

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 95

Suit No 1062 of 2020

Between

Wong Kee Wah t/a The Education Future Hub

... Plaintiff

And

Sng Boon Chye

... Defendant

JUDGMENT

[Contract – Interpretation]

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Wong Kee Wah (trading as The Education Future Hub)

v

Sng Boon Chye

[2022] SGHC 95

General Division of the High Court — Suit No 1062 of 2020

Choo Han Teck J

8 – 10 February 2022; 14 April 2022

29 April 2022

Judgment reserved.

Choo Han Teck J:

1 The plaintiff is the sole proprietor of The Education Future Hub (“TEFH”). TEFH is in the business of marketing programmes offered by Approved Training Organizations (“ATOs”) to the public and it receives a commission for each eligible student enrolled in selected programmes.

2 The ATOs in question here are Click Academy Asia Pte Ltd (“CAA”), The Leadership Institute Pte Ltd (“TLI”), and the Baking Industry Training College Pte Ltd (“BITC”). The ATOs receive funding from government-linked agencies such as the Institute of Banking and Finance (“IBF”) and Skills Future SG (“SSG”), collectively referred to as the Government Funding Bodies. Students who are eligible for government funding will pay 5% – 10% of the total course fees, and the remaining 90% – 95% will be funded by the Government Funding Bodies through the ATOs. The ATOs will pay the plaintiff commission for each student eligible for government funding and who

successfully completed his or her respective courses. The evidence given at trial shows that the commission due to the plaintiff from the ATOs for the months of April 2020 to July 2020 amounts to a staggering \$2,014,497.00, which is paid out of the government funding to the ATOs.

3 The defendant is one of the sub-contractors of the plaintiff who markets selected courses from the ATOs for the plaintiff and he, in turn, receives a commission from the plaintiff for each eligible student he recruits. The defendant has a cascading line of sub-agents himself.

4 Before working with the plaintiff, the defendant was a marketing agent for Kaplan Profession (“KP”) which was then an ATO funded by SSG. Sometime in 2018, the defendant contacted the plaintiff and informed the plaintiff that KP was under investigation by SSG for violations of SSG guidelines and KP’s funding would be soon suspended. The defendant sought to transfer his students under two of KP’s courses, namely “Leadership People Management” and “Service Leadership”, to the ATOs that the plaintiff was working with at that time so that his students would be able to complete their courses.

5 On 1 January 2019, the plaintiff and the defendant signed a Memorandum of Understanding (“2019 MOU”), under which the defendant agrees to market and promote “Leadership People Management Diploma” and “Service Leadership” courses from the ATOs for the plaintiff. The 2019 MOU also provided, *inter alia*, that the defendant must ensure that all activities and marketing must comply with school and SSG rules and that the plaintiff will make payment to the defendant 14 working days upon receiving disbursement of fund. The plaintiff says that the 2019 MOU also allowed the defendant to

market “Environmental Services & Tourism” courses, but this was disputed by the defendant.

6 Subsequently, the defendant’s work for the plaintiff extended beyond what was expressly provided for in the 2019 MOU. The defendant marketed and promoted for the plaintiff courses offered by CAA, TLI and BITC which were not “Leadership People Management Diploma” and “Service Leadership” courses. This included courses such as Block Chain, Fast Track Digital Marketing, Data Analytics and Sales Mastery. The parties did not enter into any other separate written agreement to cover the promotion of these courses. The plaintiff says that these other courses were also governed by the same 2019 MOU, but the defendant denies this.

7 The defendant would collect the course fees from students on behalf of the plaintiff. However, since the course fees collected from the students only account for 5% – 10% of the total course fees, which was often less than the commission due to the defendant, the plaintiff allowed the defendant to set-off the collected school fees from the commission due to the defendant in certain months. The defendant says that this became the standard practice between the parties since October 2020, but the plaintiff says that the set-off was only allowed as a matter of goodwill. The defendant also says that the plaintiff will pay him the balance on the 15th of every month, but the plaintiff says that payment is conditional upon the plaintiff receiving his commission from the ATOs.

8 The plaintiff has also, on occasions, provided commission in advance to the defendant. On 15 May 2020, the plaintiff says that he transferred \$15,298.55 to the defendant as advance commission for students enrolled with CAA for the month of April 2020. On top of that, the plaintiff has also provided loans to the

defendant during their working relationship. On 20 April 2020, at the defendant's request, the plaintiff transferred \$10,000 to the defendant's bank account as a loan. Again, sometime in May 2020, the defendant requested for another loan and plaintiff transferred \$30,000.00 to the defendant. The plaintiff says that the total loan extended to the defendant in the months of April to June amounted to \$40,000.00.

9 In August 2020, the plaintiff was informed by CAA that due to breaches on the part of the defendant, the funding from IBF for CAA programs would be suspended and there would be no commission paid to the plaintiff. IBF stated four reasons for the suspension of the funding, namely, that the students were provided answers for the course assessments, the marketing agent provided inaccurate course information on the website, the marketing agent promoted profiteering from grant allowance and 44% of the funding claims application by the students had accuracy issues. IBF also stated that "Marketing agent James Sng [the defendant] has repeatedly contacted our staff on disbursement of training allowance grant for himself and some trainees and verbally threatened her".

10 The plaintiff informed the defendant that because funding was suspended from IBF, he would not receive any commission from CAA and consequently, the defendant is not entitled to his commission for the months of April 2020 to July 2020. On 3 August 2020, the plaintiff requested the defendant to transfer all the school fees collected by the defendant between April 2020 to July 2020. The defendant refused, indicating that the school fees collected had been set-off from the commissions due to him, leading to the present dispute.

11 The plaintiff has three claims in the present action:

- (a) First, the plaintiff claims against the defendant the sum of \$290,259.75 being the school fees collected from students for CAA, BITC and TLI courses in the months of April 2020 to July 2020.
- (b) Second, the plaintiff claims against the defendant the sum of \$15,298.55 being the advance commission paid to the defendant for CAA courses in the month of April 2020.
- (c) Third, the plaintiff claims against the defendant the sum of \$40,000.00 being the loan extended to the defendant between 20 April 2020 to 16 May 2020.

12 The defendant says that his commission for promoting CAA, TLI and BITC courses are not covered by the 2019 MOU and is not conditional upon the ATOs receiving government funding. The defendant further claims that he was entitled to set-off the collected school fees against the commission due to him pursuant to the parties' agreed practice and therefore, he is not required to return the plaintiff the \$290,259.75 collected from students for the months of April 2020 to July 2020. In relation to the plaintiff's claims on the \$15,298.55 for advance commission and \$40,000.00 in loan, the defendant says that these amounts have also been set-off against the commission due to him.

13 The defendant counterclaims against the plaintiff the sum of \$797,985.00 being his commission for promoting CAA, TLI and BITC courses for the months of April 2020 to July 2020. During the trial, the parties agreed that the proper figure for the defendant's commission should be \$763,035.80. The breakdown of the commission is as follows:

- (a) \$682,305.00 for CAA courses;

- (b) \$64,780.00 for TLI courses; and
- (c) \$15,950.80 for BITC courses.

14 The plaintiff does not dispute that the defendant has done work in promoting CAA, TLI and BITC courses from April 2020 to July 2020. There are also no objections to the revised quantum of the commission claimed by the defendant. The crux of the plaintiff's case is that the defendant failed to fulfil the necessary conditions in the 2019 MOU to be entitled to the commission.

15 However, it is the fundamental assumption of the plaintiff's case that the 2019 MOU extends to the defendant's subsequent work in promoting CAA, TLI and BITC courses. I am of the view that the 2019 MOU does not apply to the defendant's work in promoting CAA, TLI and BITC courses. The express scope of the 2019 MOU applies only to "market and promote [Leadership People Management and Service Leadership] courses". There were no references to CAA, TLI and BITC courses in the entire 2019 MOU. It is undisputed that the CAA, TLI and BITC courses promoted by the defendant from April 2020 to July 2020 were not Leadership People Management and Service Leadership courses.

16 The plaintiff says the general terms of the 2019 MOU should extend to other courses marketed by the defendant that are not covered by the 2019 MOU. I disagree for the following reasons:

- (a) First, the plaintiff says that the 2019 MOU provides that "[t]he MOU would be in effect from the date of signing till both parties agrees to cease collaboration in written notice". The plaintiff further says that since there is no written notice to terminate the parties' collaboration, the 2019 MOU remains in force and continues to govern the parties'

business relationship in relation to courses that are not covered by the 2019 MOU. However, the express scope of the 2019 MOU covers only Leadership People Management and Service Leadership courses. Therefore, the furthest that the plaintiff could argue is that the 2019 MOU would continue to govern the parties' business relationship in relation to Leadership People Management and Service Leadership courses, should the defendant choose to market these courses for the plaintiff in the future. It is not open to the plaintiff to interpret this clause to mean that the 2019 MOU extends to courses beyond Leadership People Management and Service Leadership courses.

(b) Second, the plaintiff says that it can be inferred from the defendant's conduct — namely, the defendant collecting and paying students' course fees to the plaintiff for courses that are not covered by the 2019 MOU — that the parties agree for the 2019 MOU to apply to all courses marketed by the defendant. I do not agree with the plaintiff. The mere fact that the defendant collected and paid students' course fees to the plaintiff does not mean that the parties intended for all the terms and conditions in the 2019 MOU to apply. Furthermore, as I will elaborate below, there are no clear provisions in the 2019 MOU that require the defendant to collect and pay the students' course fees to the plaintiff.

(c) Third, the plaintiff tendered evidence of a WhatsApp message in which the plaintiff told the defendant that the commission for a BITC baking class is 12% instead of 25%, with 25% being the lower end of the commissions stated in the 2019 MOU. The plaintiff says that the reference to 25% suggest that the commission for courses not covered under the 2019 MOU also took reference to the 2019 MOU. This link is

tenuous. A mere reference to the amount of commission is surely insufficient to prove that the parties agreed to import all the terms and conditions in the 2019 MOU to all the other courses marketed by the defendant.

17 But even assuming that the 2019 MOU was to apply, I am of the view that the terms of the 2019 MOU do not support the plaintiff’s argument that the defendant should be disentitled from commission in the present case.

18 First, the plaintiff says that the defendant’s entitlement to commission is conditional upon the plaintiff receiving commission from the ATOs. The 2019 MOU provides that the plaintiff agrees to “[m]ake payment to [the defendant] 14 working days upon receiving disbursement of fund for completed [courses]”. The plaintiff interprets this provision to mean that if the plaintiff does not receive commissions from ATOs, he will not be liable to pay commissions to the defendant. I disagree. The above provision seems to be referring to the time of payment rather than the plaintiff’s obligation to make payment. If the plaintiff seeks to exonerate himself from his contractual obligation to pay commissions to the defendant in the event that he does not receive disbursement of funds from the ATOs, he needs to draft such terms in clear and express terms. Applying the rules of *contra proferentem*, I am inclined to interpret this provision against the plaintiff. Further, the plaintiff had not pleaded that such a term should be implied in the 2019 MOU.

19 Second, the plaintiff says that the defendant is not entitled to commission for his work in promoting CAA courses because the defendant breached IBF marketing guidelines. The 2019 MOU provides that the defendant agrees to ensure that all marketing activities must comply with school rules and marketing guidelines. The plaintiff says that this must be read with clause H in

Schedule 1 of the 2019 MOU which provides that “payment [is] subject to fulfilling of all agreement stated”. The plaintiff says that read together, this meant that he will not need to pay the defendant any commission if the defendant violates any school rules or marketing guidelines. However, I am of the view such an interpretation is a misreading of the contract in its entirety for the reasons below.

20 Clauses A to G in Schedule 1 of the 2019 MOU provide for administrative procedures that students will have to comply with to be eligible for government funding. For instance, clause A provides that proper and valid enrolment documents must be submitted five working days from course start date and clause B provides that students must submit valid school requirement supporting documents. The 2019 MOU provides that the defendant shall be entitled to commission for every eligible participant whose funding is approved and who fulfil all terms stated on Schedule 1. In this context, I am of the view that the phrase “all agreement stated” in clause H refers only to the terms and conditions stated in Schedule 1. Otherwise, every single clause in the 2019 MOU would be treated as a condition precedent to the defendant receiving any commission from the plaintiff for his work. If that is indeed the plaintiff’s position, such terms need to be drafted in clear and express terms.

21 Further, the plaintiff did not plead damages for breach of contract with respect to the defendant’s alleged violation of marketing guidelines. Instead, the plaintiff’s only argument is that the defendant is disqualified from receiving commissions if he had violated marketing guidelines. Therefore, given my finding that the defendant’s entitlement to commission is not conditional upon his compliance with marketing guidelines, it is unnecessary for me to decide on whether the defendant actually breached marketing guidelines in the present case.

22 Third, the plaintiff says that the defendant is not entitled to any commission for his work in promoting BITC courses from April 2020 to July 2020 because the defendant failed to ensure the funding eligibility of some participants. The plaintiff tendered evidence showing that four students were rejected for BITC courses because they took similar courses before. However, there is nothing in the 2019 MOU suggesting that the defendant should be disentitled to any commission payment if a few students were found to be ineligible. Instead, the 2019 MOU provides that the plaintiff should pay the defendant commission for “every introduction of eligible, certified competent participants whose funding are approved”. Therefore, the mere fact that four students were rejected from the BITC courses does not disentitle the defendant from commission for all the other eligible students he introduced. For completeness, the commission for the four “ineligible” students is not included in the revised figure claimed by the defendant.

23 Fourth, the plaintiff says that the defendant should not be entitled to commission because he breached Clause C of Schedule 1 of the 2019 MOU in failing to make cash payment of the students’ school fees to the plaintiff. I am unable to agree with the plaintiff. Clause C of Schedule 1 is vague. It states “[s]kill Future Credits claims to submit valid Claim ID numbers or make Cash payment”. There is nothing in Clause C which suggests that the defendant must make cash payment of the school fees to the plaintiff, much less anything to suggest that failure to do so will disentitle the defendant from receiving commission.

24 Since the plaintiff does not dispute the defendant’s work in recruiting students for CAA, TLI and BITC courses from the months of April 2020 to July 2020, I find that the plaintiff is liable to pay the defendant \$763,035.80 in commission.

25 Turning to the issue of whether the parties agreed for the defendant to set-off the school fees collected from the students against any outstanding commission, I find that the evidence is insufficient to prove the existence of such an agreement. Although the defendant was able to show multiple instances in which the plaintiff allowed the defendant to set-off the school fees from the outstanding commission, there were also other instances in which the defendant transferred the collected school fees directly to the plaintiff before he received his commission. This suggests that there is no binding agreement between the parties that confers the defendant a contractual right of set-off. The plaintiff allows the defendant to set-off the school fees collected from the commission due to him on certain occasions out of goodwill and convenience. Therefore, I find that the defendant should return to the plaintiff the sum of \$290,310.75 being the school fees collected from students for the months of April 2020 to July 2020.

26 Lastly, in relation to the plaintiff's other claims to recover the advance commission paid to the defendant and loan extended to the defendant, I note that the defendant does not dispute the fact that these payments had been made by the plaintiff. The defendant's only defence is that these payments should be set-off against the commission due to him. Given my finding that the defendant is entitled to commission, I find that the sum of \$15,298.55, being the advance commission paid to the defendant, and the sum of \$40,000.00, being the loan extended to the defendant, should be set-off against the commission due to the defendant.

27 To sum up, the plaintiff is liable to pay the defendant \$763,035.80 in commission for his work in promoting CAA, TLI and BITC courses from April 2020 to July 2020. The following sums should be set-off against the commission due to the defendant:

- (a) the school fees collected by the defendant, \$290,310.75;
- (b) the advance commission paid to the defendant, \$15,298.55; and
- (c) the loan extended to the defendant, \$40,000.00.

Therefore, the plaintiff should make a payment of \$417,426.50 to the defendant.

28 I will hear the question of costs at a later date if parties are unable to agree costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Lim Junchen Xavier and Vernon Bonifac Fernandez (Yeo &
Associates LLC) for the plaintiff;
Defendant in person.
