Lim Jen Lin *v* Energy Market Company Pte Ltd
[2014] SGHC 199

Case Number : Suit No 4 of 2011(Registrar's Appeal No 93 of 2014)

Decision Date : 15 October 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Plaintiff in-person; Pan Xingzheng Edric and June Hong (Rodyk & Davidson LLP) for the defendant.

Parties : Lim Jen Lin — Energy Market Company Pte Ltd

Civil Procedure – Discovery of documents

15 October 2014 Judgment reserved.

Choo Han Teck J:

1 The plaintiff, Ms Lim Jen Lin, is an experienced lawyer and intelligent individual. She came to Singapore from Malaysia at the age of 15 on an ASEAN scholarship awarded by Singapore's Ministry of Education and studied in two of Singapore's top schools: Raffles Girls' School and Hwa Chong Junior College. She later read law in university, graduating with a bachelor degree from the University of Kent in 1988 and a master of law from the University of Cambridge in 1990. The plaintiff was later called to the Singapore Bar in 1991 and practised law in law firms in Singapore, Malaysia and Hong Kong for some seven years. She started in Drew & Napier LLP (as it then was) in Singapore, before moving to Rashid & Lee, a Malaysia law firm for a year and spent another year in Freshfields in Hong Kong. She returned to Drew & Napier as a salaried partner in January 1996 before leaving it in April 1998 to work as an in-house legal counsel in oil and gas companies. The first is Edison Mission Energy Asia Pte Ltd (Singapore), where she worked as Deputy Regional General Counsel (Asia) and a "key member of its senior management team" in Asia from May 1998 to March 2001. In the second, ChevronTexaco, the plaintiff worked as Corporate Counsel (Asia, Middle East, Central & South Asia) from June 2001 to early 2004. In ChevronTexaco, the plaintiff was "responsible for all legal advisory and activities related to its substantial financing, trading and marketing global business units". She then resigned to join the defendant, Energy Market Company Pte Ltd as its Company Secretary and General Counsel from 1 March 2004 to 1 December 2005, when she resigned.

2 On 5 January 2011, almost six years after the plaintiff left the defendant's employ, she commenced Suit No 4 of 2011 against it for a variety of alleged unpaid remuneration and bonuses. The plaintiff's claim for unpaid remuneration and bonuses is based on misrepresentation and breach of her contract of employment. The plaintiff avers that the defendant promised to pay her at least $302,000 a year. She says that she would not have left ChevronTexaco for the defendant but for this agreement. She says she was earning $304,577.50 yearly in ChevronTexaco and was not prepared to suffer a large pay cut. The defendant disputes this on the ground that the employment contract specified her pay as $220,000 per annum. The employment contract was in the form of a letter of appointment dated 28 November 2003 and signed by the plaintiff on 1 December 2003. The complete terms will be the subject of trial.

3 The plaintiff has gone through four sets of lawyers since commencing Suit No 4 of 2011. When the plaintiff took out Summons No 6503 of 2012 on 19 December 2012 for specific discovery of

documents, she was represented by Braddell Brothers LLP. By the time the summons for specific discovery was heard by the Assistant Registrar ("AR") on 3 March 2014, she was represented by Peter Low LLC. The AR heard and dismissed the application. Dissatisfied, the plaintiff appeals. This registrar's appeal arises from that dismissal.

4 I first heard the registrar's appeal on 21 April 2014. This hearing was adjourned as the plaintiff, who was to appear in person (as she discharged her lawyers from Peter Low LLC on 17 March 2014), was absent. I informed the defendant's lawyers who were present to notify the plaintiff that if she fails to attend the hearing again, her appeal would be dismissed. The appeal was then fixed for hearing on 30 June 2014. The plaintiff wrote to say that she was not present for the hearing as she was in the Supreme Court library photocopying documents for her appeal.

5 In the meantime, the plaintiff sought two extensions of time on account of ill health. The first was made by way of a series of letters dated 23, 25 and 27 June 2014 by the plaintiff to the Supreme Court Registry ("Registry"). The plaintiff says she is suffering from anaemia and that as a result, she suffered a "dramatic drop in [her] blood levels". In this regard, she submits letters from three doctors in Malaysia in support of her request. The third letter from the doctor sent on 27 June 2014 states that the plaintiff was unfit to attend court. I granted the plaintiff's request for adjournment. The hearing was adjourned to 18 August 2014. On 11 August 2014, the plaintiff wrote yet again requesting that the hearing on 18 August 2014 be adjourned to a date in October 2014 on account of ill health. In support, the plaintiff attached a letter from a Malaysian doctor who states that she "continues to remain lethargic and has developed symptoms of headache, nausea and vertigo". The doctor goes on to state that the plaintiff is "not medically fit to attend court". The defendant's lawyers from Rodyk & Davidson LLP responded to the plaintiff's letter within the day objecting to the plaintiff's request on the ground of "inordinate delay" in the hearing of the registrar's appeal. As the registrar's appeal was delayed for a considerable period of time, I was not prepared to grant the plaintiff a further extension.

6 I heard the registrar's appeal on 18 August 2014. The plaintiff (who represented herself) was present. I found the plaintiff's submissions (both written and oral) to be rambling and repetitious. The plaintiff also filed and served further submissions and a several stacks of documents purporting to be her reply submissions out of time. These added no further merit to her case. The plaintiff's present application for specific discovery is for a total of 15 classes of documents. Even though the plaintiff seeks a total of 15 classes of documents, they can be classified into just six main groups:

(a) The first (Classes 1, 2, 11 and 12) pertains to wide-ranging internal documents and communications of the defendant. The plaintiff claims that these are needed as they relate to her hiring, the terms on which she was hired and the representations made to her prior to her employment by the defendant.

(b) The second group pertains to two classes of documents (Classes 3 and 4) that are 'relevant to the letter of 2 March 2004'. This letter, the plaintiff alleges, is a second contact document from the defendant to the plaintiff.

(c) The third group (Classes 5 and 6) relate to the plaintiff's performance as an employee with the defendant. The plaintiff says that these documents are relevant to help her show that the performance bonus which the defendant paid to her was in fact not a true performance bonus, but paid pursuant to the alleged promise which the defendant had made to her.

(d) The fourth group (Classes 7 and 8) pertains to documents relating to her alleged termination.

(e) The fifth group (Classes 9 and 10) are documents 'relevant to the remuneration and/or intended remuneration of the plaintiff as an employee of the [d]efendant'. The plaintiff claims that these documents are relevant because they go towards proving whether there are further terms agreed between the defendant and herself.

(f) The sixth group (Classes 13 to 15) relate to documents and records taken by the defendant's auditors, PricewaterhouseCoopers ("PWC") in the course of their audit of the defendant. The plaintiff says in her affidavit filed on 23 January 2013 that:

> [T]he notes that PWC made or took during the course of its audit would therefore be relevant because they would tend to show that (i) I have all along maintained by position as to what the [d]efendant had said to me prior to my agreeing to take up employment with the [d]efendant and (ii) what PWC itself found, in relation to whether my assertions were true.

7 The plaintiff's case for specific discovery was considered by the AR. He rejected the plaintiff's application for specific discovery in all but one (the sixth group, or Classes 13 to 15) of the above groups. I need concern myself only with the first five groups of documents.

8 I start with the first group of documents the plaintiff is seeking to discover (Classes 1, 2, 11 and 12). The plaintiff's own pleaded claim is one for breach of contract, or misrepresentation in the alternative. These causes of action are founded on contractual documents and communications between the plaintiff and the defendant. The allegations do not concern the defendant's own internal communications. As such, the documents in this group are of no relevance to the plaintiff's claim, and should not be disclosed. In any event, I note that the defendant has already disclosed a substantial amount of documents to the plaintiff relating to the interviewing, selection, salary negotiations with and recruitment of the plaintiff. These include:

(a) The Initial Reference Report of the plaintiff by a recruitment firm (Heidrick & Struggles) submitted to the defendant;

(b) The Confidential Candidate Appraisal by Heidrick & Struggles relating to the plaintiff;

(c) Approval paper submitted by the defendant's Chief Executive Officer (CEO), Mr Allan Dawson to the defendant's Remuneration & Appointments ("R & A") committee for approval to hire the plaintiff and to negotiate a salary within the range of $220,000 to $260,000;

(d) Draft letter of appointment with handwritten changes made by the plaintiff;

(e) Minutes of the R & A committee meeting when the proposed hiring of the plaintiff and her remuneration was considered, discussed and approved;

(f) Email correspondence between the plaintiff and the defendant on the discussion, negotiation and agreement of the plaintiff's terms of employment;

(g) Finalised terms of employment signed by the plaintiff and the defendant; and

(h) Mr Dawson's paper to the R & A committee reporting and updating on the plaintiff's appointment.

9 These documents are comprehensive and show the following:

(a) The salary initially requested by the plaintiff;

(b) The defendant's deliberations on her appointment and remuneration;

(c) The decision by the R & A committee that it was not prepared to match the plaintiff's expected salary;

(d) The ultimate decision by the R & A committee on the pay range which the defendant was able to offer ($220,000 to $260,000);

(e) Instructions from the R & A committee to Mr Dawson to negotiate within this salary range;

(f) Communications between the plaintiff and the defendant's human resource manager Mr Philip Yeo regarding, among other things, the terms on which the plaintiff was to be remunerated;

(g) Communications showing the plaintiff pressing for certain further benefits and improvements on the terms of employment, and replies from the defendant showing that some were acceded to and some were not; and

(h) The finalised terms of the plaintiff's employment, agreed to and signed by the plaintiff.

10 In contrast, the plaintiff has not been able to point to a shred of evidence that substantiates her assertion that there was a promise made by the defendant to pay her $302,000 a year. There is no justifiable basis on which I can or should grant the plaintiff's application for specific discovery of these documents. Her attempt at specific discovery seems to be not only speculative but oppressive.

11 I also deny the plaintiff's application for specific discovery of the second group of documents, *ie* those in Classes 3 and 4. These documents, the plaintiff says, is 'relevant to the letter of 2 March 2004'. The letter of 2 March 2004, the plaintiff alleges, is a second contact document from the defendant to the plaintiff. The plaintiff's application for this group of documents is not specific enough – it merely states that the defendant must disclose documents that are 'relevant' to the letter of 2 March 2014 without providing details of the exact documents she is seeking. It is neither clear if this second group of documents exists. I am also of the view that it is both pointless and unnecessary to order specific discovery of this group of documents - the 2 March 2014 letter merely reproduces the pre-contract terms set out in an email to the plaintiff on 27 November 2003 and was given only because the plaintiff requested for it as she wanted the pre-contract terms set out in a formal letter.

12 The plaintiff's application for specific discovery of the third group of documents (those in Classes 5 and 6) is also unmeritorious. Her argument that the documents are relevant to help her show that the performance bonus which the defendant paid to her was in fact not a true performance bonus, but paid pursuant to the alleged promise which the defendant had made to her contradicts her own pleaded case. The plaintiff's statement of claim states that the second tranche of her performance bonus in 2004 (amounting to $23,693) was never paid to her. Yet, her affidavit filed in support of her application for specific discovery states that she was paid, but this payment was pursuant to the alleged promise.

13 The fourth group (Classes 7 and 8) of documents are that the plaintiff say relate to her alleged termination of employment. The plaintiff's application for specific discovery fails for two reasons. First, the plaintiff's employment was not terminated. It is her own pleaded case that she resigned. Second,

even if the plaintiff's employment was terminated and there are documents relating to her alleged termination of employment, these documents are completely irrelevant to the issues in the suit. Her claim is not for wrongful termination. Instead, the claim is for breach of contract and misrepresentation on the part of the defendant in failing to pay her $302,000 per annum and bonuses (and not just $220,000 per annum).

14 The fifth group of documents (Classes 9 and 10) are documents which the plaintiff says has to be disclosed to find out whether she was paid under the written agreement or under an oral contract. This is an irrelevant issue and I therefore do not grant the plaintiff's application for specific discovery of this group of documents. There is no dispute that the plaintiff was paid under written terms and not an oral agreement.

15 Email and internal documents may be ordered to be disclosed if they are relevant. The plaintiff has not made out any clear argument as to why she is seeking the documents in her present application in spite of the voluminous documents submitted by her for this appeal. Even her submissions contradict her case as pleaded. In her reply submissions she referred to the letter of appointment only as a 'collateral contract' and that the main contract was the oral contract. Her claim in this action is for breach of contract in not having been paid according to the contract of employment. She has a problem because the contract does not support any of her claims and is thus compelled to rely on oral terms.

16 So far as her allegations of an oral contract are concerned, she realises that those claims would require corroboration; which she is unable to provide. I therefore agree with Mr Pan that the plaintiff's application for further discovery here is nothing more than a speculative exercise. It appears to me that the plaintiff has no clear idea what documents exist, and thus has no idea what she wants. For the reasons given, I am of the view that the AR had rightly dismissed the application. This appeal is dismissed with costs to the defendant in any event. I will hear parties on the quantum of costs if they are unable to agree.