U-Hin Manufacturing Pte Ltd and others *v* BT Engineering Pte Ltd and another [2010] SGHC 240

Case Number : Suit No 893 of 2008

Decision Date : 18 August 2010

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Mathiew Christophe Rajoo (DennisMathiew) for the plaintiffs; Mark Tan Chai Ming and Low Yi Yang (Rajah & Tann LLP) for the defendants

Parties : U-Hin Manufacturing Pte Ltd and others — BT Engineering Pte Ltd and another

Contract

18 August 2010 Judgment reserved

Lai Siu Chiu J:

1 This was a claim by U-Hin Manufacturing Pte Ltd ("the first plaintiff"), U-Hin Engineering Pte Ltd ("the second plaintiff") and Wong Manufacturing Pte Ltd ("the third plaintiff") ("collectively the plaintiffs") against BT Engineering Pte Ltd ("the first defendant") and BGL Engineering Pte Ltd ("the second defendant") ("collectively the defendants") for the sum of $1,823,258.49 ("the outstanding sum") on unpaid invoices for labour and services supplied by the plaintiffs to the first defendant for the construction of a topside module for a vessel.

The facts

2 Although the plaintiffs are three separate Singapore incorporated entities, they share a common office and have one common shareholder, *ie* Wong Shiu Wong ("Wong") who is the managing-director of the plaintiff of which Wong's brother Wong Sui Weng ("Weng") is the general manager. The plaintiffs are primarily in the business of ship-repair and fabrication of steel works for tankers and other ocean-going vessels.

3 The first defendant is in the specialised business of constructing (for the oil and gas industries) topside modules of vessels, processing equipment and structures. Its managing-director at the material time was Gay Beng Toong ("BT"). The first defendant was incorporated on 6 March 1986 as a family company owned by BT, his sister and wife. On 23 November 2006, the first defendant was sold to an American listed company known as Universal Compression Holdings Inc ("Universal"). Subsequently Universal merged with Hanover Compression Company and Exterran Holdings Inc. ("Exterran"), also a listed entity in the United States, and became the owner of the first defendant. BT remained the managing-director of the first defendant notwithstanding the change in ownership while his younger brother Ngay Ming Kok ("Gary") was at all material times the business development manager of the first defendant.

4 The shareholders of the second defendant are Gary's wife Lucy Tan and one Er Nyong Song. Gary is also the general manager of the second defendant. Although the business of the second defendant was stated (at the time of its incorporation on 25 August 2006) to be marine engineering, it was the defendants' case that the second defendant's specific role was to effect advances and loans to the first defendant's contractors including the plaintiffs.

5 According to BT, the first defendant's business is labour-intensive and starting from about 2000, the first defendant had subcontracted to Wong's companies various projects. Initially, the first defendant subcontracted to Wong's firm known as Sunny Construction. After their incorporation, the first defendant subcontracted projects to the plaintiffs. According to BT, it did not matter to the first defendant which of the plaintiffs was its subcontractor since all three companies effectively belonged to Wong.

6 In 2006, the first defendant subcontracted to the plaintiffs its projects numbered 1008, 1026, 1027, 1035, 1036 and 1044 and 1045 (collectively "the projects"). Project 1045 ("project 1045") was subsequently awarded to the plaintiffs in 2008. Besides labour, the second plaintiff also provided hand-tools and fabrication materials for project 1045. The plaintiffs' workers carried out work on the projects and on project 1045 at the premises of the first defendant. It was the plaintiffs' case that each of its labourers was issued unique identification numbers ("UINs") by the first defendant that enabled the workers to clock-in and clock-out using their UINs and thumbprints. The accounts department of the first defendant monitored the time spent by the plaintiffs' workers by issuing a daily manpower list. The plaintiffs (through Weng) submitted invoices (together with timesheets) to the first defendant fortnightly based on the daily manpower lists. Usually, the defendants would pay the plaintiffs within five days of the issuance of the invoices.

7 It was the plaintiffs' case that prior to its sale to Universal, the first defendant did not issue purchase orders ("PO") to the former. However, after Exterran became the owner, the first defendant issued POs to the plaintiffs upon the work being completed.

8 According to the plaintiffs' version (as given in Weng's affidavit of evidence-in-chief ["AEIC"]), Weng was told by BT in 2007 that the first defendant was losing money (of about $8m) on project 1008 but BT could not divulge this to Universal as otherwise BT would not achieve a higher price for the first defendant. To conceal such losses, Weng alleged that BT called him to a meeting and requested Weng to issue credit notes so that the expenses incurred by the first defendant on project 1008 could be reduced thereby erasing the losses. BT promised to pay the plaintiffs all the sums stated in the credit notes by utilising funds from future projects that were profitable.

9 Based on BT's assurances, Weng deposed that the second plaintiff issued the following credit notes which were backdated at BT's request:-

	Date	**Number**	**Amount $**
(a)	28 June 2007	CN027/2007/UHIN/BT	550,228.73
(b)	03 January 2008	CN001/2008/UHIN/BT	198,771.27

The defendants agreed that the first credit note was actually issued on 12 December 2007 but asserted that the second credit note was not backdated. Gary was alleged by the plaintiffs to have stopped making payment on the plaintiffs' invoices. This resulted in the plaintiffs being unable to pay their workers. When BT requested him to provide additional subcontract works for project 1045, Weng said the plaintiffs could not. As a result, Gary made cash advances of $312,000 to Wong so that the plaintiffs could carry on working on project 1045. Weng deposed that Gary wrongly asked for the return of the advances even though that meant that the plaintiffs had paid the salaries of their workers without receiving any payment from the first defendant.

10 Weng alleged that as the first defendant could not pay the plaintiffs due to its impending sale

to Universal, Gary used the second defendant to make advances to the plaintiffs. Weng further alleged that BT instructed the plaintiffs and other subcontractors of the first defendant to stop issuing invoices to the first defendant and to issue them instead to the second defendant.

11 BT on the other hand deposed that from the very beginning of their relationship, Wong constantly requested the first defendant for advances/loans for subcontracted jobs. Initially, BT acceded to the request to help Wong with his cash-flow. However over time, BT discovered that the practice of asking for advances became the *modus operandi* of the plaintiffs/Wong's operations. Other subcontractors of the first defendant also requested cash advances but to a lesser extent than the plaintiffs/Wong. BT was concerned about the practice and after consulting Gary, the brothers decided that a mechanism had to be instituted to verify that the quantum of advances/loans requested was justified as the first defendant's practice of making advances had thus far been too liberal. That decision led to the incorporation of the second defendant in August 2006. At that time, it was uncertain whether the impending sale to Universal of the first defendant would materialise. The sale was eventually concluded on 26 November 2006.

12 After the incorporation of the second defendant, Gary was tasked with handling the invoices issued by contractors to the first defendant. He would scrutinise the invoices for over-claims and assess whether a contractor's request for advances should be granted and to what extent. The second defendant followed up by disbursing payments to contractors which sums the first defendant would later reimburse.

13 Against the above backdrop, BT deposed in his AEIC that the defendants made the following payments to the plaintiffs:-

	Date	Nature of payment	Amount $
(a)	3 April 2008	Advance	152,000.00
(b)	21 May 2008	Advance	15,000.00
(c)	22 May 2008	Advance	312,000.00
(d)	31 May 2008	Advance	10,000.00
			489,000.00

of which the plaintiffs had repaid the first advance ($152,000).

14 As it was against the policy of Universal to make cash advances, BT deposed that Gary instructed the plaintiffs not to issue invoices to the first defendant but to issue them to the second defendant so that the latter could reconcile the advances it had made against the plaintiffs' invoices in its books of accounts.

15 BT admitted that the plaintiffs did issue the two credit notes set out in [9] above but, contrary to Weng's testimony, they were issued due to the plaintiffs' breaches of the subcontracts for the projects. For convenience however, both credit notes only referred to project 1008 as BT thought payment for the other projects had more or less been completed. He denied Weng's allegation that the defendants had promised but failed to pay the second plaintiff on other projects in exchange for the credit notes. BT pointed out that the defendants did give full credit for the first credit note of $550,228.73 but only $35,741.76 for the second credit note, leaving a balance of $163,029.51 in the defendants' favour.

16 BT deposed it was patently untrue for the plaintiffs to allege that he had asked Weng to deliberately reduce the liabilities of the first defendant so that the company could be sold to Universal at a higher price. He pointed out that it made no sense for him to transfer the first defendant's liabilities to the second defendant as the sale to Universal was generally based on 75% of the first defendant's earnings before interest, depreciation, taxes and amortization ("EBIDTA") for the fiscal years ending 31 March 2007, 2008 and 2009 and, he had wholly funded the second defendant. Transferring the liabilities to the second defendant only meant he would have to bear the liabilities personally whereas leaving them with the first defendant made no significant impact on the consideration he would receive from Universal because of the manner in which the sale price to Universal was calculated. The plaintiffs' allegation could not be true in any event because project 1008 was never unprofitable – in fact it made a profit of $7,442,928.51 for the first defendant (for which BT produced statements of accounts to the court).

17 BT revealed that from 2006 onwards, the plaintiffs committed repeated breaches of the works under the projects and project 1045. These included placing unsuitable/unskilled or insufficiently skilled workers on jobs and providing poor or non-existent supervision of workers. BT ascertained from his staff that the reason for the plaintiffs' deteriorated standards in workmanship was due to the fact that they were recruiting unskilled labourers and then training them to do jobs meant for skilled workers, in order to cut costs. The plaintiffs also overcharged the second defendant by invoicing for 50 workers when in reality only 25 workers were supplied to the first defendant.

18 The substandard labour provided by the plaintiffs had an adverse impact on the first defendant in particular on project 1008. That project was a $30 million contract awarded by Petreco International Inc for the construction of three process modules which were ultimately to be shipped to Brazil. Due to the plaintiffs' poor workmanship which also delayed the project, additional work amounting to US$2.8 million had to be done in Brazil. As a result, the first defendant's expected revenue of US$27,480,426.00 from project 1008 was reduced to US$24,680,426.00.

19 In addition, the defendants came to know that the second plaintiff had failed to pay Goods and Services Tax ("GST") when the first defendant was appointed the second plaintiff's agent under the GST Act by a letter from the Inland Revenue Authority of Singapore ("IRAS") dated 17 March 2008, for outstanding GST amounting to $416,687.63. After receipt of the aforesaid letter from IRAS, the first defendant remitted a sum of $85,275.69 to IRAS on or about 29 May 2008 and was released as the second plaintiff's agent. Subsequently, the first defendant received (between 17 December 2008 and 5 February 2010) five more similar letters from the IRAS. However, no payment was made by the first defendant to IRAS as the second plaintiff's appointed agent as, by 15 July 2008, the parties (according to the defendants but denied by the plaintiffs) had entered into a compromise agreement with the result that no monies were subsequently due to the second plaintiff from the first defendant.

The Compromise Agreement

20 As a result of the poor quality of work provided by the plaintiffs (which worsened over time), the first defendant was reluctant to issue any further POs to the plaintiffs. BT and Gary thought it would be prudent to try to resolve the claims the parties had against one another, bearing in mind that the defendants had by then advanced $489,000 to the plaintiffs (see [13]). The opportunity to do so presented itself when Weng called at the defendants' premises on 15 July 2008 ("the meeting") to inquire about payment on outstanding invoices.

21 At the meeting (at which Gary was present), BT told Weng the defendants were willing to settle any and all outstanding invoices and work done by the plaintiffs by the payment of a global sum to the plaintiffs, in view of the fact that the projects were drawing to a close. BT invited Weng to

propose a figure. After doing some mental calculations, Weng asked for $450,000 which BT and Gary understood did not include GST.

22 The two brothers felt comfortable with the figure and indicated to Weng that $450,000 was acceptable. (Henceforth the $450,000 will be referred to as "the settlement sum"). However, they were not certain whether a variation claim of $122,017.17 under project 1035 and another variation claim of $80,000 under project 1045 had been settled by the defendants. It was therefore agreed between the parties that the settlement sum would be adjusted downwards if it was later confirmed that those variation claims had been paid. The parties further agreed that the defendants' advances of $489,000 would be repaid by the plaintiffs.

23 In the presence of Weng and Gary, BT wrote out the following handwritten agreement there and then (henceforth referred to as "the Compromise Agreement"):-

> Final settlement with "U-Hin" and "Wong Eng'g" on all outstanding invoices/payment/claims including but not limited to BTG/1035, 1043, 1044, 1045 etc @ $450,000 pending the confirmation of BTG/1035 VO claims of $122,017.17 and BTG/1045 VO claims of $80,000. The variance of the confirmation amount pending shall be adjusted in the provisional amount of $450,000/-.
>
> Signed (BT's signature)
>
> 15/07/08
>
> Notes
>
> 1) The above is subjected [sic]to the return of all advance payments and CN amounting to $582,771 prior to the issue of the final ~~payment~~ settlement payment.
>
> Signed: (Wong Sui Weng's signature)
>
> 15/07/08
>
> S0244187/E [Wong's NRIC No.]

BT revealed that he had made a mistake in the credit note amount of $582,771 stated in the Compromise Agreement; it should have been $550,228.73 but he could not recall how his mistake came about.

24 BT deposed that at the meeting, the parties agreed on a proper paper trail to evidence the sums paid by the defendants to the plaintiffs for work done. In particular, the parties agreed that the defendants would issue POs totalling $939,000 *viz* the settlement sum plus $489,000 for loans and/or advances and payments to the plaintiffs who would in return issue invoices for the same amounts to the defendants which the defendants would pay. Simultaneously, the plaintiffs would repay the loans and/or advances that had been made to them.

25 After the Compromise Agreement had been signed, Gary and BT checked with the defendants' projects and accounts departments on the actual sums owed to the plaintiffs under projects 1035

and 1045. They were informed that the first defendant had paid $122,017.17 (excluding GST) for project 1035 but did not make payment on project 1045. However in the course of these proceedings, BT discovered that the first defendant had not in fact paid $122,017.17 on project 1035. What the first defendant did was to set-off the sums owed on project 1035 with the plaintiffs' credit note dated 26 May 2008 for $117,427.93 (*viz* $109,745.73 less GST). The defendants realised their mistake only in February 2010. However, the plaintiffs were in no way prejudiced by the defendants' error – BT pointed out that the POs issued pursuant to the Compromise Agreement totalled $824,965.26 (*viz*, $939,000 less $114,034.74 which the defendants mistakenly thought they had paid to the plaintiffs) whereas the plaintiffs were actually owed $4,289.01 more. Consequently, the defendants owed the sum of $393,866.07 under the Compromise Agreement, not $389,600.

26 After the Compromise Agreement was signed, payment of $197,995.20 by the defendants was immediately made to the second plaintiff on the day itself *viz* 15 July 2008. On the same day, in performance of the Compromise Agreement, the plaintiffs repaid $152,000 on the first advance made to them on 3 April 2008 (see [13] above). This was followed by the first defendant's issuance of a PO on 23 July 2008 to the second plaintiff for the sum of $237,393 coupled with payment. On 3 October 2008, the first defendant issued another PO to the first plaintiff for $389,600. However, no payment was made by the defendants on this PO because the plaintiffs did not continue to repay the advances that had been extended by the defendants (although BT noted that the plaintiffs' statement of claim had given credit for $312,000; this figure corresponded to the third advance made by the defendants on 22 May 2008). Consequently, the plaintiffs still owed the defendants $163,029.51 for advances/loans.

27 BT deposed he was surprised when the plaintiffs commenced this action against the defendants as the plaintiffs' original claim for $416,872 comprised of $389,600 (being the amount in the last PO issued by the defendants) inclusive of GST. The defendants no longer owed any sums to the plaintiffs as a result of the Compromise Agreement.

28 BT found it even more galling and shocking that after the plaintiffs' unsuccessful summary judgment application, they amended their claim against the defendants to $2,185,131.79 to include unpaid invoices issued by the plaintiffs. Even if such invoices were outstanding (which they were not), the same had been cancelled by the plaintiffs or they would have been subsumed in the Compromise Agreement. He accused the plaintiffs of fabricating such claims.

29 In his AEIC, Gary went into considerable detail to explain why the plaintiffs' claim for $2,185,131.79 on unpaid invoices had no merit. Gary echoed BT's contention that the plaintiffs' invoices had been subsumed in the Compromise Agreement or cancelled or already paid. Gary deposed that the claim of $2,185,131.79 against the first defendant comprised of (i) $867,237.12 plus GST of $60,706.60; (ii) $1,185,990.07; and (iii) $71,198.00. The only claim against the second defendant was for $261,870.21.

30 As the former business manager of the first defendant and the general manager of the second defendant, Gary deposed he worked very closely with the projects and accounts departments of both companies and was very familiar with the invoices which were the subject of the plaintiffs' claim. Based on the records of the defendants' accounts department, Gary maintained that the plaintiffs' invoices had either been paid or were cancelled or were subsumed in the Compromise Agreement or were fabricated.

31 In support of his assertion that the plaintiff had been paid $416,887.12 by the first defendant (according to the records of its accounts department and corroborated by payment vouchers signed by Wong), Gary exhibited cheque images to some of the invoices which were stamped PAID by his

accounts department. Gary relied on BT's AEIC to say that one invoice for $20,000 (invoice 045/2007 dated 17 December 2007) had been cancelled by oral agreement between BT and Wong in early 2008 because it should have been billed to another job.

32 Gary identified the following invoices as having been wrongly issued by the plaintiffs:

	Invoice	Date	Amount $
(1)	0022/2008	11.2.2008	34,368.40
(2)	0023/2008	11.2.2008	8,413.95
(3)	0024/2008	11.2.2008	18,084.07
(4)	0026/2008	11.2.2008	2,706.03
(5)	0035/2008	22.2.2008	17,060.35
(6)	0036/2008	22.2.2008	4,393.42
(7)	0037/2008	22.2.2008	23,412.94
(8)	0038/2008	22.2.2008	1,604.73
(9)	0039/2008	22.2.2008	4,067.07
(10)	0056/2008	19.3.2008	702.99
(11)	0064/2008	28.3.2008	8,677.17
(12)	0065/2008	28.3.2008	13,511.96
(13)	0066/2008	03.4.2008	4,839.08
(14)	0067/2008	03.4.2008	10,136.65
(15)	0068/2008	03.4.2008	3,013.12
(16)	0069/2008	03.4.2008	972.10
(17)	0070/2008	03.4.2008	8,035.70
(18)	0072/2008	15.4.2008	282.48
			164,282.21

Gary contended that the above jobs were not completed at the defendants' yard and were the subject of the Compromise Agreement.

33 Gary deposed that the plaintiff's invoice no. 0033/2008 dated 22 February 2008 for $47,037.20 was false as the defendants had paid the amount on 29 May 2008 as evidenced in the first defendant's payment advice. The same accusation was made as regards invoice 0094/2008 ($663,400) on which the plaintiffs claimed a balance of $351,400 purportedly for supplying manpower to job BT/1045. The first defendant's accounts department informed Gary that no PO for $663,400 was issued. Accordingly no invoice should have been issued by the plaintiffs for the amount. The only POs for job project 1045were PO35014 for $830,320 and PO37556 for $254,010.51 issued on 30 January 2008 and 18 July 2008 respectively. As for PO35014, the plaintiffs only did work up to the value of $823,857.20 for which the defendants paid. For PO37556, the defendants were paid in full on 23 July 2008. Like BT, Gary noted that the defendants had been given credit for $312,000 on 2 September 2008 which sum coincided with the advance made to the plaintiffs by the defendants on

22 May 2008 (see [13] above). Gary accused the plaintiffs of fabricating the invoice for $663,400. He deposed that the defendants had paid the plaintiffs $1,045,122.86 which figure, after factoring in the plaintiffs' first credit note in [9] was increased to $1,595,351.59. His figures were not disputed by Weng during cross-examination.

34 Gary corroborated BT's account on the genesis of the second defendant and the purpose of its incorporation. He reiterated BT's testimony that the other invoices claimed by the plaintiffs were subsumed in the Compromise Agreement. It would not be necessary therefore to refer to Gary's evidence in that respect.

The pleadings

35 It would also not be necessary to set out the parties' pleadings either as the same was alluded to earlier. It is to be noted however that the plaintiffs' statement of claim was amended twice. Initially, the first plaintiff made a claim for $416,872 for its final invoice no. 0061/2008 based on the defendants' PO No. 38967 dated 3 October 2008 ($389,600 plus 7% GST amounting to $27,272). Subsequently, the second and third plaintiffs were made parties to the action. The statement of claim was amended *in extenso* and the claims were increased to $867,237.12 (not including 7% GST) as being owed to the first plaintiff by the first defendant, $1,185,990.07 as being owed by the first defendant to the second plaintiff, $71,198 as being owed by the first defendant to the third plaintiff and $261,870.21 as being owed to the second plaintiff by the second defendant. The claims totalled $2,447,002.

36 At the commencement of trial, the plaintiffs amended and reduced their claim to the outstanding sum ($1,823,258.49). It was also established from Weng's testimony (at Notes of Evidence ("N/E") 53-54) that the first plaintiff was not registered for GST with the relevant authorities at the material time. Consequently, the first plaintiff was not entitled to claim any GST from the defendants, whether based on 7% or on any other rates.

37 I should add that the defendants have a counterclaim against the plaintiffs. The counterclaim in its final form was for the unpaid balance of $163,029.51 due under the second credit note issued by the plaintiffs in [9] above and for the three sums of $10,000, $50,000 and $20,000 initially advanced by Gary which debts were subsequently paid and taken over by the second defendant.

The evidence

(i) The plaintiffs' case

38 Weng and Wong were the plaintiffs' two key witnesses. As I have set out the plaintiffs' version of events in earlier paragraphs, I move straight to a review of the evidence adduced from the brothers in their cross-examination.

39 Weng (PW1) made significant concessions on the defendants' case when he was questioned by counsel for the defendants. First, he agreed that the meeting with BT and Gary was to settle all invoices of the plaintiffs on a lump sum basis. He then agreed that the discussions culminated in the Compromise Agreement (see N/E 31/32).

40 In his AEIC (para 33), Weng claimed that he agreed to accept $450,000 in full and final settlement of the plaintiffs' outstanding invoices on the basis that the defendants' cash advances in [9] would be written off. He alleged that after he had signed the Compromise Agreement, he reminded BT that the defendants were to repay the plaintiffs' credit notes from payments for future projects.

However, BT had responded that he did not want to pay the plaintiffs anymore. Counsel for the defendants pointed out to Weng that in view of BT's response, it was illogical of Weng to then contend (in his AEIC) that the Compromise Agreement (see [23]) was subject to the defendants' return of the credit note amounts. It is noteworthy that the Compromise Agreement only referred to the plaintiffs' obligation to *return* advances made by the defendants, there was no mention that the defendants had to *refund* the credit note sums of $550,228.73 to the plaintiffs (see [9]).

41 When the above fact was pointed out by counsel for the defendants during his cross-examination (at N/E 42),Weng took refuge in the excuse that in actual fact, he did not know what was written in the Compromise Agreement. Questioned by the court (at N/E 43) whether he had signed the document blindly, Weng prevaricated and said he had signed the Compromise Agreement based on issues that were agreed between himself and BT. Weng admitted that he was given an opportunity to read the Compromise Agreement but he could not understand it. I disbelieve Weng's unconvincing explanation. It was not the plaintiffs' pleaded case that Weng did not understand the Compromise Agreement on the basis of *non est factum*. Neither was it the plaintiffs' pleaded case (as stated in para 29 of the plaintiffs' closing submissions) that Weng was under pressure from various sources (not identified) and felt he had no choice but to sign the Compromise Agreement. Further, no evidence was led on this spurious allegation.

42 Weng's AEIC (para 15) as well as the reply and defence to counterclaim had alleged that the credit note for $550,228.73 was issued at BT's behest to conceal losses incurred on project 1008 from the first defendant's buyer. Quite apart from BT's denial, this was a wild and absurd allegation in the light of BT's explanation (see [16]) as to how the sale price to Universal was calculated and the fact that project 1008 was actually profitable, based on documents produced by BT.

43 It was more likely than not (as the defendants contended), that the plaintiffs agreed to and issued two credit notes because they were in breach of contract in providing substandard and/or defective works to the defendants, as evidenced in the defendants' documents (at DB37-149). While I am mindful that these documents did not form part of the agreed documents before the court, I note that counsel for the plaintiffs did not raise strenuous objections when they were referred to by BT nor did he challenge their authenticity. In their closing submissions (at para 37), the plaintiffs merely said that the defendants provided a sampling of random examples of alleged minor breaching of the subcontracts, nothing more.

44 I note further that Weng eventually agreed with counsel (at N/E 49) that the defendants' position on the Compromise Agreement was correct. Weng further agreed that some of the plaintiffs' claims (including that for GST) were unfounded and or fabricated amongst them being the unpaid invoice for $663,400 – which Wong eventually admitted (at N/E 107) was never sent to the defendants. No mention was made by Weng in his AEIC of the claim for $20,000 which the defendants disputed. In cross-examination of Weng, Wong's complaint in his AEIC that the second defendant was attempting to recover personal loans ($10,000, $20,000 and $50,000) made by Gary to Wong was proven to be incorrect. While the moneys came from Gary initially, Gary had subsequently been reimbursed by the second defendant so that the debt was owed to the latter.

45 Nothing turns on Wong's testimony as it was Weng who negotiated with BT and signed the Compromise Agreement on the plaintiffs' behalf. Wong confirmed that what he knew of the discussions and negotiations between his brother and BT was what he was told by Weng. Hence, Wong's AEIC was replete with hearsay evidence. Like Weng, Wong's AEIC (albeit to a lesser extent) contained speculation and scurrilous accusations against BT and Gary, regarding BT's motive in incorporating the second defendant. Offensive paragraphs in his and Weng's AEIC were eventually withdrawn when they took the stand.

(ii) The defendants' case

46 BT (DW2) and Gary (DW1) were the defendants' witnesses. Unlike Wong and Weng, their testimony did not contradict but was corroborated by documents that were before the court. They were far more credible witnesses than the Wongs. Indeed, their cross-examination reinforced my finding. In this regard I reject the plaintiffs' submission that BT was an evasive and unreliable witness. That criticism can be levelled at Weng and to a lesser extent Wong, but not against BT or Gary; both were forthright and truthful. Weng on the other hand was found to be lying on so many occasions that he lost all credibility.

The decision

47 The plaintiffs' closing submissions were premised on the plaintiffs' version of events being true and correct. Sometimes those submissions completely disregarded or contradicted the evidence that was adduced in court from the plaintiffs' own witnesses. I note too that the plaintiffs' submissions (para 30) asserted that the Compromise Agreement was signed by BT on behalf of the first defendant only and not on behalf of the second defendant. That however was not the plaintiffs' pleaded position nor asserted by Weng in his AEIC nor put to BT when he was in the witness stand. Consequently, I reject the argument.

48 The plaintiffs' pleaded case on the Compromise Agreement was that it did not come into effect because of the non-fulfilment of the preconditions *viz* confirmation of the two variation claims of $122,017.17 and $80,000. However, as the defendants argued and which I accept, there were no preconditions, only the requirement of confirmation of whether the two variation clams had been paid by the defendants as BT thought.

49 The plaintiffs' stand was sometimes ambivalent. Although they disclaimed knowledge (in para 62 of their submissions) on how the figure of $582,771 in the Compromise Agreement was arrived at and even accused BT of creating the same, it is noteworthy that in another part of their submissions (at para 41), the plaintiffs complained that the defendants reneged on their promise to return the credit note sum of $749,006 or even $582,771. The plaintiffs had obviously overlooked BT's explanation that the amount of $582,771 was incorrect and should have been the first credit note amount of $550,228.73 in [9] which was never in dispute.

50 Although Wong/Weng contended that they were not obliged to return the defendants' advances, the fact remains that the plaintiffs repaid the defendants the first advance of $152,000 in [13] on or about 15 July 2008, in part performance of the Compromise Agreement. Moreover, in the first amendment to the statement of claim (at para 10), the plaintiffs themselves gave credit for the defendants' third advance of $312,000 on 2 September 2008. Such conduct seriously undermined the plaintiffs' case and the credibility of their witnesses.

51 The plaintiffs' submissions dealt at length with the issue of extrinsic evidence not being admissible to interpret the Compromise Agreement as well as the application of the *contra proferentum* rule. With respect, those issues do not arise here. It is my view that the Compromise Agreement is clear on its terms and there is no need to import extraneous facts for its interpretation.

52 The documents presented in court were consistent with the defendants' position, as given by BT and Gary that after end January 2008, any work carried out by the plaintiffs must be accompanied by a PO. Their testimony that invoices of the plaintiffs subsequent to that timeframe, if unaccompanied by the defendants' POs were either false or fabricated, was substantiated by no less a person than Weng, who had admitted (see [44] above) that the plaintiffs' invoice for $663,400 was

never sent to the defendants; it can only be said to have been fabricated as BT and Gary contended.

53 Taken in its totality, the evidence adduced in court showed on a balance of probabilities that the plaintiffs' claim had no merit. More significantly, the evidence corroborated the defendants' pleaded case that the claims and counterclaims between the parties involved had been subsumed in the Compromise Agreement. I turn my attention therefore to that document.

The Compromise Agreement

54 I had set out the full text of the Compromise Agreement earlier at [23]. Contrary to the submission of the plaintiffs, I find no ambiguity in the text such as to require the application of the *contra proferentum* rule.

55 To elaborate, the parties to the agreement were set out: "U-Hin" can only refer to the first and second plaintiffs while "Wong Eng'g" must refer to the third plaintiff. The words "final settlement" are clearly stated while "all outstanding invoices/payment/claims including but not limited to..." reinforced the understanding that the agreement was to be a global settlement of all accounts between the parties. As for the note "the above is subjected [sic] to the return of all advance payments and CN amounting to $582,771 prior to the issue of the final settlement payment", the words could only have referred to the advances made to and the credit notes issued by, the plaintiffs since neither the first nor the second defendants were the recipients of advances or issuer of credit notes. Consequently, the plaintiffs' argument that the Compromise Agreement precluded the defendants from recovering the advances and the credit note sums is rejected.

56 Do the words "...pending the confirmation of BTG/1035 VO claims of $80,000" render the Compromise Agreement conditional? I do not think so. I accept the evidence of BT that the lump sum settlement of $450,000 was subject to adjustment downwards but not upwards*, viz* the amount could be less but not more than $450,000 as that figure was the maximum sum the defendants were willing to pay to the plaintiffs.

The law

57 I turn next to the law on compromise agreements. I can do no better in this regard than to refer to the recent Court of Appeal decision in *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332 ("*Gay's* case") cited by the defendants.

58 In *Gay's* case, the Court of Appeal cited Foskett QC's authoritative textbook (at [41]) on what constituted a valid compromise agreement:

> In the leading Commonwealth textbook on compromise and settlements, Foskett QC sets out the following definition of a "compromise" (see David Foskett, *The Law and Practice of Compromise* (Sweet & Maxwell, 6th Ed, 2005) at para 1-01) ("Foskett"):
>
> Compromise can be defined as the *settlement of dispute by mutual concession, its essential foundation being the ordinary law of contract*… A more practical and, perhaps, more apt description would be *the complete or partial resolution by agreement of differences before final adjudication by a court or tribunal of competent jurisdiction* [emphasis added]

59 The Court of Appeal went on to spell out (at [46]) the essential requirements of a compromise:

> As Foskett has observed (at para 3-01), and adopted in *Info-communications* (at [115]), a

compromise will not arise unless certain requirements are fulfilled; these include (differing somewhat, though, from the precise sequence Foskett has adopted) what is, in fact, traditionally required under the general common law of contract, *viz*, an identifiable agreement that is complete and certain, consideration, as well as an intention to create legal relations.

60 The Compromise Agreement satisfies all three tests. The agreement is certainly identifiable, consideration was provided by both parties to the agreement and undoubtedly there was an intention to create legal relations. It was also common ground that both parties intended to resolve all their differences by the Compromise Agreement. It would not be necessary therefore to dwell further on this issue.

The other defences

61 Even if I am wrong in my finding and the Compromise Agreement does not constitute a valid compromise agreement, I am of the view that the defendants have successfully proven on a balance of probabilities, that the plaintiffs' invoices upon which their numerous claims were based were either (i) paid or (ii) cancelled or (iii) fabricated. Indeed, the plaintiffs' claims bordered on dishonesty. I have in mind Weng's evidence in this regard; he was a totally unreliable witness as can be seen from the comments on his testimony in [39] to [44] above.

Conclusion

62 Consequently, I have no hesitation in dismissing the plaintiffs' claims with costs. I award both defendants judgment and costs on their counterclaim for $163,029.51 and judgment for $80,000 in favour of the second defendant only.

Addendum to Judgment

30 August 2010

Lai Siu Chiu J:

63 After judgment was delivered, the court was informed by the defendants' solicitors that they had made an Offer to Settle ("the OTS") pursuant to O 22A r 9(3)(b) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules") to the plaintiffs on 18 February 2010. The OTS *inter alia* stated the defendants were willing to pay the sum of $100,000 to the plaintiffs in full and final settlement of all claims with each party bearing its own costs. The defendants gave a deadline of 5 March 2010 to the plaintiffs to accept the OTS failing the same would be deemed to be withdrawn. There was no response from the plaintiffs' solicitors on the OTS.

64 Under O 22 r 9(3)(b) of the Rules, the terms of the OTS were more favourable to the plaintiffs than the judgment herein, as I had dismissed the plaintiffs' claims. Consequently, the defendants are entitled to their costs on a standard basis up to and including 18 February 2010 and thereafter they are entitled to costs against the plaintiffs on an indemnity basis.