Chai Kwok Seng Anthony *v* CCM Group Limited
[2013] SGHC 208

Case Number : District Court of Appeal No 9 of 2013

Decision Date : 08 October 2013

Tribunal/Court : High Court

Coram : George Wei JC

Counsel Name(s) : Timothy Ong Kian Wei (Timothy Ong, Lim & Partners) for the appellant/plaintiff; Ng Hweelon (Legal Clinic LLC) for the respondent/defendant.

Parties : Chai Kwok Seng Anthony — CCM Group Limited

Contract – Contractual Terms – Parol Evidence Rule

Contract – Contractual Terms – Express Terms

8 October 2013 Judgment reserved.

George Wei JC:

1 In the Suit below (MC Suit No 28976 of 2011), the principal claim was for the sum of S$56,000.00 said to be owed by CCM Group Limited ("the Defendant") to Chai Kwok Seng Anthony ("the Plaintiff") as the balance of a commission due under an alleged oral commission agreement. The subsidiary claim was for the sum of S$1,000.00 said to be due as a contractual entitlement to a petrol allowance under the terms of a contract of employment between the Defendant and the Plaintiff.

2 On 11 March 2013, District Judge Seah Chi Ling ("the DJ") dismissed both claims on the Defendant's submission of no case to answer. Consequently, an appeal was brought by the Plaintiff to the High Court against the decision of the DJ.

3 It is apparent from the Record of Appeal that the submission of no case to answer was advanced on two grounds. First, the parol evidence rule as set out in ss 93 and 94 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") together with the terms of an "entire agreement clause" in the contract of employment precluded any reliance on the evidence of the alleged oral commission agreement or understanding ("the Parol Evidence Rule/Entire Agreement Argument"). Second, the evidence in support of the alleged oral agreement or understanding was not believable or was improbable and because the alleged agreement was in any case too uncertain to be enforceable ("the Factual Arguments").

4 After hearing submissions, the DJ found for the Defendant on the basis of the Parol Evidence Rule/Entire Agreement Argument. The DJ dismissed the submission of no case to answer insofar as it was based on the Factual Arguments.

5 After considering the parties' arguments, I was of the view that the parol evidence rule applied, and that the DJ did not err in his decision. Apart from allowing the subsidiary claim for the petrol, I am, in substance, dismissing the appeal. The grounds for my decision are as follows.

The background facts

6 Given that the Defendant succeeded below on the submission of no case to answer, it is necessary to set out in some detail the background facts as gleaned from the Plaintiff's evidence and tested in cross-examination in the context of the pleaded cases of the parties.

7 The Defendant is a public company listed on the Singapore Stock Exchange. Between 3 January 2011 and 31 October 2011, the Plaintiff was employed by the Defendant as the Head of Business Development for the defendant's group of companies. This was governed by an employment contract dated 3 January 2011 ("the Employment Contract").

8 The Plaintiff in his evidence describes himself generally as a "Business Development Consultant" operating through an "entity" called Chai Consulting (as from around 2008). Under cross-examination the Plaintiff explained that his past clients included the Ministry of Defence where he consulted for "Lockheed Martin" and "Korean Aerospace Industries". According to the notes of evidence, the Plaintiff continued to hold his position at Chai Consulting whilst he was employed by the Defendant. Under further cross examination, the Plaintiff explained that he derived his income as a consultant at Chai Consulting through "retainers", "commissions" and also "success fees".

9 According to the Plaintiff, he was introduced to Joseph Liew, the CEO and Chairman of the Defendant, sometime in August/September 2010. The introduction was facilitated by an acquaintance and was for the purpose of introducing someone (namely the Plaintiff) "who could introduce business on a commission/brokerage business".

10 Subsequently, on or around 15 or 16 November 2010, the Plaintiff introduced to Joseph Liew the business opportunity of bidding for the construction of a hangar for a company known as MAJ Aviation Pte Ltd at Seletar Aerospace Park ("the Hangar Project"). The evidence led was that the Plaintiff had a contact in MAJ Aviation, a Mr Khoo Beng Kiat who previously served in the Republic of Singapore Air Force with the Plaintiff. At that time (mid-November 2010) the Hangar Project was said to be in the tender phase which was conducted on a closed/invitation basis. The Plaintiff asserted that after making the introduction, he started work in an attempt to secure the Hangar Project for the Defendant, *inter alia*, by facilitating discussions on the Hangar Project including participating in the negotiation of the project price.

11 For example, the Plaintiff states in his affidavit of evidence-in-chief ("AEIC") at [12] that:

> sometime in December 2010, [he] was called by Khoo to meet him together with Charles [the General Manager of the Defendants] to discuss the possibility of lowering the price for the Hangar Project.

After discussions, a deal was struck with the price being fixed eventually at S$7.6 million. From the evidence, the actual date when the tender phase of the Hangar Project was closed and the Project awarded to the Defendant is not clear, but appears to be sometime in December 2010 or more likely January 2011. Certainly, by 20 January 2011, the Hangar Project was awarded pursuant to a letter of award of the same date and a definitive agreement for the Hangar Project was executed between the Defendant and MAJ Aviation on or around 14 February 2011.

12 In any case there is no dispute that the Hangar Project was awarded and that the Plaintiff did play a role in assisting in the negotiations. What is in dispute is whether there was an oral agreement made between the Plaintiff and the Defendant to the effect that the Plaintiff would be paid a commission of 1% of the value of projects introduced to the Defendant by the Plaintiff.

13 Indeed, according to the Plaintiff's AEIC, not long after his first meeting with Joseph Liew in

August/September 2010, he raised to Joseph Liew the possibility of tendering for the Hangar Project and that Joseph Liew agreed that the commission payable, if the Defendant was successful in securing the Hangar Project, was 1% of the contract sum.

14 In short, the Plaintiff's evidence was that at the very first meeting in August/September 2010 a verbal agreement was made for payment of 1% commission on any projects secured. Subsequently when the Hangar Project was introduced in October/November 2010, a 1% commission was agreed as the remuneration package for the Hangar Project. The Plaintiff's evidence under cross-examination was that the agreement was made before the introduction to MAJ Aviation was arranged. Indeed, it is emphasised that the Plaintiff stated several times in cross-examination that an agreement was made prior to October/November 2010 for the payment of a 1% commission specifically in respect of the Hangar Project.

15 The evidence before this court is that in early January 2011 the Plaintiff met Joseph Liew at the Defendant's offices for the purpose of discussing the possibility of the Plaintiff joining the Defendant full-time as an employee. According to the Plaintiff's AEIC, what was discussed at this meeting was the basic salary, petrol allowance and a commission of 1% on all contracts introduced by the Plaintiff. The Plaintiff asserted in his AEIC that Joseph Liew was not able to insert a clause on commission into the Employment Contract as doing so "would reflect that I would be paid more than the Defendant's general manager." The Plaintiff also asserted that Joseph Liew told the Plaintiff that he "could trust him as he was the CEO of a publicly listed company."

16 Shortly thereafter, the Plaintiff entered into the Employment Contract dated 3 January 2011 where he was appointed Head of Business Development (CCM Group of Companies). The Employment Contract sets out, in writing, detailed terms including terms on duties and responsibilities, emoluments, date of commencement, termination notice, annual leave, Central Provident Fund contributions, working hours, effort, confidentiality, gifts, non-solicitation, indemnity and restraint of employment. In addition there was an express provision under the sub-heading "Entire Agreement" which provided that "This Agreement shall constitute the whole of the terms agreed between the parties hereto in respect of the subject-matter of this Agreement." It bears repeating that the "subject-matter" of the Employment Contract was the appointment of the Plaintiff as the Head of Business Development for the CCM Group under which he was required *inter alia* to carry out the duties assigned by the Chairman and CEO, to assist the Chairman/CEO in corporate and strategic planning and to assist the Group of Companies in the implementation of new policies and activities. Under the Employment Contract, the Plaintiff received a commencing salary of S$7,000.00 per month. He was also to be provided with "a company petrol fleet card limit to S$500.00 per month."

17 As noted above at [15] *supra*, the Employment Contract did not contain any express term governing the payment of commission. However, according to the Plaintiff, payment of a commission had been orally agreed to be part of the terms of the employment and was not expressly set out because the Plaintiff would "otherwise be reflected as earning more than the Defendant's general manager."

18 Subsequent to the Hangar Project, it appears that the Plaintiff was unsuccessful in procuring any further projects for the Defendant. The Defendant became unhappy with the Plaintiff's work performance over the months that followed in 2011 and asked the Defendant to improve on his work performance. This eventually resulted in the Defendant requesting that the Plaintiff tender his resignation. The Plaintiff tendered his resignation on 1 October 2011 with an employment cessation date of 31 October 2011.

19 In the Plaintiff's resignation letter, the Plaintiff sought payment of a sum of S$56,000.00 being

the balance of the commission allegedly due to him from the Hangar Project. The DJ noted that the balance commission was computed on the basis of 1% of the project value of $7.6m less a part payment of $20,000.00 which the Plaintiff claimed to have received from Joseph Liew in February 2011.

20 Thereafter, the Plaintiff commenced legal proceedings against the Defendant for recovery of the sum of S$56,000.00 and a further sum of S$1,000.00 which he claimed was owed to him under the Employment Contract by way of petrol allowance for the months of September and October 2011.

The case below

The plaintiff's case as pleaded

21 In respect of the claim for the balance of the commission alleged to be due for the Hangar Project, the case for the Plaintiff was advanced in two ways.

22 In the original Statement of Claim, the claim for commission was said to flow from the Employment Contract by virtue of an oral agreement made between "the Chairman/CEO of the Defendant[s], one Joseph Liew and the Plaintiff". The commission agreement was said to have arisen "in consideration of the employment agreement." The meaning of this pleading is unclear. One interpretation is that the commission was being claimed as an oral term of the Employment Contract. Alternatively, it also strongly suggests that a subsequent oral agreement was entered into for the payment of the commission.

23 In any event, the Statement of Claim was amended to include a new [5] which states:

> Further and in the alternative, the commission agreement was orally made between the Defendants' said Joseph Liew and the Plaintiff on or about August/September 2010.

24 The effect of the amendment was that the Plaintiff now advanced an additional and separate ground for the claim to a commission, namely, that there was an earlier (separate) commission agreement between the Plaintiff and the Defendant.

The defendant's case as pleaded

25 The Defendant denied the existence of any oral agreement on commission and asserted that it is not the Defendant's policy to provide commissions to their employees unless it is expressly stated to be so in their contract. The Defendant in its pleadings also relied upon the express terms of the contract of employment which made no reference to the payment of commission. The Defendant also denied that there was a specific commission payable for the Hangar Project. The part payment of $20,000.00 was also denied and it was asserted (in the Defence) that if it was indeed received, it was a payment by persons unknown and received in breach of the Employment Contract. In making references here to the Defendant's case as pleaded it bears repeating that there is no evidence at all before this court in relation to the Defendant's case since their submission of no case to answer was successful.

The decision of the DJ

26 As mentioned above at [4] *supra*, after considering the arguments of the parties, the DJ found that the parol evidence rule applied and the previous oral agreement, if any, would have been effectively replaced by the Employment Contract. Given that the Employment Contract was silent as

to the Plaintiff's claim for the balance of a commission allegedly due against the Defendant, the DJ held in favour of the Defendant after the Defendant's submission of no case to answer.

27 I considered the decision of the DJ in detail when dealing with the substance of the appeal.

The main points in issue: the alleged balance of commission

28 There are two main issues before this court:

(a) Whether the parol evidence rule applied, such that the previous oral agreement between the parties, if any, on a commission would now be governed solely by the Employment Contract;

(b) Whether the terms of the Employment Contract allowed the appellant to claim for the petrol allowance.

29 The first issue warrants some elaboration. Insofar as the balance commission claim is concerned, the key points are:

(a) whether there was an oral agreement or an oral understanding reached between the Plaintiff and Joseph Liew (on behalf of the Defendant) sometime around August/September 2010 for payment of a 1% commission on projects introduced by the Plaintiff to the Defendant;

(b) whether there was an oral agreement made between the Plaintiff and Joseph Liew (on behalf of the Defendant) for the payment of a 1% commission on the Hangar Project at or about the time the Project was introduced;

(c) irrespective of whether there was any prior oral agreement or understanding for the payment of commission, whether the Employment Contract was a contract reduced into writing such that the parties' contractual relationship was to be governed solely by the terms of that contract without reference back to any earlier oral agreement or understanding that may have been reached.

30 I will consider these three points holistically when addressing the first issue.

My decision

General legal principles applying to a submission of no case to answer

31 Before considering the appeal before me in detail, it will be convenient to examine the legal principles governing the submission of no case to answer in civil proceedings.

32 In *Central Bank of India v Hemant Govindprasad Bansal & Ors* [2002] 1 SLR(R) 22 ("*Bansal*"), S Rajendran J commented at [21] that:

> A decision by a defendant not to adduce evidence in his defence is a decision that ought not to be lightly taken. Where a defendant makes such an election, the result will be that the court is left with only the plaintiff's version of the story. So long as there is some *prima facie* evidence that supports the essential limbs of the plaintiff's claim(s), then the failure by the defendant to adduce evidence on his own behalf would be fatal to the defendant. [emphasis in original]

33 Turning to the question of the circumstances under which a valid submission of no case to answer could be made, S Rajendran J referred at [24] of *Bansal* to the English case of *Storey v*

Storey [1960] 3 All ER 279 where Omerod LJ stated at 282 that there were two circumstances under which the submission could be made:

> … In the one case there may be a submission that, accepting the plaintiff's evidence at its face value, no case has been established in law, and in the other that the evidence led for the plaintiff is so unsatisfactory or unreliable that the court should find that the burden of proof has not been discharged.

34 The decision of S Rajendran J was subsequently upheld by the Court of Appeal (see *Bansal Hemant Govindprasad and another v Central Bank of India* [2003] 2 SLR(R) 33).

35 The question that remains concerns the standard by reference to which the court determines whether (i) no case has been established at law or (ii) that the evidence is so unsatisfactory that the burden of proof has not been discharged. In the second scenario, it must be borne in mind that the burden of proof that is being referred to is the burden as it exists at the time when the submission of no case is being evaluated. In *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657, Judith Prakash J held at [20]:

> … In this respect, the plaintiff has only to establish a *prima facie* case. A *prima facie* case is determined by assuming that the evidence led by the plaintiff is true, unless it is inherently incredible or out of all common sense or reason. Further, if circumstantial evidence is relied on, it does not have to give rise to an irresistible inference as long as the desired inference is one of the possible inferences. …

36 In a similar vein, Chan Sek Keong CJ (delivering the judgment of the Court of Appeal) in *Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 ("*Borden*") noted at [84] that where the defendant elects not to give any evidence on a submission of no case to answer, the burden on the Plaintiff is simply to prove a *prima facie* case and that the burden "is not difficult to discharge". The DJ rightly concluded that whether the submission of no case to answer is based on limb 1 of the *Bansal* test or limb 2 of the *Bansal* test, the Plaintiff only has to show a *prima facie* case to defeat a submission of no case to answer.

37 I pause at this juncture to observe that what is at issue before the court is whether the DJ was correct in coming to the view that the submission of no case to answer had been made out.

38 In determining the appeal, this court is reminded that an appeal to the High Court from the decision of the District Court is by way of rehearing: see s 22(1) Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and O 55, r 2(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). Indeed, it is noted that under O 55, r 6(3) the court enjoys the "power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose." That said, it bears repeating that the High Court judge does not have the benefit of observing the demeanour of the witnesses who gave evidence at the District Court and that due deference should be given to the inferences of facts as drawn by the district judge.

39 Some of the general comments made by Chan Sek Keong CJ in the *Borden* case on making of a submission of no case to answer bear repeating. There it was said at [5] that:

> …It is trite principle that under our adversarial system of justice, each party has the right to conduct his action or his defence, as the case may be, in a way that benefits him most. It is also an accepted principle that he who asserts must prove and therefore a defendant is entitled to put the plaintiff to strict proof of everything he is alleging without having to respond in any way

to the allegations. However, it is also accepted that where a defendant calls no evidence to rebut the evidence of the Plaintiff, a submission of no case in those circumstances is a high-risk strategy. …

40 Then again at [6] the Court of Appeal continued:

… In the light of [*Bansal*] the respondents would have to be supremely confident of the absence of any merits in the appellants' claims … either on the facts or on the law to resort to a submission of no case to answer.

41 With these legal principles in mind, I now consider the appeal before me and whether the DJ had rightly allowed the Defendant's submission of no case to answer.

The first issue – did the parol evidence rule apply?

Analysis of the decision and evidence below

42 Insofar as the "factual arguments" are concerned, the approach taken by the DJ was that the Plaintiff only had to make out a *prima facie* case that there was a binding agreement to pay the Plaintiff the commission. Following the cases discussed earlier, the DJ held that the evidence led by the Plaintiff would be subject to a minimal evaluation and assumed to be true unless it was inherently incredible. On this basis, the DJ was of the view that the evidence led on the oral contract provided "a reasonable basis for inferring that Joseph Liew did orally agree on behalf of the Defendant to pay the Plaintiff the commission amounts." With an eye cast towards the alternative basis for the no case to answer submission, the DJ was quick to add that "a prima facie case in relation to the Plaintiff's claim for the Balance Commission would have been made out *if such evidence were indeed admissible*." [emphasis added] According to the DJ, the evidence before the court that the Plaintiff relied on to prove the existence of the oral contract was as follows:

(a) The Plaintiff's evidence in his AEIC and under cross-examination was to the effect that Joseph Liew had orally agreed to pay a commission of 1% of the value of the projects secured by him by way of a commission.

(b) The Plaintiff's evidence that Joseph Liew had made a $20,000.00 part payment towards the commission due on the Hangar Project in February 2011 and had further promised to pay the remaining S$56,000.00 at a later date.

(c) A SMS reply allegedly sent by Joseph Liew to the Plaintiff (in response to a query by the Plaintiff as to whether he would be honouring the commission) where Joseph Liew had allegedly stated: "I will. Do not write on paper."

(d) The evidence of Khoo Beng Kiat (whom the Plaintiff had subpoenaed) confirming that the Defendant was introduced to MAJ Aviation by the Plaintiff.

(e) The evidence of Lee Kong Honn who was general manager of the Defendants from 1 April 2010 to 16 July 2012 that the Plaintiff had previously mentioned to him that the Plaintiff would receive a cut of the value of the Hangar Project. It was noted however that he did not state that he was told of this arrangement by Joseph Liew, nor did he have personal knowledge of the alleged commission agreement.

43 Whilst this court does not disagree with the summary of the Plaintiff's evidence set out by the

DJ, it would add that there was also some evidence led in cross-examination before the DJ that an oral contract had been entered into between Joseph Liew (on behalf of the Defendants) to pay a 1% commission specifically in respect of the Hangar Project shortly before the introduction was made.

44 Whilst the formal signing of the Hangar Project did not take place until after January 2011, there is no doubt that:

(a) contact was first made between the Plaintiff and Joseph Liew in August/September 2010;

(b) that the Hangar project was introduced to the Defendant sometime in October/November 2010;

(c) that negotiations on the Hangar project between the Defendant and MAJ Aviation was at an advanced stage by end of December 2010; and

(d) that the Plaintiff had introduced the project and also assisted in the negotiations.

45 The Plaintiff's evidence appeared to be that even if there was no term in the Employment Contract for the payment of a commission for projects introduced, that a separate oral agreement had already been made which specifically related to the payment of a commission for the Hangar Project. The case for the Defendant as put in cross-examination was that the reward for the Plaintiff's help on the Hangar Project was the offer of a full-time Employment Contract.

The applicability of the parol evidence rule

46 The DJ found in favour of the Defendant on the basis that the evidence of the oral contract was inadmissible - as a matter of law - in light of the parol evidence rule and the entire agreement clause. In short, the contractual relationship between the Plaintiff and Defendant was governed solely by the written terms of the Employment Contract which did not make express provision for the payment of any commission.

47 The parol evidence rule can be found in ss 93 and 94 of the EA. The material parts of the provisions are as follows:

> **Evidence of terms of contracts, grants and other dispositions of property reduced to form of document**
>
> 93. When the terms of a contract or of a grant or of any disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.
>
> …
>
> **Exclusion of oral agreement**
>
> 94. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying,

adding to, or subtracting from its terms subject to the following provisions:

…

(b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;

...

48 In deciding whether the parol rule applies, care must be taken in the identification of the contract or contracts in question. This can be especially tricky where the parties have a prior history of dealings and negotiations during which different business opportunities or arrangements may have been discussed and/or agreed upon. In such cases there is always the possibility that the parties have entered into a number of distinct and separate contracts, each of which is governed by its own terms and conditions (written or oral). Alternatively, it may be that the parties intended, after the discussions and negotiations were concluded, to reduce the agreement into writing and for the written agreement to govern the entirety of their contractual relationships. An obvious advantage of doing so is to inject certainty into the relationship. See generally the observations set out in *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 06.026. In the present case, the issue is whether the parties intended the Employment Contract to contain the entire content of the agreement and the parties' contractual relationship such that any prior oral commission contract (if any) was replaced and/or superseded by the written employment contact.

49 It will be recalled that as originally pleaded, the Plaintiff's case was founded on the "simple" assertion that:

> In further consideration of the employment agreement, it was orally agreed … that the Plaintiff would also be paid a commission of one (1) per cent of the value of projects introduced by the Plaintiff to the Defendants ("the commission agreement").

Subsequently, the Statement of Claim was amended so as to include the following:

> 5. Further and in the alternative, the commission agreement was orally made between the Defendants' said Joseph Liew and the Plaintiff on or about August/September 2010.

This, of course, refers to a time well before the making of the Employment Contract.

50 The point has been touched on above that the Plaintiff's case as amended included the claim that a separate oral commission agreement was entered into prior to the Employment Contract. The Plaintiff's evidence in his AEIC on the terms of the Employment Contract and the commission entitlement was that Joseph Liew "expressly mentioned that the commission payable could not be put in the contract (of employment) as doing so would reflect that I would be paid more than the Defendant's general manager." The plaintiff also gave evidence that shortly after he had started work as an employee, he was handed the sum of $20,000.00 by Joseph Liew as part payment of the commission due on the Hangar Project. Also in evidence was a SMS reply that was allegedly sent by Joseph Liew after the Plaintiff had asked Joseph Liew whether he would be honouring the commission, and stating "I will. Do not write on paper". It was on the basis of this evidence that the DJ came to the view that there was "a reasonable basis for inferring that Liew did orally agree on behalf of the Defendant to pay the Plaintiff the commission amounts" and that a "*prima facie* case in relation to

the Plaintiff's claim for the Balance Commission would have been made out." The DJ was, however, also of the view that the evidence was not admissible because of the parol evidence rule and the entire agreement clause. Based on the written terms of the Employment Contract, the Plaintiff was only entitled to a salary and a petrol allowance with no mention of any commission.

51 In his Grounds of Decision, the DJ referred to and held inapplicable a number of exceptions to the parol evidence rule set out in s 94 of the EA. The first was the exception set out in s 94(d) which deals with evidence as to the existence of any distinct *subsequent* agreement to rescind or to modify the contract. Section 94(d) was correctly found to be inapplicable because the Plaintiff's case did not in fact rest on any subsequent oral agreement at all (at least in terms of the evidence).

52 The second exception concerned s 94(b) which provides that "the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document" (see [47] above).

53 This exception was also rejected because (i) the alleged commission agreement was inconsistent with the express terms of the Employment Contract; and (ii) because the employment terms as set out in the written contract had been set out with a high degree of formality. Thus, the DJ held at [40] of his Grounds of Decision that s 94(b) was inapplicable. Since no exception to the parol evidence rule was applicable, the DJ held that all the evidence on any oral agreement was inadmissible under ss 93 and 94 of the EA.

54 I find that on the evidence and pleaded case, the DJ rightly concluded that the statutory exceptions to the parol evidence rule as set out in s 94 were inapplicable. Any prior oral understanding or contract for payment of a commission on projects introduced to the Defendant would be inconsistent with the written terms of the Employment Contract under which the Plaintiff was employed as Head of Business Development.

55 Nevertheless, could the Plaintiff have asserted that the prior oral commission contract that he was relying on was one which had been made specifically in respect of the Hangar Project sometime in October/November 2010? In other words, rather than relying on an oral agreement made in August/September 2010 (when the Plaintiff first met Joseph Liew), could the Plaintiff assert and rely on a specific oral commission contract in respect of the Hangar Project alone? After all, there was some evidence to suggest that notwithstanding what was agreed in August/September 2010, there was further discussion and agreement to pay a 1% commission specifically on the Hangar Project shortly before that project was actually introduced to the Defendant. A prior oral contract to pay a commission for specific project introduced and worked on several months before the Employment Contract might not necessarily conflict with the terms of the Employment Contract.

56 This question was not specifically addressed by the DJ. Would it have made any difference? The problem is that the starting point must be the pleaded case of the Plaintiff. [1] of the Plaintiff's Statement of Claim pleads the Employment Contract that was entered into on 3 January 2011. It will also be recalled that [5] (as amended) goes on to assert that further and in the alternative, "the commission agreement was orally made between the Defendants' said Joseph Liew and the Plaintiff on or about August/September 2010." [6] of the amended Statement of Claim goes on to state that "pursuant to the commission agreement, a sum of S$76,000.00 was payable to the Plaintiff as commission for the "MAJ hangar Project" signed on or about 14th February 2011".

57 It follows that as pleaded, the claim for a commission on the Hangar Project was said to have arisen from an oral agreement made in August/September 2010. That oral agreement would have been

in respect of the alleged understanding that a 1% commission would be paid on the value of any successful project introduced by the Plaintiff to the Defendant. Whilst the transcript of the cross examination suggests that there may have been a specific oral agreement for 1% on the Hangar Project made just before the Plaintiff facilitated the introduction of MAJ Aviation to the Defendants, this is not the basis on which the claim to the commission is advanced in the amended Statement of Claim. The claim is made on the basis of an alleged general oral contract made in August/September 2010 for payment of 1% commission on any projects secured. That being so this court has no alternative but to conclude that the DJ was correct in holding that the parol evidence rule applied. Evidence of that oral agreement could not be admitted as it would be inconsistent with the terms of the Employment Contract that had been reduced to writing in January 2011.

58 In any case, the DJ also found that the entire agreement clause set out in cl 16.1 of the Employment Contract was clear as to the parties' intention. That clause provides that:

> 16.1 This Agreement shall constitute the whole of the terms agreed between the parties hereto in respect of the subject matter of this Agreement.

59 The DJ held that "[b]ased on an objective construction, it was clear that the parties intended the terms of the Employment Contract to supersede all prior discussions and understandings" with respect to the Plaintiff's employment terms. It followed that any attempt by the Plaintiff to prove the existence of the oral agreement was in any case foreclosed by the entire agreement clause. In coming to this view, the DJ cited the decision of the Court of Appeal in *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 and stated that whether an entire agreement clause has the effect of excluding all extrinsic evidence is ultimately a question of construction. The subject matter of the agreement that was being referred to in "the entire agreement" clause was of course the employment of the Plaintiff as Head of Business Development. This was the context (together with the way the case was pleaded) in which the DJ concluded that it was clear that the parties' intention was that the Employment Contract "should supersede all prior discussions and understandings … with respect to the Plaintiff's employment terms, and for their contractual relations to be strictly governed by the terms of the Employment Contract."

60 Given these observations, I conclude that the DJ did not err in finding that the parol evidence rule applied, and therefore, given that such evidence would not be admissible, that the DJ was correct in allowing the Defendant's submission of no case to answer.

The second issue – did the Employment Contract support a claim for the petrol allowance?

61 The second claim brought by the Plaintiff is for S$1,000.00 said to be owed pursuant to the Plaintiff's petrol allowance under cl 2.2 of the Employment Contract for the months of September and October 2011. The DJ found in favour of the Defendant on the submission of no case to answer on the basis that aside from the bare assertion that it was owed, there was no evidence to support the claim that the allowance for September and October 2011 had not been paid. In particular, the DJ noted that the Plaintiff had adduced no official business records/statements showing the extent of utilisation of the petrol card. The DJ also noted that in his resignation letter and post-resignation communications, no reference at all was made by the Plaintiff claiming that a S$1000.00 petrol balance was due.

62 Whether the Plaintiff was entitled to the petrol allowance for September and October 2011 involves a question of interpretation of the petrol allowance clause. The clause could either mean that the Plaintiff was entitled "as of right" to an allowance of S$500.00 a month for petrol (via the company petrol fleet card) or that he was entitled to claim up to a maximum of S$500.00 each month

subject to proof of actual usage. Whilst the evidence was thin, the Plaintiff did assert at [36] of his AEIC that the Defendant had withdrawn his company petrol fleet card on the same day he was told by Joseph Liew that he should leave the Defendant's employment. Whilst the drafting of the clause could have been clearer, there is at least some evidence that the petrol allowance claim may have been sustainable. It follows that this aspect of the Plaintiff's claim should have survived the submission of no case to answer as a *prima facie* case has been made out.

Conclusion

63 For the above reasons, the appeal in respect of the balance S$56,000.00 is dismissed. The appeal in respect of the claim to $1,000.00 for the petrol allowance is allowed with the result that judgment in the Plaintiff's favour is to be entered for that amount.

64 Costs are awarded to the Defendant to be agreed upon or taxed.