IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 254

Suit No 221 of 2017
(Summons No 2331 of 2017)

Between

Law Beng Chong Gary

… *Plaintiff*

And

The Wellness Group Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Contract] — [Contractual terms]

Version No 1: 27 Oct 2020 (22:40 hrs)

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Law Beng Chong Gary
v
The Wellness Group Pte Ltd

[2017] SGHC 254

High Court — Suit No 221 of 2017 (Summons No 2331 of 2017)
Hoo Sheau Peng J
28 July 2017

17 October 2017

Hoo Sheau Peng J:

Introduction

1 This was the defendant's application, pursuant to O 14 r 12 of the Rules of Court (Cap 322, R5, 2014 Rev Ed), for the court to construe a letter of termination, discharge and release dated 31 March 2011 ("Termination Agreement"), which is concerned with the termination of an employment letter dated 13 April 2007 between the parties ("2007 Employment Letter") and the discharge and release of the parties' obligations contained therein. Upon construing the Termination Agreement, I determined that the 2007 Employment Letter had been terminated, and that the parties had been discharged and released from the obligations contained therein. Therefore, I dismissed the plaintiff's action which he had brought based on the 2007 Employment Letter.

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The plaintiff has filed an appeal against my decision. I now furnish my reasons.

Background

2 The defendant is The Wellness Group Pte Ltd. It is in the business of wholesale and retail of wellness-related and food and beverage products. It owns 30.1% of the shares in a subsidiary company, TWG Tea Company Pte Ltd ("TWG Tea").

3 The plaintiff, Mr Gary Law Beng Chong, was the Chief Operating Officer of the defendant from 2 May 2007 to 1 April 2011, and was, at the time of this application, the Chief Operating Officer of TWG Tea.

4 While the plaintiff was the Chief Operating Officer of the defendant, the terms of his employment were set out in the 2007 Employment Letter. A material term, cl 4(c), set out a stock option scheme under which the plaintiff was entitled to 5% of the total issued share capital of the defendant ("the stock option scheme"). Clause 4(c) states as follows:

> You will be entitled to the Company's stock option scheme of 5% shareholding of TWG. Equity can be issued as per latter shareholding and value when you first joined. If 3rd party investment is accepted to the newly formed company, the ratio of shareholding between yourselves and TWG shall hold. In the event that you leave TWG within 3 years, the shares will be returned to TWG.

5 Subsequently, the plaintiff's employment was transferred to TWG Tea by way of a letter dated 1 April 2008. The letter stated that the "present terms and conditions of [the plaintiff's] service" would continue to apply. It was undisputed that this meant that the terms and conditions in the 2007 Employment Letter were to continue to apply.

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6 In 2011, the plaintiff, the defendant and TWG Tea signed the Termination Agreement. The following specific terms bear noting:

(a) Clause 2 states that "[i]n consideration of the mutual release and termination of any and all obligations on the part of [the defendant], [TWG Tea] and/or [the plaintiff] in relation to or arising from the [2007 Employment Letter], we are pleased to confirm the following terms". This was followed by terms set out in cll 2(a)–(e).

(b) Clause 2(a) sets out the plaintiff's entitlement to a profit share of TWG Tea, and a formula for calculating this entitlement based on TWG Tea's "Corporate Gross Turnover Sales". I will refer to this as the "profit sharing scheme".

(c) Clause 2(b) sets out a definition of "Corporate Gross Turnover Sales".

(d) Clause 2(c) states that the plaintiff would receive a salary which would be revised upwards to $16,000 per month.

(e) Clause 2(d) provides that the plaintiff would receive a one-time *ex gratia* payment of $100,000, which was to be paid in three instalments between January and March 2012.

(f) Clause 2(e) spells out the plaintiff's liability for the payment of personal income tax and TWG Tea's liability for CPF contributions which would be incurred in relation to the *ex gratia* payment.

(g) Clause 3 stipulates that cll 2(a)–(c) would be "set out in a letter of employment to be entered into between TWG Tea and [the plaintiff]".

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(h) Clause 5 provides that if the terms in the Termination Agreement were not fulfilled, the plaintiff would have the right to terminate it and the 2007 Employment Letter would continue in force. The exact wording of cl 5 is as follows:

> You expressly agree that the [2007 Employment Letter] shall be terminated and/or deemed to be null and void, and [the defendant] and/or TWG Tea and/or you shall be fully and finally discharged and released from any and all obligations, covenants, representations, warranties and liabilities (if any) whatsoever contained in, arising under or in connection with the [2007 Employment Letter] (by contract or otherwise), only if the above terms are fulfilled. However in the event that any part of the above terms are not fulfilled, you have the right to terminate and withdraw from this agreement and the [2007 Employment Letter] shall survive and continue to be in force.

7 It is common ground that the plaintiff was paid the $100,000 *ex gratia* payment, and that TWG Tea duly issued him a new letter of employment dated 1 April 2011 ("2011 Employment Letter") setting out the terms in cll 2(a)–(c) of the Termination Agreement. It is relevant to note that cl 4(e) of the 2011 Employment Letter reproduced cl 2(a) of the Termination Agreement, and thus incorporated the profit sharing scheme.

8 Thereafter, the plaintiff continued to be employed by TWG Tea. About five years later, the present dispute arose. It stemmed from a decision by TWG Tea to replace the profit sharing scheme contained in the 2011 Employment Letter with a new incentive scheme. TWG Tea communicated this decision to the plaintiff by way of two letters as set out below:

(a) First, in a letter to the plaintiff dated 25 January 2016, TWG Tea proposed that the profit sharing scheme stated in cl 4(e) of the 2011 Employment Letter be replaced with a new incentive scheme. Instead of

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being paid a percentage of TWG Tea's corporate gross turnover, the plaintiff would, under the new incentive scheme, be paid a number of months of his gross pay as an annual bonus, the number being calculated in accordance with a formula pegged to the revenue of TWG Tea. The plaintiff did not sign this letter.

(b) Second, in a letter dated 16 March 2016, TWG Tea informed the plaintiff that the company's shareholders had decided to "lapse" the profit sharing scheme indicated in the 2011 Employment Letter and that the new incentive scheme in the letter of 25 January 2016 would take effect immediately. The plaintiff signed the letter to acknowledge receipt but, above his signature, he wrote that he did not accept its contents.

The present action

9 The plaintiff then commenced this action against the defendant. Relying on cl 4(c) of the 2007 Employment Letter, he claimed to be entitled to the 5% of the defendant's total issued share capital under the stock option scheme. His argument ran as follows:

(a) TWG Tea, a party to the Termination Agreement, had refused to fulfil its terms because it had unilaterally informed him that it would be terminating the profit sharing scheme set out in cl 2(a) of the Termination Agreement and replacing it with a new incentive scheme.

(b) Upon the non-fulfilment of the terms of the Termination Agreement, and pursuant to cl 5 thereto, the plaintiff withdrew from and terminated the Termination Agreement. He opted to treat the 2007 Employment Letter as surviving and continuing to be in force.

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(c) The plaintiff therefore claimed to be entitled to shares in the defendant, as was provided for under the stock option scheme in cl 4(c) of the 2007 Employment Letter.

10 In its Defence, the defendant denied that TWG Tea had failed to fulfil the terms of the Termination Agreement. Its case was that the defendant and TWG Tea had already fulfilled all their obligations under the Termination Agreement. Further, the defendant denied that the plaintiff was entitled to treat the 2007 Employment Letter as surviving and continuing to be in force.

11 Subsequently, the defendant brought the application under O 14 r 12 of the Rules of Court for a determination of the following two questions pertaining to the construction of the Termination Agreement and, if the questions were answered in the affirmative, for the plaintiff's claim to be dismissed with costs:

> 1. Has [the plaintiff's] employment with [the defendant] on the terms set out in [the 2007 Employment Letter] been terminated and/or deemed to be null and void pursuant to Clause 5 of [the Termination Agreement]?
>
> 2. Has [the defendant] been fully and finally discharged and released from any and all obligations, covenants, representations, warranties and liabilities (if any) whatsoever contained in, arising under or in connection with [the 2007 Employment Letter] pursuant to Clause 5 of [the Termination Agreement]?

12 The plaintiff did not dispute that, in accordance with O 14 r 12 of the Rules of Court, the questions were suitable for determination without a full trial of the action, and that doing so would fully determine the entire cause or matter or any claim or issue therein.

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Parties' cases

13 The plaintiff's arguments were as follows. His starting point was that the obligations under the Termination Agreement had been undertaken by the defendant and TWG Tea jointly. This could be seen from the use of the word "we" in the phrase "we are pleased to confirm the following terms" in cl 2 (see [6(a)] above). This meant that although it was TWG Tea which had to pay him the revised salary and grant him the profit sharing scheme, the defendant would remain liable if TWG Tea reneged on these terms. TWG Tea had purported to replace the profit sharing scheme in cl 2(a). This meant that that one of the "above terms" referred to in cl 5 was "not fulfilled" (see [6(h)] above). Hence, the plaintiff was entitled, pursuant to cl 5, to terminate and withdraw from the Termination Agreement and to treat the 2007 Employment Letter as continuing to be in force.

14 The plaintiff believed his construction of the Termination Agreement to be supported by the fact that cl 2 and cl 3 were separate from each other. Clause 2 was an offer of the terms that the defendant and TWG Tea (*ie*, "we") were both making, which included cll 2(a)–(c), while cl 3 specifically imposed an obligation only on TWG Tea to enter into a new employment contract with the plaintiff. Clause 2 did not say, for example, that the defendant's obligation was only to procure that TWG Tea would enter into a new employment contract with the plaintiff that set out the terms in cll 2(a)–(c). If that were the case, the defendant would have fulfilled its obligations once the 2011 Employment Letter had been entered into between TWG Tea and the plaintiff. The inclusion of cll 2(a)–(c) under cl 2 meant that the defendant had undertaken to ensure that TWG Tea continuously complied with cll 2(a)–(c).

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15 Providing some context to the Termination Agreement, the plaintiff stated in his affidavit that it was clear to the defendant that the plaintiff wished to protect and preserve his entitlement under the stock option scheme before he was prepared to sign the Termination Agreement and enter into any new employment contract with TWG Tea. Clause 5 was crafted to reflect that the defendant would protect and preserve his entitlement, and that the plaintiff could "revert to [his] original entitlement of [his] profit sharing and stock option in the [defendant]" should the terms of the Termination Agreement not be fulfilled.

16 The defendant advanced a different construction of the Termination Agreement. It argued that the Termination Agreement was meant to set out the terms on which the plaintiff would move from being an employee of the defendant to being an employee of TWG Tea. The two terms were that the plaintiff would enter into a new employment contract with TWG Tea, which was to incorporate cll 2(a)–(c), and that the plaintiff would receive the *ex gratia* payment of $100,000. These two terms had already been fulfilled. Therefore, pursuant to cl 5, the defendant and TWG Tea had been discharged and released from all obligations under the 2007 Employment Letter.

17 The defendant submitted that the plaintiff's construction would lead to a result that was at odds with the commercial purpose of the Termination Agreement. The commercial purpose was to secure the termination of and the discharge and release of the parties from their obligations under the 2007 Employment Letter. The plaintiff's construction would mean that the plaintiff would continue to have a right to revive the 2007 Employment Letter as against the defendant even though TWG Tea might at any time change the profit sharing scheme or the monthly salary. The defendant would not be able to stop TWG Tea from doing that because it was no longer the majority shareholder of TWG

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Tea. Yet the effect of the plaintiff's construction would be to place the defendant under a continuing obligation to ensure TWG Tea's performance of its obligations as an employer under the 2011 Employment Letter. This obligation would continue until the plaintiff resigned or retired from TWG Tea. The result was that the release of the defendant from its obligations under the 2007 Employment Letter, as contemplated in cl 5 of the Termination Agreement, would never occur. In fact, the defendant submitted that the plaintiff's construction would lead to unreasonable and "plainly absurd" results.

My decision

18 As this application turned on a proper construction of the Termination Agreement, I start my analysis by briefly setting out the relevant legal principles. Construction is the process of ascertaining the intentions of the parties as expressed in the contract. An objective approach must be taken. What must be sought is the meaning that the contract conveys to a reasonable person having the background knowledge that would have been reasonably available to him: *Ang Tin Yong v Ang Boon Chye and another* [2012] 1 SLR 447 ("*Ang Tin Yong*") at [11]. Two other principles of construction are pertinent: first, that regard must be had to the commercial purpose of the transaction; and second, that a construction which leads to unreasonable results is to be avoided unless it is required by clear words and there is no other tenable construction (see *Ang Tin Yong* at [10]).

19 The key question before me was whether cl 5 imposed a continuing obligation on the defendant to guarantee the performance by TWG Tea, as employer of the plaintiff, of the obligations in cll 2(a)–(c) which were set out in the 2011 Employment Letter as required by cl 3 of the Termination Agreement.

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20 Based on an objective construction of the Termination Agreement and in particular cll 2,3 and 5, my answer to this question was "no". Reading the plain words of cll 2, 3 and 5, it seemed to me that they would clearly convey the following meanings to a reasonable person. To secure a termination of the 2007 Employment Letter, the plaintiff would be offered new terms of employment pertaining to salary and incentives. These terms were in cll 2(a)–(c), and were to be set out in a new letter of employment between TWG Tea and the plaintiff, as required by cl 3. The plaintiff would also be offered the $100,000 *ex gratia* payment. Upon TWG Tea's entering into the new letter of employment with the plaintiff, and the plaintiff's receipt of the $100,000 *ex gratia* payment, cl 5 would then become operative and the defendant, TWG Tea and the plaintiff would be discharged and released from all obligations and liabilities under the 2007 Employment Letter. If, and only if, either of these conditions had not been met, the plaintiff would be entitled to treat the 2007 Employment Letter as continuing in force. Otherwise, the employment relationship between TWG Tea and the plaintiff would be governed only by the new letter of employment. In short, I agreed with the defendant's position.

21 I disagreed with the plaintiff's submission that the separation of cl 2 from cl 3 of the Termination Agreement, and the use of "we" in cl 2, meant that the defendant had undertaken a continuing obligation to ensure that TWG Tea complied with the terms in cll 2(a)–(c) during the plaintiff's employment with TWG Tea. In fact, the converse appeared to be true. If cl 2 were meant to impose on the defendant a continuing obligation to guarantee the performance of the obligations in cll 2(a)–(c), there would be no reason to insert cl 3 to ensure that these terms were incorporated into a new letter of employment between TWG Tea and the plaintiff. The existence of cl 3 suggested that the defendant's obligations under the Termination Agreement would cease once a new letter of employment were to be entered into between TWG Tea and the plaintiff. There

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was no obligation imposed on the defendant to ensure that TWG Tea continued to honour cll 2(a)–(c) as incorporated in the new letter of employment between TWG Tea and the plaintiff.

22 In my view, the construction as explained at [20] would be in accord with the commercial purpose of the Termination Agreement, which, according to its header, was the "[t]ermination, [d]discharge, and [r]elease" of the 2007 Employment Letter. The Termination Agreement was obviously intended to effect a clean transfer of the plaintiff's employment from the defendant to TWG Tea on the new terms pertaining to salary and incentives. To find that the Termination Agreement imposed a continuing obligation on the defendant would have run counter to this commercial purpose because it would have meant, as the defendant had pointed out, that the release in cl 5 would never have operated so long as the plaintiff remained in TWG Tea's employment. In this regard, I accepted the defendant's argument as summarised at [17] above.

23 Moreover, to find that such a continuing obligation existed would, in my view, lead to unreasonable and absurd results. On the plaintiff's construction of the Termination Agreement, were TWG Tea to replace the profit sharing scheme as set out in cl 2(a) with a new incentive scheme, the plaintiff would be entitled to reject the new incentive scheme and, as it were, substitute that with the stock option scheme in the 2007 Employment Letter. Such a construction would mean that 5% of the defendant's total issued share capital would always be on the line, to be transferred to the plaintiff if TWG Tea departed from the profit sharing scheme as set out in cl 2(a) of the Termination Agreement. In fact, this would also be the case if TWG Tea were to depart from the revised salary as set out in cl 2(c) of the Termination Agreement.

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24 Seen in that light, the obligation the defendant was supposed to have assumed under the Termination Agreement was akin to a guarantee: the defendant was putting forth 5% of its total issued share capital as assurance for the plaintiff that TWG Tea would honour the obligations in cll 2(a)–(c). As set out at [15] above, the plaintiff explained that at the material time, the defendant knew of the plaintiff's concern to protect his entitlement under the stock option scheme before he would sign a new letter of employment with TWG Tea. According to the plaintiff, under such circumstances, the defendant agreed to cl 5, which was meant to reflect the defendant's intention to provide such protection on an ongoing basis.

25 I note that the defendant disputed the plaintiff's account. More importantly, in my view, there was no reason for the defendant to undertake such an onerous obligation. After all, it would be open to the plaintiff to commence an action against TWG Tea for any breach of the 2011 Employment Letter. In any case, it would take the inclusion of clear, explicit and unambiguous provisions in the Termination Agreement for the defendant to be said to have assumed such an onerous and uncommercial obligation. There were no such provisions here.

26 By the foregoing, I found that on an objective construction of the Termination Agreement, cl 5 would become operative after the occurrence of two things: first, cll 2(a)–(c) being set out in a new letter of employment between TWG Tea and the plaintiff, and second, the plaintiff receiving the $100,000 *ex gratia* payment in accordance with cll 2(d)–(e). Since the parties did not dispute that both these terms had been fulfilled, cl 5 operated, with the result that the 2007 Employment Letter had been terminated and the parties had been discharged and released from their obligations contained therein. There was no continuing obligation imposed on the defendant to ensure TWG Tea's

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performance of the obligations in cll 2(a)–(c) of the Termination Agreement, as set out later in the 2011 Employment Letter. Thus, there was no basis for the plaintiff to rely on the 2007 Employment Letter to claim 5% of the defendant's total issued share capital in this action.

Conclusion

27 Accordingly, I dismissed the plaintiff's action against the defendant in its entirety. I ordered the plaintiff to pay the defendant's costs of the action, fixed at $10,000, and reasonable disbursements to be agreed or taxed.

Hoo Sheau Peng
Judge

Koh Swee Hua Eddie (S H Koh & Co) for the plaintiff;
Chua Sui Tong (Rev Law LLC) for the defendant.

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