Lim Suat Hua *v* Singapore HealthPartners Pte Ltd
[2012] SGHC 63

Case Number : Suit No 726 of 2010

Decision Date : 21 March 2012

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Lynette Chew, Gadriel Tan and Tan Hui Qing (INCA Law LLC) for the plaintiff; Kannan Ramesh SC, Marina Chin and Ho Xin Ling(Tan Kok Quan Partnership) for the defendant.

Parties : Lim Suat Hua — Singapore HealthPartners Pte Ltd

Contract – Variation

Contract – Contractual terms – Implied terms

Equity – Estoppel

Employment law – Leave – Annual

Companies – Directors – Duties

21 March 2012 Judgment reserved.

Andrew Ang J:

Introduction

1 The plaintiff, Lim Suat Hua ("Lim") was employed by the defendant, Singapore HealthPartners Pte Ltd ("Singapore HealthPartners") between 1 September 2007 and 25 July 2010. Pursuant to the execution of a Settlement and Share Purchase Agreement dated 12 July 2010 ("the Settlement Agreement"), Lim's employment was terminated with effect from 25 July 2010. Lim brought this Action against Singapore HealthPartners for the amount allegedly owing to her under the terms of her employment.

Background

2 Singapore HealthPartners was incorporated on 9 March 2006. It is in the business of developing a medical complex comprising a hospital, medical suites and a hotel at No 1 Farrer Park Station Road to be named the "Connexion" ("the Project").

3 Lim was one of the initial shareholders and directors of Singapore HealthPartners. Pursuant to a service agreement dated 1 September 2007, entered into between Singapore HealthPartners and Lim ("Lim's Service Agreement"), Lim was appointed as the Executive Director of Singapore HealthPartners. Under cl 4.1 of Lim's Service Agreement, she was to be paid $60,000 per month. She was also entitled to 30 business days of leave a year under cl 5.1.

4 Djeng Shih Kien ("Djeng"), the other initial shareholder of Singapore HealthPartners, was

appointed Executive Chairman of Singapore HealthPartners pursuant to a similar service agreement entered into between himself and Singapore HealthPartners on 1 September 2007 ("Djeng's Service Agreement"). Under cl 4.1 of Djeng's Service Agreement, he was to be paid $70,000 per month.

5 On 26 September 2007, pursuant to an investment agreement executed on 29 June 2007 ("the Investment Agreement"), a number of medical doctors or their corporate vehicles (collectively "the Investors Group"), Berjaya Leisure (Cayman) Ltd ("Berjaya") and Wharton Scott Pte Ltd ("Wharton Scott") were registered as new shareholders of Singapore HealthPartners. As entitled to under the Investment Agreement, the new shareholders nominated directors ("the new directors") to represent their respective interests. The new directors were:

(a) Maurice Choo, Richard Chew and Whang Hwee Yong for the Investors Group;

(b) Dato' Lee Kok Chuan and Dato' Tan Yeong Ching (with Ng Chee Yau as alternate director) for Berjaya; and

(c) Tan Soon Hoe and Richard Charles Helfer for Wharton Scott.

6 Some of the new directors took issue with both Lim's Service Agreement and Djeng's Service Agreement (collectively "the Service Agreements"). They alleged that the Service Agreements were signed before the new directors had been appointed, and that Djeng and Lim had for their mutual benefit signed each other's Service Agreement. Further, they alleged that there was no board resolution approving the terms of the Service Agreements and that no disclosure of the Service Agreements was made to the new directors. The new directors were dissatisfied as to why no explanation was offered for the urgency in putting in place the Service Agreements prior to the registration of the new shareholders and the nomination of new directors. In addition, the new directors felt that the remuneration of both Lim and Djeng was excessive.

7 As such, at the conclusion of the board of directors meeting on 21 March 2009 ("the 21 March 2009 board meeting"):

(a) Djeng agreed to step down from his position as Executive Chairman of Singapore HealthPartners on the basis that Singapore HealthPartners would not pursue any claims against him; and

(b) it was resolved that a Remuneration Committee be set up "to review Directors' Fees and Directors' Remunerations [*sic*], including retrospectively review [*sic*] the appropriateness of past Directors' Remuneration".

8 At the next board meeting on 30 March 2009, it was resolved that Lim be offered "a New Service Agreement (NSA) for the period from 1 April 2009 to TOP [Temporary Occupation Permit] of the project, at a monthly basic salary of S$50,000". All other terms in Lim's Service Agreement were unchanged. According to Singapore HealthPartners, Lim had verbally agreed to this.

9 From July 2009 onwards, the situation worsened as the directors and shareholders split into two factions. On one side was the faction headed by Djeng, comprising Djeng, Lim and the Berjaya directors. On the other was the faction that comprised the Investors Group directors and the Wharton Scott directors. The dispute initially was over the question whether Djeng was entitled to remain as Chairman of Singapore HealthPartners notwithstanding his resignation at the 21 March 2009 board meeting. The dispute resulted in several arbitral and court proceedings.

10 Eventually, the two factions concluded that the best way of resolving the disputes was for one side to buy the other out. As a result, the Settlement Agreement was executed on 12 July 2010. Pursuant to the Settlement Agreement:

(a) Lim, Djeng and Berjaya exited as shareholders of Singapore HealthPartners; and

(b) Lim's last day of employment as Executive Director of Singapore HealthPartners was to be 25 July 2010.

11 Following the mutual termination of Lim's employment on 25 July 2010, Lim and Singapore HealthPartners disagreed over the amount of salary that was owing to Lim. Lim brought this Action against Singapore HealthPartners on 22 October 2010 for the amount allegedly owing to her under Lim's Service Agreement.

Plaintiff's pleadings

12 Lim's claim against Singapore HealthPartners for unpaid salary was made up of three components:

(a) Claim for "short-paid" salary from May 2009 to June 2010;

(b) Claim for pro-rated salary for July 2010; and

(c) Claim for compensation for unconsumed leave of 37 days for the years 2008, 2009 and 2010.

Claim for "short-paid" salary from May 2009 to June 2010

13 Under cl 4.1 of Lim's Service Agreement, Singapore HealthPartners was to pay Lim a monthly salary of $60,000. Lim alleged that in breach of Lim's Service Agreement, Singapore HealthPartners had only paid her $50,000 per month for the period May 2009 to June 2010. This resulted in Lim suffering a loss of $140,000 over the 14-month period.

Claim for pro-rated salary for July 2010

14 As mentioned earlier, Lim's last day of employment pursuant to the Settlement Agreement was 25 July 2010. Lim pleaded that her pro-rated salary for July 2010 ought to be $46,251.64.

Claim for compensation for unconsumed leave of 37 days for the years 2008, 2009 and 2010

15 At trial, Lim withdrew her claim for compensation for unconsumed leave for the years 2008, 2009 and 2010.

Plaintiff's eventual claim

16 Therefore, Lim's claim against Singapore HealthPartners is for the sum of $186,026.64, the breakdown of which is as follows:

S/No	Item	Amount

1	The withholding of $10,000 from Lim's salary for 14 months (from May 2009 to June 2010)	$140,000.00
2	Pro-rated salary for July 2010	$46,026.64
	Total:	**$186,026.64**

Defendant's pleadings

17 Singapore HealthPartners' defence to Lim's claim is as follows:

(a) Lim's Service Agreement had been varied as of April 2009 such that the monthly salary provided therein was reduced from $60,000 to $50,000 ("the Varied Service Agreement");

(b) Alternatively, an estoppel by convention/common assumption operated to prevent Lim from relying on the monthly salary of $60,000 provided in Lim's Service Agreement;

(c) Lim's pro-rated salary for July 2010 should be based on the reduced monthly salary of $50,000; and

(d) Singapore HealthPartners is entitled to a set off and counterclaim against Lim's pro-rated salary for July 2010.

18 Singapore HealthPartners' counterclaim against Lim is for:

(a) Lim's breach of fiduciary obligations as a director of Singapore HealthPartners; and

(b) Lim's breach of duties of loyalty and fidelity owed to Singapore HealthPartners by virtue of Lim's Service Agreement.

Lim's Service Agreement was varied such that the monthly salary provided therein was reduced from $60,000 to $50,000

19 Singapore HealthPartners pleaded that on or about 26 March 2009, Maurice Choo had verbally informed Lim that her salary of $60,000 was excessive and proposed that Lim's Service Agreement be varied such that her monthly salary would be reduced to $50,000 ("Maurice Choo's proposal on 26 March 2009"). Singapore HealthPartners averred that on or about 27 March 2009, Lim had verbally informed Maurice Choo that she agreed to the reduction of her monthly salary to $50,000. Further, or in the alternative, Lim's Act of accepting the reduced salary was an acceptance of Maurice Choo's proposal on 26 March 2009, which acceptance was re-affirmed by the acceptance of the reduced salary every month until July 2010.

Estoppel by convention/common assumption operated to prevent Lim from relying on the monthly salary of $60,000 provided in Lim's Service Agreement

20 Assuming that Lim's Service Agreement had not been varied, Singapore HealthPartners pleaded in the alternative that pursuant to Maurice Choo's proposal on 26 March 2009, Lim and Singapore HealthPartners Acted on a shared assumption that Lim would only be entitled to a monthly salary of $50,000 with effect from 1 April 2009.

21 This assumption was Acted and relied upon by Lim when she received the reduced salary for the period 1 May 2009 to 30 June 2010. She also signed authorisation letters on behalf of Singapore HealthPartners to instruct the bank to make payments into her bank account based on the reduced salary for the period 1 May 2009 to 30 June 2010. Lim had further Acted and relied on this shared assumption by not addressing the issue of her reduced salary in the Settlement Agreement. Singapore HealthPartners had also relied on the shared assumption and as a result took no step to ensure that the reduction of salary was legally perfected. As such, Singapore HealthPartners pleaded that it would be unconscionable for Lim to resile from the shared assumption.

Lim's pro-rated salary for July 2010

22 Singapore HealthPartners does not dispute that it owes Lim her pro-rated salary for July 2010. However, it disputes the quantum of the said salary.

23 Firstly, it asserts that the pro-rated amount should be based on the reduced salary of $50,000. Secondly, it claims that it is entitled to deduct the sums of $16,438.36 (being the gross amount of salary for over-consumed leave in 2010) and $10,000 (being the excess amount that Lim paid herself in April 2009).

24 As such, Singapore HealthPartners avers that the amount it owes Lim for July 2010 is only $13,546.22.

Counterclaims for breach of fiduciary duties

25 Firstly, Singapore HealthPartners pleaded that Lim made unauthorised overseas trips at its expense, causing it a loss of $42,105. The first was a trip to Thailand from 1 to 3 October 2008 ("the Thailand trip") and the second, a trip to New Zealand from 20 to 24 October 2008 ("the New Zealand trip").

26 Secondly, Singapore HealthPartners seek an order for an account and inquiry in relation to secret profits received by Wizvision Pte Ltd ("Wizvision") and Fidelio Realty Pte Ltd ("Fidelio"). Additionally, Singapore HealthPartners seek an order for payment to itself of all sums found due and owing on the taking of the account.

27 Wizvision had provided information technology services to Singapore HealthPartners from around November 2007 to around September 2010. According to Singapore HealthPartners, Lim had been a director of Wizvision since 7 April 2000. Her son, Lim Kong Wee, had been an alternate director of Wizvision from 7 December 2007 to 2 August 2009 and a director of Wizvision since 3 August 2009. In addition, Lim and another of her sons, Lim Wee Kiat, had direct and indirect shareholdings of at least 32% in Wizvision which they failed, refused and/or neglected to fully disclose to the board of Singapore HealthPartners.

28 Fidelio were co-brokers of a tenancy which Singapore HealthPartners had entered into in or around 2007. As co-brokers, Fidelio were alleged to have received a fee of $4,935. According to Singapore HealthPartners, Lim and Lim Kong Wee were shareholders of Fidelio, and Lim had failed, refused and/or neglected to disclose that she and her son were shareholders of Fidelio. However, at trial, Singapore HealthPartners withdrew its claim against Lim in relation to Fidelio.

Issues before the court

29 With regard to Lim's claim, the issues which need to be dealt with are as follows:

(a) Whether there was an agreement between Lim and Singapore HealthPartners to reduce Lim's monthly salary from $60,000 to $50,000 ("the Variation Issue");

(b) Whether, alternatively, an estoppel by convention and/or common assumption operates to prevent Lim from relying on cl 4.1 of Lim's Service Agreement which stipulates a monthly salary of $60,000 ("the Estoppel Issue"); and

(c) Whether Lim had taken excess leave of ten days in 2010 for which Singapore HealthPartners should be credited with $16,438.36 ("the Excess Leave Issue").

30 With regard to Singapore HealthPartners' counterclaim, the following issues need to be resolved:

(a) Whether Lim had paid herself $10,000 in excess of the salary she was entitled to for the month of April 2009 ("the Excess Payment Issue");

(b) Whether the Settlement Agreement constituted a waiver, release or discharge of Singapore HealthPartners' claims ("the Waiver, Release and Discharge Issue");

(c) If not waived, released or discharged, whether the overseas trips were unauthorised and constituted a breach of Lim's fiduciary duties to Singapore HealthPartners ("the Unauthorised Trips Issue"); and

(d) If not waived, released or discharged, whether Lim had breached her fiduciary duties to Singapore HealthPartners by failing to disclose her direct and indirect stakes in Wizvision ("the Disclosure Issue").

Court's findings

Lim's claims

The Variation Issue

31 It is noted that Lim does not dispute that Maurice Choo had on or about 26 March 2009 proposed to her that her salary be reduced to $50,000. However, Lim asserts that, in any event, Maurice Choo "was not duly authorised by [Singapore HealthPartners] to make that request or otherwise vary the Service Agreement" as:

(a) Maurice Choo was only appointed as an interim chairman at the 21 March 2009 board meeting;

(b) Maurice Choo had not, prior to making the proposal to Lim, brought the proposal to the board of directors for its consideration; and

(c) There was no resolution by the board of directors for Maurice Choo to make such a proposal to Lim.

32 Another issue is whether Lim had on 27 March 2009 verbally agreed to Maurice Choo's proposal on 26 March 2009. Lim denies having agreed to Maurice Choo's proposal. At trial, Lim maintained that she did not, at any point in time, agree to the reduction of her monthly salary. According to her, even up till the date of the mutual termination of her employment pursuant to the Settlement Agreement

on 25 July 2010, she was waiting for a written or verbal offer to vary her Service Agreement. Maurice Choo gave evidence at trial that Lim had agreed on 27 March 2009 to reduce her monthly salary to $50,000. He produced his electronic diary entry for 27 March 2009 ("the Entry") which noted as follows:

> Mrs. Lim Suat Hua came to meet Dr. Maurice Choo at Maurice Choo Clinic. She accepted the arrangement discussed the previous day, and will submit her resignation accordingly. She will accept a salary of $50,000 per month.

33 Singapore HealthPartners also rely on the minutes of the board meeting of 30 March 2009 to show that Lim had agreed to the reduction of her salary. Item 12.7 of said minutes ("Resolution 12.7") records the following:

> It is resolved
>
> That SHL [Lim] be offered a New Service Agreement (NSA) for the period from 1 April 2009 to TOP of the project, at a monthly basic salary of S$50,000. All other terms of the Service Agreement shall remain the same.

34 It is undisputed that Lim was present at the 30 March 2009 board meeting. It is also undisputed that Lim was asked to step out of the meeting room when the time came to discuss the matters within the purview of the Remuneration Committee. According to the testimony of Maurice Choo and Richard Chew, all the directors agreed to reduce Lim's salary to $50,000. She was then asked to rejoin the meeting where she did not object to the reduction in salary with effect from 1 April 2009.

35 However, Lim denies that such a resolution was validly passed. She argues that the resolution must have been subsequently inserted into the minutes by Maurice Choo. She claims not to have been told of the deliberations of the board in her absence and that she did not know that such a resolution had been passed until she received the draft minutes on 2 May 2009.

36 In addition, Lim gave evidence that from May 2009 to June 2010 she did not openly object to the reduction of her monthly salary because:

> (a) she was waiting for the written offer from Richard Chew to know the full terms of Singapore HealthPartners' proposed variation to her Service Agreement;
>
> (b) her time and mind were occupied with the sales of the medical suites and evaluation of the tenders for the main building contract; and
>
> (c) the disputes amongst the shareholders and directors had caused her great stress and duress.

37 On a balance of probabilities, I am unable to find that Lim had agreed to the variation of her monthly salary on or about 27 March 2009. I note that the Entry recorded the following:

> (a) That there was an "arrangement" discussed the previous day;
>
> (b) That Lim accepted the "arrangement" and would submit her resignation accordingly; and
>
> (c) That Lim would accept a salary of $50,000 per month.

It would appear from the above that Lim's agreement to accept the $50,000 was part of a wider

"arrangement" involving her resignation and entering into a new service agreement one of the terms of which was that Lim would be paid a monthly salary of $50,000. Nothing in the Entry suggested that Lim's Service Agreement was to be varied in only one respect, namely, the salary. As such, the Entry did not bear out Singapore HealthPartners' contention that Lim had agreed on 27 March 2009 to a reduction of her salary.

38 I move on to consider Resolution 12.7 of the minutes of the 30 March 2009 board meeting. Even if it had been validly passed, Resolution 12.7 of the minutes of the 30 March 2009 board meeting only resolved that Lim be offered "a New Service Agreement (NSA) for the period from 1 April 2009 to TOP of the project at a monthly basic salary of S$50,000"; it did not record that Lim had agreed to the said variation. This accords with my interpretation of the Entry.

39 If Lim had indeed agreed on 27 March 2009 to a reduction of her salary as the sole variation of Lim's Service Agreement, Maurice Choo would have informed the board, at the 30 March 2009 board meeting, of such agreement. Nothing to this effect appeared in exhibit P2 or in the entire transcripts of the audio-recording of the 30 March 2009 board meeting. Instead, Lim was required to leave the room when the time came to discuss her Service Agreement.

40 I also note that, at the Annual General Meeting ("AGM") of Singapore HealthPartners on 2 May 2009, Maurice Choo had informed shareholders that Lim had tendered her resignation on 21 March 2009. However, under cross-examination, Maurice Choo was forced to concede that he had misled the shareholders at the AGM.

41 For the above reasons, it would not be safe to rely on Maurice Choo's oral evidence that Lim had agreed on 27 March 2009 to the variation of her Service Agreement.

42 In addition to the question of her salary, Lim alleged that another term that was being considered was the issue of her tenure. Lim exhibited an extract from the transcripts of audio-recordings of the board meeting on 30 March 2009 ("exhibit P2") to support her case that there was "no consensus reached by the [b]oard on how to move forward on the Service Agreement let alone any consensus on the revised terms". Lim also pointed out that exhibit P2 did not contain any discussion of a resolution to reduce her salary. As such, Lim submits that Resolution 12.7 "cannot be correct but must have been inserted subsequently into the minutes" by Maurice Choo. Given my reading of the text of Resolution 12.7, it is unnecessary for me to say anything further in regard to its validity or otherwise.

43 I should perhaps add that I generally had considerable difficulty with the evidential value of exhibit P2 (and the transcripts of the audio-recording of the 30 March 2009 board meeting in general). As exhibit P3 (a table of audio-recordings of board meetings comparing the duration of such recordings with the length of the respective meetings as shown in the minutes thereof) noted, the audio-clip on which the transcripts were based only ran for 1 hour 18 minutes and 59 seconds. However, the recorded duration of the meeting was 2 hours 15 minutes. It would appear that about 56 minutes of the meeting was unrecorded. This calls into question the completeness of exhibit P2 (and the transcripts of the audio-recording of the 30 March 2009 board meeting in general). In addition, the following board resolutions that were recorded in the minutes of the 30 March 2009 board meeting are also missing from the corresponding audio-recordings and transcripts:

(a) Resolution 12.8 that Maurice Choo and Lim are "authorized [*sic*] to sign on behalf of the Board, the Audited Financial Statements for the Financial Period ended 31 December 2008";

(b) Resolution 12.9 that "the withdrawal of Mr. Gary Yeoh as the Alternate Director to Dato'

Tan is accepted and the withdrawal be recorded in the Company's Register and lodgment be made to ACRA";

(c) Resolution 12.9 that "the next AGM shall be held on 25 April 2009 at 2:30 PM at Lucky Plaza, conference room"; and

(d) Resolution 12.10 that "the next BOD meeting shall be held half an hour after the conclusion of the next AGM".

44 In defending the reliability of exhibit P2, Lim noted that there were discrepancies between the duration of the audio-recordings and the recorded duration in the minutes for *all* the recorded board meetings. In fact, for the board meeting on 23 May 2009, the audio-recordings had an additional 35 minutes as compared to the recorded duration in the minutes. The then-corporate secretary Steven Lim offered the following reasons for the discrepancies:

(a) When the board went off tangent during meetings, he would switch off the recording;

(b) He recorded approximate timings in the minutes; and

(c) The recorder used was a voice-activated recorder that would automatically stop recording until it picked up a voice.

45 In addition to the *quantitative* discrepancies between the audio-recordings and the recorded duration in the minutes, exhibit P2 was also *qualitatively* flawed. The transcripts, in my view, do not allow me to form a clear picture of what was discussed at the meeting. There are parts of exhibit P2 where the voices are unidentified. Further, some parts of exhibit P2 are incomplete. The quality of the transcripts is directly related to the quality of the audio-recordings. At trial, I struggled to make out parts of the audio-recordings as the members of the board often spoke simultaneously. There are also parts of the audio-recordings which were inaudible.

46 Given both the quantitative discrepancies between the duration of the audio-recordings and the recorded duration in the minutes for all the recorded meetings and the poor quality of the transcripts and audio-recordings of the 30 March 2009 board meeting, I am unwilling to place much weight on exhibit P2 (and the transcripts of the audio-recording of the 30 March 2009 board meeting in general).

The Estoppel Issue

47 In the alternative, Singapore HealthPartners argues that even if Lim did not agree to the reduction in her monthly salary, an estoppel by convention/common assumption operates to prevent Lim from insisting that her monthly salary should have been $60,000.

48 The law on estoppel by convention/common assumption is set out in the case of *Travista Development Pte Ltd v Tan Kim Swee Augustine* [2008] 2 SLR(R) 474 at [31] where the Court of Appeal held that:

On the basis of existing authorities, for estoppel by convention to operate, the following elements must be present (see *SingTel v SCV* at [28]; see also *Chitty on Contracts* (H G Beale gen ed) (Sweet & Maxwell, 29th Ed, 2004) vol 1 at para 3–107):

(a) The parties must have Acted on *'an assumed and incorrect state of fact or law'* [emphasis added] (per Bingham LJ in *The Vistafjord* [1988] 2 Lloyd's Rep 343 at 352) in

their course of dealing.

(b) The assumption must be either shared by both parties pursuant to an agreement or something akin to an agreement, or made by one party and acquiesced to by the other.

(c) It must be unjust or unconscionable to allow the parties (or one of them) to go back on that assumption.

It follows that an estoppel by convention cannot arise where neither of the parties between whom the alleged estoppel arose was aware of the facts on which the common assumption in question was said to have been based (see *Chitty on Contracts* vol 1 at para 3–109; *HIH Casualty & General Insurance v Axa Corporate Solutions* [2002] All ER (Comm) 1053). [emphasis in original]

49 On the evidence before me, I find that Lim's Actions and omissions between April 2009 and June 2010 were consistent with the presence of a shared assumption that Lim's salary had been reduced to $50,000. Both parties shared and Acted on an assumed and incorrect state of fact, *ie*, that Lim had agreed or at least acquiesced to the reduction of her monthly salary.

50 The Actions and omissions which, I find, establish the presence of a shared assumption, are as follows:

(a) Lim had failed to raise any objection when Maurice Choo informed shareholders at the AGM on 2 May 2009 that Lim had agreed to her Service Agreement being reviewed by the board;

(b) Lim did not raise any objection to being paid $50,000 per month during the period from May 2009 to June 2010 when she was, as she claims, still entitled to $60,000 per month. At trial, Lim conceded that she "had many opportunities to register [her] position on the shortfall in salary". However, she maintained that she was "not in the frame of mind at that time". When pressed further, she then said that her main concern at that point in time was the shareholder dispute within Singapore HealthPartners. In the end, she admitted that the issue regarding her salary had nothing to do with the shareholder dispute and would have had no implication for the dispute;

(c) during the period from May 2009 to June 2010, Lim had co-signed the Authorisation Letters for submission to DBS providing for herself to be paid a monthly salary of $49,662 (her monthly salary of $50,000 less deductions for Central Provident Fund ("CPF") and Chinese Development Assistance Council Fund ("CDAC Fund"). In addition, Lim had prepared a revised budget in which her salary was recorded as $50,000;

(d) lastly, in the course of settlement negotiations in 2010 which led to the eventual Settlement Agreement, Lim had sought compensation of $600,000 (being 12 months' of her revised salary of $50,000). It is apparent from the exchange of e-mails between Lim's solicitor and the opposing solicitor that both parties had shared and Acted on an assumed and incorrect state of fact, *ie*, Lim had agreed or at least acquiesced to the reduction of her monthly salary. For instance, Lim's solicitor, in an e-mail to the opposing solicitor, noted that:

> [Lim's] engagement as [Executive Director] and her remuneration were discussed at the Board meeting. When Maurice Choo took over as Chairman, these issues were once again tabled to the 'new' Board who all approved it, save and except for her salary which was reduced from $60,000 to $50,000 per month.

51 In the circumstances, I also find that it is unjust and unconscionable for Lim to go back on the shared assumption. I agree with the passage in *Credit Suisse v Borough Council of Allerdale* [1995] 1 Lloyd's Rep 315 at 367 cited by counsel for Singapore HealthPartners:

> The basis for that unconscionability is that the party said to be estopped would otherwise be allowed to adopt a position which was inconsistent with that which he had previously led the other party to believe was common ground. There would therefore be both inconsistency of conduct and potential prejudice from that inconsistency which is the essence of estoppel by whatever name it is known: See *Amalgamated Investment & Property Co. Ltd.*, sup., at p. 121 per Lord Denning, M.R. [emphasis added]

52 In our case, as counsel for Singapore HealthPartners submits, the unconscionability arises as Singapore HealthPartners was not given a chance to address the issue of the alleged short-payment of Lim's salary between May 2009 and June 2010. At trial, Lim conceded that had she complained about her salary, Singapore HealthPartners might not have signed the Settlement Agreement. As such, it is unconscionable for Lim to now resile from the shared assumption and rely on her strict legal rights.

53 For the aforementioned reasons, I dismiss Lim's claim that she is entitled to $140,000 in "short-paid" salary.

Lim's pro-rated salary for July 2010

54 Singapore HealthPartners does not dispute Lim's entitlement to a pro-rated salary for July 2010. However, it disputes the quantum of that entitlement. In coming to a finding as to the quantum, I am required to address the Excess Payment Issue and the Excess Leave Issue.

(1) The Excess Payment Issue

55 On or about 13 April 2009, Lim co-signed an Authorisation Letter for submission to DBS mandating payment to herself of an amount of $59,662 (this being the monthly salary of $60,000 less the $338 contribution to the CPF and the CDAC Fund) for April 2009.

56 Given my finding that Lim did not agree to the reduction in salary, it follows that she did not overpay herself by $10,000 for April 2009. It was only in May 2009 that the estoppel by convention/common assumption arose.

(2) The Excess Leave Issue

57 Clause 5.1 of Lim's Service Agreement ("Clause 5.1") stated that:

> The Appointee shall be entitled during the continuance of this Agreement, without loss of remuneration to thirty (30) business days leave a year (in addition to public holidays as gazetted in Singapore) to be taken at such time or times as may be approved by the Board. *The Appointee shall not be entitled to carry forward the balance of any unconsumed leave*. [emphasis added]

58 It is undisputed that between 1 January 2010 and 25 July 2010, Lim took 27 days of leave. Singapore HealthPartners' claims, however, that for the period between 1 January 2010 and 25 July 2010, Lim was only entitled to 17 pro-rated days of leave; the 30 days of leave provided for in Clause 5.1 being for a year's service. She had thus taken ten days of excess leave for which she is liable to reimburse Singapore HealthPartners.

59 On the other hand, Lim argues that:

(a) There is no legal basis for Singapore HealthPartners' claim to compensation for leave taken in excess of entitlement;

(b) The 27 days of leave taken by Lim by 25 July 2010 was her entitlement under Clause 5.1; and

(c) Singapore HealthPartners had agreed with Lim to allow her to carry forward her excess leave of 25.5 days from 2008 and 2009.

60 I find that Singapore HealthPartners had not agreed with Lim to allow her to carry forward her excess leave from 2008 and 2009. Lim alleged that there was an oral agreement between Djeng and herself which permitted her to carry forward her unconsumed leave for 2008. She also alleged that this oral agreement was evidenced in writing by a letter from Djeng to herself dated 31 December 2008 ("the Leave Letter").

61 However, I am not convinced that the Leave Letter exists. Firstly, the Leave Letter was not mentioned in Lim's Statement of Claim. Instead, Lim pleaded an oral agreement. In February 2011, Lim then belatedly sought discovery of the Leave Letter. Singapore HealthPartners explained that it had no such document in its possession. At trial Lim omitted to call Djeng as a witness to prove the existence of the Leave Letter.

62 Secondly, an e-mail dated 24 November 2009 sent on Lim's behalf to the board to request approval to carry forward her leave in 2009, made no mention of the Leave Letter. Had the Leave Letter existed, Lim would naturally have referred to it in the e-mail. As Lim conceded during cross-examination, no director on the board had consented to Lim's request. As such, her excess leave from 2008 and 2009 was forfeited in accordance with Clause 5.1.

63 In my view, a term ought to be implied into the Service Agreement to allow Singapore HealthPartners to claim against Lim for leave taken in excess of entitlement. To hold otherwise would, *in extremis*, allow an employee to take 30 days leave after having served the employer for a few days, and after such leave, to quit the employment with impunity.

64 While employers often allow employees to take leave in advance of entitlement, this is done on the premise that the employee will complete that year's service. In Lim's case, she took her leave entitlement in advance without subsequently completing that year of service. It could not have been the intention of the parties to allow Lim to do so.

65 I thus find that the pro-rated salary for July 2010 owed to Lim is $23,884.22, the breakdown of which is as follows:

S/No	**Item**	**Amount**
1	Salary from 1 July to 25 July 2010 (calculated on the basis of S$50,000 per month)	$40,322.58
2	Less: Her leave taken in excess of entitlement	$16,438.36
	Net Salary Payable to Lim for July 2010	**$23,884.22**

Singapore HealthPartners' claims

Singapore HealthPartners' claims

The Waiver, Release and Discharge Issue

66 In regard to Singapore HealthPartners' counterclaims, Lim asserts that Singapore HealthPartners had "waived, released and discharged" Lim from such claims by virtue of cl 10.7 of the Settlement Agreement ("Clause 10.7"). Clause 10.7 states:

> [Lim] shall execute and deliver to the Company the **LSH Undertaking** upon the execution of this Agreement. *The Company and each and every Shareholder irrevocably and unconditionally waives, releases and discharges [Lim] of and from any and all Claims which any of them has or may have against [Lim] arising from and/or in connection with any of the agreements, deeds, contracts, and/or transactions referred to in the LSH Undertaking (the '**Disclosed Transactions**') and/or any Act or omission of [Lim] as director and Executive Director of the Company with respect to the Disclosed Transactions.* Each Shareholder hereby acknowledges, and irrevocably and unconditionally directs the Company to grant the waiver, release and discharge by the Company set out in this Clause 10.7. [emphasis added]

67 The Disclosed Transactions are set out in the LSH Undertaking in Schedule 5 of the Settlement Agreement as follows:

> (a) the Facility Agreement, the Profit Sharing Agreement, the Security Trust Agreement and Deed of Subordination dated 18 December 2007 between the Company and United Overseas Bank Limited;
>
> (b) the Building Agreement dated 27 December 2007 between the Company and Urban Redevelopment Authority of Singapore;
>
> (c) the Hotel Technical Services Agreement dated 24 March 2008 between the Company and Rendezvous Hotels International Pte. Limited;
>
> (d) the sale and purchase agreements for the sale and purchase of medical suites from the Company; and
>
> (e) any other contract(s) or transaction(s) which had been expressly approved pursuant to written resolutions duly passed by the Board of Directors of the Company or referred to in the audited accounts of the Company or disclosed to the Board of Directors of the Company as set out in the document captioned "Handover Contract Documents" attached to this Warranty and Undertaking.

68 Essentially, the intention of Clause 10.7 was to release, waive and discharge Lim from any claims arising from or in connection with two classes of transactions:

> (a) Agreements, deeds, contracts, and/or transactions referred to in the LSH Undertaking ("the Disclosed Transactions"); and/or
>
> (b) Any Act or omission of LSH as director and Executive Director of the Company with respect to the Disclosed Transactions ("acts or omissions with respect to the Disclosed Transactions").

69 Singapore HealthPartners submits that Clause 10.7 does not preclude them from bringing any of the counterclaims against Lim as the subject matter of the counterclaims does not fall within any of the Disclosed Transactions.

70 I will first proceed to consider whether Singapore HealthPartners' counterclaims are covered by Clause 10.7. If so, the counterclaims fail *in limine*. If not, I will then proceed to address the counterclaims on their merits.

(1) Clause 10.7 in relation to the alleged unauthorised trips

(A) "Disclosed transactions"

71 Lim gave evidence that the Thailand trip was a business trip to review the implementation of certain hospital software ("the Amalga Software) which Singapore HealthPartners was keen on acquiring for the Project. On 11 March 2009, a substantial report prepared by Lim Kah Chuan ("the Amalga Report") was e-mailed to the board of Singapore HealthPartners. Eventually, on 6 November 2009, Singapore HealthPartners signed a contract with Microsoft Amalga to obtain the Amalga Software (the "Microsoft Amalga Agreement" listed in the Handover Contract Documents). As such, Lim argues that it is "clear from the evidence adduced that the Thailand trip was for the purpose of understanding and acquiring the Amalga [S]oftware for the Project and benefited [Singapore HealthPartners]".

72 In regard to the New Zealand trip, Lim gave evidence that it was a business trip to study the architectural, mechanical and electrical engineering aspects of a new hospital building in Auckland organised by Singapore HealthPartners' mechanical and electrical engineering consultants, Beca Carter Holling & Ferner Ltd ("Beca Carter"). Lim made this trip together with Djeng, five representatives from DP Architects and a representative from Beca Carter. Eventually, on 23 March 2009, Singapore HealthPartners signed a contract with Beca Carter appointing Beca Carter as its Mechanical and Electrical Engineers ("the M&E Agreement").

73 In addition, Lim relied on the item listed as "travelling and entertainment expenses" in the Detailed Income Statement within Singapore HealthPartners' Reports and Financial Statements for the period from 1 July 2007 to 31 December 2008 to argue that the Thailand trip (as well as the New Zealand trip)

> ... [had] clearly been accounted for in the '*audited accounts of the Company*' under the LSH Undertaking and [Singapore HealthPartners had] clearly waived, released and discharged [Lim] in relation to any claims resulting from these trips.

74 Singapore HealthPartners submit that this argument is fallacious and that the said item listed as "travelling and entertainment expenses" could not be treated as reference to "contract(s) or transaction(s) referred to in the audited accounts of the Company". It argues that the "travelling and entertainment expenses" in the 2008 audited accounts were merely:

> ... a reference to a general category of expenses incurred by [Singapore HealthPartners] for the period of 1 July 2007 to 31 December 2008 ... [and are] buried as part of the overall travelling and entertainment expenses of [Singapore HealthPartners]. ...

It therefore submits that Clause 10.7 does not apply to the alleged unauthorised trips.

75 In my view, the alleged unauthorised trips could not qualify as Disclosed Transactions merely because the Detailed Income Statement within Singapore HealthPartners' Reports and Financial Statements contains an item listed as "travelling and entertainment expenses". To my mind, for the trips to have been "referred to in the audited accounts", they need to have been specifically mentioned in the Detailed Income Statement. However, such detail was lacking in the Detailed Income

Statement. Instead, as Singapore HealthPartners argued, they were "buried as part of the overall travelling and entertainment expenses of [Singapore HealthPartners]".

76 Nevertheless, I am of the opinion that the counterclaims based on the alleged unauthorised trips would still fail as they are "acts or omissions of [Lim] ... with respect to the Disclosed Transactions" within the scope of Clause 10.7.

(b) "Acts or omissions with respect to the Disclosed Transactions"

77 It is not disputed that the Microsoft Amalga Agreement is listed under the Handover Contract Documents and hence is one of the Disclosed Transactions for the purposes of Clause 10.7. It is also not disputed that the M&E Agreement is a Disclosed Transaction. *Therefore, even if the trips themselves are not Disclosed Transactions for the purposes of Clause 10.7, they can still fall under Clause 10.7 if the trips were either an Act or omission of LSH as director and Executive Director of the Company with respect to the Disclosed Transactions*.

(I) Thailand trip

78 In my view, the Thailand trip would be an Act or omission with respect to the Microsoft Amalga Agreement, if it had any causal link to the said agreement. According to the evidence of Singapore HealthPartners, the board was not informed of the Thailand trip despite the fact that there were board meetings in September, October and November 2008. In fact, the board only found out about the trip on or about February 2008 when Tan Soon Hoe chanced upon certain documents. It was only after the board had found out about the hitherto-undisclosed Thailand trip that the board received the Amalga Report.

79 Singapore HealthPartners took the position that it had found the Amalga Report to be of no real value, and that subsequently, Maurice Choo had, together with James Woo, undertaken the responsibility of evaluating the viability of acquiring the Amalga Software for the Project. According to Maurice's Choo evidence, the Amalga Report was based on a quotation of $9,487,000. It was only after his efforts that it obtained a quotation of $4,406,400 from Microsoft. In effect, Maurice Choo told the court that James Woo and he had negotiated the reduction in the price of the Amalga Software from $9,487,000 to $4,406,400.

80 However, I had difficulty with the evidence of Maurice Choo in this regard. During cross-examination, when Maurice Choo was taken through Microsoft's proposal in the Amalga Report where the quotation in exhibit A of Microsoft's proposal added up to $4,406,400, he was unable to explain why he had taken the position that the Amalga Report was based on a quotation for $9,487,000. Clearly, this shows that, contrary to the position taken by Singapore HealthPartners, the Amalga Report had been of some value to Singapore HealthPartners as it contained a competitive quotation from Microsoft (which Maurice Choo and James Woo tried to claim credit for).

81 As such, this suggests that the Thailand trip and the Amalga Report had some bearing on the eventual signing of the Microsoft Amalga Agreement. I thus find that the Thailand trip was taken with a view to the said Agreement. The Thailand trip is therefore covered by Clause 10.7 as it was an Act with respect to the Microsoft Amalga Agreement.

(II) New Zealand trip

82 Similarly, the New Zealand trip was also related to the M&E Agreement signed on 23 March 2009. Lim adduced sufficient evidence to prove that the New Zealand trip was organised by Beca

Carter and was for the purpose of studying the architectural, mechanical and electrical engineering aspects. For this reason, I find that the New Zealand trip was linked to the M&E Agreement.

83 Accordingly, the counterclaim with regard to the unauthorised trips fails.

(2) Clause 10.7 in relation to contracts between Wizvision and Singapore HealthPartners

84 Wizvision, a company providing information technology services, had entered into three contracts with Singapore HealthPartners:

(a) An Office/Server Desktop Solution contract signed in November 2007;

(b) An IT System Maintenance Support contract signed in January 2008 for the period for the period 1 April 2008 to 31 March 2009; and

(c) An IT System Maintenance Support contract signed for the period 1 April 2009 to 31 March 2010.

85 Singapore HealthPartners contend that Lim did not disclose the full extent of her direct and indirect interests in Wizvision, in effect breaching her obligation of disclosure under s 156(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Act") and under general law. At this juncture, I should state that s 156(1) of the Act imposes a statutory duty of disclosure on directors but otherwise has little bearing on this civil Action; s 156(9) specifically provides that the Section is in addition to and not in derogation of the operation of any rule of law.

86 Lim's interest in Wizvision comprised:

(a) a 17% direct stake in Wizvision;

(b) a 15.59% indirect stake in Wizvision through Hua Jie Pte Ltd; and

(c) her directorship of Wizvision since 7 April 2000;

Her son, Lim Kong Wee, was a director of Wizvision from 7 December 2007. Another son, Lim Wee Kiat, had an indirect stake of 0.12% in Wizvision through Hua Jie Pte Ltd.

87 Although under s 156(8) of the Act, for the purposes of disclosure of a director's interest in a transaction with the company, an interest of a member of the director's family is to be treated as the director's interest, no authority was cited to me that the position is the same under common law. However, it is not necessary for me to decide on this issue because, in any event, Lim failed to disclose her own indirect interest in a 15.59% stake in Wizvision held through Hua Jie Pte Ltd.

88 Lim insists that but for an "honest oversight in not disclosing her indirect stake in Wizvision through Hua Jie Pte Ltd", she had provided disclosure of her interest in Wizvision prior to Singapore HealthPartners engaging Wizvision. In any event, Lim argues that these contracts were referred to in the audited accounts of Singapore HealthPartners and, as such, are "Disclosed Transactions" covered by Clause 10.7 so that no Act or omission on her part (as a director of Singapore HealthPartners) with respect to these contracts could found a claim by Singapore HealthPartners against her.

89 However, Singapore HealthPartners points out that when the Settlement Agreement was signed on 12 July 2010, the audited accounts only covered accounts up till the year ended 31 December 2008. As such, Singapore HealthPartners contends that contracts entered into or subsisting between

Wizvision and Singapore HealthPartners after 31 December 2008 are not covered by Clause 10.7 as they are not "referred to in the audited accounts of the Company". Moreover, Singapore HealthPartners takes the position that Clause 10.7 is operative only to the extent of her disclosed interests in Wizvision.

90 It is trite law that a director occupies a fiduciary office. As such, a director is not to place himself or herself in a position where his or her duty and interest conflict. According to the learned authors of Walter Woon on Company Law (Sweet & Maxwell, Revised 3rd Ed, 2009) ("*Walter Woon on Company Law*") at para 8.38, the no profit rule posits that a fiduciary may not obtain a profit in connection with his position without the informed consent of the person he is bound to protect. Therefore:

> ... unless he has provided full disclosure and obtained the informed consent of the company, a director who acquires a benefit in connection with his office is accountable to the company for that benefit. (Walter Woon on Company Law at para 8.39).

91 Traditionally, the law has always taken a very strict approach where conflicts of interest are concerned. Lord Herschell in *George Bray v John Rawlinson Ford* [1896] AC 44 at 51 said that:

> It is an inflexible rule of a Court of Equity that a person in a fiduciary position ... is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is a danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he was bound to protect. It has therefore been deemed expedient to lay down this positive rule.

92 As such, where a director has failed to make full disclosure and to obtain the informed consent of the company, the company may seek disgorgement of any profits that the director makes from the transaction (*Walter Woon on Company Law* at para 8.42).

93 However as noted by the learned authors of *Walter Woon on Company Law*, just as a natural person may validly release another party from liability, a company may similarly do so. The members of a company may release a director from his fiduciary duty by agreement: see *New Zealand Netherlands Society 'Oranje' Incorporated v Kuys* [1973] 2 All ER 1222 (Privy Council on appeal from New Zealand). The members of the company may also ratify and adopt an Act of the directors which would otherwise be a breach of their fiduciary duty: see *Walter Woon on Company Law* at para 9.18 and the authorities therein cited. *Walter Woon* concludes that:

> ... Notwithstanding *dicta* to the contrary by some English judges, the general rule is that if the directors have exercised their powers irregularly, or Acted without proper authority or Acted from improper motives, they can by full and frank disclosure of all material facts to the members obtain absolution and forgiveness of their sins.

94 I am of the view that the first two contracts referred to in [84] above ("the first two Wizvision contracts") are within the scope of Clause 10.7 since they were "referred to in the audited accounts of the Company" for the year ended 31 December 2008. It does not matter that the second of these contracts, namely, the IT System Maintenance Support contract signed in January 2008 continued to have effect beyond 31 December 2008.

95 In contrast, the third contract referred to in [84] above, namely, the IT System Maintenance Support contract for the period 1 April 2009 to 31 March 2010 ("the third contract") falls outside the scope of Clause 10.7 since the latest audited accounts of Singapore HealthPartners at the time of the Settlement Agreement were the audited accounts for the year ended 31 December 2008 and therefore could not have referred to the third contract.

96 I am also of the view that, in so far as the first two Wizvision contracts are concerned, Clause 10.7 is effective in releasing Lim from liability for inadequate disclosure of her interest in Wizvision to the shareholders of Singapore HealthPartners. The Settlement Agreement containing Clause 10.7 was signed by Singapore HealthPartners and all its shareholders. Clause 10.7 states:

> ... The Company and each and every Shareholder irrevocably and *unconditionally* waives, releases and discharges LSH of and from any and all Claims which any of them has *or may have* ... Each Shareholder hereby acknowledges, and irrevocably and unconditionally directs the Company to grant the waiver, release and discharge by the Company set out in this Clause 10.7. [emphasis added]

To my mind, Singapore HealthPartners, together with all its shareholders, intended to "irrevocably and unconditionally" release Lim from any and all claims in connection with the two Wizvision contracts falling within the scope of Clause 10.7, even if such claims arose out of a breach of Lim's fiduciary duty of disclosure.

97 To begin with, it is not in evidence whether at the time the Settlement Agreement was signed the shareholders knew of Lim's partial failure to disclose her interest. From Singapore HealthPartners' case, it is obvious that, at some point in time, Singapore HealthPartners became aware of Lim's undisclosed interest in Wizvision. But when did it become aware? When Lim, in her Reply to the Defence and Counterclaim, invoked Clause 10.7, there was no reply at all from Singapore HealthPartners. It would appear that the latter had not thought to challenge Lim's invocation of Clause 10.7 on the ground that there had been lack of informed consent to the release in Clause 10.7.

98 In any event, the Settlement Agreement should be construed in the context in which it was signed. From the middle of 2009, the shareholders and directors of Singapore HealthPartners were split into two factions, and the dispute between the two factions resulted in several arbitral and court proceedings. Eventually, the two factions concluded that the best way of resolving the dispute was for one side to buy the other out on the terms of the Settlement Agreement. In this context, it can reasonably be inferred that the intention of the parties in signing the Settlement Agreement was to wipe the slate clean by releasing Lim from all claims within the scope of Clause 10.7 without any qualification.

99 The wording of Clause 10.7 supports my view. Clause 10.7 states that each and every shareholder of Singapore HealthPartners "irrevocably and *unconditionally*" releases Lim from "any and all Claims which any of them has or *may have*". The release is clearly not given on the condition that Lim had given full and frank disclosure of any breaches of her fiduciary duty. In addition, Clause 10.7 contemplates both present claims which the shareholders are aware of and claims which they "may have" in the future but are currently not aware of.

100 As such, I am of the view that Clause 10.7 is effective in releasing Lim from any liability to the Company arising from her failure to disclose fully her interest in Wizvision under the first two Wizvision contracts. Accordingly, the counterclaim with regard to the first two Wizvision contracts fails but that with respect to the third succeeds.

Conclusion

101 In summary, notwithstanding my finding that Lim did not agree to a reduction in her monthly salary on 27 March 2009, I find that Lim is estopped from enforcing her strict legal right to the short-paid salary from May 2009 to June 2010. As the estoppel arose only from May 2009 onwards, I find that she did not overpay herself by $10,000 in respect of her salary for April 2009. Singapore HealthPartners' counterclaim in respect of the $10,000 overpayment therefore fails.

102 With regard to Lim's claim for her pro-rated salary for July 2010, I find that Lim had taken ten days in excess of her leave entitlement for 2010 for which Singapore HealthPartners ought to be credited with $16,438.36. Lim's claim is thus allowed in part in the sum of $23,884.22, together with interest at the rate of 5.33% from the date of the termination of Lim's Service Agreement.

103 In regard to Singapore HealthPartners' other counterclaims, I find that those in respect of the Thailand and New Zealand trips are within the scope of Clause 10.7 and are therefore dismissed. In addition, I find that Singapore HealthPartners and its shareholders had agreed under Clause 10.7 to release and absolve Lim from any and all claims arising from any Act or omission with respect to the first two Wizvision contracts. Accordingly, the claim arising from Lim's alleged failure to disclose her interest in the first two Wizvision contracts is dismissed. In regard to the third contract, I order an account and inquiry before the Registrar as to Lim's profits therefrom and payment to Singapore HealthPartners of all sums found to be due and owing on the taking of the account, together with interest at the rate of 5.33% from the date of filing of the Defence and Counterclaim herein.

104 I will hear the parties on costs.