Harwindar Singh s/o Geja Singh *v* Michael Wong Lok Yung and another [2015] SGHC 132

Case Number	: Suit No 1087 of 2014 (Registrar's Appeal No 61 of 2015)
Decision Date	: 18 May 2015
Tribunal/Court	: High Court
Coram	: Chua Lee Ming JC
Counsel Name(s)	: Walter Ferix Silvester and Leow Wei Xiang, Jeremy (Joseph Tan Jude Benny LLP) for the plaintiff; Khoo Boo Teck Randolph and Tan Huiru Sally (Drew & Napier LLC) for the first defendant.
Parties	: Harwindar Singh s/o Geja Singh — Michael Wong Lok Yung and another

Civil Procedure – Striking Out

Contract – Implied Contracts – Quantum Meruit

18 May 2015

Chua Lee Ming JC:

Introduction

1 Harwindar Singh s/o Geja Singh ("the Plaintiff") started this action against two defendants – Michael Wong Lok Yung ("the First Defendant") and GDS Global Limited ("GDS Global"). Both defendants applied to strike out the Plaintiff's claim. On 13 February 2015, the Assistant Registrar ("the AR") struck out the Plaintiff's claims against GDS Global but declined to strike out the Plaintiff's claims against the First Defendant. This was an appeal by the First Defendant against the AR's refusal to strike out the claim against him. I allowed the appeal and struck out the Plaintiff's claim against the First Defendant. The Plaintiff has appealed against my decision.

The Plaintiff's claim

2 The relevant entities are:

(a) GDS Global – GDS Global is an investment holding company listed on the SGX Catalist Exchange. The First Defendant is the Chairman and Chief Executive Officer of GDS Global. GDS Global was formerly known as GDS Global Pte Ltd and it was incorporated on 19 July 2012. On 25 March 2013, GDS Global Pte Ltd was converted into a public company under its present name. The Plaintiff pleaded in his Statement of Claim ("SOC") that GDS Global was known as Gliderol Doors (S) Pte Ltd prior to its listing, [note: 1] but Plaintiff's counsel conceded that this is wrong.

(b) Gliderol Doors (S) Pte Ltd ("GDS Singapore") – GDS Singapore was incorporated in Singapore on 1 September 1982. GDS Singapore became a wholly-owned subsidiary of GDS Global on 14 September 2012.

(c) Gliderol International (ME) FZE ("GME") – GME was incorporated in the United Arab Emirates ("UAE") on 23 January 2007. On 24 June 2012, GME became a wholly-owned subsidiary of GDS Singapore.

(d) Gliderol Doors LLC ("GDL") – GDL was incorporated in the UAE in September 2007 to market and install GME products in the UAE.

The above-mentioned companies are involved in the business of manufacturing and selling roller shutter doors.

3 Although the only employment pleaded in the SOC is the Plaintiff's employment with GME, the SOC includes a claim against the First Defendant for unfair dismissal. The Plaintiff's SOC, affidavits and written submissions also refer – at several points – to the First Defendant as the Plaintiff's employer. However, at the hearing before me, Plaintiff's counsel confirmed that the Plaintiff would not be proceeding on the basis that there existed an employment contract between the Plaintiff and the First Defendant.

4 Plaintiff's counsel confirmed that the Plaintiff's claim against the First Defendant is for loss and damage suffered as a result of the First Defendant's breach of his oral agreement with the Plaintiff. According to the Plaintiff, he met the First Defendant in September 2006. [note: 2] The Plaintiff stated that the First Defendant was aware that the Plaintiff, having worked and done business in the area for many years, was well-acquainted with the Middle East. The Plaintiff further stated that the First Defendant had represented himself as having control of GDS Singapore and orally proposed that the Plaintiff join him in expanding his roller shutter business in the Middle East. [note: 3]

5 Plaintiff's counsel submitted that the oral agreement between the First Defendant and the Plaintiff is pleaded in paras 9 and 10 of the SOC, which read as follows:

> 9. The [First Defendant] proposed a low starting salary and commission rate for the Plaintiff's [*sic*] in the expansion of the roller shutter business in the Middle East. The [First Defendant] promised the Plaintiff that once GDS Singapore and/or the companies to be incorporated with a view to expansion of the roller shutter business in the Middle East (later on GME and/or GDL) were sold or listed, the Plaintiff *would make a lot of money*.
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> Particulars
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> a. If GDS Singapore and/or the companies to be incorporated with a view to expansion of the roller shutter business in the Middle East (later on GME and/or GDL) were sold, the [First Defendant] said the Plaintiff would be paid *a lump sum to make up for the loss in salary that he was suffering now*.
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> b. If GDS [Singapore] and/or the companies to be incorporated with a view to expansion of the roller shutter business in the Middle East (later on GME and/or GDL) were listed, the Plaintiff would be *paid a lump [sum] as would all senior management of the said companies*.
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> c. On top of that, in the listing scenario described above, the Plaintiff would be retained by the Gliderol group of companies in a *senior management position and also be given a significant salary increase to match his true market value*.
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> 10. The Plaintiff agreed to the above and was paid 15,000 AED per month with 2% commission on the total annual turnover of the company.
>
> [emphasis added in italics]

6 It is important to note that a condition precedent in para 9(a) of the SOC is the *sale* of "GDS Singapore and/or the companies to be incorporated with a view to expansion of the roller shutter business in the Middle East (each, a "Relevant Company")." In contrast, the condition precedent in both paras 9(b) and (c) is the *listing* of a Relevant Company.

7 The Plaintiff alleges in his SOC that he rejected other job offers with salaries ranging from $22,000 to $27,000 per month and instead accepted the "extremely modest package" offered by the First Defendant because of the promises of future rewards should the Gliderol roller shutter business do well. [note: 4] The Plaintiff alleges that he was employed by GME. [note: 5] The Plaintiff was appointed a director of GME in 2012. [note: 6]

8 The First Defendant denies the existence of any oral agreement and avers that the Plaintiff was not employed by GME but had only provided consultancy services to GME. [note: 7] Further, the First Defendant states that the Plaintiff voluntarily resigned as a director of GME on 14 January 2013. [note: 8]

The First Defendant's application

9 The First Defendant applied to strike out the Plaintiff's SOC under O 18 r 19(a), (b), and/or (d) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), and/or the inherent jurisdiction of the court. Before me, First Defendant's counsel submitted as follows:

(a) The SOC discloses no reasonable cause of action as the terms of the oral agreement in para 9 of the SOC are too vague to constitute a valid contract.

(b) In any event, the Plaintiff's claim is scandalous, frivolous or vexatious, and/or an abuse of process because the Plaintiff is bringing the claim for a collateral purpose.

(c) Even if the Plaintiff's claim were not struck out, paras 14, 17–30 and 34 of the SOC should be struck out as they are not relevant and are embarrassing, scandalous, frivolous and vexatious.

Whether the SOC discloses a reasonable cause of action

10 It is not disputed that a pleading will only be struck out under O 18 r 19(1)(a) if it fails to make out a reasonable cause of action without reference to other evidence: *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 at [112]. That said, the SOC has to be read with two things in mind: (a) the Plaintiff's concession that GDS Global and GDS Singapore are two separate entities; and (b) the Plaintiff's confirmation that his claim against the First Defendant is based solely on the terms of the oral agreement pleaded in paras 9 and 10 of the SOC.

11 The First Defendant submitted that the SOC does not disclose any reasonable cause of action as (a) the alleged oral agreement is void for uncertainty; and (b) the Plaintiff has no valid *quantum meruit* claims.

Whether the oral agreement is void for uncertainty

12 The First Defendant submitted that the terms of the oral agreement in para 9 of the SOC are too vague to constitute a valid contract. The First Defendant referred to the following passage in *Rudhra Minerals Pte Ltd v MRI Trading (formerly known as CWT Integrated Services Pte Ltd)* [2013] 4 SLR 1023 ("*Rudhra Minerals*") at [32]:

> … For a contract to be valid and enforceable, its terms must be certain and the contract must be complete. A term that is "uncertain" exists but is otherwise incomprehensible; an agreement that is "incomplete" has certain terms that do not (but should) exist and the non-existence of these terms make the agreement incomprehensible: *The Law of Contract in Singapore* (Andrew Phang Boon Leong ed) (Academy Publishing, 2012) at para 03.145. A term is also uncertain and a contract incomplete where there is no objective or reasonable method of ascertaining how the term or agreement is to be carried out, thus rendering the agreement unworkable. …

13 In *Rudhra Minerals*, the court held that the choice of load port surveyor was essential to the contract for the purchase of coal. The load port surveyor's role was to analyse samples of the cargo for conformity with contractual specifications. The contract for the purchase of coal was held to be void for uncertainty and incompleteness as the parties had not agreed on the choice of load port surveyor although they had narrowed down the choice to three load port surveyors.

14 The First Defendant also relied on *Grossner Jens v Raffles Holdings Ltd* [2004] 1 SLR(R) 202 ("*Grossner Jens*"), in which the court held there was no binding brokerage contract as the parties had failed to agree on crucial terms such as the scope of brokerage services to be performed and the remuneration to be paid. The court held at [14]:

> … Depending on circumstances, negotiating parties may enter into a binding contract even though there are a few terms which have yet to be agreed upon. This was recently reiterated by the Court of Appeal in *The Rainbow Spring* [2003] 3 SLR(R) 362. However, the position is very different where important terms have not been agreed upon for as Maugham LJ put it in *Foley v Classique Coaches Ltd* [1934] 2 KB 1 at 13, "unless all the material terms of the contract are agreed there is no binding obligation". In the present case, the parties did not reach agreement on crucial terms such as the remuneration for [the broker] if he succeeds in brokering the sale of Swissotel to Raffles and the scope of the services to be rendered by [the broker].

15 The First Defendant submitted that, with respect to para 9 of the SOC, the term that the Plaintiff would "make a lot of money" is clearly too vague. The First Defendant further submitted that the particulars in para 9 are equally uncertain for the following reasons:

> (a) Paragraph 9(a) does not state what the "loss in salary" should be nor how it is to be computed. The employment offers which the Plaintiff claimed to have rejected only provide a range of possible salaries and there is no agreed mechanism to decide at which point within that range the Plaintiff's salary should fall.
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> (b) Paragraph 9(b) does not state what the lump sum to be paid should be or who in "senior management" the Plaintiff should be pegged to. There is also no agreed mechanism on how the lump sum should be computed.
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> (c) Paragraph 9(c) does not state what "senior management position" the Plaintiff should be appointed to. There is no agreed mechanism to decide how this "senior management position" is to be identified; neither is there a mechanism to determine the Plaintiff's "true market value".

16 The Plaintiff did not dispute the materiality of the terms set out in para 9 of the SOC but submitted that they are not uncertain even though some terms have not been worked out in detail. In his written submissions, the Plaintiff accepted the principle that where a term is to be determined in the future, the contract itself must provide the means for the ascertainment of that term. However, the Plaintiff's written submissions did not explain how the omitted details in para 9 of the SOC are to be ascertained.

17 Plaintiff's counsel was unable to clarify this during his oral submissions. With respect to para 9(a) of the SOC, he referred to the range of salary offers that the Plaintiff claimed to have received and rejected. However, he conceded that the terms of the pleaded oral agreement did not specify who was to decide precisely how much the Plaintiff was to be paid.

18 As for para 9(b) of the SOC, Plaintiff's counsel submitted that the lump sum would be pegged to what "senior management" is given. However, he was unable to say who comprised "senior management" or how it was to be decided which individual in "senior management" the Plaintiff was to be pegged to for purposes of his entitlement to be paid a lump sum.

19 Plaintiff's counsel was also unable to shed light on which company in the Gliderol group the Plaintiff was to be given a "senior management position" in for purposes of para 9(c) of the SOC. He was also unable to explain which "senior management position" the Plaintiff was to be retained in or the salary increment the Plaintiff was to receive. All he could say was that parties would have to agree later on which senior position the Plaintiff should be given.

20 I agreed with the First Defendant's submissions that the terms of the oral agreement as set out in para 9 of the SOC are too uncertain to constitute a binding agreement. Essential details are missing and there is no mechanism to ascertain these details. Plaintiff's counsel's submission in respect of para 9(c) that parties would have to "agree later" was an admission that there was nothing more than an agreement to agree. It is trite that an agreement to agree is not enforceable. I would add that although the Plaintiff had provided a range of salaries, that does not suffice to make the term in para 9(a) of the SOC certain since there is no agreed mechanism to decide on a salary *within* that range. This is similar to *Rudhra Minerals*, where the choice of load port surveyors had been narrowed down to three but that did not save the contract since there was no agreed mechanism as to how the choice was to be made. The alleged oral agreement is therefore void for uncertainty.

21 I should point out that, during the hearing before me, both parties seemed to have proceeded on the assumption that the listing of GDS Global satisfied the condition precedent in paras 9(b) and (c) of the SOC. However, in view of the Plaintiff's mistake as to the relationship between GDS Global and GDS Singapore (see [2(a)] above), it is not clear whether the expression "GDS Singapore" in the SOC (in particular para 9) is intended to be a reference to GDS Global Limited or to Gliderol Doors (S) Pte Ltd. This is an important point. GDS Global was listed; Gliderol Doors (S) Pte Ltd was not. It is also not clear whether GDS Global is a Relevant Company for the purposes of paras 9(b) and (c) since it is unclear from the SOC whether GDS Global had been "incorporated with a view to expansion of the roller shutter business in the Middle East". Furthermore, it is not clear whether the Relevant Companies are limited to only to GDS Singapore, GME and GDL. Since these issues were not raised or argued during the hearing before me, they did not feature in my decision and I shall say no more about them.

Whether the quantum meruit claims are valid

22 The Plaintiff submitted that, although the sums to be paid under para 9 of the SOC are not quantified, he has pleaded *quantum meruit* and this should allow him to recover a reasonable sum as remuneration for work done for the First Defendant. [note: 9] It is necessary to first understand how the Plaintiff's claim in *quantum* meruit is pleaded.

23 Paragraphs 35-36 of the SOC read as follows:

> 35 As a result of the [First Defendant's] breaches of promises made to the Plaintiff, the Plaintiff has suffered loss and damage.

36 The Plaintiff was never paid a lump sum payout on listing as promised. He was never given the salary increase to match his contribution and experience as promised. The Plaintiff was also terminated without cause or notice. The Plaintiff has therefore suffered loss as he had acted in reliance of the [First Defendant's] promises.

PARTICULARS

a. The Plaintiff worked for 7 years and 2 months on a reduced salary in reliance on the [First Defendant's] promise that he would be adequately compensated. The Plaintiff received only AED15,000 for the most part of this period when his salary should have been approximately AED60,000 or more.

b. The Plaintiff sacrificed bonuses over the course of this 7 years and 2 months during which the average bonus payment in Dubai was AED180,000 per year.

c. The Plaintiff was unfairly dismissed from his employment without cause or notice. The Plaintiff is of the view that the minimum notice that an employee of the Plaintiff's position would be entitled to receive is 3 months.

24 The reliefs claimed by the Plaintiff include the following heads of claim:

1. A sum of AED45,000 per month over the course of 7 years and 2 months which works out to the sum of AED3,870,000 or SGD1,336,772.64 *in the alternative, quantum meruit for this period of employment*;

2. A bonus payment of 3 months per year over the course of 7 years and 2 months based on the average salary of AED60,000 per month which works out to AED429,999.99 or SGD148,553.70 *in the alternative, quantum meruit for this period of employment*;

3. The payout on listing of [GDS Global] that an employee of the Plaintiff's seniority would have received;

4. Damages for unfair dismissal;

[emphasis added]

25 There are two preliminary points to note:

(a) The Plaintiff has confirmed that his claim is based solely on the oral agreement pleaded in para 9 of the SOC, and not on any employment contract. The claims relating to unfair dismissal are therefore to be disregarded.

(b) The amount of AED429,999.99 stated in the second head of claim seems to have been computed wrongly. Bonus of 3 months per year over a period of 7 years 2 months at AED60,000 per month would work out to approximately AED1,290,000. The amount stated in the Plaintiff's claim seems to have been computed based on a bonus of AED60,000 (*ie*, one month) per year.

26 The first and second heads of claim are clearly referable to the Plaintiff's losses particularised in paras 36a and b of the SOC (see [23] above). In turn, these losses are referable to the Plaintiff's claims for "loss in salary" pursuant to the term pleaded in para 9(a) of the SOC (see [5] above). The

Plaintiff's claims in *quantum meruit* are thus alternative claims in respect of para 9(a) of the SOC.

27 The way the Plaintiff's *quantum meruit* claims arise seem to be as follows. The Plaintiff first claims that, under the term in para 9(a) of the SOC, the agreement was to compensate him for his loss of salary which is to be quantified based on the difference between the salary he alleges he was paid by GME and the salary that he alleges he could have earned if he had taken alternative employment. In the alternative, the Plaintiff claims in *quantum meruit* on the ground that the agreement under para 9(a) was to pay him an unquantified sum to compensate him for his loss in salary. Since the amount has not been quantified, he is entitled to be paid a reasonable sum.

28 The First Defendant submitted that there cannot be a claim in *quantum meruit* since the terms of the oral agreement in para 9 of the SOC expressly provide for specific rewards to the Plaintiff upon the sale or listing of a Relevant Company. The First Defendant relied on certain passages in *Grossner Jens* at [41] and *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR(R) 655 at [123] ("*Rabiah*"). These passages stand for the proposition that there cannot be a claim in *quantum meruit* as to matters that are expressly covered by a contract. In my view, this argument by the First Defendant fails. The Plaintiff's argument is that he is entitled to payment of a reasonable sum on the ground that under para 9(a), the agreement to pay him a lump sum for his loss in salary is silent as to the quantum. This *quantum meruit* claim is contractual in nature. As explained in *Rabiah* at [123]:

> …Where there is an express or implied contract which is silent on the quantum of remuneration or where there is a contract which states that there should be remuneration but does not fix the quantum, the claim in quantum meruit will be contractual in nature.

29 The First Defendant next submitted that the Plaintiff cannot claim an agreement to be compensated a reasonable sum as this is inconsistent with his claim that there is an express agreement to compensate him specific sums on the happening of the sale or listing of a Relevant Company. The First Defendant relied on *Ng Chee Weng v Lim Jit Ming Bryan* [2011] 1 SLR 457. In that case, the Court of Appeal held as follows (at [37]):

> … While the pleader should be free to plead inconsistent causes of action in the alternative, the inconsistency cannot – particularly in relation to the facts pleaded – offend common sense. One obvious example of an inconsistency that will offend common sense is when the pleader has actual knowledge of which alternative is true…

In my view, this submission by the First Defendant also fails. I do not see any inconsistency that offends common sense in the Plaintiff's claims in *quantum meruit* (see [27] above).

30 However, that is not the end of the matter. As stated in [6], a condition precedent under para 9(a) of the SOC is the *sale* of a Relevant Company. As can be seen from the SOC, the Plaintiff's case is premised on the listing of GDS Global and not on the sale of a Relevant Company. Any entitlement that the Plaintiff may have to any payment under para 9(a) simply has not arisen since the condition precedent has not been met. In the circumstances, it is clear that the Plaintiff's *quantum meruit* claims are obviously unsustainable.

Whether the Plaintiff's claim is scandalous, frivolous or vexatious, and/or an abuse of process

31 It is well established that a claim may be struck out for being frivolous or vexatious under O 18 r 19(1)(b) if it is legally or factually unsustainable (*The "Bunga Melati 5"* [2012] 4 SLR 546 at [38] and [39]). A claim that is obviously unsustainable would also be struck out for being an abuse of process under O 18 r 19(1)(d). For the same reasons discussed earlier (see [20] and [30] above), the

Plaintiff's claims are legally unsustainable and may also be struck out under O 18 r 19(1)(b) and/or (d).

32 However, the First Defendant relied on O 18 r 19(1)(b) and (d) for a different reason. The First Defendant submitted that the claim should be struck out on these grounds because the Plaintiff is bringing the claim for a collateral reason. The First Defendant submitted that the Plaintiff had elected to sue the First Defendant in Singapore because he wished to avoid suing GME in the UAE. The First Defendant averred that the Plaintiff was a sponsored employee of a company called Sujai General Trading LLC and could not legally work for any other entity. On that basis, he argued that the Plaintiff would run the risk of being exposed to UAE laws and penalties for being unlawfully employed by GME should he bring suit in the UAE.

33 The First Defendant also submitted that statements in the Plaintiff's affidavits revealed the Plaintiff's propensity for making wild and baseless claims, supporting the argument that the Plaintiff was abusing the court process in this case.

34 I disagreed with the First Defendant's submissions. First, even if it were true that the Plaintiff intended to avoid suing GME in the UAE, that did not mean that his claim against the First Defendant in Singapore is therefore scandalous, frivolous, vexatious or an abuse of process. The Plaintiff's claim against the First Defendant falls to be decided on its merits. If the Plaintiff does not have a good claim against the First Defendant, his claim fails on that ground. If the Plaintiff has a meritorious claim against the First Defendant, I did not see why it was relevant whether the Plaintiff had deliberately intended to avoid suing GME in the UAE. Second, the fact that the Plaintiff had (allegedly) made baseless claims cannot of itself be determinative of the fact that the *present claim* was an abuse of process.

Whether paragraphs 14, 17–30 and 34 of the SOC should be struck out

35 The First Defendant submitted that even if the Plaintiff's claim were not struck out in its entirety, paras 14, 17–30 and 34 of the SOC should nevertheless be struck out as they are not relevant and are embarrassing, scandalous, frivolous and vexatious.

36 The paragraphs in question make allegations of impropriety and/or illegal conduct against the First Defendant, his lawyers and other advisors. The First Defendant's submission was that these allegations were not necessary for purposes of the Plaintiff's claim. In view of my decision to strike out the Plaintiff's claim, it is not necessary for me to decide this point.

Conclusion

37 The alleged oral agreement pleaded in para 9 of the SOC is clearly void for uncertainty so the Plaintiff's claims, which are founded on this agreement, are legally unsustainable. Further, the Plaintiff's claims in *quantum meruit* are obviously unsustainable as pleaded. In the circumstances, I allowed the appeal and ordered that the Plaintiff's claim be struck out. Consequently, I ordered that the Plaintiff pay the First Defendant's costs here and below fixed at $5,500 plus reasonable disbursements.

[note: 1] SOC at para 3.

[note: 2] SOC at para 7.

[note: 3] SOC at para 8.

[note: 4] SOC at para 12.

[note: 5] SOC at para 13.

[note: 6] SOC at para 20.

[note: 7] Defence at paras 11 & 15.

[note: 8] Defence at para 8.3.

[note: 9] Pf's Written Submissions at para 67.