintiff of his meetings with Keppel Land and had, in fact, instructed his legal assistant to keep the plaintiff in the dark. The plaintiff was told of the meetings by the staff in Keppel Land. The plaintiff was seriously contemplating joining another firm, M/s Rodyk & Davidson, in which several of her classmates at law school were practising.

27 She also felt that her share of the fees should be increased to 45%, instead of the 30% share which she was entitled to.

28 She discussed these issues with Ms Teh. In relation to the five projects, it was noted that the land developer would be merging with a government-linked company. Both of them considered the pros and cons and concluded that it would be unlikely that the merger would affect their retainer in respect of the five projects. As for the unhappiness with Mr Kau, Ms Teh said that she would speak with him.

29 In the result, ETP and the plaintiff entered into a fresh consultancy agreement. Mr Kau had initially assisted in the drafting. But Ms Koh took over. She based her drafting on the initial draft prepared by Mr Kau. Ms Koh gave unequivocal evidence that there was no mention to her at all about any oral collateral agreement between Ms Teh and the plaintiff relating to the five projects, as Ms Teh has alleged in these proceedings and to which I shall revert later in this judgment.

30 The terms of the 13 April 2000 consultancy agreement were essentially the same as those in the previous consultancy agreements. However, it was quite specific in relation to the five projects. The plaintiff's share of the files brought in and worked on by her would increase from 30% to 45%. It was also agreed that for legal fees billed from January to March 2000, the plaintiff would receive a lump sum of $5,500. The 13 April 2000 consultancy agreement also addressed the dispute between Mr Kau and the plaintiff. It was agreed in this connection that ETP would pay the plaintiff $20,000, which would be applied towards the purchase of a membership at the Tower Club. But the plaintiff agreed to repay this amount if ETP was not appointed for the Sunset Way project.

31 I should set out below the terms of the 13 April 2000 agreement, omitting expressions of pleasantries and the "Other Terms" set out in the Annexure thereto since those other terms are irrelevant for present purposes:

> Pursuant to the appointment letter dated 9 September 1986, as varied by further letters dated 25 February 1998 and 6 October 1999 (copies of the letters are enclosed for reference), your term of appointment as consultant will terminate on 23 September 2001.
>
> We thank you for your efforts which have resulted in [the land developer's] appointment of our Firm to act for [the land developer's] or its related corporations in relation to 5 new development projects particulars of which are set out in the Schedule herein, with estimated total legal fees of $3 million attributable to the Firm (the "5 Projects"). At your request, and in appreciation of your contributions, we have considered your proposed revisions to the existing terms of your appointment as consultant. We are pleased to confirm the revised terms as follows:
>
> 1. Position
>
> You shall be engaged as a consultant to the Firm on a profit-sharing basis on the terms set out herein. You shall not be deemed to be an employee of the Firm. Accordingly, you shall not receive any CPF contributions, bonuses or other amounts not expressly set out below.
>
> 2. Term
>
> Your term of appointment shall commence retrospectively 1.1.2000 (the "Commencement Date") and shall remain valid for as long as our duties as solicitors in the 5 Projects have not been completed provided always that in the event of any earlier termination of the term of this Agreement, all the files brought in by you including the 5 Projects will not be transferred out of the Firm by you unless such a transfer occurs resulting from death or permanent incapacity arising from a medically certified illness or disease, otherwise you will indemnify us for the full legal fees that we would be entitled to bill from such file(s) had it remained with the Firm.

3. Profit Sharing

(a) Subject to sub-paragraph (b) below, your profit share from legal fees billed and collected with effect from 1st April 2000 shall be on the following basis:

-Files relating to the 5 Projects handled and billed by you, 45% of the legal fees (less disbursements).

-Files (other than the 5 Projects) brought in directly and handled and billed by you, 45% of the legal fees (less disbursements).

-Files (other than the 5 Projects) brought in directly by you but not handled by you, 15% of the legal fees (less disbursements).

(b) Your entitlement to the profit share shall be conditional upon the following:

-Other than the 5 Projects, you shall only be entitled to a share of profits from files, whether brought in directly and handled by you or brought in directly by you but not handled by you, if the initial instruction to the Firm to act in respect of such files is addressed to your attention.

-You will receive your profit share of the relevant legal fees billed and collected after deducting from such collection your annual advance drawings and administrative charges for that year attributable to you.

-Payment of your percentage share of the legal fees will be made to you at the end of each 3 month period subject to the bills being paid.

-It is agreed that in respect of legal fees billed from January to March 2000 and to be collected, you will only be entitled to $5,500.00.

4. Drawings

With effect from 1st January 2000, you will be entitled to advance monthly drawings of $7,000 and your entitlement to profit share from any bills paid by the clients will first be used to offset such drawings on an annual basis together with annual administrative charges of $12,000 provided that in the event that your entitlement to profit share in a year is less than the monthly drawings and administrative charges for that year, you shall reimburse any excess drawings to the Firm at the end of each year.

To clarify, the pro-rating of the advance drawings and administrative charges will be charged on an incurred basis.

5. Costs

We will bear the cost of your secretary at the current salary plus Employers' CPF (excluding bonuses, increments, medical fees and other benefits) for 3 years from the Commencement Date. Your secretary's employment will not be terminated during the said 3 years except by mutual consent. Your secretary shall work exclusively for you. The services of any other staff in the Firm shall be utilized only with our consent.

6. Tower Club membership

(a) Immediately on the appointment referred to in (1)(b) you will be entitled to a sum of $20,000 to go towards payment of a membership at Tower Club provided that if ETP is not appointed for the Sunset Way project, you will reimburse the sum of $20,000 to ETP before the expiry of this Agreement. Thereafter, you will not be entitled to any share of profits from any files relating to Keppel Land or any of its related corporations unless you obtain written instructions addressed to you to act in any other development projects of Keppel Land or its related corporations.

(b) All monthly subscription fees, dues, levies, penalties, costs and expenses incurred in connection with the Tower Club membership shall be borne by you.

7. Car Park

We will reimburse your car park charges at Ocean Building for a period of 3 years commencing from 1st January 2000.

8. Entitlement

You shall be entitled to be reimbursed on a quarterly basis up to an amount of $4,800 per annum for your entertainment expenses provided that each claim by you must be accompanied by receipts and particulars of clients entertained by you. Any amount not utilised for a year shall not be carried forward to the following year.

9. Other Terms

The other terms of your appointment are set out in the Annexure enclosed herewith.

10. Existing Letter of Appointment

Upon your acceptance of this letter, your terms of appointment as set out in the appointment letter dated 9 September 1996, as varied by further letters dated 25 February 1998 and 6 October 1999, shall be null and void save for your accrued entitlement to the profit share thereunder.

Project Anaheim

32 Some three months after the 13 April 2000 consultancy agreement, the plaintiff discovered that she had been short-changed. As referred to earlier, the plaintiff had accepted the lump sum of $5,500 for work done from January to March 2000. But she found out that Ms Chen had billed $88,000 for corporate work done by Ms Chen in relation to a project of the land developer known as the Anaheim project. The project involved the transfer of shares in the corporate entity owning the ANA Hotel. Accordingly, the plaintiff should have received 15% of the $88,000 bill. She remonstrated with Ms Chen. Eventually, this episode was settled by ETP offering to pay to the plaintiff, and the plaintiff accepting, 7.5% of the $88,000 bill.

The withdrawal of the five projects

33 In relation to the five projects, the plaintiff worked on the development project known as Casabella Development at Duchess Avenue. She carried out the relevant searches, prepared the sale and purchase agreements and obtained the necessary permits and approvals. The development was ready for sale in December 2000.

34 In late January 2001, the land developer was merged with another company and the amalgamated corporate entity informed ETP that its appointment as solicitors for the five projects was terminated. Naturally, both the plaintiff and Ms Teh were very disappointed. At the request of Ms Teh, the plaintiff checked with the CEO to see if the decision could be reversed. The decision to terminate the retainer remained, seeing that a new management had taken over all the projects.

35 Although the five projects had been withdrawn, the plaintiff continued to work at ETP as a consultant. She continued her work on other files, notably and prominently, the Aspen Heights files and the Ardmore Park files. By any measure those were substantial conveyancing retainers. Though substantial, conveyancing work for such developments has a period of gestation which parallels the progress payments which the developers collect from their purchasers. Legal fees payable are paid in stages, with a balloon payment more or less towards the completion stage of each project.

36 The plaintiff continued to draw her monthly drawings from the firm. Her secretary continued to be paid. So far as the plaintiff was concerned, her consultancy was continuing on the terms agreed. In truth, Ms Teh and her partners in ETP, other than Ms Koh, had made some decisions detrimental to the plaintiff.

The unceremonious booting out of the plaintiff

37 Just after office hours on 18 April 2001 Ms Teh asked to see the plaintiff in her office. The plaintiff went to her office. She noticed that Ms Teh's manner was cold. She asked the plaintiff if ETP would be reappointed as solicitors for the five projects. The plaintiff told her that it was unlikely, as the whole matter was in the hands of the new management.

38 According to the plaintiff, Ms Teh became very angry. She demanded that the plaintiff refund 15% of all the fees the plaintiff had received as her profit share under the 13 April 2000 consultancy agreement. It was made quite clear to the plaintiff that her position in the firm was at stake. Taken aback by the demand, the plaintiff did not know how to respond except to ask for time. She sat down and tried to work out the amount involved. She realised that she was in no position to accede to the demand of ETP. She spoke to Ms Teh on the telephone the next morning. The latter insisted that she pay back the 15% of the fees, if necessary, by way of the plaintiff's future earnings. The plaintiff tried to tell Ms Teh that this was all quite unfair. Ms Teh then told the plaintiff that her consultancy with ETP was terminated and that the partners of ETP wanted her out of the firm with immediate effect. She informed her not to come to the firm anymore, not even that very day. Ms Teh hung up on her. Ms Teh's actions must have cut the plaintiff in the raw. She had done nothing wrong and had over many years brought in good clients and done good work. I found the treatment quite appalling.

39 Later that morning, the plaintiff called Ms Teh again, after she regained her composure. This call was only to ask if she could collect her personal belongings from the office. Ms Teh refused. The plaintiff had to beg Ms Teh, who eventually relented and told her she could come in later with a prior appointment. She collected her belongings on 21 April 2001 under what must have been humiliating circumstances.

40 On the same day, Ms Teh wrote to the plaintiff a memo ("the 19 April 2001 memo"). Referring to the agreement to pay the plaintiff 45% of the fees, Ms Teh went on to say that "[a]s the basis for such payment no longer exists, and you have indicated that you are not prepared to compromise the outstanding issues by giving the firm a refund of 15% of the 45% payments, you leave us no choice but to take the necessary action against you to recover such sums". Prominently and significantly, there was no mention that ETP was entitled to the refund claimed because the plaintiff had orally agreed earlier to do so. It was not merely an omission by a Senior Counsel, but in this instance

Ms Teh, a Senior Counsel, had misstated the basis of ETP's claim for the refund. It would have been clear to all that the basis for the claim for refund was founded either on a contract, as ETP asserted much later, or nothing at all; there was no question of the disappearance of a substratum of a deal (which suggested vague notions of frustration) or a compromise, which is a fashionable assertion in this case.

41 Ms Teh in the 19 April 2001 memo further alleged that it was "agreed" over the telephone conversation between her and the plaintiff that the latter's consultancy with ETP was "terminated by mutual consent with immediate effect".

42 The plaintiff took legal advice. On 23 April 2001 she sent by hand to Ms Teh her response to the 19 April 2001 memo. She pointed out to Ms Teh that she was wrong to have done what she did and that it was very clear that Ms Teh had timed the wrongful termination of the consultancy to take place after she had done all the work on the Aspen Heights and Ardmore Park files and before the bills could be raised. It should be noted that the two bills would have been the two biggest bills for ETP in that year. Ms Teh asserted that the termination of the consultancy was by mutual consent. On the evidence, it was quite clear that Ms Teh had timed the termination thinking that she would not be liable to pay the plaintiff any share for work done and not billed.

The law

43 As this action concerns the formation of five oral contracts of the purport to be explained later, the primary test of the court when analysing the totality of the evidence, which is entirely oral, is to find if there was in each alleged oral contract an intention to enter into a binding contract. It is important to note that the test of a person's intention is not a subjective one, but an objective one. In other words, the intention which courts will attribute to a person is always that which that person's conduct and words amount to when reasonably construed by a person in the position of the offeree, and not necessarily that which was present in the offeror's mind.

44 In *Aircharter World Pte Ltd v Kontena Nasional Bhd* [1999] 3 SLR 1 at [30], the Court of Appeal stated as follows:

> According to the learned authors of *Chitty on Contracts* (27th Ed, 1994) at p 89 *et seq*, the normal test for determining whether the parties have reached agreement is to ask whether an offer has been made by one party and accepted by the other. In deciding whether the parties have reached agreement, the courts normally apply the objective test. Under this test, once the parties have to all outward appearances agreed in the same terms on the same subject-matter, then neither can, generally, rely on some unexpressed qualification or reservation to show that he had not in fact agreed to the terms to which he had appeared to agree. Such subjective reservations of one party, therefore, do not prevent the formation of a contract. The objective test of agreement applies as much to an acceptance as it does to an offer. An offer, simply defined, is an expression of willingness to contract made with the intention (actual or apparent) that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed. … Reverting to the objective test of agreement, from the perspective of the offeree, an apparent intention to be bound may suffice, *ie* the alleged offeror … may be bound if his words or conduct are such as to induce a reasonable person to believe that he intends to be bound, even though in fact he has no such intention.

45 In the leading case of *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 3 SLR 405, Yong Pung How CJ similarly held as follows:

40 The principles of law relating to the formation of contracts are clear. Indeed the task of inferring an assent and of extracting the precise moment, if at all there was one, at which a meeting of the minds between the parties may be said to have been reached is one of obvious difficulty, particularly in a case where there has been protracted negotiations and a considerable exchange of written correspondence between the parties. Nevertheless, the function of the court is to try as far as practical experience allows, to ensure that the reasonable expectations of honest men are not disappointed. To this end, it is also trite law that the test of agreement or of inferring consensus *ad idem* is objective. Thus, the language used by one party, whatever his real intention may be, is to be construed in the sense in which it would reasonably be understood by the other.

41 In the recent local decision, *SAL Industrial Leasing Ltd v Teck Koon (Motor) Trading (a firm)* [1998] 2 SLR 325, this court held to the same effect that the question whether or not there was an intention by the parties to enter into a legally binding contract is an objective one. The following passage from *R v Lord Chancellor's Department, ex p Nangle* [1991] ICR 743 at p 751 was quoted with approval:

> … [T]he question whether there is an intention to create legal relations is to be ascertained objectively, and where the terms of the relationship are, as here, to be derived solely from the documents, depends upon the construction of those documents. It is possible for a party to believe mistakenly that he is contractually bound to another when in fact he is not, and conversely to believe that he is not when he is. His belief is immaterial. While this remains a subjective belief uncommunicated to the other party, this is plainly correct. But where such a belief is expressed in the documents it must be a question of construction of the documents as a whole what effect should be given to such a statement.

The compromise

46 The first to third defendants alleged that there was a compromise concluded with the plaintiff in relation to the latter's claims and their counterclaims. According to them, it was concluded through an intermediary, Ms Chia, an advocate and solicitor. She is a cousin of the plaintiff. She is also a friend of Ms Teh from primary school days. She did not affirm any affidavit and her evidence was entirely *viva voce*.

47 The first three defendants alleged that the compromise was reached between them and the plaintiff at the end of or as a result of a couple of telephone conversations between Ms Chia and Ms Teh, who initiated the conversations, followed by a telephone conversation with the plaintiff. There followed other telephone conversations. Ms Chia described them as a "couple of telephone conversations" which "probably took place within a space of one afternoon". She did not personally meet either the plaintiff or Ms Teh in connection with the telephone conversations about settling the disputes. The plaintiff had informed Ms Chia of the termination of the consultancy. Ms Chia was not sure whether it was in April, May or June. Looking at the sequence of events, which culminated in the plaintiff's letter to Ms Teh on 23 April 2001, more likely than not, the plaintiff had informed Ms Chia of the unhappy circumstances of the termination of her consultancy by Ms Teh.

48 On the evidence, it was tolerably clear that Ms Chia was advising both parties not to pursue their claims against the other in court. The details of the claims and counterclaims were not known. When asked for the response of the plaintiff, Ms Chia said that the plaintiff mumbled "okay lor" or "yeah". Ms Chia stressed the point that she did not know what the plaintiff meant to say. When asked to clarify by the court, she said that she "was not sure" if the plaintiff had agreed to settle. When asked what she had told Ms Teh after the plaintiff had mumbled colloquially, the witness

mentioned that the conversations took place three years earlier. Ms Chia said presumably she had conveyed the message of Ms Teh to the plaintiff who had said "okay".

49 When asked by defence counsel if parties had made a decision in consequence of her efforts, she said that to her mind, counting out what was going on inside the minds of the two parties, she took it as a "prelude, … like laying the ground work for something more final". This witness formed the impression that both parties were "beginning to see the light".

50 Ms Chia did say in evidence that both parties agreed not to sue each other and to drop hands. But in the same breath she said that whether the agreement was binding or whether the parties had finally agreed not to sue each other, "it was not staring in [her] face". At one point, she also said that the telephone conversations were a prelude. When pressed in cross-examination, she retracted it and she asserted that the formation of a binding agreement never crossed her mind.

51 Mr Shanmugam, counsel for the plaintiff, in cross-examination referred to the plaintiff's colloquial reply and suggested that the reply (a) could have meant "I hear what you say. I will go back and think about it"; (b) could have just been a polite noise. Counsel then suggested to Ms Chia that at the end of the day she in fact felt that she had communicated the message to them, that she had tried to be a good Samaritan, and she had hoped that they would see sense and not sue each other. Ms Chia agreed, but in the same breath she added the plaintiff had said "yeah lor, okay lor, drop hands, drop hands lor". She then appeared to have been quite clear when she said that the plaintiff, having said "yeah lor, okay lor, drop hands, drops hands lor", "would have given [her] a feeling that [the plaintiff] agreed not to sue". Confusingly enough, immediately after this piece of evidence, Ms Chia substantially qualified her answer by saying that she could not say with certainty "whether the parties had decided one way or another … whether to proceed or not". Ms Chia at the end of the cross-examination bearing on the question whether there was a binding agreement to compromise left me with the clear impression that she was confused and uncertain in relation to the formation of any agreement of compromise.

52 Ms Chia did intend to mediate after receiving the telephone call from Ms Teh. She did not want both of them to ventilate their grievances or any unpleasantness in court. It is unfortunate that, in my view, we will never know what actually transpired between her and the plaintiff on the one hand and between her and Ms Teh on the other. Her evidence was peppered with too many tentative answers. Her recall of the telephone conversations was shaky and the manner she gave the evidence before me does not, in my judgment, provide any reliable basis to find that a binding compromise agreement had been agreed to by the plaintiff.

53 The first three defendants relied on the fact that the plaintiff did not take any legal action until some time later. That lack of action was due to the plaintiff picking up the pieces of her life and devoting herself to her work in another law firm. In this connection, I prefer the evidence of the plaintiff and I reject the evidence of Ms Teh. The plaintiff was mistaken about the occasion when she talked to Ms Chia about the claims. She must have had more than one conversation with Ms Chia. In substance, from what she had told Ms Chia, as recited by her (the plaintiff), I find that she did not agree to any compromise. The first three defendants therefore have failed to prove the compromise which they have asserted.

54 I now turn to the other four oral agreements allegedly agreed to by the plaintiff. If those agreements were entered into, the effect would reduce the proportion and amount of the fees payable to the plaintiff. The four oral agreements are these. First, Ms Teh alleged that around the time of the 9 September 1996 agreement, the plaintiff agreed she (the plaintiff) would not receive any percentage of fees on her files which were not billed as at the date of termination. I will refer to

this as the "first oral agreement". Secondly, Ms Teh also alleged that at or around the time of the 6 October 1999 agreement the plaintiff had orally agreed that for the Ardmore Park development, and work done for the Marco Polo group, the plaintiff would be entitled to 20% of the fees on conveyancing files only. This shall be referred to as the "second oral agreement". Thirdly, Ms Teh alleged that at or around the time of the 13 April 2000 agreement the plaintiff had agreed that if the five projects were withdrawn, the parties will revert back to the 6 October 1999 agreement with the consequence that the plaintiff will refund the additional 15% paid to her under the 13 April 2000 agreement. This shall be referred to as the "third oral agreement". Fourthly, Ms Teh alleged that the termination of the plaintiff's consultancy on or about 19 April 2001 with ETP was mutual and accordingly ETP was not liable for any repudiatory breach of the consultancy agreement in question. I shall refer to this as the "fourth oral agreement". These four oral agreements preceded the defence that parties had orally compromised their respective claims against the other sometime in April 2001 after the termination of the consultancy. In this action, the first three defendants therefore asserted that altogether five oral agreements were agreed to by the plaintiff.

The alleged first oral agreement

55 In relation to the first oral agreement, the following provisions of the 9 September 1996 agreement have to be kept in view:

(a) Clause 5(a) states:

> In addition to the Fee, you will receive in respect of all files directly brought in by you, the respective percentages specified in the attached Schedule, of all the relevant legal fees billed for each year and collected after deducting your Annual Costs for that year.

(b) Clause 5(b) states:

> Payment of your percentage share of the legal fees will be made to you at the end of each 6 month period subject to the bills being collected.

(c) Clause 8(b) states:

> Upon the termination of the above appointment, you will be entitled to your share *in accordance with paragraph 5 above*, of the relevant legal fees *for work done up to the date of the termination.* [emphasis added]

56 It will be readily noted that cl 5(a) did not say when the bills rendered had to be collected before the plaintiff was entitled to her profit share. She became entitled to her profit share when the bills were collected. In my view, cl 8(b) should be given a commercially sensible construction. In clear terms, cl 8(b) spells out the plaintiff's entitlement to her share of the legal fees "for work done up to the date of the termination". The first oral agreement is inconsistent with these clear terms. In any case, I find that the plaintiff did not agree with Ms Teh. As was well known at the material time, and certainly to the plaintiff, the practice was for such lawyers to be paid in stages. She could not have agreed to such a chancy arrangement. ETP's obligations under the 9 September 1996 agreement was to pay the plaintiff her share when they billed their clients and were paid.

The alleged second oral agreement

57 According to Ms Teh, she had approached the plaintiff prior to the 6 October 1999 agreement to handle the conveyancing work for the Ardmore Park development. It was because Mr Kau was

uncomfortable handling it. The plaintiff and Ms Teh agreed to agree later on the fee-sharing structure. Ms Teh said that it was agreed in late October 1999 that the plaintiff would be entitled to 20% of the fees on conveyancing work only. In fact, the plaintiff was paid her profit share under the relevant consultancy agreements on the bills issued to the Marco Polo group. The plaintiff was also paid her share of the MP-Bilt litigation files under the consultancy agreements, and not pursuant to the oral agreement reached in late October 1999. Ms Teh asserted that the plaintiff was not entitled to a profit share on bills for non-conveyancing work done for the Marco Polo group. There was, notably, a corporate bill issued by Mr Kau to the Marco Polo group, in respect of which the plaintiff was paid her profit share for the period April to June 2000. This piece of documentary evidence supported the evidence of the plaintiff. In all the circumstances, I have to reject the evidence of the first three defendants bearing on the second oral agreement.

The alleged third oral agreement

58 Under this part of their defence and counterclaim, the first three defendants claimed that there was a collateral oral agreement to the 13 April 2000 agreement to the effect that, in the event that the five projects are withdrawn, the parties would revert to the 9 October 1999 agreement and that the plaintiff would refund the additional 15% profit share paid to her on her conveyancing files under the 13 April 2000 agreement. Ms Teh told the court that this collateral agreement was not reduced into writing because they did not wish to mention the name of the CEO. I reject that excuse as unconvincing: the name of the CEO could have been omitted whilst the gist of the collateral contract could have been easily reduced into writing.

59 Ms Teh in her evidence stated that she had told Mr Kau to prepare a summary of points discussed between Ms Teh and the plaintiff. The first three defendants depended on the manuscripts in the summary to indicate that there was the third oral agreement. If, as she said in evidence, she had told Mr Kau not to put in writing the nature of the third oral agreement, it is puzzling why Ms Teh had penned down her immediate concern by these remarks: "[I]f project withdrawn, to refund 15%? Old Agreement?" She was doing the very thing of leaving a record which she had advised Mr Kau against.

60 After the withdrawal of the five projects, there was no indication that the parties had reverted to the 6 October 1999 agreement. Ms Teh admitted in cross-examination that she did not tell the plaintiff of the reversion. That would have been the most natural thing to do.

61 Ms Koh's evidence supports the case of the plaintiff. She was the one who ultimately negotiated and settled the 13 April 2000 agreement. She told the court clearly that the first to third defendants did not mention the existence of the third oral agreement.

62 In my judgment, there was no collateral contract as alleged. Clause 10 of the 13 April 2000 agreement provided that the 6 October 1999 agreement was to be null and void, save for the accrued entitlements to which it was the plaintiff's contractual right to receive. This factor in the light of the evidence before me has persuaded me that there was no third oral agreement.

The alleged fourth oral agreement

63 Under this aspect of their case, the first to third defendants pleaded in their defence that the consultancy under the 13 April 2000 agreement was terminated by mutual consent. I have already set out my findings earlier. ETP was liable for their act of repudiatory breach of the agreement. Ms Teh's assertion in writing was disingenuous and unsupported by the probabilities of the case. There was nothing mutual in the plaintiff's departure. It was unilaterally assertive on the part of ETP.

In my view, reasonable notice ought to have been given. That period must be sufficient to allow the plaintiff to complete and bill all the files on which she would be entitled to a profit share. Those files included her then existing conveyancing files, including those projects such as the Ardmore Park development in which she had agreed to bill the clients in stages. The period of notice must be sufficient for the plaintiff to render her bills for work done and for the bills to be rendered in stages to be done. For example, under the latter category is included the substantial Ardmore Park development bill which was rendered eventually for $273,999.02, of which the plaintiff is entitled to 45%.

Sums owing to the plaintiff

64 Bundles of bills were produced to verify the amount of money owing from ETP to the plaintiff. The bills were divided into conveyancing and non-conveyancing bills. They straddled the period prior to October 2000 and the period from October 2000 to December 2003. The common ground is that the plaintiff was only paid on certain bills collected up to October 2000.

65 Based on the bills disclosed, even during the trial of this action, the amount owing to the plaintiff is $408,986.82. As I have some items to clarify with the parties, they are directed to prepare a summary of what they say is payable. They are also directed to appear before me to settle the draft of the judgment.

Conclusion

66 Accordingly, there will be judgment with costs for the plaintiff on her claims, as verified later. The counterclaims are dismissed with costs.