

Fu Yuan Foodstuff Manufacturer Pte Ltd v Methodist Welfare Services
[2008] SGHC 179

Case Number : Suit 637/2007
Decision Date : 20 October 2008
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : S Magintharan (Netto & Magin LLC) for the plaintiff; Ang Cheng Ann Alfonso (Ang, Seah & Hoe) for the defendant
Parties : Fu Yuan Foodstuff Manufacturer Pte Ltd — Methodist Welfare Services
Contract

20 October 2008

Judgment reserved.

Judith Prakash J:

Background

1 The plaintiff is a company in the food business and its activities include the provision of in-house catering for various establishments. The shareholders and directors of the plaintiff are Mr Tay Ann Siang and his wife, Ms Lai Guek Ling, also known as Sally Lai. Mr Tay was also the sole proprietor of a business called Ann Siang which was registered as a sole proprietorship on 12 November 2006.

2 The defendant is a society that was set up in 1981 to do social work for the Methodist Church in Singapore. The defendant operates twelve service centres including a nursing home, a home for the destitute and five family services centres. The nursing home, Bethany Methodist Nursing Home (the "Home"), was set up in September 2001. The Home has 271 beds and caters to destitute and very low income persons who are in need of long-term nursing care. There is a day care centre attached to the Home which caters to frail elderly persons who require supervision. About 90 per cent of the patients who live in the Home are above sixty years of age. They suffer from all types of chronic illnesses and many have special dietary needs.

3 The Home does not have the manpower to cater for the food needs of the patients and the catering is therefore outsourced to specialist food caterers. These caterers use the Home's kitchen facilities to prepare food for its patients and staff.

4 In 2006, the caterer for the Home was the Methodist Co-operative Society Ltd ("MCS") which was operating under a contract that was due to expire in November 2006. Thus in August 2006, the defendant invited tenders for the Home's in-house catering service. Eight bids were received. The lowest tender came from the plaintiff.

5 On 31 October 2006, the plaintiff was notified that it was successful in its bid. Consequently, on 22 November 2006, the plaintiff and the defendant entered into a written contract ("the Agreement") for the catering services to be provided by the plaintiff to the Home. The Agreement was for a period of two years from 1 December 2006 up to 30 November 2008.

6 The plaintiff commenced provision of services under the Agreement on schedule on 1 December 2006. On 30 August 2007, some nine months later, the defendant served notice of termination on the

plaintiff terminating the Agreement with immediate effect. The plaintiff, alleging that such termination was wrongful, commenced this action for damages for breach of contract in October 2007.

The claim and the defence

7 In its statement of claim, the plaintiff claimed the sum of \$469,767.79, as particularised below:

- | | | |
|----|---|--------------|
| a. | Loss of profit on the agreement for remaining 15 mths @25,000.00 x 15 mths: | \$375,000.00 |
| b. | Arrears of service fee for the month of August 2007: | \$54,182.82 |
| c. | Deposit made but not returned | \$36,000.00 |
| d. | Value of supplies handed to Defendants but not reimbursed: | \$4,585.12 |

Total: \$469,767.94

The statement of claim also included an alternative prayer for damages to be assessed.

8 After the writ was served however, the defendant paid the amounts set out in items (b), (c) and (d) of para 7. At the trial, therefore, the only remaining claim was the claim for damages for wrongful repudiation of the contract which had been quantified in the sum of \$375,000.

9 The defendant's stand as pleaded in its defence was that it was entitled to summarily terminate the Agreement for breach on the part the plaintiff. The following particulars of breach were given:

- a. The plaintiff had breached clause 2.7 of the Agreement in that it had failed to comply with the law of Singapore governing the employment of staff. Sometime on or about the 21 August 2007, the plaintiff inspected the kitchen and discovered that there were 6 Chinese nationals working in it. Of the 6 Chinese nationals, 5 held long term social passes and 1 was on work permit. It was subsequently ascertained from the Ministry of Manpower that the Chinese workers were not permitted to work in the Home's kitchen as they did not have the relevant work permits.
- b. The plaintiff had breached clause 2 of the Agreement in that it failed to comply with the menu requirements of the Agreement in that the plaintiff failed to provide a 28-day menu cycle and the special lunch menu on Wednesday and failed to serve food in consistent quantities and quality at all times.
- c. The plaintiff breached clauses 2.3 and 2.5 of the Agreement in that it failed to meet the requisite standards of hygiene, sanitation and maintenance in that it had:
 - (i) Failed to maintain and repair all kitchen equipment in a satisfactory condition;
 - (ii) Used a floor squeegee to clean the kitchen table used for food preparation;

- (iii) Failed to clean the cutlery and had served inmates of the Home with cups stained with food from previous meals; and
 - (iv) Failed to ensure that the food preparation areas were clean.
- d. The plaintiff also breached the Agreement in that it failed to ensure that the food was properly prepared because:
 - (i) The plaintiff failed to prepare therapeutic diets according to instructions given by the defendant;
 - (ii) The plaintiff served food which was rancid and fruit which was rotten; and
 - (iii) On 10 August 2007, monosodium glutamate, instead of sugar was used in the MILO drinks which were consumed by the inmates of the Home.
- e. The plaintiff also breached the Agreement in that one of its directors, Tay Ann Siang had tendered for a contract to cook and supply meals to the Singapore Flying College from the Home's kitchen.

It should be noted that in its closing submissions the defendant no longer pursued the allegation in sub para (e) above.

10 The issues that arise out of the pleadings are as follows:

- a. whether the plaintiff was in breach of any or all of the contractual provisions relied on by the defendant;
- b. if so, whether such breach entitled the defendant to summarily terminate the plaintiff's engagement under the Agreement;
- c. if the defendant was not entitled to terminate the plaintiff, on what basis should the plaintiff's damages be assessed.

Contractual provisions

11 The termination provisions of the Agreement are found in cl 3 thereof:

3. TERMINATION

3.1 MWS [i.e the defendant] may terminate the Agreement at anytime by giving the Contractor [i.e the plaintiff] two (2) months' notice in writing.

3.2 MWS may terminate the Agreement without notice should the Contractor breach any item under Clauses 1.4, 2.3 and 2.7.

12 The Clauses referred to in cl 3.2 of the Agreement read as follows:

1.4 The Contractor shall not transfer or assign this Contract directly or indirectly to any person whatsoever.

2.3 Hygiene & Sanitation

2.3.1 The Contractor shall ensure that [a] high standard of hygiene and cleanliness is maintained at all times in the procurement, handling, preparation, distribution and storage of food.

2.3.2 The Contractor shall ensure that all food supplies procured, regardless cooked, uncooked, bottled or canned, meet the highest standards of hygiene.

2.3.3 The Contractor shall ensure that all food are stored and prepared to meet the highest standards of hygiene.

2.7 Licensing Compliance

2.7.1 The Contractor shall obtain the necessary licenses for operations and submit copies to the Director for reference.

2.7.2 The Contractor shall comply with all Singapore laws and regulations, especially with regard to food establishments and employment of staff.

13 There are some other relevant clauses as well. These are cl 2.2.2, cl 2.2.5 and cl 2.2.6 which provide as follows:

2.2.2 The Contractor shall draw up the 28-day menu and the special menu, together with recipes for every dish. The menu shall include varieties [*sic*] and meet nutritional requirements.

2.2.5 The Contractor shall ensure that Residents and Staff are served food in consistent quantities and quality at all times.

2.2.6 Bethany is entitled to impose a penalty charge and/or charge the Contractor for costs incurred in providing meals to Residents and/or Staff should the Contractor fail to:

- provide the menu;
- provide meals of acceptable quality;
- meet the meal schedule;
- provide the meals in sufficient quantities; or
- meet hygiene and sanitation standards.

Was the plaintiff in breach of cl 2.7 of the Agreement?

14 On 30 August 2007, the defendant through the Executive Director of the Home, Ms Yip Moh Han, terminated the Agreement with immediate effect. The ground given for the termination was that due to the "illegal deployment of 6 foreign workers in the kitchen [of the Home]" the defendant had failed to comply with cl 2.7 of the Agreement.

15 The events leading up to the termination were explained by Ms Yip in her affidavit of evidence in chief as follows. Sometime on 21 August 2007, the staff of the Home conducted an inspection of the kitchen and noticed an unusually large number of Chinese nationals in the kitchen. There were six Chinese nationals working in the kitchen of whom five held long term social passes and the sixth held

a work permit. The particulars of the Chinese nationals given by Ms Yip were:

Name	Fin No
Han Zhichen	G 5852297 Q
Shi Min	G 5829845 Q
Ren Shanglai	G 8078969 L
Liu ZengFeng	G 5930630 N
Liu Yuan Yin	G 5930392 W
Zeng Ye Feng	G 5929600 R

16 On 24 August 2007, Ms Yip collected the passes of all six Chinese nationals from the plaintiff and made enquiries with the Ministry of Manpower ("MOM") and the Immigration and Checkpoint Authority ("ICA") on the status of these persons. Ms Yip said that the MOM told her that those foreign workers could not work at the Home and that they could only work at the place designated in the work permit which was 36 Regent Street (*ie* the plaintiff's registered address).

17 On 27 August 2007, Ms Yip wrote to the Director of Foreign Workforce Policy, MOM, explaining what had happened at the Home and asking for information on the status of the foreign workers. On the same day, she wrote to Sally Lai of the plaintiff informing her that MOM had stated that these workers were not allowed to work in the Home. She reiterated that the deployment of the foreign workers was carried out without the Home's knowledge or approval and that it was illegal. Ms Yip instructed Sally Lai to remove all the foreign workers from the Home immediately. Sally Lai replied and asked for approval for these workers to work at the Home, claiming that she had spoken to staff at the MOM and had been given approval to deploy these workers in the Home. Ms Yip did not, however, accede to this request.

18 On 29 August 2007, Ms Yip received a reply from the MOM to her letter. In its response, the MOM stated that the plaintiff's work permit holder should not be deployed to work in any address except 36 Regent Street. It further stated that of the remaining five workers, three of them were not the plaintiff's legal employees and, therefore, they too were not allowed to work in the kitchen of the Home.

19 Ms Yip maintained that in view of the breaches of the Agreement and the law, the defendant was compelled to terminate the Agreement. In doing so, it was concerned with the welfare of the patients and the need to comply with the law. She did not accept the allegation made by the plaintiff that the defendant had used the situation with the workers as an excuse to get rid of the plaintiff because she herself did not like the plaintiff and wanted to re-employ MCS as the caterer for the Home. This was the stand that the plaintiff maintained throughout the trial. It was the plaintiff's position that they had not broken the law in deploying the six Chinese workers in the Home and should not have been terminated on this ground.

20 When the matter came to trial, the defendant called an officer from MOM to give evidence on the position of the Chinese workers. Mr Yeo Kim Huat is the Senior Assistant Director, Work Pass

Division, MOM. He stated that prior to 1 July 2007, among the different types of work passes issued by the MOM, there were "Work Permits", "S-Passes" and "Employment Passes". The S-Pass was actually a work permit and both the work permit and the S-Pass were issued by the Controller of Work Permits under the Employment of Foreign Manpower Act ("EFMA"). The employment pass was issued under the Immigration Regulations but the power to do this had been delegated to officers within the MOM by the Controller of Immigration. All three work passes were issued subject to the following conditions:

- (i) The foreigner shall not perform an occupation different from the one for which the work pass was issued.
- (ii) The foreigner shall not perform work for any person other than the employer stated in the work pass.

21 According to Mr Yeo, two of the workers, *ie* Han Zhichen and Shi Min, held employment passes which had been issued to them in February 2006 for employment with the plaintiff. The third worker, Ren Shanglai, held a work permit that had been issued to him in August 2006 for employment with the plaintiff as a kitchen assistant in a restaurant. The other three workers each held an employment pass which authorised them to work as chefs for Ann Siang. Mr Yeo stated:

Ren Shanglai was issued with a work permit to work as a kitchen assistant in a restaurant. His work permit did not allow him to work as part of the catering staff at a nursing home. Zheng Yefeng, Liu Yuanyin and Liu Zengfang were issued with employment passes to work for Ann Siang, a sole proprietorship. Fu Yuan Foodstuff Manufacturer Pte Ltd is a different legal entity from Ann Siang. The employment passes of these 3 PRC workers only allowed them to perform work for Ann Siang and did not allow them to work for Fu Yuan Manufacturer Pte Ltd.

22 It can immediately be seen that the legal position of the six foreign workers as explained to the court was different from the position that appeared to exist in August 2007 when the defendant was making its enquiries about them. At least two of the workers were fully qualified to work in the kitchen of the Home and there was therefore no basis for the Home to ask for all six of the workers to be removed from the premises.

23 When Mr Yeo was cross-examined, a slightly different picture appeared. He conceded that the work permit issued to Ren Shanglai did not, on its face, contain any condition that restricted Mr Ren to work in as a kitchen assistant in a restaurant. All that the work permit contained in relation to Mr Ren's occupation were the words "kitchen assistant". Mr Yeo maintained that, nevertheless, Mr Ren was supposed to work only in the kitchen of a restaurant and not in the kitchen of a nursing home because the plaintiff when it made its application for the work permit stated that it wanted to employ him as a kitchen assistant in a restaurant. He said that the MOM would have different considerations when it was considering an application for the post of a restaurant kitchen assistant than it would have when considering a similar application for work in a nursing home kitchen. When asked what the difference in the considerations would be, however, Mr Yeo's response was that he did not have the knowledge to describe this as it was handled by a different section of the Work Pass Division.

24 There were other important pieces of evidence given by Mr Yeo. First, he said that when a foreign worker is issued an employment pass, the pass will not specify any specific location at which the foreigner must work. The worker could work for the approved employer at any address. The worker would also have a disembarkation pass issued by the ICA and the address stated in that pass would be the residential address of the worker and not his work address. The MOM counter staff will

not require proof of residential address and will update the residential address on the card as and when requested to do so by the card holder.

25 The next thing that Mr Yeo said was in relation to the requirement that an employment pass holder work only for the employer specified on his pass. He stated that the three workers employed by Ann Siang were supposed to work for Ann Siang and the assertion that they could not work at the Home was made because the Home had informed the MOM that it had awarded the catering contract to the plaintiff. Accordingly, it was the MOM's position that the plaintiff should bring its own workers to the Home in order to carry out the Agreement and should not use Ann Siang's workers for that purpose. Ann Siang would not be allowed to act as a labour supplier and supply its workers to the plaintiff to assist it in performing the Agreement. However, if the plaintiff had wanted to sub-contract the catering contract to Ann Siang, that would be a private commercial arrangement and the MOM would have no objections to Ann Siang's workers working at the Home in that situation. Similarly, in a case where Ann Siang and the plaintiff had entered a joint contract to provide catering services to the Home, it would be acceptable for Ann Siang to put its own workers in the Home's kitchen to fulfil the joint contractual obligations.

26 The plaintiff's evidence on the issue was as follows. Sally Lai explained in her affidavit that after the plaintiff was awarded the tender for the catering services, she and her husband considered that for administrative reasons it would be better if the services were provided by Ann Siang rather than by the plaintiff. They therefore procured the registration of the Ann Siang business name. According to Sally Lai, the defendant was agreeable to the novation of the Agreement to Ann Siang and that was why it was Ann Siang who first applied to the MOM for approval to employ three foreign workers. Once the approval was granted, these foreign workers started to work at the Home. Subsequently when the plaintiff required more staff, they applied for three workers in their own name as the novation of the Agreement had not been concluded. All the workers that they put to work in the Home were legally employed under valid work permits and were legally authorised to work in Singapore. In this connection, it should be noted that according to Mr Yeo's records, two of the foreign workers employed by Ann Siang had employment passes that were issued in February 2007, while the third had an employment pass issued in June 2007. Two of the plaintiff's foreign workers had employment passes issued in February 2006 and the third, Ren Shanglai, had a work permit issued in August 2007.

27 Ms Lai maintained that the defendant was fully informed and aware of the legal status of all the plaintiff's workers whether the same had work permits under Ann Siang or under the plaintiff. The plaintiff had been required to submit, and had submitted, copies of all the workers' passports and work permits to the defendant prior to the employment at the Home. Ms Cindy Loh, a senior executive at the Home, had also checked daily on the workers to ensure that they were lawfully employed and did not breach any rules.

28 It is also necessary to consider the evidence of Ms Loh. In her affidavit, she did not deal with the situation before August 2007. Instead she started with a reference to the letter of warning dated 16 August 2007 issued by the Home to the plaintiff. One of the matters raised in the letter was the necessity for the plaintiff to inform the Home immediately of any changes in staff. It pointed out that there was a foreign staff member who had been working in the kitchen for the previous few weeks and that the Home had no record of who this person was. The next day, Ms Loh was instructed by Ms Yip to do a quiet update of the kitchen staff and take note of unfamiliar faces.

29 Thereafter, Ms Loh reported to Ms Yip that her observations did not tally with the documents submitted by the plaintiff. She also noted that the staff were actually holding what she called long term social passes and not employment passes. On 22 August 2007, she called the MOM and was

informed that long term social pass holders were not allowed to work in Singapore. That same day Ms Loh asked Sally Lai to confirm that the particulars of the staff the latter had submitted to date were correct and to furnish Ms Loh with the original copies of the work permits or employment passes of the staff for verification. (Ms Loh furnished Sally Lai with a table containing various details of the staff employed in the kitchen and asked Sally Lai to fill in certain other particulars. In this table, the names of five Chinese workers were given by Ms Loh together with their FIN numbers and in one case, the work permit number. The only worker whose name did not appear in the table was Zeng Ye Feng, one of Ann Siang workers.) Sally Lai replied to say that she was out of the country so Ms Loh collected original copies of these documents from the chief cook. She then went to see the authorities with the documents to verify the position and was informed by the MOM that the plaintiff's foreign workers could not be deployed for work at the Home.

30 Under cross examination, Ms Loh testified that she and Ms Yip knew who the persons were who the plaintiff employed to carry out the catering work at the kitchen. This was because the plaintiff needed to report the workers to the office and the persons in charge there were Ms Yip and herself. She agreed that she was aware that there were foreign workers working in the kitchen. She first noticed some Chinese workers during the initial period of the contract. Subsequently, and from time to time, there were changes in the staff. Ms Loh confirmed that the Home did not have any objections in principle to Chinese workers being employed in the kitchen. The plaintiff was required to submit particulars of the passports, work permits and other passes held by such employees. Ms Loh maintained that Sally Lai did not give her copies of the passports, but from time to time she submitted documents relating to the foreign workers. Ms Loh maintained that this was done on a piecemeal basis.

31 Ms Loh was the officer in charge of Human Resources for the Home. She was therefore asked whether she was saying that she had never checked, knowing that there were Chinese workers in the kitchen, whether these workers had valid work permits and whether Sally Lai had given her copies of these documents. Ms Loh's reply was "as I mentioned, she give me the copies, so I actually go through, but I did not realise that they are actually under EP [Employment Pass]". She then said that she was given only the long term social passes and the work permit held by Mr Ren. Ms Loh asserted that she was not aware that three of the workers in the kitchen were actually employed under S-Passes issued for them to work for Ann Siang. It was not until she took the passes down to the offices of the MOM that she learnt from the MOM that Ann Siang was the approved employer for these workers.

32 Ms Loh also maintained that every day she did a routine check on the faces in the kitchen to see who was working there. As for the paper work, she updated it every two or three months. The requirement imposed on the plaintiff was to let Ms Loh know what staff they were employing and what positions those staff members were holding. In the case of a foreign worker, the plaintiff also had to supply Ms Loh with copies of documents proving that this worker was allowed to work in Singapore. This requirement was not promptly and fully met by the plaintiff and Ms Loh had to chase Sally Lai for documentation which came in bits and pieces. She said that for Liu ZengFeng and Liu Yuan Yin she was given copies of the long term passes that indicated the FIN numbers for these workers. According to Ms Loh, a FIN number is a number given to a foreign worker that is equivalent to an identity card number that is given to a citizen. She explained that when she saw a FIN number, she was aware that the number was issued by the MOM and was issued in relation to a permit to work in Singapore. At that time therefore, she said, that she did not realise that the passes that these two workers were holding were long term social passes rather than work permits or employment passes. As far as Zeng Ye Fang was concerned, Ms Loh confirmed that sometime in July 2007 she received a copy of the long term social pass together with the FIN number. As for the other three workers, Ms Loh stated that they had joined the Home in August and that they were the unfamiliar

workers whose faces she saw in the kitchen. These workers had started work on 6 August 2007 and by 17 August 2007, the plaintiff had not given her copies of their documents. These only came in subsequently after Sally Lai filled in the particulars form on 24 August. It should also be noted that when Ms Loh spoke to the officer at the MOM counter on 22 August she was told that the long term social passes the workers were holding fell under a category called "EPQ1" so that these workers were allowed to work in Singapore though the officer added that they were not allowed to work in a nursing home because they were registered under another category, that was not meant for employment in nursing homes.

33 For the purpose of my analysis, it is helpful to tabulate the particulars of the foreign workers concerned as they emerged from the evidence given by Mr Yeo and Sally Lai.

Name	Work Pass Type	Employer Stated in Work Pass	Date of Issue	Date Started Work at Home	Occupation Stated in Work Pass	Occupation in the Home
Liu ZengFeng	Employment Pass	Ann Siang	6.2.07	1.3.07	Chef	Assistant Cook
Liu Yuan Yin	Employment Pass	Ann Siang	26.2.07	1.3.07	Chef	Assistant Cook
Zeng YeFeng	Employment Pass	Ann Siang	11.6.07	15.6.07	Chef	Kitchen helper
Han Zhichen	Employment Pass	Plaintiff	11.2.06	6.8.07	Chinese Chef	Assistant Cook
Shi Min	Employment Pass	Plaintiff	27.2.06	6.8.07	Senior Chef	Kitchen helper
Ren Shanglai	Work Permit	Plaintiff	6.8.07	6.8.07	Kitchen assistant	Dishwasher

34 As the account of the evidence given in the case shows, a great deal of confusion arose from various consultations that the defendant's staff had with various officers of the MOM on the status of the foreign workers employed in the kitchen. Part of this confusion was caused by the plaintiff's failure to furnish the defendant with full documentation relating to its workers. The defendant was given copies of immigration passes and as a result at times believed that the workers were not entitled to work in Singapore at all. If the defendant had been given full documentation, however, it would have learnt at an early stage that some of the workers in the kitchen were employees of Ann Siang rather than employees of the plaintiff. That was possibly a reason for the incomplete documentation that was furnished.

35 It is also clear from the above table that whilst the plaintiff had two Chinese nationals with valid employment passes under its employ from August 2006, it did not deploy these workers in the Home until August 2007. Instead, at the beginning of March 2007, the plaintiff used two of Ann Siang's Chinese workers in the Home and these were joined by a third foreign employee of Ann Siang

in June 2007. The plaintiff did not deploy its own foreign workers in the Home until early August 2007. In this regard, I should state that it appears to me that all three of the plaintiff's workers were qualified (by which I mean legally permitted) to work in the Home. Whilst I note that Mr Yeo maintained that Mr Ren could not do so because he was only supposed to work in the kitchen of a restaurant, there was nothing on his work permit to evidence such a restriction and Mr Yeo was not able to satisfy me what different considerations would apply to the employment of a foreign worker in the kitchen of a nursing home. The work permit or employment pass is the document which specifies the employer and the occupation in respect of each foreign worker and if the MOM wishes to restrict the permitted occupation in any way, it is easy to do so by way of the description of the occupation in the work permit. Mr Ren's occupation, for example, could have been described as "restaurant kitchen assistant" on his work permit.

36 In view of what I have said above, it is rather ironic that it was the deployment of the plaintiff's legitimate workers in the Home that drew the attention of the defendant's staff and caused them to make all the various enquiries that eventually led them to believe that all the foreign workers were working illegally. As I have said, however, at least three of the workers had the requisite legal status and the defendant's complaint about them turned out to be unjustified. On the other hand, Mr Yeo's evidence was plain: workers holding a work permit or employment pass are entitled to work in Singapore as long as their work is performed for the particular employer named on the permit. If they work for someone else then they will be breaching the conditions of their permit and will be illegal workers. Whether the plaintiff was in breach of cl 2.7 because it used Ann Siang's workers in the Home therefore turns on whether these workers were working for Ann Siang or the plaintiff and that in turn depends on whether Ann Siang had a legal presence in the Home.

37 It is the plaintiff's stand that Ann Siang's workers were not "illegal workers" when they were working in the Home. The plaintiff contended that it and Ann Siang were jointly providing the catering services at the Home. It asserted that Ms Loh was aware of Ann Siang's involvement. She had testified that her understanding was that the contract was awarded to the plaintiff but that subsequently the plaintiff had asked for the contract to be novated to Ann Siang. As far as she knew, there was no objection on the part of the Home to Ann Siang carrying out the catering services. Ms Loh also testified, however, that she had no idea when Ann Siang became involved in providing the services. She knew that the main contractor was the plaintiff but, in her understanding, Ann Siang and the plaintiff were the same company or entity and both of them were providing the services. The plaintiff argued that based on this testimony, the defendant was fully aware that it and Ann Siang were jointly carrying out the catering services at the Home. In fact, at the end of the first month of operation of the Agreement, it was Ann Siang who billed the defendant rather than the plaintiff.

38 The defendant's response was that its contract was with the plaintiff and that it had never agreed to novate that contract to Ann Siang. The defendant said that there was no evidence that the Agreement involved Ann Siang as a sub-contractor or a joint venture party. The plaintiff could not and did not deny that it and Ann Siang were separate legal entities and therefore, the defendant submitted, Ann Siang's workers were not legally permitted to work for the plaintiff in the Home.

39 In my judgment, the plaintiff has failed to establish that it and Ann Siang had a legal relationship which permitted Ann Siang's foreign workers to work for the plaintiff without a breach of the conditions of their employment passes. As Mr Yeo testified, Ann Siang was not permitted to act as a labour supplier to the plaintiff or, for that matter, to any other third party. Accordingly Ann Siang's workers, wherever they were deployed, had to be working for Ann Siang itself. In this case where the catering contractor under the Agreement was the plaintiff (being the entity that had tendered for that contract and whose tender had been accepted), Ann Siang could only have a legal

status as a contractor in the Home if it was either a sub-contractor of the plaintiff or a joint venturer with it. There was no evidence of any sub-contract between Ann Siang and the plaintiff. If there had been a sub-contract of the services (and not simply a labour supply sub-contract which still would have infringed the employment pass conditions), however, this situation would not have aided the plaintiff in relation to compliance with cl 2.7 because then the plaintiff's foreign workers would not have been legally entitled to work at the Home since the kitchen should have been staffed entirely by Ann Siang's workers.

40 The only way that both Ann Siang's foreign workers and the plaintiff's foreign workers could legally work in the Home would be if there was a joint venture between Ann Siang and the plaintiff to provide the services required by the Agreement. No such joint venture was pleaded nor was there any evidence of such a legal arrangement whether concluded orally or in writing. Sally Lai's testimony was that the plaintiff wanted to novate the Agreement to Ann Siang. Such a novation would have meant that Ann Siang would have replaced the plaintiff as the contractor and the plaintiff would have had nothing further to do with the Agreement. A novation is not a joint venture and the suggestion of a joint venture made in the submissions is therefore contrary to Sally Lai's testimony on what the plaintiff actually wanted to achieve. In any case, no novation was ever concluded and the Agreement remained a contract between the plaintiff and the defendant. The plaintiff cannot rely on the evidence of Ms Loh to establish something that is within its own knowledge and about which it would have the best evidence since Ann Siang is a business owned by one of its own directors. Further, although Ms Loh was aware that Ann Siang was involved in some way in the catering services, she did not know the legal relationship between the parties and she regarded them as one and the same entity which, in law, is not the case. It is worth noting that although Ann Siang may have issued the initial invoice for the catering services, subsequent invoices were issued by the plaintiff and the defendant itself issued various tax invoices to the plaintiff for expenses relating to the catering services that it was the plaintiff's obligation to pay. The defendant did not invoice Ann Siang for these items. Whilst some members of the defendant's staff may have been aware that Ann Siang was participating in the provision of the services in some way, in the legal sense Ann Siang's participation remained invisible and unknown to the defendant. In this connection, it is significant that by cl 1.4 of the Agreement, the plaintiff was prohibited from transferring or assigning the Agreement directly or indirectly to any person. As long as the defendant did not agree to a novation therefore, whatever Ann Siang did it could not be recognised as a party to the Agreement.

41 I have therefore concluded that by using Ann Siang's foreign workers as part of its catering crew, the plaintiff was in breach of cl 2.7. These foreign workers were not permitted to work for the plaintiff. Under the terms of their employment passes, they had to work for Ann Siang and Ann Siang had no contractual role under or in connection with the Agreement.

Was the plaintiff in breach of the hygiene and sanitation requirements of the Agreement?

42 It would be recalled that under cl 2.3 of the Agreement, the plaintiff had to ensure that a high standard of hygiene and cleanliness was met at all times in relation to the procurement, handling, preparation, distribution and storage of food. Breach of this requirement apparently entitled the defendant to terminate the Agreement without notice. The defendant submitted the evidence had established that this clause had been breached by the plaintiff.

43 The defendant relied on two audit reports issued by Ms Serene Tay Wen Hsi, a dietician attached to the Alexandra Hospital. Ms Tay conducted audits on the state of the food that was served to the patients and also checked the kitchen. These checks were done regularly pursuant to a contract between the defendant and Alexandra Hospital. During the period that the Agreement was in operation, Ms Tay conducted two checks: the first was on 18 January 2007 and the second on 5 July

2007.

44 According to her first audit report, Ms Tay made various observations of undesirable practices or conditions during her check carried out on 18 January 2007. In relation to the kitchen, she noted that the floor was very wet, that the workers who were plating meals for dinner were not wearing protective gear, and hairnets, and open items in the freezer had not been dated with the dates on which they had been opened. She also observed that the kitchen staff had had no previous working experience in medical/nursing institutions and were therefore not able to differentiate between the different types of special diets required by the residents. Ms Tay made various suggestions for training of the staff and also for monitoring the service of the food to ensure that it was kept sufficiently heated. Further observations were made by Ms Tay in her second report. Her second visit took place in the afternoon and the kitchen staff were cooking and plating food. Ms Tay observed a fly flying around the uncovered food that was waiting to be plated. The kitchen floor was very wet, oily and slippery. Ms Tay noted that during her last visit she had reminded the staff to keep the floor dry so as to minimise the chances of any unnecessary accidents. In relation to the staff, she noted that all of them should have attended the basic food hygiene course as soon as they started work and must have had a typhoid injection prior to starting work. The report stated that the caterer should ensure that the staff who were plating put on masks and gloves for food safety reasons. In the storage area, Ms Tay noted that items had not been marked with the date of opening and that some open products had not been tied up after use. The food preparation area was found to be messy, dustbins were overflowing with waste and egg shells were found at the vegetable preparation area. Ms Tay was not happy about the fact that a second washing area had been set between the meat preparation area and the drinks preparation area. This increased the risk of cross contamination between food and washing detergents.

45 The defendant also relied on evidence given by Ms Tan Peck Kheng who worked as a nursing officer at the Home from August 2002 to 31 July 2007. Ms Tan asserted that some of the plaintiff's workers had not been properly vaccinated. She also stated that there had been slackness in the service provided in that on occasion, residents' lunch trays filled with leftover food had been stacked with clean trays. She gave details of the failure of the plaintiff's staff to keep the kitchen clean and how they had failed to follow the prescribed menu and had cooked what they wanted to instead. At times the cooking had not been up to the standard required. The examples given were that the porridge had been too watery and the rice had been too lumpy on occasion and this could have led to residents choking. The defendant submitted that the plaintiff failed to meet the requirements in cl 2.2.2 in relation to drawing up a 28-day menu and a special menu together with recipes for every dish. The plaintiff was also in breach of the requirements in cl 2.2.5 that the residents and staff of the Home were not served food of consistent quality and quantity at all times. There was also evidence that on one occasion many of the staff members suffered from diarrhoea after eating some curry prepared by the plaintiff.

46 Ms Tay testified in court and confirmed what she had stated in her reports. She also asserted that as she made her observations during her visits she had told the persons who were accompanying what her findings were and what improvements needed to be made. On her first visit, she was attended by Sally Lai of the plaintiff and Ms Tan and Ms Loh of the Home. On the second visit, Sally Lai was not present. The reports were sent directly to the defendant and Ms Tay did not extend a copy to the plaintiff. It turned out that the defendant itself did not give copies of the reports to the plaintiff either. It should have done so but nothing turns on this.

47 In my assessment of the evidence, it is plain that from time to time various complaints were made to the plaintiff regarding the quality of the food and the standards of hygiene observed by the defendant's staff. Most of these complaints were oral. In February 2007 there was a written

complaint regarding the stacking of dirty trays with old food together with clean trays, in March 2007 there was a written complaint about the lack of variety in the food served and in July 2007 Ms Loh sent an email complaining about the menu not being observed and attendance at a hygiene course. Apart from that no substantial written complaint was made until 10 August 2007 when Ms Yip complained that monosodium glutamate was being used in food preparation despite many previous instructions that this was not permitted. Then, on 16 August 2007, Ms Yip sent the plaintiff a letter of warning which set out all the various complaints that the defendant had about the staff, the food preparation, the menu, maintenance and hygiene and compliance with licensing requirements. The plaintiff replied to the letter of warning and, basically, informed the defendant of the steps that it was taking or had taken to deal with the various complaints. It did not refute the veracity of those complaints.

48 It is clear overall that, from time to time, the plaintiff did not strictly comply with cl 2.3.1 and cl 2.3.3 of the Agreement or with cl 2.2.2 or cl 2.2.5. These breaches contributed to a growing dissatisfaction on the part of the defendant with the plaintiff's performance but may not have been sufficient to justify a termination.

Was the defendant entitled to terminate the contract without notice?

49 Clause 3.2 is, as stated, the clause of the Agreement that permits summary termination. The plaintiff submitted that cl 3.2 was ambiguous and too widely drafted and should not be enforced. This was because:

- a. the clause sought to entitle the defendant to summarily terminate the Agreement for "breach of any item under clauses 1.4, 2.3 and 2.7". Clause 1.4 dealt with the non-assignability/transfer of the Agreement whilst clause 2.3 dealt widely with hygiene and sanitation requirements of various types. Clause 2.7 was also worded widely requiring the plaintiff to obtain the necessary licenses and comply with "all Singapore law and regulations, especially with regard to food establishment and employment of staff";
- b. Clause 3.2 does not state what particular breaches would be so fundamental or serious that they would enable the defendant to invoke a summary termination provision;
- c. Clause 3.2 was absurd because, taken literally, it would mean that the defendant would be entitled to summarily terminate the Agreement if the plaintiff breached even the most trivial licensing or employment regulation or hygienic or sanitary regulations which had no bearing whatsoever on the catering services provided under the Agreement; and
- d. in any event the *contra proferentem* rule should be applied in the construction of the clause.

50 The plaintiff submitted that the court should adopt a "common sense commercial" interpretation of cl 3.2 so as to restrict the defendant's right to summarily terminate the contract only to cases where the breach goes to the root of the contract and where the breaches would deprive the defendant of a "substantial part of the totality of that which it had contracted for during that period" and not for trivial breaches. In this respect, the plaintiff relied on the case of *Rice v Great Yarmouth Borough Council* [2000] Time Report July 25 ("the *Rice* case") where the English Court of Appeal applied such an approach in interpreting what the plaintiff considered to be an equally wide summary termination clause.

51 In the *Rice* case, a local authority (the "Council") had contracted with a firm for it to provide

leisure management and ground maintenance services for a period of four years using a standard form of contract drafted by the Association of Metropolitan Authorities. Clause 23.2 of the contract provided that if the contractor committed "a breach of any of its obligations under the contract ... the council may ... terminate the contractor's employment ... by notice in writing having immediate effect". After the contract had been in effect for seven months, the Council invoked this clause and gave the contractor a notice of immediate termination. The contractor sued for wrongful termination and it was held by the judge at first instance that the clause providing for termination had to be given a common sense, commercial interpretation and could not be applied literally so as to give the Council the right to terminate for breach of any of the obligations in it other than the trivial. This decision was upheld on appeal. Hale LJ who delivered the judgment of the Court of Appeal agreed with the judge's view that in the context of a contract intended to last for four years, involving substantial investment or at least substantial undertaking of financial obligations by one party and involving a myriad of obligations of different importance and varying frequency, a common sense interpretation should be imposed upon the strict words of the contract and a repudiatory breach or an accumulation of breaches that as a whole could properly be described as repudiatory were a pre-condition to termination pursuant to cl 2.3.1. Her Ladyship also observed that whilst the judge was right to ask himself whether the accumulative breaches were such as to justify an inference that the contractor would continue to deliver a sub-standard performance, there was also a possibility that some aspects of the contract were so important that the parties were to be taken to have intended that depriving the Council of that part of the contract would be sufficient in itself. That however had not been what the judge had found in this case.

52 I accept the plaintiff's submission that because of the width of its language, cl 3.2 of the Agreement cannot be applied literally to any and every breach of contract that might occur on its part. It is worth noting that whilst the clause states that breach of any item under cl 2.3 dealing with hygiene and sanitation is a ground for termination, cl 2.2.6 gives the Home the additional right to impose penalties should the plaintiff fail to meet the hygiene and sanitation standards. From this it can be seen that it was not envisaged that all breaches of the hygiene and sanitation requirements would result in termination; rather the plaintiff would be sufficiently penalised for some of them by being required to pay a penalty charge pursuant to cl 2.2.6.

53 Thus, the question that I have to ask myself is whether the cumulative breaches were, taken a whole, such as to justify an inference that the plaintiff would continue to deliver a sub-standard performance so that the breaches amounted to repudiatory conduct on the part of the plaintiff. If the various breaches in complying with the hygiene and sanitation requirements are considered, I do not think, on the whole, that by 30 August 2007 they amounted to a repudiation of the contract. The most serious of the breaches related to the kitchen staff in that they were not always properly trained in hygiene and sanitation requirements. The three Chinese nationals employed by the plaintiff did not go through the basic hygiene course until after the contract was terminated (though to be fair, in July 2007 the plaintiff had told the defendant that two workers were scheduled to attend courses in August 2007) and, in the case of the three Ann Siang employees, they were only sent for it months after starting work. Additionally four of the workers were only given the necessary typhoid injection two weeks or so after they started working in the Home. Apart from this and the incident of minor food poisoning in July 2007, the breaches were trivial and could be cured by proper attention on the part of the plaintiff. When the various complaints were formally notified to the plaintiff, it accepted them and gave a detailed response of what it would do to rectify the situation. If therefore these were the only complaints on which the termination was based, I would find that the termination was wrongful in that the breaches did not amount to repudiatory conduct.

54 There is, however, also the much more serious issue of the legal status of the workers in the kitchen. Although the requirement in cl 2.7 with regard to the plaintiff's obligation to comply with

Singapore laws and regulations was widely drafted, it specifically highlighted those laws and regulations regarding the employment of staff. The public, not to mention all business entities, is well aware that in Singapore there are strict rules and regulations governing the employment of foreigners who are not permanent residents. Such foreigners can only work here if they hold the appropriate permits issued by the MOM. Employing foreign workers who are not in possession of the correct documentation is an offence. It is also an offence for a foreign worker to work for any employer other than that permitted by his documentation. Thus the requirement in cl 2.7 that the plaintiff comply with laws relating to employment of staff would have been well understood by the plaintiff to include its legal obligation not to employ foreign workers who did not have the correct documentation. The plaintiff must also have been aware that the employment law relating to foreign workers would be a major concern of the Home as it would hardly want to be an accessory to the breach of Singapore's labour laws. It was Ms Loh's evidence that she frequently asked the plaintiff to supply her with the documentation relating to its foreign workers. The plaintiff never refused to supply such documentation on the ground that it was not required. On the contrary, copies of passes were given to the defendant to attempt to satisfy the request and Sally Lai had no hesitation in assuring Ms Loh that all her workers were legal workers.

55 It is in the above context that I find the aspect of the contract that required the plaintiff to comply with the laws of Singapore relating to the employment of workers was so important to the Home that breach of this requirement on the part of the plaintiff must be considered a repudiatory breach. The plaintiff used the three Ann Siang workers in the Home from as early as March 2007 and there was no indication that this deployment was a temporary one only. The plaintiff concealed the fact that Ann Siang was the authorised employer of these persons as it did not furnish the plaintiff with complete documentation. There was no legitimate excuse why the plaintiff could not have done so bearing in mind that the owner of Ann Siang was himself a director of the plaintiff.

56 Thus I conclude that the immediate termination of the Agreement was justified. Whilst at the time the defendant thought that all six foreign workers were illegal workers, the fact that three of them actually held that status in relation to their work in the Home was sufficient to justify the termination.

Conclusion and other observations

57 The plaintiff's claim must be dismissed with costs. I would like to observe that even if I had found for the plaintiff, it would not have been entitled to recover damages for the whole of the unexpired period of the Agreement. The Agreement permitted termination prior to its expiry provided that two months' notice was given to the plaintiff. Accordingly, at the most, the plaintiff could have recovered damages for two months' loss of profits. Secondly, the plaintiff spent much of its time trying to establish bad faith and hostility on the part of the defendant and, in particular, Ms Yip. It is not necessary for me to make a finding on these allegations. I must say, however, that the motives of the defendant or its officers are irrelevant when one is considering whether there is a breach of contract that justifies a termination of that contract. This is an objective exercise and the outcome does not depend on whether the party terminating the contract did so reluctantly or was very happy to bring the association to an end.

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