Teo Bee Tiong *v* Ong Teck Ghee (practising under the name and style of Ong & Lau) [2013] SGHC 211

Case Number	: Suit No 261 of 2013 (Registrar's Appeal No 215 of 2013)
Decision Date	: 16 October 2013
Tribunal/Court	: High Court
Coram	: Andrew Ang J
Counsel Name(s)	: Gan Theng Chong and Jovian Tan (Lee & Lee) for the appellant; Ong Boon Kiat (Ong & Lau) for the respondent.
Parties	: Teo Bee Tiong — Ong Teck Ghee (practising under the name and style of Ong & Lau)

Civil Procedure – Summary Judgment

16 October 2013

Andrew Ang J:

Introduction

1 This was an appeal by the plaintiff, Teo Bee Tiong, against the decision of the learned Assistant Registrar dismissing his application (in Summons No 2485 of 2013) for summary judgment against the defendant, Ong Teck Ghee (an advocate and solicitor), and granting the defendant unconditional leave to defend. I allowed the appeal and gave judgment in favour of the plaintiff. The defendant having appealed to the Court of Appeal against my decision, I set out below my grounds of decision.

Background

2 The Plaintiff's claim was based on the terms of a settlement deed dated 10 January 2013 ("the Settlement Agreement") made between the parties.

3 As stated in Recital D to the Settlement Agreement, the parties' purpose in entering into the Settlement Agreement was "to fully and finally settle all disputes and differences between them relating to, arising out of and/or in connection with the Suit and their dealings with each other". The "Suit" referred to was the plaintiff's earlier action in Suit No 567 of 2012 ("Suit 567") against the defendant for breach of an investment agreement dated 28 June 2010 ("the Investment Agreement") between them.

4 Ordinarily, it would be unnecessary and inappropriate to go into the terms of the underlying contact (*ie*, the Investment Agreement) and the parties' rights and liabilities thereunder as their differences would have been put to an end by the Settlement Agreement. It is the Settlement Agreement that governs their legal relationship with respect to the dispute in which they had been engaged.

5 However, by way of background and in order to assist in understanding how the Settlement Agreement came about, I will briefly outline the terms of the Investment Agreement and the dispute under Suit 567.

6 The Investment Agreement recited that the defendant had been appointed as a "consultant" to Bavarian Nordic A/S ("BN") (a public company listed on the Copenhagen Stock Exchange), under a consultancy agreement dated 21 February 2006 between them as subsequently amended ("the Consultancy Agreement"). The "Project" for which the defendant was appointed a consultant was not described at all in the Investment Agreement. However, it is described in Recital B to the Settlement Agreement as "the proposed sale of at least four million doses of 3rd Generation (non-replicating) smallpox vaccines to the Ministry of Health in Singapore ('the Singapore Order')" from which the defendant "expect[ed] to receive consultancy fees of about S$20m under the Consultancy Agreement if the sale [went] through".

7 Under the Investment Agreement, the plaintiff was to commit S$450,000 to be paid to the defendant on or before 10 July 2010 (which he did) and the defendant was to use his best efforts to perform his part under the Consultancy Agreement. The defendant undertook to pay to the plaintiff S$900,000 immediately upon his receipt of the consultancy fees of about US$20m (Note: the Settlement Agreement referred to S$20m). The defendant was to report periodically on the status of the Project.

8 The Investment Agreement was for a period of 12 months unless extended by mutual agreement. Clause 10 provided that in the "unlikely event" that the Project was not successful, the defendant would repay to the plaintiff the sum of S$450,000. The plaintiff agreed "to maintain strict confidentiality of all and any information pertaining to the Project". Apart from a couple of other provisions not essential to an understanding of the background, those were the terms of the Investment Agreement.

9 The 12-month period expired on 27 June 2011 but the defendant neither paid the plaintiff S$900,000 nor refunded the S$450,000. More than a year later, being unaware whether the Project had been successful, the plaintiff brought an action on 6 July 2012 in Suit 567 claiming the sum of S$900,000 (if the Project had been successfully completed) or S$450,000 if it had not. The plaintiff alleged that the defendant had repeatedly represented to him earlier that the Project was nearing completion and requested for more time. In particular, the plaintiff recounted a meeting between the parties on 20 March 2012 when the defendant requested for yet further time until 1 December 2012 to make payment. According to the plaintiff, he refused and demanded full payment forthwith.

10 In his Defence filed in Suit 567, the defendant averred that the Project was still ongoing. He further contended that because the parties realised that it was impossible to be certain when the Project would be completed, they had agreed to adopt a "holding mentality" such that the Investment Agreement was extended from time to time by mutual agreement and had effectively become "open-ended" as to an expiry date. He denied the plaintiff's account of the meeting of 20 March 2012. I shall not go into other issues raised by the parties in the pleadings raised by the parties. Suffice it to say that the principal dispute between them was whether the plaintiff was entitled, at the least, to repayment of the S$450,000. This in turn depended upon whether the duration of the Investment Agreement had expired, no further extension having been agreed to by the plaintiff when the parties met on 20 March 2012, or the Investment Agreement had become "open-ended" as alleged by the defendant. It was in the midst of this dispute that the parties entered into the Settlement Agreement.

The Settlement Agreement

11 As stated in Recital D thereto, the parties' express purpose in entering into the Settlement Agreement was "to fully and finally settle all disputes and differences between them relating to, arising out of and/or in connection with [Suit 567]".

12 The salient terms of the Settlement Agreement are set out below:

A. The settlement sum and manner of payment

1. [The defendant] shall pay to [the plaintiff] the sum of S$900,000.00 if the Singapore Order is issued on or before 28 February 2013. The payment of the S$900,000.00 shall be made on the first business day following the issue of the Singapore Order as defined under paragraph 3 below.

2. However, if the Singapore Order is not issued by 28 February 2013, [the defendant] shall not be liable to pay [the plaintiff] the sum of S$900,000.00 but shall instead pay [the plaintiff] the sum of S$485,000.00, which shall be the refund of [the plaintiff]'s initial investment of S$450,000.00 along with the additional sum of S$35,000.00 as an agreed fair return for the period [the plaintiff] was kept out of funds. **The sum of S$485,000.00 shall be paid on 1 March 2013**.

3. For the purposes of this Settlement Agreement, the Singapore Order shall be deemed to be issued on the date when a purchase order is issued from MOH to BN for the purchase of at least four million doses of 3rd Generation (non-replicating) smallpox vaccines.

4. [The defendant] agrees to accept the sum of S$18,000.00 from [the plaintiff] in full and final settlement of [the defendant]'s bill O82/2012 ("**the Bill**") dated 20 March 2012. The said sum of S$18,000.00 shall only be payable when [the defendant] makes payment of the settlement sum above and shall be set off from the amount to be paid by [the defendant] to [the plaintiff] under Clause 1 or 2 above, as the case may be. Save as set out aforesaid, [the defendant] shall have no further claims against [the plaintiff] whatsoever in relation to the Bill.

5. For the purpose of this Settlement Agreement, **time shall be of the essence** and **there shall be no further extension of time for the payments set out above**.

B. Consequences of default

6 **In the event of default of payment** of the settlement sum under Clauses 1 or 2 above (as the case may be) or any part thereof, [the plaintiff] **shall be at liberty to commence action against [the defendant] under this Settlement Agreement and enter final judgment** for the full amount of the applicable sum (ie S$485,000.00 or S$900,000.00 pursuant to Clause 1 or 2) together with interest charged at the rate of 10% per annum from the due date to the date of payment and costs as provided under this Agreement.

7. [The defendant] shall be liable to [the plaintiff] on a full indemnity basis for all of [the plaintiff]'s legal costs incurred to enforce this Settlement Agreement and all his rights thereunder.

C. Miscellaneous matters

8. In line with matters agreed herein, [the defendant] agrees to provide regular updates to [the plaintiff] on the status of the Singapore Order as and when requested.

9. Strictly without prejudice to his rights, [the plaintiff] shall file his Notice of Discontinuance in respect of Suit No 567 of 2012/E, with each party bearing their own costs within seven (7)

days of the Parties executing this Settlement Agreement on the terms and conditions set out herein.

10. Save for the matters stated in this Settlement Agreement, the Parties hereto agree and confirm that, neither Party shall hereafter bring or maintain any further claim or claims with regard to or arising out of the Suit or the Bill against the other Party as the case may be.

11. **This Settlement Agreement constitutes the complete agreement** between the Parties on the subject matters herein and supersedes all other oral or written contracts, understandings, arrangements or agreements between the parties relating to the subject matters hereof.

12. …

[emphasis added in bold]

13 Pursuant to the Settlement Agreement, the plaintiff discontinued Suit 567 on 15 January 2013. Thereafter, he received no further news from the defendant and was unaware whether the defendant had managed to secure the Singapore Order by 28 February 2013. On 8 March 2013, the plaintiff instructed his solicitors to issue a letter of demand for $882,000 (this being $900,000 on assumption that the Singapore Order had been issued less $18,000 which, under the Settlement Agreement, the plaintiff had agreed could be deducted therefrom in respect of the defendant's legal services).

14 The defendant replied that the Singapore Order had not been received and proposed a meeting to discuss the matter. When the parties met on 14 March 2013, the defendant confirmed the Singapore Order had not been issued. On his part the plaintiff required the defendant to pay him the sum of $467,000 (this being $485,000 as agreed to be paid by the defendant under cl 2 of the Settlement Agreement less the sum of $18,000 for the defendant's legal services). Notwithstanding further demands by the plaintiff and assurances by the defendant, the sum demanded remained unpaid. This finally led to the plaintiff commencing the action herein on 2 April 2013 to enforce his rights under the Settlement Agreement.

15 As noted earlier, the plaintiff failed in his application before the Assistant Registrar for summary judgment and his appeal against her decision came before me.

The parties' respective positions

16 The plaintiff's grounds of appeal were essentially as follows:

(a) The terms and conditions of the Settlement Agreement were clear and embodied the parties' entire agreement.

(b) No extrinsic evidence was admissible to contradict, vary, add to or subtract from the contract by reason of s 94 of the Evidence Act, none of the exceptions thereto being applicable.

(c) Therefore, the defendant's averment in the Defence that there was an understanding that "the exact time of the completion of the investment project is unascertainable or cannot be ascertained … and that the [p]laintiff ought not to hold the [d]efendant strictly to the payment terms of the Settlement Agreement" was inadmissible.

(d) Neither was there anything in the Settlement Agreement to support the defendant's

contention that "[i]n the Settlement, the [p]laintiff agreed to stay invested until a specified date [and] will assess the status of the [P]roject at that time".

17 The defendant's submissions before me were as follows:

(a) The Settlement Agreement was not a settlement of Suit 567 but a record that the plaintiff agreed to stay invested until such time when the Project could be assessed again on its status;

(b) The defendant was not seeking to contradict cl 2 of the Settlement Agreement (thereby going against the parol evidence rule) but intending to show at the trial that he entered into the Settlement Agreement not because he admitted liability under the Investment Agreement but because the parties had an understanding that the Investment Agreement was an open-ended project, such that the date for payment could not be strict and inflexible despite the stipulation of the date in the Settlement Agreement.

18 Elaborating on the above, the defendant went on to say that he gave up a valid and valuable defence to enter into the Settlement Agreement and that the Settlement Agreement had to be considered against the background of the open-ended investment project under the Investment Agreement. He further contended that the Settlement Agreement was merely a record of "the renegotiated possible but not determined timeline for payment" and was "not meant to be enforced by the plaintiff". The defendant did not challenge the validity of the Settlement Agreement but contended that there were triable issues as to the reasons and purpose for which the defendant entered into the Settlement Agreement.

My decision

19 In my view, the defendant's submissions were totally untenable and doomed to fail for the following reasons:

(a) Despite the Settlement Agreement reciting clearly the parties' intention "to full and finally settle all disputes and differences between them … on the terms and conditions [of the Settlement Agreement]", the defendant sought to dredge up the question as to whether the Project under the Investment Agreement was of an open-ended nature, such that there was no fixed date for payment thereunder. In this connection, he claimed that he had a valuable defence against the plaintiff's action in Suit 567 which he gave up when he entered into the Settlement Agreement. However, as I held in *Real Estate Consortium Pte Ltd v East Coast Properties Pte Ltd* [2011] 2 SLR 758, where parties had agreed to resolve their disputes amicably by way of a validly formed settlement agreement, that agreement alone governed the parties' legal relationship; the effect of the settlement agreement was to put an end to the issues previously raised. The settlement agreement essentially took over as the basis of the parties' legal and contractual relationship. Moreover, cl 11 of the Settlement Agreement provides that it constitutes the complete agreement between the parties and supersedes all other contracts, understandings, or arrangements between them.

(b) Despite his denials, the defendant was clearly seeking to contradict the express terms of the Settlement Agreement, in breach of s 94 of the Evidence Act (Cap 97, 1997 Rev Ed).

(i) The effect of cll 1 and 2 of the Settlement Agreement is that 28 February 2013 was to be the cut-off date for procuring the Singapore Order. If it was issued on or before that date, the defendant would pay the plaintiff the sum of $900,000 on the first business day following the issue of the Singapore Order. If it was not, the defendant would pay the

plaintiff the sum of $485,000 on 1 March 2013. Clause 5 further provides that "time shall be of the essence and there shall be no further extension of time for the payments set out above". Clause 6 goes on to provide that if there is default of payment under cl 1 or 2, the plaintiff shall be at liberty to commence action against the defendant and enter final judgment. The defendant's contentions:

(A) that the date for payment could not be strict and inflexible because there was an understanding that the Investment Agreement was an open-ended project; and

(B) that "the [Settlement Agreement] is merely a record of the renegotiated possible but not determined timeline for payment and is not meant to be enforced by the Plaintiff".

were diametrically opposed to the terms of the Settlement Agreement and therefore failed.

(ii) For the same reason, the defendant's contention that the Settlement Agreement was "a record that the [p]laintiff agreed to stay invested until such time when the [P]roject can be assessed again on its status" was devoid of merit.

20 In the result, I allowed the appeal and gave judgment to the plaintiff with costs on an indemnity basis as provided in the Settlement Agreement.

21 Coda: I feel constrained to make the following observation, although it played no part in my decision, that it is curious how the Project could have come about. As far as I have been able to ascertain, the World Health Organisation certified in 1979 that smallpox had been eradicated worldwide. This resulted in routine vaccination against smallpox among the general public being progressively discontinued so that by 1986, routine vaccination had ceased in all countries.