IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 19

Suit No 855 of 2014

Between

Eastern Resource Management Services Ltd

… Plaintiff

And

Chiu Teng Construction Co Pte Ltd

… Defendant

JUDGMENT

[Contract] — [Breach]
[Contract] — [Consideration] — [Sufficiency of consideration]
[Contract] — [Contractual terms]
[Contract] — [Duress] — [Economic]
[Contract] — [Illegality and public policy] — [Statutory illegality]

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v
Chiu Teng Construction Co Pte Ltd

[2019] SGHC 19

High Court — Suit No 855 of 2014
Woo Bih Li J
31 July, 1, 2 August 2018; 30 August 2018

30 January 2019 Judgment reserved.

Woo Bih Li J:

Introduction

1 The plaintiff, Eastern Resource Management Services Ltd ("ERMS"), commenced Suit No 855 of 2014 ("S 855/2014") against the defendant, Chiu Teng Construction Co Pte Ltd ("Chiu Teng"), for breach of contract. Before this court, ERMS claims payment of 50% of certain fees collected by Chiu Teng (through use of another company) from June 2012 to August 2014,[1] with interest, or alternatively, for damages to be assessed.

2 S 855/2014 was first decided by Edmund Leow JC after hearing the trial over two days in October 2015. Thereafter, ERMS appealed in Civil Appeal No 34 of 2016 against part of the decision of Leow JC. On 25 September 2017, the Court of Appeal allowed the appeal and set aside the judgment of Leow JC,

[1] See Statement of Claim (Amendment No 5) ("SOC") at pp 6–7.

except in relation to the costs ordered in respect of an amendment by ERMS of its statement of claim. The Court of Appeal remitted the claim of ERMS in S 855/2014 for a re-trial in the High Court. The Court of Appeal also gave directions for ERMS to file its amended statement of claim and for Chiu Teng to file its amended defence.

3 I heard the re-trial over three days and reserved judgment. The trial was not bifurcated.[2] References to "the trial" are to this re-trial before me unless otherwise stated.

Background

4 I set out the background facts as far as they were relevant to the parties' allegations in this suit.

5 Chiu Teng is a company incorporated in Singapore. At the material time, Chiu Teng held a licence from the Building and Construction Authority ("BCA") to operate an overseas test centre ("the OTC") in Bangladesh to conduct the requisite trade tests for various trades for workers in Bangladesh to determine their fitness to work in the Singapore construction industry.[3] The OTC was owned and managed by Bangladesh Foundry and Engineering Works Ltd ("BFEW"), a company incorporated in Bangladesh. The OTC usually conducted the trade tests monthly. Workers who passed the trade test could then apply for an in-principle approval letter from the Singapore government to work in Singapore. With the licence from BCA, the registered licensee Chiu Teng was also allowed to register workers with BCA for testing at the OTC.[4]

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2 Notes of Evidence of 31 July 2018 ("NEs 31/07/18") at p 4 lines 19–22.

3 See SOC at para 2; Defence (Amendment No 3) ("Defence") at para 2.

4 See Reply at para 3.

6 ERMS is a company incorporated in Bangladesh. Chiu Teng appointed ERMS to be its agent in carrying out its responsibilities as the OTC licensee in Bangladesh.[5]

7 Both ERMS and BFEW had training centres in Bangladesh which trained workers for various jobs in the construction industry and prepared them for testing at the OTC.

2008 JVA

8 Sometime in 2008, ERMS, Chiu Teng and BFEW entered into a joint venture agreement for the setting up of the OTC ("2008 JVA").[6] The written agreement for the 2008 JVA was drafted by Mr Cedric Ng Hark Li ("Cedric Ng"),[7] who was the administrative manager of Chiu Teng. Cedric Ng was a factual witness for Chiu Teng in the trial. It was his evidence that the 2008 JVA was not drafted with the assistance of any lawyer.[8]

9 In relation to the workers trained at BFEW's training centre, the 2008 JVA provided that for every worker who passed the trade test at the OTC and was mobilised to work in Singapore, BFEW would pay ERMS and Chiu Teng $300 each.[9]

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5 See SOC at para 4; Defence at para 2.

6 See 1Agreed Bundle ("AB") 3–6.

7 Notes of Evidence of 2 August 2018 ("NEs 02/08/18") at p 28 lines 29–32, p 29 line 1.

8 See NEs 02/08/18 at p 29 lines 27–30.

9 See 1AB 4.

10 In relation to the workers trained at ERMS' training centre, the 2008 JVA did not provide that ERMS had to pay (Chiu Teng) for the workers who were tested at the OTC.

11 The 2008 JVA provided that the OTC was also allowed to conduct trade tests for workers who were trained at third party training centres.[10] Because these workers were directly tested at the OTC without being trained previously at the training centres of ERMS and BFEW, these workers were referred to as "direct testing workers".

12 Cedric Ng gave evidence that until the tests conducted by the OTC in April 2011, ERMS had "recruited workers for 'direct testing' for [Chiu Teng]".[11] From the April 2011 testing and onwards, Chiu Teng 'recruited' these direct testing workers for testing at the OTC.[12]

13 The 2008 JVA stated under cl 8 of "Other Points":[13]

> For the direct testing, [Chiu Teng] and ERMS will collect from these agents for each worker $325.00 (Centre Fees) + $200.00. We will pay a fixed amount of TK9000 (SGD$180.00) to BFEW for the rental of [the OTC]. *The remainder amount of $345.00 will be divided between [Chiu Teng] and ERMS.* These [*sic*] amount is based on the current market practice, it will fluctuate dependant [*sic*] on the market demand. [emphasis added]

14 The 2008 JVA did not provide the procedure for how this "direct testing fee" per direct testing worker was to be collected and distributed. In these proceedings, ERMS and Chiu Teng disputed how their sum of $345 of the direct

10 See 1AB 5.

11 Cedric Ng Hark Li's affidavit of evidence-in-chief ("Cedric Ng's AEIC") at para 16(b).

12 See Cedric Ng's AEIC at para 18.

13 1AB 5.

testing fee was to be divided between them. ERMS argued that this sum was to be divided equally between ERMS and Chiu Teng, *ie*, $172.50 each per direct testing worker.[14] Chiu Teng argued that because the 2008 JVA had been conducted through CTBF Management Services Pte Ltd ("CTBF") which had collected the direct testing fee of $345, ERMS was only entitled to 49% of *CTBF's profits*, through distributions of dividends, if any.[15] This was because ERMS had received its share of the direct testing fees through dividends declared by CTBF and ERMS had received only 49% of the dividends.

15 I briefly set out CTBF's involvement in the 2008 JVA. The 2008 JVA had provided that ERMS, Chiu Teng and BFEW would incorporate CTBF.[16] The shareholding in CTBF was to be 33% to ERMS, 33% to Chiu Teng and 34% to BFEW, and BFEW was to have no profit interest in CTBF.

16 After CTBF was incorporated, ERMS, Chiu Teng and BFEW agreed that BFEW's shareholding in CTBF would be transferred to ERMS and Chiu Teng.[17] Consequently, the shareholding in CTBF was 49% to ERMS, held by its nominee Mr Abul Monsur Ahmed ("Monsur"), and 51% to Chiu Teng, held by its nominee Mr Kor Khee Nghee ("Kor", who was also known as Benny Kor[18]). Monsur was a director of ERMS and was a factual witness for ERMS in the trial. Kor was a representative of Chiu Teng, although he was neither a director or employee of Chiu Teng.[19]

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14 SOC at para 6.

15 See Defence at para 4.

16 1AB 4.

17 See 1AB 7.

18 See SOC at para 8.

19 See NEs 31/07/18 at p 60 lines 1–3; NEs 02/08/18 at p 75 lines 15–18.

17 As mentioned, CTBF collected the direct testing fee of $345. As agreed between ERMS and Chiu Teng at the trial, CTBF also collected the total sum of $600 that BFEW paid ERMS and Chiu Teng for each worker trained at BFEW's training centre who passed the trade test at the OTC and was mobilised to work in Singapore (see [9] above).[20] As pleaded by ERMS in its statement of claim, from 2008 to April 2011, ERMS was paid 49% of the net profits of CTBF through dividend payments.[21] It was not disputed that these net profits were derived after accounting for the costs of running CTBF.[22] Monsur gave evidence at the trial that during this period of time, ERMS had agreed to receiving such dividend payments as its share of the direct testing fees (and of the payment from BFEW).[23]

18 The 2008 JVA only had two clauses pertaining to the duration of the 2008 JVA, *ie*, cll 10 and 11 of "Other Points".[24] Clause 10 stated that the 2008 JVA was to be for a period of six months from 1 October 2008 to 31 March 2009, and if no objections were raised on the expiry date, it shall be deemed agreed by the three parties and shall continue. Clause 11 stated that the 2008 JVA "shall terminate on the expiry, revocation or suspension of BCA's endorsement of the OTC".

19 ERMS pleaded that Chiu Teng abided by the 2008 JVA from 2008 to June 2011.[25]

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20 NEs 31/07/18 at p 48 lines 10–11, 15.

21 SOC at para 8.

22 See *eg*, NEs 02/08/18 at p 63 lines 8–11.

23 See NEs 31/07/18 at p 46 lines 12, 29, p 47 line 15.

24 1AB 5.

25 SOC at para 9.

May 2011 Agreement

20 From early 2011, BCA imposed, for the first time, a quota on the number of workers who could be tested for each trade at each overseas test centre each month.[26] This resulted in ERMS, Chiu Teng and BFEW meeting on 14 May 2011 and agreeing that until ERMS and BFEW furnished a more detailed proposal, the quota for the number of workers who could be tested for each of five trades at the OTC was to be allocated as follows: 30% to ERMS, 30% to Chiu Teng and 40% to BFEW.[27] This agreement ("May 2011 Agreement") was recorded in the minutes of the meeting. The quotas allocated to ERMS and BFEW were for the workers trained at the training centres of ERMS and BFEW respectively, and the quota allocated to Chiu Teng was for direct testing workers.

June 2011 Agreement

21 On 15 June 2011 or 16 June 2011, Monsur had a meeting with three representatives of Chiu Teng, namely, Mr Ng Chee Hwa ("CH Ng"), Cedric Ng and Kor.[28] CH Ng was the managing director of Chiu Teng. Thereafter, on 17 June 2011, Monsur had a second meeting with these three representatives of Chiu Teng.[29]

22 After the second meeting and on the same day, Monsur signed a document entitled "Minutes for Meeting on 17/06/2011", which evidenced the following agreement ("June 2011 Agreement"):[30]

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26 See SOC at para 9.

27 Defendant's Bundle of Documents ("DB") 30.

28 Abul Monsur Ahmed's affidavit of evidence-in-chief ("Monsur's AEIC") at para 12; NEs 02/08/18 at p 32 lines 18–27, p 33 lines 4–5.

29 1AB 223.

> 1. With effect from April Test 2011, ERMS have agreed and will not enjoy any revenue derived from [CTBF].
> 2. In addition, with effect from April Test 2011, ERMS have also agreed to pay CTTC Management Services Pte Ltd SGD $600.00 for every worker passed in the SEC Trade Test under their allocated quotas.

23 It was common ground that cl 1 of the June 2011 Agreement meant that with effect from the April 2011 testing, ERMS would not be receiving a share of the direct testing fees which had originally been provided for under cl 8 of "Other Points" of the 2008 JVA (see [13] above). This was because CTBF had been collecting the direct testing fee of $345 per direct testing worker and paying ERMS 49% of its net profits through dividend payments.

24 In fact, after June 2011, CTBF no longer collected the direct testing fees, and Chiu Teng used CTTC Management Services Pte Ltd ("CTTC") (of which Kor was a director[31]) to collect the direct testing fees instead.[32] ERMS was not a shareholder of CTTC.

25 Clause 2 of the June 2011 Agreement meant that with effect from the April 2011 testing, ERMS would have to pay CTTC $600 for every worker trained at ERMS' training centre who passed the trade test at the OTC. In comparison, the 2008 JVA did not provide that ERMS had to make any such payment for the workers trained at its training centre (see [10] above).

26 It was undisputed that ERMS agreed to the June 2011 Agreement.[33] What was in dispute was whether Cedric Ng (and/or the other two

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30 1AB 223.

31 NEs 02/08/18 at p 75 line 18.

32 See Cedric Ng Hark Li's supplemental affidavit of evidence-in-chief ("Cedric Ng's Supplemental AEIC") at para 19.

representatives of Chiu Teng) had threatened Monsur during the two meetings that unless Monsur agreed to the June 2011 Agreement, Chiu Teng would stop the registration for the July 2011 testing at the OTC of the workers trained at the training centres of ERMS and BFEW.[34] ERMS alleged that such a threat was made, while Chiu Teng denied it. It was nevertheless agreed that Chiu Teng had in fact registered these workers on 17 June 2011, which was the last day for registration of workers for the July 2011 testing at the OTC, and Chiu Teng had done so after the June 2011 Agreement was entered into.[35] Cedric Ng had agreed to this fact during cross-examination when he was referred to his evidence as recorded in the transcripts of the trial before Leow JC.[36]

27 ERMS claimed that the alleged threat would have meant that workers who were not registered for the July 2011 testing would have to wait until the subsequent month, at the earliest, to be registered for testing at the OTC.[37] ERMS would also still be subjected to the quota it was allocated for the number of workers who could be tested at the OTC each month.[38] ERMS also submitted that it would then have to pay for the workers' accommodation and meals for such longer period until they could be tested at the OTC.[39]

28 I mention two further points in relation to the June 2011 Agreement. First, ERMS did not plead that Monsur signed the minutes evidencing the June

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33 See SOC at para 12; Notes of Evidence of 1 August 2018 ("NEs 01/08/18") at p 31 line 27, p 51 line 24; NEs 02/08/18 at p 5 lines 17–19.

34 See SOC at para 11(a); Reply at para 2; Monsur's AEIC at paras 13–14.

35 See NEs 02/08/18 at p 40 lines 8–28.

36 See 3AB 203.

37 See SOC at para 11(c).

38 SOC at para 11(d).

39 See SOC at para 11(e).

2011 Agreement believing the minutes to be only a set of minutes which was not binding. ERMS however made such a point in its opening statement at para 49. In any case, I will not consider this point as it contradicts the pleading of ERMS that Monsur had agreed to the June 2011 Agreement but that the June 2011 Agreement was procured by economic duress.

29 Second, ERMS did not plead that the June 2011 Agreement was subject to review. In so far as Monsur seemed to have suggested that "he agreed to the meeting of minutes … on … 17th June because they [*ie*, Chiu Teng] mentioned that it will be in review",[40] Monsur should not be taken to have meant that he had agreed to the June 2011 Agreement on a condition that it was subject to review. What he meant was that after the June 2011 Agreement had already been entered into, Chiu Teng allegedly gave an assurance thereafter that it would review the June 2011 Agreement.[41] This meant that the June 2011 Agreement did not, in fact, include a term that it was subject to review. ERMS also did not plead that the June 2011 Agreement was subject to review or that the June 2011 Agreement lapsed because there was no review.

July 2012 Agreement

30 On 6 July 2012, ERMS and Chiu Teng entered into another agreement ("July 2012 Agreement"), which was evidenced by the minutes for the meeting on the same day.[42] While ERMS pleaded in its statement of claim that the July 2012 Agreement was entered into in May 2012,[43] ERMS in its opening statement and submissions took the position that the July 2012 Agreement was

40 NEs 01/08/18 at p 17 lines 24–26.

41 NEs 01/08/18 at p 21 lines 15–19.

42 See 1AB xiii at no 65; 1AB 224; DB 55.

43 SOC at para 14.

entered into on 6 July 2012 instead.[44] Chiu Teng also stated in its opening statement and submissions that the July 2012 Agreement was entered into on 6 July 2012.[45]

31 The July 2012 Agreement was for the settling of the accounts of BFEW and ERMS with Chiu Teng.[46] The parties were agreed that the July 2012 Agreement was a compromise.[47] From the minutes of the meeting, Monsur signed for and on behalf of ERMS as its director in undertaking to pay CTTC $129,709.02. (It is unclear if Monsur, who had been appointed agent of BFEW since 2012, was authorised to enter into the July 2012 Agreement on behalf of BFEW as well.[48]) The sum of $129,709.02 was arrived at after computing the following:

(a) amount BFEW was owing to Chiu Teng:

(i) $400 for every worker who passed the trade test at the OTC and was mobilised to work in Singapore from April 2011 to June 2012;

(ii) $250 for every worker who passed the trade test at the OTC but was not yet mobilised to work in Singapore as at June 2012; and

(iii) *less* BFEW's past payment to Chiu Teng as at June 2012;

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44 See Plaintiff's Opening Statement ("POS") at para 71; Plaintiff's Closing Submissions at para 36.

45 Defendant's Opening Statement ("DOS") at para 19; Defendant's Closing Submissions at para 9.

46 DB 55.

47 See SOC at para 14; Defence at para 11.

48 Monsur's AEIC at para 5.

(b) amount ERMS was owing to Chiu Teng as at June 2012;

(c) *less* proposed dividend due to ERMS in 2011; and

(d) *less* direct testing fees of $100 for each of the 868 direct testing workers under Chiu Teng's quota from April 2011 to May 2012.

32 I mention three points about the July 2012 Agreement. First, in respect of [31(a)(i)] above, instead of paying ERMS and Chiu Teng a total sum of $600 for every worker who was mobilised to work in Singapore (see [9] above), BFEW would only be paying Chiu Teng $400 instead for every such worker.

33 Second, in respect of [31(b)] above, the amount ERMS owed to Chiu Teng as at June 2012 included the sum of $600 for every worker which ERMS was supposed to pay CTTC under cl 2 of the June 2011 Agreement with effect from the April 2011 testing (see [25] above). This was accepted by ERMS at the trial and in its closing submissions at para 19.[49] Further arguments by the parties concerning this payment are discussed at [103]–[105] below.

34 Third, in respect of [31(d)] above, the July 2012 Agreement provided that ERMS had a share of the direct testing fees from April 2011 to May 2012, *ie*, $100 for each direct testing worker. Clause 1 of the June 2011 Agreement had instead provided that with effect from the April 2011 testing, ERMS would not be receiving a share of the direct testing fees (see [23] above).

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[49] See NEs 02/08/18 at p 81 lines 28–31, p 82 line 4, p 84 lines 8–10.

After the July 2012 Agreement

35 The parties were agreed that from June 2012 to August 2014, the OTC conducted trade tests for a total of 2,248 direct testing workers.[50] The OTC did not conduct anymore trade tests for direct testing workers thereafter.

36 On 27 October 2017, a winding up order was made against CTBF and the liquidation has since been completed.[51]

37 The crux of ERMS' case in this suit was that ERMS was not paid any share of the direct testing fees for these 2,248 direct testing workers. Alleging that Chiu Teng was consequently in breach of the 2008 JVA,[52] ERMS claims from Chiu Teng a 50% share of these direct testing fees, which ERMS submits to be $387,780 (*ie*, 50% x $345 x 2,248), with interest.[53]

Issues

38 I summarise the submissions of ERMS and Chiu Teng.

39 ERMS' position was that the 2008 JVA was still binding on the parties as at August 2014, and that under the 2008 JVA, the direct testing fee of $345 per direct testing worker was to be divided equally between ERMS and Chiu Teng. ERMS thus claims from Chiu Teng a 50% share of the direct testing fees for the 2,248 direct testing workers tested from June 2012 to August 2014 at the OTC. ERMS argued that the June 2011 Agreement was not enforceable because (i) it was tainted with illegality for a contravention of BCA guidelines, (ii) Chiu

50 See NEs 02/08/18 at p 13 lines 24–26.

51 See POS at para 27.

52 See SOC at para 16; Plaintiff's Closing Submissions at paras 48–49.

53 See formula in SOC at para 18.

Teng did not provide any or sufficient consideration, and/or (iii) the June 2011 Agreement was procured by economic duress by Cedric Ng on Monsur. As for the July 2012 Agreement, ERMS submitted that it was only in respect of the direct testing fees from April 2011 to May 2012, and not direct testing fees thereafter.

40 On the other hand, Chiu Teng's position was that the 2008 JVA had first been superseded by the June 2011 Agreement, which was in turn superseded by the July 2012 Agreement. Chiu Teng submitted that the June 2011 Agreement was enforceable, and that the July 2012 Agreement was a full and final settlement of all claims the parties had against each other. Thus, as at August 2014, the 2008 JVA was no longer binding on the parties. ERMS was not entitled to any share of the direct testing fees, except for the direct testing fees of $100 each for 868 direct testing workers from April 2011 to May 2012 which Chiu Teng agreed to under the July 2012 Agreement and which was taken into account to reach the sum of $129,709.02 that ERMS undertook to pay CTTC under the July 2012 Agreement (see [31] above). In the alternative, Chiu Teng pleaded that the 2008 JVA was not enforceable because it was tainted with statutory illegality as ERMS and BFEW both contravened s 22A of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) ("EFMA"). Alternatively, Chiu Teng pleaded that if the June 2011 Agreement was not enforceable because it was tainted with illegality for a contravention of BCA guidelines, the 2008 JVA should also not be enforceable for a similar illegality.

41 The following issues thus arose for consideration:

(a) in relation to the 2008 JVA:

(i) whether it was tainted with illegality and was not enforceable;

(ii) how the direct testing fee of $345 per direct testing worker was to be divided between ERMS and Chiu Teng; and

(iii) what the contract duration for the 2008 JVA should be;

(b) in relation to the June 2011 Agreement:

(i) whether it was tainted with illegality and was not enforceable;

(ii) whether Chiu Teng provided sufficient consideration; and

(iii) whether the June 2011 Agreement was procured by economic duress by Cedric Ng on Monsur;

(c) whether following the July 2012 Agreement, ERMS was entitled to a share of the direct testing fees from June 2012 to August 2014; and

(d) how much was collected from June 2012 to August 2014 from the 2,248 direct testing workers.

42 I mention first that if I find that the June 2011 Agreement was enforceable and the July 2012 Agreement only provided that ERMS had a share of the direct testing fees from April 2011 to May 2012 and not thereafter, the sub-issues in relation to the 2008 JVA (see [41(a)(i)]–[41(a)(iii)] above) become moot. I nevertheless address the above issues *seriatim*.

2008 JVA

Illegality

43 Chiu Teng pleaded in the alternative that the 2008 JVA was not enforceable because it was tainted with illegality in two respects. First, Chiu Teng pleaded that the 2008 JVA was not enforceable because it was tainted with statutory illegality as ERMS and BFEW both contravened s 22A of the EFMA.[54] Second, Chiu Teng pleaded in the alternative that if the June 2011 Agreement was not enforceable because it was tainted with illegality for a contravention of BCA guidelines, the 2008 JVA should also not be enforceable for a similar illegality.[55]

(1) EFMA

44 I deal with the first argument pertaining to the breach of s 22A of the EFMA. The relevant sub-provisions of s 22A state:

> **Restrictions on receipt, etc., of moneys in connection with employment of foreign employee**
>
> **22A.**—(1) No person shall deduct from any salary payable to a foreign employee, or demand or receive, directly or indirectly and whether in Singapore or elsewhere, from a foreign employee any sum or other benefit —
>
> (*a*) as consideration or as a condition for the employment of the foreign employee, whether by that person or any other person;
>
> …
>
> (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $30,000 or to imprisonment for a term not exceeding 2 years or to both.

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54 Defence at para 14.

55 See Defence at para 3.

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45 Chiu Teng alleged that in the operation of the 2008 JVA, ERMS and BFEW collected moneys from workers who trained at their training centres and from direct testing workers in exchange for a promise of employment in Singapore.[56] Chiu Teng thus submitted that ERMS and BFEW breached s 22A of the EFMA.

46 On the other hand, ERMS submitted that the fees collected from the various workers under the 2008 JVA were not for their employment in Singapore but for the OTC test fees and rental fees.[57]

47 During the trial, counsel for Chiu Teng asked Monsur whether he had promised Bangladeshi workers jobs in Singapore in exchange for a fee, which Monsur simply denied.[58] With Monsur's denial, counsel for Chiu Teng did not pursue this line of questioning at all or put Chiu Teng's case in this regard to Monsur.[59]

48 ERMS' other factual witness Mr Lee Siong Kee testified that ERMS obtained "Prior Approvals" which confirmed that there were job vacancies in Singapore and which were required by BCA for registering workers to be tested at the OTC.[60] Chiu Teng argued that this meant that ERMS was also subsequently placing these workers for employment in Singapore.[61] I find that Chiu Teng has not proven such a link.

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56 Defence at para 14.

57 See POS at para 75; Plaintiff's Closing Submissions at para 44.

58 See NEs 01/08/18 at p 99 lines 29–31.

59 See NEs 01/08/18 at p 99 line 32, p 100 line 1.

60 See NEs 31/07/18 at p 14 lines 27–32, p 16 lines 21–23.

49 I also consider the affidavit of evidence-in-chief ("AEIC") of Mr Sanowar Hossain Mohammad Nurul Islam ("Sanowar"), the other factual witness for Chiu Teng, which was admitted in evidence. ERMS did not cross-examine Sanowar. In his AEIC, Sanowar discussed his experience with a third party training centre, and stated that "[t]he training centers also act as agents to secure jobs for the workers, for a fee".[62] Sanowar's evidence did not pertain specifically to the training centre of ERMS or of BFEW, and there was no corroborating evidence to support his generalisation of the conduct of training centres.

50 I thus find that Chiu Teng has not proven that ERMS or BFEW breached s 22A of the EFMA.

51 I note that Chiu Teng also seemed to allege in its opening statement and closing submissions that ERMS also breached s 25(4) read with s 25(6) of the EFMA.[63] As ERMS rightly pointed out,[64] Chiu Teng had not pleaded in its defence such a breach to support its argument on statutory illegality.[65] In any case, s 25(4) read with s 25(6) concerns a breach by "any employer" of a foreign employee. Not being an employer of any of the workers who were tested at the OTC, ERMS could not have breached s 25(4).

52 In the light of the above, Chiu Teng has not proven that there was any statutory illegality based on any contravention of the provisions of the EFMA.

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61 See Defendant's Closing Submissions at para 94.

62 See Sanowar Hossain Mohammad Nurul Islam's affidavit of evidence-in-chief at para 11.

63 See DOS at paras 64–65, 67; Defendant's Closing Submissions at para 91.

64 See Plaintiff's Reply Submissions at para 13.

65 See Defence at para 14.

(2) BCA Prospectus

53 I turn to Chiu Teng's argument in the alternative that if the June 2011 Agreement was not enforceable because it was tainted with illegality for a contravention of BCA guidelines, the 2008 JVA should also not be enforceable for a similar illegality. I will discuss the illegality in relation to the June 2011 Agreement at [80]–[81] below.

54 In relation to the 2008 JVA, the alleged contravention was non-compliance with para 7 of BCA's "Prospectus for Setting Up and Operation of Overseas Test Centres (OTCs)" ("BCA Prospectus").[66] According to Chiu Teng, the BCA Prospectus was applicable since 2007.[67]

55 Paragraph 7 of the BCA Prospectus stated:[68]

> Foreign candidates shall enrol for tests with the OTCs and sit for the trade tests at these OTCs' premises. *The OTC is allowed to collect a test fee of $325 (without GST) per test candidate.* The OTC shall also collect, on behalf of BCA, the portion of the test fee due to BCA and pay to BCA through GIRO when the OTC registers for the trade test through the BCA online system[.] [emphasis added]

56 Chiu Teng argued that under the 2008 JVA, each direct testing worker was charged a test fee of $525 (*ie*, $325 + $200, see [13] above) when at that time, BCA only allowed the OTC to collect a test fee of $325 as stated at para 7 of the BCA Prospectus.[69]

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66 2AB 74–112.

67 NEs 01/08/18 at p 33 lines 31–32.

68 2AB 76.

69 See Defence at para 3.

57 On the other hand, ERMS submitted that Chiu Teng's argument was an afterthought as it was not taken up in the trial before Leow JC.[70] ERMS also argued that $180 went to BFEW as rental fee of the OTC (see [13] above) and that was not prohibited by the BCA Prospectus.[71] ERMS further submitted that Monsur was not aware of the BCA Prospectus or its contents until 2017 when the BCA Prospectus was disclosed by Chiu Teng, and was not aware in 2008 that only $325 could be collected per worker for the test fee.[72] ERMS relied on *Dimpex Gems (Singapore) Pte Ltd v Yusoof Diamonds Pte Ltd* [1987] SLR(R) 349 (*"Dimpex Gems*") to argue that Chiu Teng must show that ERMS had knowledge of the illegal act and actively participated in that act before a court would hold a contract to be unenforceable against ERMS for that illegality.[73]

58 Chiu Teng's second illegality argument was made in the alternative, and was premised on the court finding in favour of ERMS' argument that the June 2011 Agreement was not enforceable because it was tainted with illegality for a contravention of BCA guidelines. ERMS pleaded this argument only in its Statement of Claim (Amendment No 4) dated 28 September 2017 at para 13, which was after the trial before Leow JC. Chiu Teng followed by pleading its similar illegality argument in its Defence (Amendment No 1) dated 10 October 2017 at para 3. I do not find that Chiu Teng's illegality argument in this regard was an afterthought.

59 It does not assist ERMS to argue that $180 went to BFEW as rental fee of the OTC. Even if this sum of $180 could legitimately be collected from each

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70 POS at para 33; Plaintiff's Closing Submissions at para 4.

71 See POS at para 34; Plaintiff's Closing Submissions at para 5.

72 See POS at para 34; Plaintiff's Closing Submissions at paras 5–6.

73 Plaintiff's Closing Submissions at para 7.

direct testing worker in addition to the test fee of $325 that BCA allowed the OTC to collect, this still meant that each direct testing worker was being charged a test fee of $345 (*ie*, $525 – $180). This sum still exceeded the test fee of $325 that BCA allowed the OTC to collect.

60 I proceed to consider the nature of the BCA Prospectus.

61 Paragraph 1 of the BCA Prospectus stated that "[t]his prospectus will form part of the terms and conditions of endorsement of the OTC."

62 Under the "Terms and Conditions of Endorsement for an Overseas Test Centre (OTC)" in the BCA Prospectus, para 24 stated:[74]

> 24 BCA reserves the sole right to review, revoke, cease, suspend or otherwise the endorsement of the Company to conduct testing at the OTC at any time without giving notice, for any one of the following reasons:
>
> (a) If the Company or its OTC does not comply with any of the above conditions or BCA's requirements; [or]
>
> …
>
> for any other reason if BCA deems necessary.

63 I find that non-compliance with the BCA Prospectus, and specifically with para 7, did not constitute a contravention of a statutory provision (this was Chiu Teng's defence against ERMS' argument that the June 2011 Agreement was not enforceable for a similar illegality[75]). The BCA Prospectus provided the contractual terms and conditions of endorsement for any overseas test centre, in this case the OTC, between BCA and the company conducting testing at the OTC, *ie*, Chiu Teng. Also, while non-compliance with para 7 might have led to

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74 2AB 95–96.

75 See Defendant's Closing Submissions at paras 77–80.

BCA reviewing or revoking the endorsement of Chiu Teng to conduct testing at the OTC, like revoking Chiu Teng's licence from BCA to operate the OTC, this was also not a necessary consequence.

64 I also find that the 2008 JVA did not fall foul of one of the established heads of common law public policy because of non-compliance with para 7 of the BCA Prospectus (see *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 at [29]). Such non-compliance did not render the 2008 JVA a contract to deceive public authorities or a contract to commit a crime, tort or fraud.

65 It is unnecessary for me to discuss *Dimpex Gems* in the light of the above conclusion.

66 I thus find that the 2008 JVA was not tainted with illegality or void by virtue of public policy such that it was not enforceable.

Division of direct testing fees

67 The next issue was how the direct testing fee of $345 per direct testing worker was to be divided between ERMS and Chiu Teng under the 2008 JVA (see [14] above). ERMS contended that the direct testing fee was to be divided equally, *ie*, 50% or $172.50 each for ERMS and Chiu Teng.[76] ERMS made the point that this was the intention of the parties when the 2008 JVA was signed.[77]

68 On the other hand, Chiu Teng submitted that cl 8 of "Other Points" of the 2008 JVA (see [13] above) should be interpreted as follows:[78] because the

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76 SOC at para 6.

77 POS at paras 37–38.

direct testing fee of $345 had been collected by CTBF, and ERMS had been paid 49% of the net profits of CTBF through dividend payments from 2008 to April 2011, ERMS was only entitled to 49% of CTBF's profits, through distributions of dividends, if any (see [14] and [17] above).[79]

69 In this regard, Chiu Teng argued that ERMS should be claiming (or should have been claiming) against CTBF and not Chiu Teng, as ERMS should be advancing its claims, if any, as a shareholder against CTBF.[80] Chiu Teng submitted that both the rights of ERMS and Chiu Teng in relation to CTBF were those accorded to them under the Companies Act (Cap 50, 2006 Rev Ed) and under CTBF's memorandum and articles of association.[81] However, ERMS chose to omit CTBF as a defendant.[82] Where ERMS is claiming a share of the direct testing fees for the 2,248 direct testing workers tested from June 2012 to August 2014 at the OTC, Chiu Teng added that since CTBF's profits were distributed by way of dividends and none were declared after 2012, ERMS had no valid claim.[83]

70 I make two preliminary points on the pleadings. First, Chiu Teng did not plead that it was incorrectly brought in as a defendant.[84] I accept that ERMS was not suing as a shareholder of CTBF but against Chiu Teng for breach of the 2008 JVA.[85]

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78 See Defendant's Closing Submissions at p 7 (heading "Interpretation of Clause 8").

79 See also Defendant's Closing Submissions at paras 30–32.

80 See Defendant's Closing Submissions at para 40.

81 Defence at para 5.

82 See Defendant's Closing Submissions at para 44.

83 See Defendant's Closing Submissions at para 39.

84 See Plaintiff's Reply Submissions at para 5.

85 Plaintiff's Reply Submissions at para 4.

71 Second, to the extent that ERMS sought for this court to imply a term that the direct testing fee of $345 was to be divided between ERMS and Chiu Teng equally,[86] ERMS did not plead a case for such a term to be implied.[87]

72 I find that cl 8 of "Other Points" of the 2008 JVA can be construed and interpreted in line with the common intention of ERMS and Chiu Teng when the 2008 JVA was signed, that the direct testing fee of $345 was to be divided between ERMS and Chiu Teng equally. Cedric Ng had drafted the 2008 JVA and gave evidence at the trial that under this provision, "[t]he remainder amount of $345.00 will be divided between [Chiu Teng] and ERMS" meant that the sum of $345 was to be divided equally.[88] Monsur's evidence was also that it was understood between the parties that this sum would be divided equally.[89] Therefore, I find that under the 2008 JVA, the direct testing fee of $345 was to be divided between ERMS and Chiu Teng equally.

73 I am aware that from 2008 to April 2011, ERMS was not in fact paid a 50% share of the direct testing fee of $345. Instead, during that period, CTBF had collected the direct testing fee of $345 and ERMS was paid 49% of the net profits of CTBF through dividend payments (see [17] above). ERMS had agreed to receiving such dividend payments as its share of the direct testing fee.

74 In the light of the common intention of ERMS and Chiu Teng when the 2008 JVA was signed that the direct testing fee of $345 was to be divided between them equally, there is no reason in this case to use the subsequent

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86 Plaintiff's Reply Submissions at para 4.

87 See Defendant's Closing Submissions at para 34.

88 See NEs 02/08/18 at p 28 lines 29–30, p 30 lines 14–18.

89 See *eg*, NEs 31/07/18 at p 42 lines 3–4.

conduct of how the direct testing fee was in fact collected and distributed to interpret cl 8 of "Other Points" of the 2008 JVA, even if a court may rely on subsequent conduct to interpret a contractual provision.

75 Chiu Teng did not plead that if under the 2008 JVA the direct testing fee of $345 was to be divided between ERMS and Chiu Teng equally, this had been varied by oral agreement as evidenced by subsequent conduct. Neither did Chiu Teng plead estoppel by convention.

76 It bears mentioning that the difference between ERMS' claim of a 50% share of the direct testing fees for the 2,248 direct testing workers (see [37] above) and a 49% share of the same is $7,755.60 (*ie*, *1%* x $345 x 2,248).

Contract duration

77 As for the issue of the contract duration of the 2008 JVA, I have mentioned that the 2008 JVA only had two clauses pertaining to the duration of the 2008 JVA, *ie*, cll 10 and 11 of "Other Points", set out at [18] above.

78 Cedric Ng had drafted the 2008 JVA, and this was done without the assistance of any lawyer (see [8] above). It could not have been the parties' intention that the 2008 JVA could only be terminated on 31 March 2009 (cl 10) or on the expiry, revocation or suspension of BCA's endorsement of the OTC (cl 11). I do not find that cll 10 and 11 were exhaustive with respect to how the 2008 JVA might be terminated. This is relevant as I will elaborate later at [85] below.

June 2011 Agreement

Illegality

79 Moving on to the June 2011 Agreement, the first issue was that of illegality in respect of a contravention of BCA guidelines. I have considered this same issue in relation to the 2008 JVA.

80 Under cl 2 of the June 2011 Agreement, ERMS would have to pay CTTC $600 for every worker trained at ERMS' training centre who passed the trade test at the OTC with effect from the April 2011 testing (see [25] above). ERMS thus argued that the June 2011 Agreement was not enforceable because it was tainted with illegality since Chiu Teng required ERMS to collect $600 from every such worker, when BCA only allowed the OTC to collect a test fee of $350 at that time.[90] ERMS also argued that Chiu Teng contravened public policy by extorting or attempting to extort more than what was permitted by BCA.[91]

81 As I have found earlier in relation to the 2008 JVA (see [63]–[64] above), I find that non-compliance with the amount of test fee BCA allowed the OTC to collect did not constitute a contravention of a statutory provision. Also, such non-compliance did not necessarily mean that BCA would review or revoke the endorsement of Chiu Teng to conduct testing at the OTC. The June 2011 Agreement also did not fall foul of one of the established heads of common law public policy because of such non-compliance. I thus find that the June 2011 Agreement was not tainted with illegality or void by virtue of public policy such that it was not enforceable.

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90 SOC at paras 13(a)–13(c).

91 SOC at para 13(d).

82 In any case, even if non-compliance with the amount of test fee BCA allowed the OTC to collect amounted to some illegality, this was only with respect to cl 2 of the June 2011 Agreement. Such illegality would not have affected cl 1 of the June 2011 Agreement, under which ERMS would not be receiving a share of the direct testing fees with effect from the April 2011 testing (see [23] above). ERMS' agreement not to share in the direct testing fees under cl 1 had not been given in exchange for its obligation to pay CTTC under cl 2. Thus, only cl 2 would have been unenforceable.

Consideration

83 ERMS also argued that Chiu Teng did not provide any or sufficient consideration for the June 2011 Agreement.[92]

84 On the other hand, Chiu Teng submitted that it had provided consideration for the June 2011 Agreement as follows:[93]

(a) Chiu Teng continued with the 2008 JVA despite the change in circumstances brought about by BCA's imposition of quotas on the number of workers who could be tested at each overseas test centre each month (see [20] above);

(b) Chiu Teng allocated 60% of the monthly quota to ERMS and BFEW to share in any manner as they deemed fit, as opposed to the original arrangement under the May 2011 Agreement where ERMS had 30% of the monthly quota, Chiu Teng had 30% and BFEW had 40% (see [20] above); and

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92 SOC at para 10.

93 Defence at para 7.

(c) ERMS no longer needed to source for direct testing workers on behalf of Chiu Teng.

85 I disagree with the submission of ERMS that the continuation of the 2008 JVA could not amount to consideration for a new agreement.[94] As I have found at [78] above, the 2008 JVA did not exhaustively stipulate the circumstances under which the 2008 JVA might be terminated. I find that Chiu Teng's decision to continue with the 2008 JVA, in so far as its terms were not varied by the June 2011 Agreement, could and did constitute consideration for the June 2011 Agreement.

86 On the other hand, I do not find that Chiu Teng's allocation of 60% of the monthly quota to ERMS and BFEW constituted consideration for the June 2011 Agreement. Where the quota limited the number of workers who could be tested at the OTC each month, ERMS was limited in respect of the number of workers from its training centre that it could send for testing at the OTC. Compared with the May 2011 Agreement where ERMS had 30% and BFEW had 40% of the quota, it is not apparent how a combined quota of 60% for ERMS and BFEW conferred a benefit on ERMS.

87 As for Chiu Teng's third argument that ERMS no longer needed to source for direct testing workers on behalf of Chiu Teng, I find that there was insufficient evidence to sustain such an argument.

88 As mentioned at [12] above, Cedric Ng gave evidence that ERMS had 'recruited' direct testing workers for Chiu Teng until the April 2011 testing, but

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94 Plaintiff's Closing Submissions at para 22.

Chiu Teng itself 'recruited' these direct testing workers from the April 2011 testing and onwards.

89 However, during cross-examination, Monsur gave evidence that he never sourced for direct testing workers on behalf of Chiu Teng and that it was not the responsibility of ERMS/Monsur to do so.[95] Monsur did nevertheless liaise on behalf of Chiu Teng with employment agents who would bring direct testing workers for testing at the OTC, and Monsur stated that he did this both before and after entering into the June 2011 Agreement.[96]

90 The written agreement for the 2008 JVA itself did not impose on ERMS any obligation to recruit or source for direct testing workers on behalf of Chiu Teng.[97] Given the evidence adduced before this court, I am unable to prefer the account given by Chiu Teng over that given by ERMS.

91 I add that I do not accept the submission by ERMS that Chiu Teng's third argument on consideration was an afterthought simply because it had not been pleaded for the trial before Leow JC.[98] Although it had not been pleaded, Cedric Ng had already given the same evidence mentioned at [88] above in his AEIC for the trial before Leow JC.

Duress

92 ERMS also pleaded that the June 2011 Agreement was not enforceable as it was procured by economic duress by Cedric Ng on Monsur.[99] ERMS

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95 See NEs 02/08/18 at p 6 lines 10–13, p 9 lines 1–4.

96 See NEs 02/08/18 at p 6 lines 21–26, p 9 lines 6–17.

97 See 1AB 3–6.

98 See Plaintiff's Closing Submissions at para 25.

pleaded that, on or about 15 June 2011, Cedric Ng had threatened Monsur that unless Monsur agreed to the June 2011 Agreement, Chiu Teng would stop the registration for the July 2011 testing at the OTC of the workers trained at the training centres of ERMS and BFEW.[100] The consequences of such an alleged threat have been described at [27] above.

93 I mention that while Monsur's evidence was that Cedric Ng and two other representatives of Chiu Teng, *ie*, CH Ng and Kor, had made the same threat to Monsur,[101] ERMS' pleading mentioned only Cedric Ng as the person who had threatened Monsur. There was no dispute that CH Ng and Kor had been present at the meetings with Monsur first on 15 June 2011 or 16 June 2011, and second on 17 June 2011. However, neither side chose to call CH Ng or Kor as a witness.

94 Chiu Teng submitted that neither Cedric Ng nor any of Chiu Teng's employees, officers, servants or agents exerted any form of duress on Monsur when he entered into the June 2011 Agreement.[102] Cedric Ng denied that he made the alleged threat.[103] Instead, Chiu Teng argued that ERMS had regretted entering into the June 2011 Agreement after it had been signed.[104]

95 I address first ERMS' argument that Chiu Teng had chosen not to cross-examine Monsur on his account of the two June 2011 meetings.[105] During the

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99 SOC at para 11.

100 SOC at para 11(a).

101 See *eg*, Monsur's AEIC at para 13; NEs 01/08/18 at p 27 lines 5–6.

102 Defence at para 8.

103 Cedric Ng's AEIC at para 19.

104 Defendant's Closing Submissions at para 55.

105 Plaintiff's Closing Submissions at para 12.

trial, while cross-examining Monsur, counsel for Chiu Teng informed the court that Chiu Teng's case was that it had never made the alleged threat to Monsur.[106] Counsel for Chiu Teng then referred to two letters dated 17 October 2011 and 20 October 2011 respectively which were sent by ERMS' then lawyers to Chiu Teng. Monsur gave evidence that ERMS had instructed its then lawyers to send the letter dated 17 October 2011 because of a disagreement over the May 2011 Agreement concerning the quotas on the number of workers who could be tested at the OTC.[107] The subsequent letter dated 20 October 2011 was sent under ERMS' instructions to withdraw the earlier letter.[108] Counsel for Chiu Teng then asked why Monsur/ERMS had not asked the lawyers to send Chiu Teng a letter to complain that Monsur had been under duress when he entered into the June 2011 Agreement.[109] Monsur's answer was that Chiu Teng had promised to review the June 2011 Agreement and there was an ongoing discussion on this at that time[110] (for a similar point, see [29] above). Thereafter, counsel for Chiu Teng put Chiu Teng's case to Monsur that there was actually no duress by Chiu Teng when Monsur entered into the June 2011 Agreement.[111] I find that counsel for Chiu Teng had sufficiently put Chiu Teng's case on duress to Monsur, although counsel might not have expressly put it to Monsur that Cedric Ng did not make the alleged threat.

96 With regard to whether the alleged threat was made, I have mentioned that the undisputed circumstantial fact was that Chiu Teng had in fact registered

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106 See NEs 01/08/18 at p 24 line 21.

107 See NEs 01/08/18 at p 30 lines 13–23; DB 40–41.

108 See DB 42.

109 See NEs 01/08/18 at p 30 lines 24–27.

110 See NEs 01/08/18 at p 30 lines 28–30.

111 NEs 01/08/18 at p 30 lines 31–32.

the workers trained at the training centres of ERMS and BFEW on 17 June 2011, which was the last day for registration of workers for the July 2011 testing at the OTC, and Chiu Teng had done so after the June 2011 Agreement was entered into (see [26] above).

97 I am not convinced that Cedric Ng made the alleged threat to Monsur. Even if Cedric Ng made the alleged threat and it amounted to illegitimate pressure, I am not persuaded that such pressure overwhelmed Monsur's will such that he entered into the June 2011 Agreement involuntarily.

98 First, Monsur referred the court to several of his emails to Chiu Teng from September 2011 to June 2012 which he claimed showed that he had protested against the June 2011 Agreement.[112] I note that the earliest of these emails was sent on 22 September 2011.[113] This was *three months* after the June 2011 Agreement had already been entered into. There was no mention in the earliest email of any threat or pressure from Chiu Teng.

99 Second, Monsur had sent an email to Cedric Ng and BFEW on 12 October 2011 stating, "As I will not enjoy CTBF profit from April 2011, and I decide I will resigne [*sic*] from the company."[114] During cross-examination, Monsur sought to explain that the moneys (*ie*, the direct testing fees) were no longer being collected by CTBF but were being collected by CTTC instead (see [24] above). However, Monsur agreed that he did not mention in this particular email that he was still entitled to receive profits (which had their source from the direct testing fees), whether they would come through CTBF or CTTC.[115] I

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112 See 1AB 119–146.

113 1AB 119.

114 1AB 126.

find that this email confirmed that ERMS/Monsur had voluntarily entered into the June 2011 Agreement under which ERMS would not share in the direct testing fees. That was why he decided to resign from CTBF.

100 Third, in none of these emails that Monsur sent to Chiu Teng from September 2011 to June 2012 do I find any mention of the alleged threat that Chiu Teng would stop the registration of workers for testing. During the trial, Monsur himself testified that he did not state directly in these emails that he had been pressured by Chiu Teng to enter into the June 2011 Agreement,[116] but instead stated that he only followed the 2008 JVA or stated that he requested Chiu Teng to honour the 2008 JVA and not any other agreement.[117] I observe that in Monsur's email sent to Cedric Ng on 24 November 2011, Monsur stated "again I request do not threat to stop transfer letter" [original emphasis omitted],[118] but this did not refer to a threat to stop the registration of workers for testing. It referred to withholding the transfer letter which would prevent a worker who had passed the trade test from travelling to Singapore.[119]

101 More importantly, Monsur did not say in any of these emails that, notwithstanding what he had signed in June 2011, ERMS would still be entitled to revenue from CTBF (or otherwise) or a share of the direct testing fees. This was with the exception of one email dated 29 June 2012,[120] but it was disputed as to whether this email was even sent to or received by Chiu Teng. This email

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115 See NEs 01/08/18 at p 22 lines 30–32.

116 NEs 01/08/18 at p 1 lines 14–17.

117 NEs 01/08/18 at p 2 lines 27–29.

118 1AB 135.

119 See POS at para 44(a); 1AB 134.

120 1AB 145–146.

was sent by Monsur but the addressee was Monsur himself. During the trial, Monsur said that he gave a copy of this email to Chiu Teng (it was unclear when),[121] but Cedric Ng said that Chiu Teng did not receive this email (at the material time).[122] In any event, while Monsur in this email seemed to deny that the June 2011 Agreement was binding and seemed to assert that ERMS was entitled to share in the direct testing fees, this email was written much later in June 2012. This was *a year* after the June 2011 Agreement had already been entered into, and does not assist ERMS in showing that it had not voluntarily entered into the June 2011 Agreement under which ERMS would not share in the direct testing fees.

102 During the trial, Monsur testified that he can read and understand English.[123] For instance, Monsur confirmed that he read and understood the 2008 JVA without the help of any interpretation. Monsur also gave part of his oral evidence in English.[124] In the light of this, I find that Monsur had the ability to express himself in English, including using the word "threat", if he had wished to state directly in his emails that he had been pressured by Chiu Teng to enter into the June 2011 Agreement as a result of the alleged threat that Chiu Teng would stop the registration of workers for testing. The fact that Monsur did not make any mention of the alleged threat suggests that Cedric Ng did not make such a threat to Monsur or that the alleged threat, if any, did not amount to pressure amounting to the compulsion of Monsur's will. During the trial, Monsur was also able to insist in English on ERMS' claim for a share of the direct testing fees. The fact that Monsur did not do so in his emails (until June

121 See NEs 01/08/18 at p 15 lines 25–28.

122 See NEs 02/08/18 at p 43 lines 15–21.

123 See NEs 31/07/18 at p 42 lines 11–23.

124 See NEs 31/07/18 at p 43 lines 3–16.

2012) suggests that he had entered into the June 2011 Agreement voluntarily, knowing that under this agreement, ERMS would not be receiving a share of the direct testing fees with effect from the April 2011 testing.

103 Fourth, I do not accept the submission of ERMS that it had protested against the June 2011 Agreement by not complying with the obligation provided for in the June 2011 Agreement to pay CTTC $600 for every worker trained at ERMS' training centre who passed the trade test at the OTC (see [25] above).[125]

104 During the trial, counsel for ERMS had initially stressed, particularly when re-examining Monsur, that ERMS had refused to pay the $600 for every such worker and that this supported its position that it was not bound by the June 2011 Agreement.[126] Unfortunately for ERMS, it was not accurate to say that it had refused to pay the $600 for every such worker. Cedric Ng had explained during cross-examination that under the July 2012 Agreement, the amount that ERMS was owing to Chiu Teng as at June 2012 included the sum of $600 for every such worker under the June 2011 Agreement (see [33] above). Counsel for ERMS then informed the court that ERMS accepted Cedric Ng's evidence on this point.[127]

105 At that time, counsel for ERMS did not then say that ERMS' payment of $600 for every such worker was "in conjunction with" Chiu Teng agreeing to pay $100 for each direct testing worker from April 2011 to May 2012 under the July 2012 Agreement (see [34] above). Neither was there any evidence from ERMS to this effect. This point was only made after the trial in ERMS' closing

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125 See Plaintiff's Closing Submissions at para 19.

126 See *eg*, NEs 02/08/18 at pp 10–12.

127 See NEs 02/08/18 at p 81 lines 28–31, p 82 line 4.

submissions.[128] In fact, this is a different point from that made by ERMS in its opening statement at para 71, where ERMS had stated that Chiu Teng decided to pay the $100 for each direct testing worker "at [Chiu Teng's] own volition".[129]

106 I find that the June 2011 Agreement was not procured by economic duress by Cedric Ng on Monsur.

107 I therefore find that the June 2011 Agreement was enforceable between ERMS and Chiu Teng. Under the June 2011 Agreement, ERMS would no longer be entitled to a share of the direct testing fees with effect from the April 2011 testing. This was subject to any further contractual agreement otherwise.

July 2012 Agreement

108 I consider the next issue as to whether following the July 2012 Agreement, ERMS was entitled to a share of the direct testing fees from June 2012 to August 2014.

109 Chiu Teng pleaded that the July 2012 Agreement superseded the 2008 JVA, the June 2011 Agreement and any other agreements between Chiu Teng and ERMS, such that there were no further sums owing by Chiu Teng to ERMS.[130] Chiu Teng thus submitted that ERMS cannot revert to the 2008 JVA at its convenience.[131]

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128 Plaintiff's Closing Submissions at para 14.

129 See also POS at paras 53–54.

130 Defence at para 11.

131 Defendant's Closing Submissions at para 85.

110 On the other hand, ERMS submitted that the July 2012 Agreement was only for the settling of accounts for the period from April 2011 to May/June 2012 and since the June 2011 Agreement was not enforceable (whether because of duress or some other reason), ERMS was still entitled to its share of direct testing fees under the 2008 JVA from June 2012 to August 2014.[132] ERMS submitted that Chiu Teng was unable to show otherwise, whether through some admission which had been made by ERMS or by Chiu Teng.[133]

111 To recapitulate, under the June 2011 Agreement, ERMS was no longer entitled to a share of the direct testing fees with effect from the April 2011 testing. The July 2012 Agreement thereafter only allowed ERMS to have a share of the direct testing fees from April 2011 to May 2012, *ie*, $100 for each direct testing worker (see [34] above). The minutes for the meeting which evidenced the July 2012 Agreement were silent on the question as to whether ERMS was to have any share of the direct testing fees after May 2012.

112 ERMS did not refer the court to instances where ERMS had asserted to Chiu Teng after 6 July 2012 that ERMS was entitled to a share of the direct testing fees, save for an email Monsur had sent to Cedric Ng on 14 December 2013.[134] When cross-examined on this email, Cedric Ng accepted that Monsur was conveying in his email that he wanted the 2008 JVA to be followed so that ERMS could receive a 50% share of the direct testing fees.[135] This seems to be the earliest piece of documentary evidence provided to the court in the Agreed Bundle of Documents in which ERMS asserted to Chiu Teng an entitlement to

132 See Plaintiff's Closing Submissions at para 39; Plaintiff's Reply Submissions at para 12.

133 See Plaintiff's Closing Submissions at para 38.

134 See Plaintiff's Closing Submissions at para 13; 1AB 166.

135 See NEs 02/08/18 at p 43 lines 31–32, p 44 line 1.

a share of the direct testing fees after May 2012. However, this email was written much later in December 2013, almost *1.5 years* after the July 2012 Agreement had already been entered into. There was no explanation by ERMS why it took so long to claim a share of the direct testing fees from June 2012 if it had genuinely believed that the July 2012 Agreement did not preclude it from claiming such a share. In my view, its silence for so long supported Chiu Teng's position that the parties had agreed, under the July 2012 Agreement, that ERMS would have no further share in such fees.

113 It seems to me that the purpose of the July 2012 Agreement was to settle the disputes between the parties. It would have been strange to settle the question of ERMS' share of direct testing fees up to May 2012 only and then continue to dispute ERMS' share from June 2012. It was more likely that the $100 per direct testing worker granted to ERMS up to May 2012 was the agreed sum to resolve once and for all ERMS' share of direct testing fees.

114 I therefore find that even if the June 2011 Agreement was not enforceable, the parties had agreed under the July 2012 Agreement that ERMS was not entitled to any share of the direct testing fees from June 2012 to August 2014.

Direct testing fees from June 2012 to August 2014

115 For completeness, I will also address the issue of the amount of direct testing fees collected from June 2012 to August 2014 from the 2,248 direct testing workers.

116 Chiu Teng pleaded that for this period, it had only collected $350 per direct testing worker in 2012, and $50 per direct testing worker in 2013 and

2014.[136] ERMS did not seem to dispute that Chiu Teng had only collected $350 per direct testing worker in 2012,[137] but submitted that Chiu Teng did not substantiate its assertion that it had only collected $50 per direct testing worker in 2013 and 2014.[138]

117 During the trial, Cedric Ng gave evidence that Chiu Teng collected $350 per direct testing worker from June 2012 to September 2012, and $50 per direct testing worker from October 2012 to 2014.[139] Cedric Ng relied on copies of deposit slips showing payments of sums into CTTC's bank account.[140] However, these copies of deposit slips did not evidence the amount that was collected per direct testing worker, whether $350 or $50. Chiu Teng did not produce any invoices that CTTC had issued to collect $50 per direct testing worker, despite having access to them,[141] and did not call Kor, who was the director of CTTC, to give evidence on the same.

118 I thus find that Chiu Teng has not proven that it only collected $350 per direct testing worker from June 2012 to September 2012, and $50 per direct testing worker from October 2012 to 2014. If I were wrong in finding that the 2008 JVA was no longer binding on the parties, I would have found that ERMS was entitled to 50% of a direct testing fee of $345 for each of the 2,248 direct testing workers who tested at the OTC from June 2012 to August 2014.

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136 Defence at para 12(d).

137 See POS at para 70.

138 See Plaintiff's Closing Submissions at para 40.

139 Exhibit D2.

140 See Cedric Ng's Supplemental AEIC at para 18 and exhibit marked CN-33.

141 See NEs 02/08/18 at p 95 lines 13–19.

Conclusion

119 For the foregoing reasons, I dismiss ERMS' claim against Chiu Teng.

120 I will hear the parties on costs.

Woo Bih Li
Judge

Andrew John Hanam (Andrew LLC) for the plaintiff;
Lee Mei Yong Debbie and Wong Qiao Ling Sharon
(ECYT Law LLC) for the defendant.