Siemens Industry Software Pte Ltd *v* Lion Global Offshore Pte Ltd [2014] SGHC 251

Case Number	: Suit No 785 of 2014 (Registrar's Appeal No 331 of 2014)
Decision Date	: 28 November 2014
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: Navin Joseph Lobo and Ang Kai Wen (ATMD Bird & Bird LLP) for the plaintiff; Lim Hong Kan (Lim & Bangras) for the defendant.
Parties	: Siemens Industry Software Pte Ltd — Lion Global Offshore Pte Ltd

Contract – Formation

28 November 2014

Chan Seng Onn J:

Introduction

1 This is an appeal by the defendant against the decision of the Assistant Registrar ("the AR") entering summary judgment on a sum of $267,500 in favour of the plaintiff. I dismissed the defendant's appeal. The defendant has since filed an appeal against my decision.

Background

2 The plaintiff is a company whose stated business is in the development of software and other programming activities and software consultancy. The defendant is a company whose stated business is in offshore rig vessel design, shipbuilding, ship repair, commissioning and marketing as well as marketing and trading in offshore vessels. Both companies were incorporated in Singapore. [note: 1]

3 At the material time, there was a copyright infringement dispute between the plaintiff and the defendant regarding the installation and use of eight allegedly infringing copies of the plaintiff's software on the defendant's computer's system ("the Copyright Dispute"). [note: 2]

4 On 27 June 2014, representatives of the plaintiff and the defendant met at the plaintiff's office with a view to settle the Copyright Dispute ("the Meeting"). [note: 3] Two documents were signed at the Meeting, namely:

(a) the Settlement Agreement ("the SA"); [note: 4] and

(b) a document titled "Quotation 419833 Licensed Software Designation Agreement" ("the LSDA"). [note: 5]

5 The SA is a short, two-page document with eight clauses. In effect, the SA is a full and final settlement of the Copyright Dispute on a no-fault basis, subject to certain conditions. Clause 1 of the SA states that the defendant agrees to buy six sets of the plaintiff's software called FEMAP, pursuant to the LSDA. Clause 3 of the SA states that the settlement will only come into force and be valid

when the defendant has made full payment for all monies owed under invoice" to the plaintiff. It is clear, therefore, that the SA is conditional on the payments owed under the LSDA.

6 The LSDA is three pages long. The first page sets out the software to be purchased, namely, the six software licenses, as well as the price, being $250,000 (plus taxes). The second page sets out additional terms and conditions, including the means by which the software will be delivered to the customer and the validity of the quotation. The last page is simply the page used for parties to sign. Under the title "Licensed Software Designation Agreement" can be found the words "Valid through: June 30, 2014".

7 At the end of the Meeting, the defendant's director, Mr Ng Khim Kiong ("Mr Ng"), signed the SA, while the defendant's general manager, Mr Benjamin Oh ("Mr Oh"), signed the LSDA. [note: 6] The LSDA was countersigned by one of the plaintiff's representatives. [note: 7] However, a copy of the SA signed by the plaintiff was never provided to the defendant. [note: 8]

8 On 30 June 2014, the plaintiff transmitted to the defendant by email a "Proforma Invoice" dated 28 June 2014 ("the Invoice") for the sum of S$267,500 being the purchase price of S$250,000 and goods and services tax amounting to S$17,500 (7% of S$250,000). [note: 9] The payment term was stated to be "immediate". However, the email to which the Invoice was attached stated: "As per agreement and process, USD 100K or USD 150k shall be paid to Siemens within today, and the rest will be arranged in the coming 2 days". [note: 10] Mr Saurabh Bose ("Mr Bose"), the director of License Compliance (Asia Pacific), Global Sales & Services of the plaintiff, clarified that the payments were actually for the same sums in Singapore dollars. [note: 11]

9 Around 2 July 2014, Mr Oh informed the plaintiff that the defendant was not willing to pay on the Invoice. [note: 12] The plaintiff took the view that this amounted to a repudiatory breach of the LSDA. [note: 13]

10 Notwithstanding the non-payment by the defendant, the plaintiff delivered six software licenses to the defendant by making the software available on a website and providing the necessary passwords and instructions to the defendant to download, activate and use the plaintiff's software licenses by way of an email dated 15 July 2014. [note: 14] This delivery was in accordance with the LSDA, which states that the delivery of the products will occur when the plaintiff makes the software available to the customer by means of electronic download from a website specified by the plaintiff. [note: 15]

11 The next day, the plaintiff issued a letter of demand through its solicitors notifying the defendant of the plaintiff's election to perform notwithstanding the defendant's refusal to pay. The plaintiff demanded payment of the sum of S$267,500 within seven days of the date of the letter. [note: 16]

12 No payment was made by 24 July 2014, and the plaintiff commenced the present action on the same date. [note: 17] According to the Statement of Claim, the plaintiff's claim is simply a claim in debt as:

(a) the defendant acted in breach of its obligations under the LSDA when it informed the plaintiff that it would not be making payment under the Invoice;

(b) notwithstanding the defendant's breach of the LSDA, the plaintiff elected to perform and duly delivered the plaintiff's software in accordance with the terms of the LSDA; and

(c) the defendant is, as a result of the circumstances raised in [12(a)] and [12(b)], indebted to the plaintiff for the sum of S$267,500, which has not been paid.

General principles on which summary judgment is granted

13 In the recent case of *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2014] SGHC 225 ("*M2B World*"), at [17] to [19], Prakash J gave a helpful overview of the legal principles governing an application for summary judgment. The relevant portion of the judgment reads as follows:

> 17 The legal principles governing an application for summary judgment are well known. To obtain judgment, the plaintiff first has to show that he has a *prima facie* case for summary judgment. If he fails to do that, his application ought to be dismissed. However, once the plaintiff shows that he has a *prima facie* case, the burden shifts to the defendant who, in order to obtain leave to defend, must establish that there is a fair or reasonable probability that he has a real or *bona fide* defence: see, for example, *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 ("*Ritzland*") at [43]–[47].
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> 18 In *Ritzland*, it was clarified that it is the tactical burden and not the evidential or legal burden that shifts to the defendant.
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> 19 The defendant need only show that there is a triable issue or question or that for some other reason there ought to be a trial: *Singapore Civil Procedure*, vol 1 (Sweet & Maxwell, 2013) at para 14/4/5 ("*Singapore Civil Procedure*"). A court would not grant leave to defend if all the defendant provides is a mere assertion, contained in an affidavit, of a given situation which forms the basis of his defence: *Prosperous Credit Pte Ltd v Gen Hwa Franchise International Pte Ltd* [1998] 1 SLR(R) 53 at [14]. The following statement from *Bank Negara Malaysia v Mohd Ismail & Ors* [1992] 1 MLJ 400 is also instructive:
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> > Under an O 14 application, the duty of a judge does not end as soon as a fact is asserted by one party, and denied or disputed by the other in an affidavit. *Where such assertion, denial or dispute is equivocal, or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable in itself, then the judge has a duty to reject such assertion or denial, thereby rendering the issue not triable*. In our opinion, unless this principle is adhered to, a judge is in no position to exercise his discretion judicially in an O 14 application. Thus, apart from identifying the issues of fact or law, the court must go one step further and determine whether they are triable. This principle is sometimes expressed by the statement that a complete defence need not be shown. The defence set up need only show that there is a triable issue.

The alleged triable issues

14 It is clear, from even the brief rendition of the background facts, that the plaintiff has a *prima facie* case for summary judgment.

15 In its written submissions before the AR, the defendant had argued that there were six triable issues in the present case, which it argued were as follows: [note: 18]

(a) The First Alleged Triable Issue: Whether the plaintiff is precluded from proceeding with its claim against the defendant by simply pleading its claim based solely on the LSDA without pleading the SA when in fact the LSDA is an express term of the SA; and therefore any decision made in this action might have impact on the settlement under the SA.

(b) The Second Alleged Triable Issue: If the LSDA is a separate agreement from the SA, whether the LSDA is unenforceable for uncertainty since there are, *inter alia*, no agreed terms or any term for payment.

(c) The Third Alleged Triable Issue: The words "Valid through: June 30, 2014" in the LSDA are vague and uncertain. The triable issue is whether the date refers to the date on which the parties must sign the LSDA, the date the plaintiff must deliver the goods to the defendant, or the date the defendant must make payment to the plaintiff.

(d) The Fourth Alleged Triable Issue: Whether the Invoice with a unilaterally imposed term (*ie*, the requirement that payment be immediate), and whether the email dated 30 June 2014 requesting the defendant to pay US$100,000 or US$150,000 within the same day and the rest to be arranged within the following two days, constituted a variation of the terms of the LSDA, thereby rendering the LSDA invalid.

(e) The Fifth Alleged Triable Issue: Whether para 5(d) of the plaintiff's Reply should be struck out or alternatively be disregarded for the purpose of the plaintiff's application therein. Paragraph 5(d) of the Reply states:

> In order to give business efficacy to the LSDA, it was an implied term of the LSDA that the sum of S$250,000 (and 7% GST thereon) would be paid upon the issuance of the Invoice. In the alternative, in order to give business efficacy of the LSDA, it was an implied term of the LSDA that the sum of S$250,000 (and 7% GST thereon) would be paid upon the delivery of the Software Licenses or a reasonable time thereafter.

(f) The Sixth Triable Issue: Whether there was *consensus ad idem* in respect of the LSDA.

The AR's decision

16 After hearing the arguments of the parties, the AR stated that the only issue was whether a contract had been formed. She referred to evidence which showed that the defendant had agreed to the LSDA. She referred to an email from Mr Ng to the plaintiff dated 29 June 2014 in which Mr Ng stated, "I must admit I felt the need to settle as gentlemen and under the pressure put on us, I had mistakenly agreed. But in retrospect, it is too excessive". [note: 19]

17 Accordingly, she found that the parties had entered into a valid and binding contract (*ie*, the LSDA). She also found that the issues characterised by the defendant as triable issues were not in fact triable issues. [note: 20]

My decision

Whether the LSDA was an independent agreement

18 Leaving aside any possible vitiating factors for the moment, the first question is whether an agreement was concluded on the LSDA. There is no question that the defendant's representatives knew what they were getting into when the LSDA was signed. It is clear from Mr Ng's affidavit dated

28 August 2014 that he read both the SA and the LSDA. It did not escape his attention that the SA was only effective upon the fulfilment of two conditions. The first condition was for the sale of the six licenses under the LSDA and the second condition was for the payment owed under the Invoice to be made in full. However, he asserted that this meant that if the SA had not been made effective, the sale of the software licenses *per se* would also not be effective. He claimed that this clearly showed that the plaintiff was well aware that *both* the SA and the LSDA were conditional/contingent agreements and they were not binding on the defendant by the express terms and conditions thereof. This was why the defendant's representatives signed the SA and LSDA. [note: 21]

19 To begin, this is a rather bizarre assertion. The SA and the LSDA are two separate agreements, for two different purposes. The SA deals with the resolution of the Copyright Dispute while the LSDA deals with the sale of the software licenses. The fact that the LSDA is referred to in the SA does not make the LSDA an "annexure" to the SA, as argued by the defendant. [note: 22] Obviously, the settlement being conditional on the sale of the licenses does not mean that the sale of the licenses is also conditional on the settlement coming into effect. This would require a condition precedent to an outcome to be conditional on the outcome itself. At the very least, this is not a reasonable reading of the SA and LSDA, which are, I add, very short and simple documents. The interaction between the SA and LSDA is clear. In order for the SA to come into effect, the defendant must (1) enter into the LSDA and (2) make full payment of the monies *owed* under the Invoice. It is not possible for the LSDA to only become binding when the SA is itself effective, because the SA is only valid when full payment is made of the monies *owed* under the Invoice. It is not possible for there to be any monies *owed* under the Invoice unless the LSDA is already effective and binding on the parties. This is a clear indication that the SA and LSDA must have been contemplated as separate and independent agreements, rather than mutually dependent ones.

20 In any event, Mr Ng's assertions amount to no more than his subjective views of the effect of the SA and the LSDA. As I have demonstrated, even if Mr Ng honestly believed in his own views on how the SA and LSDA should be construed, they constituted an objectively unsustainable interpretation of the SA and the LSDA. In any event, the evidence shows that the defendant was well aware that it was bound. If Mr Ng really did think that nothing was actually agreed or that nothing was legally binding on the defendant, one might expect the defendant to mention this in its correspondence with the plaintiff. On the contrary, Mr Ng's email dated 29 June 2014 – which was highlighted by the AR (see [16] above) – shows that he understood that an agreement had actually been concluded.

21 Similarly, in an email dated 7 July 2014 by Mr Oh to the plaintiff, the defendant essentially accepts that an agreement was concluded: [note: 23]

> In retrospect, we felt we were under pressure to settle *and we did.* The settlement quantum of 6 licenses exceeds our expectation. It was all conducted under your License Compliance department in a matter of hours to which we tried to mitigate for amicable settlement of lesser amount *but failed*. [emphasis added]

22 As the SA and the LSDA are separate contracts, there is therefore no need for the plaintiff to have pleaded the SA in the Statement of Claim. This deals with the First Alleged Triable Issue.

23 At this juncture, I consider if there is a triable issue as to whether the LSDA was procured by duress or undue pressure. To summarise, Mr Ng claimed that Mr Bose had acted in a threatening manner during the Meeting. He claimed that Mr Bose stated that infringement of copyright was a serious crime that could land Mr Ng in jail, [note: 24] and that the plaintiff could potentially sue the

defendant for damages of over US$800,000. [note: 25] Mr Ng said that Mr Bose had also insisted that if no settlement was reached, the plaintiff would not hesitate to begin legal proceedings. [note: 26] Moreover, Mr Bose had allegedly expressed displeasure after Mr Ng said that the defendant ought to reserve its right to seek legal advice on this matter. [note: 27] Mr Ng asserted that he had "no other choice" but to "play for a little time to work things out". [note: 28]

24 In my view, these assertions are merely an afterthought. To begin, the defendant did not plead any such vitiating factors in its defence. This issue was also not raised in the defendant's written submissions to the AR, or in oral arguments before her. Clearly, the defendant's counsel did not think that this was a meritorious argument, and neither do I.

25 As noted in *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* [2011] 2 SLR 232 at [48] and [51], there are two elements in the wrong of duress: (1) pressure amounting to compulsion of the will of the victim, and (2) the illegitimacy of the pressure exerted.

26 Even if Mr Bose had threatened Mr Ng with legal action, a "threat" to enforce one's legal right does not amount to duress, at least where the threat is made *bona fide*, and is not manifestly frivolous or vexatious (at *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [43]).

27 For completeness, I also refer to *Real Estate Consortium Pte Ltd v East Coast Properties Pte Ltd and another* [2011] 2 SLR 758 at [51]:

> 51 In any event, even if I were to accept the defendants' allegations that Chan and Sern had threatened the second defendant that the plaintiff would take legal action if the defendants failed to make payment of the principal sum, that alone is insufficient to amount to "illegitimate pressure". It has been observed in *Chitty on Contracts* vol 1 (Sweet & Maxwell, 30th Ed, 2009) at para 7-050 (endorsed in *Shunmugam Jayakumar v Jeyaretnam Joshua Benjamin* [1996] 2 SLR(R) 658 at [51] ("*Shunmugam*"); also see *Miles v New Zealand Alford Estate Company* (1886) 32 Ch D 266 and *Jayawickreme v Amarasuriya (since deceased)* [1918] AC 869) that:
>
> > Since recourse to law is the remedy for redress provided by the law itself, it is obvious that prima facie a threat to enforce one's legal rights by instituting civil proceedings cannot be an unlawful or wrongful threat. Consequently a contract which is obtained by means of such a threat must prima facie be valid, and cannot be impeached on grounds of duress. So an ordinary bona fide compromise is clearly a valid contract even though exacted under threats to bring (or defend) legal proceedings. … Even a threat to bring proceedings where there is no ground of action in law is prima facie not an unlawful threat, at least where the threat is made *bona fide*, and is not manifestly frivolous or vexatious.

28 Even on Mr Ng's evidence, it is clear that he knew what he was signing, even if he appears to have taken an unreasonable interpretation of the terms. It is also clear that Mr Bose's alleged threats of legal action were not without basis. Indeed, in Mr Oh's letter to the plaintiff dated 26 June 2014, Mr Oh effectively admitted that there had been unauthorised installations and use of the plaintiff's software. [note: 29] The sum of US$800,000 in potential damages that Mr Bose allegedly mentioned was also not plucked out of thin air, but arrived at through a pricing mechanism that was actually disclosed to the defendant *before* the Meeting. [note: 30] Interestingly, Mr Ng did not assert that he had no alternative but to *enter into the settlement* to avoid the threat of legal sanction. Rather, he said that he had no alternative "but to play for a little time". Indeed, Mr Ng was effectively saying that he signed the SA and the LSDA because he thought that *they would not be binding on him.* The

implication is, of course, that if he had thought that they were binding, he would not have signed them.

29 Accordingly, even if Mr Ng's assertions were true with respect to the Mr Bose's behaviour at the Meeting, the LSDA remains a binding agreement. Perhaps, after further consideration, the defendant decided that the prospect of civil litigation (and even the possibility of criminal sanction) was preferable to the sums it actually agreed to pay for the software licenses under the LSDA. As the plaintiff has submitted, all this shows is that the defendant was suffering "a classic case of buyer's remorse". [note: 31] But that, by itself, would not release the defendant from any contractual obligations to which it had agreed.

Whether the LSDA is unenforceable for uncertainty

30 The Second, Fourth and Fifth Alleged Triable Issues are linked and I will deal with them together. To begin, the defendant claims that there is a triable issue as to whether the LSDA is unenforceable for uncertainty because there are no terms for payment in the LSDA itself.

31 Uncertainty as to the time of payment may render an agreement unenforceable when it is determined to be vital to the agreement. In *T2 Networks Pte Ltd v Nasioncom Sdn Bhd* [2008] 2 SLR(R) 1 ("*T2 Networks*"), Prakash J found that a settlement agreement was not legally binding because the payment terms of the settlement agreement were not certain. *T2 Networks* was cited with approval by the Court of Appeal in *Dynasty Line Ltd (in liquidation) v Sukamto Sia and another and another appeal* [2014] 3 SLR 277 at [19].

32 In *T2 Networks*, the clause that was found to be uncertain was as follows (*T2 Networks* at [20]):

> 2. NasionCom to settle the outstanding payments to T2 within a stated schedule
>
> a. Action by Kai Shan to instruct MobileOne that settlement will be made directly by NasionCom
>
> b. Action by Damien to update Dato' on the payments for Dato' [*sic*] approval
>
> c. Immediate partial payment and thereafter on a scheduled basis.

33 On this issue, Prakash J set out her reasoning as follows (*T2 Networks* at [44]):

> 44 Apart from the lack of consideration to support the settlement agreement, there is another problem with it: it is uncertain. Clause 2 does not give a schedule for NC's payment of the invoices. In court, Dato Chee could not tell me whether the schedule was agreed and, if so, how long it would take for full payment to be made. NC submitted that I should read cl 2 as providing for payment within a reasonable time. *I find it difficult to do so because it is hard to determine what a reasonable time is in a situation where the creditor is desperate for money and the debtor has been stringing out payment for a long time.* It was also clear to me from the evidence that all along what T2 wanted from NC was immediate payment. I do not think that it would have agreed to payment within a reasonable time as determined by Dato Chee, when NC had not previously been reliable in its payments. Further, even if cl 2(c) was agreed, how much would be paid immediately and what the amount and period of the succeeding instalments would be was left to NC to determine. As I have stated, the payment schedule was vital for T2 and if that payment schedule was not agreed, then the settlement agreement could not have been

concluded. In this connection, the following observation by Lord Wright in *G Scammell and Nephew, Limited v H C and J G Ouston* [1941] AC 251 (at 268-269) is apposite:

> It is a necessary requirement that an agreement in order to be binding must be sufficiently definite to enable the court to give it a practical meaning. Its terms must be so definite, or capable of being made definite without further agreement of the parties, that the promises and performances to be rendered by each party are reasonably certain.
>
> *It has been held in later cases that as long as the main terms of an agreement have been arrived at, the agreement can still come into existence and be enforceable even though there are some minor terms to be worked out.* I do not consider that this case comes within that situation. It was vital for T2 to have certainty as to the dates and amounts of payment from NC. These were not minor terms that T2 would have been content for NC or Dato Chee to work out in their discretion.
>
> [emphasis added]

34 Clearly, it is not always the case that the non-inclusion of the mode or time for payment of a sale renders a contract unenforceable for uncertainty. In *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 03.148, the learned authors rightly noted that:

> … the courts do not expect commercial documents to be drafted with the outmost precision and certainty. To take such an approach would strike down bargains legitimately reached by two parties who might not have been so astute as to legal precision or uncertainty. …

35 In *T2 Networks*, Prakash J had concluded that on the facts of that case, the payment schedule was vital because the plaintiff had to have certainty as to the dates and amounts of payment from NC. She was unable to find that cl 2 should have been read as providing for payment within a reasonable time in circumstances where the creditor was desperate for money in the face of a dilatory debtor.

36 In the present case, there is nothing whatsoever in Mr Ng's affidavit that shows that the time of payment was vital to the transaction. On the contrary, it is clear from Mr Ng's own affidavit that the timing of the payments is not one of the main terms of the contract. Unlike in *T2 Networks*, there is also no indication that a term of payment within a reasonable time could not be implied. In any event, it is not necessary for me to determine the exact scope of the implied term. All I have to determine is whether, in the absence of any express term as to payment, the LSDA is unenforceable for uncertainty. On the face of the LSDA alone, the quantity of products to be purchased, the method of delivery, and the price of sale have been determined. These are sufficient for the LSDA to be valid and binding. Although the time of payment was not stated, it was merely a minor term that could be worked out. The Second Alleged Triable Issue is therefore not a triable issue.

37 As it is not necessary to consider whether there is an implied term as pleaded in para 5(d) of the Reply, the Fifth Alleged Triable Issue is also not a triable issue.

38 For completeness, I note that it is Mr Bose's evidence that the terms of payment were in fact discussed. If this is true, it explains why the plaintiff agreed to split the payments, as shown in the email to which the Invoice was attached (see [8] above). [note: 32] It also explains why in its subsequent correspondence, the defendant never raised the issue of when it was liable to pay.

39 As for the Fourth Alleged Triable Issue, I am not able to see how the Invoice, or the email containing the Invoice, is "tantamount to a variation of the terms of the LSDA". If there was no express and/or implied term as to the timing of the payments, there can be no variation of the LSDA in any way. Even if it was an attempt to vary the terms of the LSDA, I do not see how this renders the LSDA invalid. It must be recalled that at this point the LSDA was already a concluded contract, as I have found. Issues relating to offer and acceptance are no longer relevant. This is not a case involving, for example, a battle of the forms. Certainly, nothing done by the plaintiff can be construed as being of a repudiatory nature. For completeness, I will add that if the email containing the Invoice reflects the true agreement of the parties as discussed at the Meeting, clearly the email cannot be considered a "variation of the terms of the LSDA". Accordingly, the Fourth Alleged Triable Issue is also not a triable issue.

Whether the LSDA became invalid on 30 June 2014

40 The defendant also asserts that there is a triable issue as to the meaning of the words "Valid through: June 30, 2014" in the LSDA (see [6] above). To begin, there is nothing in Mr Ng's affidavit that says anything about any representations made to him about what the words mean. The plaintiff, on the other hand, asserts that it was explained to the defendant's representatives at the Meeting that the validity date merely referred to the date that the *offer* would lapse. [note: 33]

41 Even on the assumption that nothing was said to the defendant's representatives at the Meeting, no reasonable person would regard the words "Valid through: June 30, 2014" as meaning anything other than the date by which the quotation is to be accepted. Reading it in any other way requires a most strained and unreasonable interpretation of the LSDA. There is nothing in Mr Ng's rendition of the facts that comes close to suggesting that the acceptance of the LSDA should be achieved by any means other than through the signature of the parties, or that after acceptance, the LSDA could somehow "self-invalidate" if neither party performed under the contract by 30 June 2014. The LSDA was signed and concluded at the Meeting. This disposes of the Third Alleged Triable Issue.

42 For completeness, I will add that it is highly doubtful that the defendant's representatives actually subjectively held such a belief. Even in Mr Oh's email dated 7 July 2014 (see [21] above), in which the defendant requested a meeting with the plaintiff's chief executive officer after the receipt of the Invoice, no mention was made about the expiry of the defendant's obligation under the LSDA.

Whether there was consensus ad idem

43 Since the LSDA is a clear, simple, independent and valid agreement, the Sixth Alleged Triable Issue of whether there was "*consensus ad idem*" is not a triable issue as well.

Conclusion

44 For the above reasons, I dismissed the defendants' appeal and awarded $4,000 as the plaintiff's costs and disbursements for the appeal.

[note: 1] Statement of Claim, paras 1 and 2; admitted in Defence, para 1.

[note: 2] Saurabh Bose's affidavit dated 11 Sep 2014 ("Bose's Affidavit"), para 9; Ng Khim Kiong's affidavit dated 28 Aug 2014 ("Ng's Affidavit"), para 22.

[note: 3] Ng's Affidavit, para 16.

[note: 4] Ng's Affidavit, p 44.

[note: 5] Ng's Affidavit, p 46.

[note: 6] Ng's Affidavit, para 38.

[note: 7] Ng's Affidavit, p 48.

[note: 8] Bose's Affidavit, para 12.

[note: 9] Teo Swee Guan Alex's affidavit dated 15 Aug 2014 ("Teo's Affidavit"), p 10.

[note: 10] Teo's Affidavit, p 10.

[note: 11] Bose's Affidavit, para 23(i).

[note: 12] Ng's Affidavit, p 32.

[note: 13] Written Submissions of the Plaintiff dated 20 Oct 2014 ("PS"), para 20.

[note: 14] Teo's Affidavit, para 9 and pp 13 to 15.

[note: 15] Ng's Affidavit, p 47.

[note: 16] Teo's Affidavit, pp 16 to 17.

[note: 17] PS, para 5(e).

[note: 18] Respondent's (The Defendant) Skeletal Submissions (Sum No 4026 of 2014), pp 6 to 8.

[note: 19] Ng's Affidavit, p 28.

[note: 20] The AR's NE, p 6.

[note: 21] Ng's Affidavit, paras 37 and 38.

[note: 22] The AR's NE, p 3, lines 27 to 29.

[note: 23] Ng's Affidavit, p 34.

[note: 24] Ng's Affidavit, para 19.

[note: 25] Ng's Affidavit, para 22.

[note: 26] Ng's Affidavit, para 27.

[note: 27] Mr Ng's affidavit, para 31.

[note: 28] Ng's Affidavit, para 34.

[note: 29] Ng's Affidavit, p 22.

[note: 30] Ng's Affidavit, p 24; see also the Written Submissions of the Plaintiff dated 22 Sep 2014, para 30.

[note: 31] PS, para 15.

[note: 32] Bose's Affidavit, para 23(i).

[note: 33] Bose's Affidavit, para 18.

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