IN THE APELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC(A) 17

Civil Appeal No 101 of 2021

Between

Elias Xanthopoulos

… *Appellant*

And

(1) Rotating Offshore Solutions Pte Ltd
(2) ROS Engineering Pte Ltd
(3) Lim Boon Chye Victor

… *Respondents*

EX TEMPORE JUDGMENT

[Civil Procedure — Appeals]
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Quentin Loh JAD (delivering the judgment of the court *ex tempore*):

Introduction

1 AD/CA 101/2021 ("CA 101") is an appeal by the appellant, Elias Xanthopoulos ("the Appellant"), against the High Court Judge's decision (the "Judge") in *Xanthopoulos, Elias v Rotating Offshore Solutions Pte Ltd and others* [2021] SGHC 197 (the "Judgment") to dismiss his claim for unpaid fees pertaining to certain projects against the first respondent, Rotating Offshore Solutions Pte Ltd ("RO Solutions") in HC/S 626/2019 ("Suit 626"). Parties have agreed to dispense with the third respondent's, Lim Boon Chye Victor ("Mr Lim"), participation in CA 101 given that the issues on appeal do not concern him.

2 The Appellant was the managing director and minority shareholder (with 30% of the shares) of the second respondent, ROS Engineering Pte Ltd ("ROSE") and the engineering director of RO Solutions. The first, second and

third respondents will be referred to hereinafter as the Respondents. RO Solutions owned the remaining shares of ROSE. ROSE was set up as a joint venture with RO Solutions pursuant to discussions between the Appellant, Chia Kuan Wee ("Mr Chia"), the managing director of RO Solutions from 3 March 2015 to 13 September 2019, Mr Lim and Murugesan Srinivasan ("Mr Srinivasan"), a director of RO Solutions.

3 Under an agreement dated 1 May 2012 ("the ROSE Agreement", which was rectified by the Judge below, but upon which no issues arise therefrom), the Appellant was appointed the managing director of ROSE; he (a) would receive a monthly salary of $10,000, (b) could retain any consultancy fees billed and performed by him directly with other parties, (c) would be entitled to commissions if he initiated any projects that were eventually secured by ROSE, and (d) as for compensation for managing and executing any in-house work, he would not charge any additional fee if he was billing independently under (b) and if he was not billing independently under (b), then "reasonable compensation agreed by both parties shall be paid to [him] to manage and execute this work".[1]

4 He also took on the role of engineering director of RO Solutions. From around July 2013, RO Solutions paid the Appellant an additional sum of S$15,000 *per* month though the reason for these payments is disputed.

5 The Appellant was also separately appointed as project manager for the MOPU BOSS1 Project from November 2013 to March 2014, the MODEC Project from November 2014 to June 2015, and the MOPU D18 Project from

[1] RA Vol V(3) at p 267 (clauses 2 and 5.1).

June 2015 to March 2016. In 2016, RO Solutions entered into a contract with Caevest Private Limited ("Caevest") for a project (the "Caevest Project").

6 On 1 July 2018, the Appellant resigned from his positions as engineering director at RO Solutions and managing director of ROSE. In Suit 626, he claimed for unpaid fees pertaining to certain projects against RO Solutions under the ROSE Agreement and sought relief as a minority shareholder of ROSE from the oppressive conduct of RO Solutions and Mr Lim.

7 The Judge allowed the Appellant's minority oppression claim but dismissed all his other claims for unpaid fees. In relation to the Appellant's claim for commission for the Caevest Project, the Judge found that the Appellant had not initiated the Caevest Project within the meaning of cl 5.4 of the ROSE Agreement and was not entitled to be paid a commission (Judgment at [86] to [93]). In relation to the Appellant's claim for compensation as the project manager of the MODEC Project, the Judge found that cl 5.5 of the ROSE Agreement required prior agreement for such remuneration and there was no such agreement made (Judgment at [94] to [97]).

8 In CA 101, the Appellant appeals against the Judge's findings in relation to the Caevest Project and the MODEC Project. In our judgment, the Appellant's appeal with regard to the Caevest Project has, for the reasons set out below, no merit and must be dismissed. However, we find that the Appellant is, for the reasons set out below, entitled to reasonable compensation for his work as project manager of the MODEC Project. We accordingly allow CA 101 in part.

Our decision

9 Before turning to our decision on the Caevest Project and the MODEC Project, we address two preliminary issues.

10 First, we make no order on HC/SUM 12/2022 ("SUM 12"), the Respondents' application to strike out the Appellant's Reply on the basis that the Appellant's Reply was filed in contravention of O 56A r 9(7) of the Rules of Court (2014 Rev Ed) ("ROC"). At the outset, the plain language of O 56A r 9(7) of the ROC provides for when an appellant *must* file a reply. It does not state that the court must strike out an appellant's reply if it takes the view that it was not required to be filed. This decision would be left to the discretion of the court to act in the best interests of the dispute and justice. For example, in *Global Yellow Pages Ltd v Promedia Directories Pte Ltd and another matter* [2017] 2 SLR 185 at [22], the Court of Appeal made no order on a summons filed by the first respondent seeking to strike out the Appellant's Reply for non-compliance with O 57 rr 9A(5A)–9A(5B) of the ROC because it was "inclined to consider the arguments raised in the reply in any event". In this case, we consider it arguable that the respondents relied on arguments and/or evidence which were not clearly considered or relied on by the Judge. For instance, the Respondent's Case made submissions on why the evidence of Mr Ernest Enver of Caevest and Mr Chia on the Caevest Project were contradictory.[2] It also made submissions on the *contra proferentem* rule for the interpretation of cl 5.5 of the ROSE Agreement even though the Judge did not rely on that rule.[3] In substance, this was a submission that the Judge's decision should be affirmed on grounds other

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2 Respondent's case dated 28 February 2022 ("RC") at paras 52 to 56.

3 RC at para 83.

than those relied upon in the judgment. We therefore decline to strike out the Appellant's Reply.

11 Secondly, the Appellant's ground of appeal regarding the Judge's findings relating to the Appellant's failure to raise his claims for unpaid fees at an earlier stage at [98] to [102] of the Judgment is misconceived. While the Appellant seems to be under the impression that the Judge found that he "should not be entitled to any of his project claims because of his failure to ask for payment until the last day of his notice period",[4] the Judge never found that the Appellant's failure to raise the three claims at an earlier stage *meant* that he was not entitled to any of his claims for unpaid fees. The Judge's observations on the timing of which the payment claims were stated in the Judgment only *after* the Judge had dismissed the Appellant's claims for unpaid fees. It is clear to us that the Judge was merely summing up her assessment of witness testimony and evidence given on those claims. The Judge did not rely on those findings to support her decision to dismiss his claims for unpaid fees relating to the projects.

Caevest Project

12 We affirm the Judge's dismissal of the Appellant's claim for commission for initiating the Caevest Project. Clause 5.4 of the ROSE Agreement (as rectified by the Judge) states:[5]

> 5.4 A *Commission* in addition to the salary as provided in Clause 5.1 shall be as follows for any projects ***initiated by*** Appointee and ***secured by*** Company *or RO Systems*:
>
> 5% of the value of the contract up to S$5M (million).
>
> 3% of the value of the contract up to S$5M~50M

[4] Notice of appeal dated 28 September 2021 at para 5.

[5] RA Vol V(3) at pp 268 to 269.

> 2% of the value of the contract up to S$50~100M
>
> 1% of the value of the contract up to S$100M
>
> The amount shall be computed as follows: As an example, a purchase order in the amount of 8 million dollars would generate a Commission of 5 million x 5% = S$250,000, plus 3 million at 3% = S$90,000 for a total of S$340,000.
>
> To further clarify the commission described above and to preclude any future misunderstanding:
>
> a. For any orders from "NEW" Clients ***initiated by*** Appointee and/or his team, Appointee to receive 100% of Commission described above.
>
> b. For all other orders for modules/packages that Rotating Offshore Solutions Pte. Ltd., Rotating Offshore Systems Pte. Ltd. or other affiliated group businesses (refer to all aforementioned as "ROS Group") do not currently offer to "NEW" or existing Clients, requiring assistance from Appointee and/or his team, Appointee shall receive 50% of Commission described above.
>
> [emphasis added in italics and bold italics]

13 On a contextual approach, considering the negotiation context in the emails from 8-9 February 2012 as admissible extrinsic evidence, the Judge found that parties envisioned that the Appellant would only be paid a commission for *extra work* that he brought to RO Solutions using his expertise and contacts and which RO Solutions would not otherwise get, in other words, the Appellant must have had some instrumentality in enabling RO Solutions to secure the project and cannot merely have been a conduit for interested customers. In our view, the Judge's observations regarding the need for "some instrumentality in enabling RO Solutions to secure the Project" seems to have conflated the need for the Appellant to have *initiated* the project with the requirement for RO Solutions to have *secured* the project.

14 The word "initiate" in the context of cl 5.4 and in plain English means to begin or to start. We agree that the negotiating context shows that parties

intended that the Appellant would need to expend some effort in order to bring in an introduction or referral such that he could be described as having "initiated" the new project. Unlike other contexts, in the context of the marine and offshore oil and gas industry in which the parties operated, there will be some process of validation by the counter party, which includes proof of relevant expertise, ability to secure the appropriate workforce, quality control and track record, before the project or contract will be awarded to them. Hence the reference in cl 5.4 to "initiated" and "securing" of the contract by the Company. We agree that this is illustrated by the Appellant and Mr Chia's email discussion regarding whether BW Offshore ("BWO") ought to be excluded for the purposes of commissions. The Appellant himself justified the inclusion of BWO by explaining that he had "many contacts in BWO" and BWO was a company he was very strongly focused on getting module work from. Even though they were a client, it would be difficult for RO Solutions to secure other module work without his help.[6] This shows the parties' expectation that some work was to be done by the Appellant to bring new clients to the table (or new work from existing clients) even though there was no express discussion of any threshold of effort. Clause 5.4 would not encompass a situation where the Appellant was merely a conduit for an already interested customer. It would not be commercially sensible for the Appellant to be paid significant sums of money in commissions if he was simply relaying an order from an already interested customer.

15 In this case, the Appellant did not put in any effort to bring the Caevest Project to RO Solutions and cannot be considered to have "initiated" the Caevest Project. Essentially, the only act the Appellant did was to direct Mr Enver's invitation to RO Solutions to participate in the Caevest Project to Mr

6 RA Vol V(3) at p 74.

Srinivasan *after* Mr Enver approached him. In Mr Enver's affidavit, he states that he had known the Appellant during his previous employment.[7] However, the evidence shows that this was not the reason for the Caevest Project. In April 2016, Mr Enver, Stuart Robinson ("Mr Robinson") and Tony Compagnino, the three directors of Caevest, held a discussion on which company to engage as a subcontractor for the Caevest Project.[8] Mr Enver recounted the discussion as follows:

> 15 During that discussion, I suggested that Caevest *approached [RO Solutions] to explore the possibility of engaging [RO Solutions] as a subcontractor* for the Caevest Project. Stuart Robinson and Tony Compagnino then asked me ***if I had any contacts in [RO Solutions]*** whom I could speak with to invite to participate in the Caevest Project. I replied that I knew [the Appellant] who was working for ROS then and had his number. At that time, other than [the Appellant], I did not know anyone else who was working at [RO Solutions].
>
> 16 However, Stuart Robinson insisted on asking Tech Offshore to submit a bid to us. As it turned out, Tech Offshore went directly to make a bid to Saipem SA after we approached them. Then, Stuart Robinson went to approach another company, Sun Marine. Sun Marine did the same thing and went to bid directly with Saipem SA. Another company was a small company called Fab Tech. However, Stuart Robinson met the person in charge and said the person could not speak proper English and so did not have confidence in him.
>
> 17 Only subsequently, around 30 April 2016, Stuart Robinson ***verbally told me in the office to call [the Appellant] to arrange for a meeting with ROS to discuss the possibility of [RO Solutions]*** joining the Caevest Project. Consequently, on or about 30 April 2016 at around 4.00 PM, I called [the Appellant] on his personal mobile number to discuss the opportunity for [RO Solutions] to provide professional services for the Caevest Project. During the conversation, [the Appellant] expressed [RO Solutions'] interest in participating in the Caevest Project and asked that I send him an email with more details on the project so that he could refer the project to the relevant personnel(s) in [RO Solutions] who dealt with the type of work required for the Caevest Project.

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7 RA Vol III(8) at p 47 (paras 4 to 5).

8 RA Vol III(8) at pp 48 to 49 (paras 9 and 14).

> [emphasis in italics and bold italics]

16 It is apparent that when Mr Enver suggested RO Solutions as a possible subcontractor for the Caevest Project, it was not because of any efforts on the part of the Appellant or because of the Appellant himself. On the contrary, it was only when he was asked if he had any contacts at RO Solutions did Mr Enver reply that he knew the Appellant. While it is true that Mr Enver later approached the Appellant as the point of contact to invite RO Solutions to participate in the Caevest Project after having been instructed to do so by Mr Robinson on 30 April 2016, this was only after Mr Robinson had already made the decision to approach RO Solutions since his approaches to two other companies were unsuccessful and ended in some level of grief for them. We agree with the Judge that Caevest's decision to contact the Appellant was purely out of convenience since Mr Enver was acquainted with the Appellant. Mr Enver himself testified that the motivation to contact the Appellant was to "bypass" the "ding-donging, passing the chain" if he had contacted RO Solutions through the enquiry sales. We thus dismiss the Appellant's claim for commission for the Caevest Project.

MODEC Project

17 We find, with respect, that the Judge erred in her construction of cl 5.5 of the ROSE Agreement (as rectified by the Judge) which states:

> 5.5 Regarding compensation for managing & executing of [*sic*] any in-house work *for the ROS Group*, Appointee agrees not to charge any additional fee assuming he is billing for consulting work being performed directly by himself as per 5.3 above. In the event that Appointee is not billing or performing consulting work as in 5.3 above, then *reasonable compensation agreed by both parties* shall be paid to Appointee to manage and execute this work. If there is no in house work to manage/execute, then only the terms of 5.1 and 5.4 shall apply. [emphasis added]

The Judge found that cl 5.5 of the ROSE Agreement required prior agreement for reasonable compensation for the services the Appellant provided for each project. She noted that specific remuneration agreements were made between Mr Chia and the Appellant in relation to both the MOPU BOSS1 Project (which preceded the MODEC Project) and the MOPU D18 Project (which followed the MODEC Project). Yet, there was no agreement made for the MODEC Project.

18 The Appellant submits that cl 5.5 of the ROSE Agreement does not require a separate agreement for entitlement to payment. Instead, cl 5.5 is itself the agreement for entitlement to payment for work done because it states that "reasonable compensation agreed by both parties *shall be paid* to [the Appellant]" [emphasis added].[9] The Respondents submit that remuneration for any services performed under cl 5.5 must be agreed between the Appellant and the relevant entity (RO Solutions, Rotating Offshore Systems Pte Ltd or ROSE) and such remuneration must be reasonable.[10] In our view, the plain wording of cl 5.5 that "*reasonable compensation agreed by both parties shall be paid* to [the Appellant] to manage or execute this work" supports the Appellant's submission. The clause envisages that should no consulting fees within the meaning of cl 5.3 be billed, the Appellant *shall* be paid reasonable compensation. What should be "agreed by both parties" is the quantum of compensation that is reasonable for each project. The use of "shall" provides for the entitlement to payment. Thus, even though there was no separate agreement for the Appellant's remuneration for the MODEC Project, we find that he is entitled to reasonable compensation for his project management services for the MODEC Project under cl 5.5 of the ROSE Agreement.

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9 Appellant's case dated 28 January 2022 ("AC") at para 66.

10 RC at para 92.

19 We reject the Respondents' further point that the Appellant was compensated for his work on the MODEC Project by his $15,000 monthly payment from July 2013 to July 2018.[11] This defence is contradicted by Mr Chia's evidence at trial that the $15,000 monthly payment was paid to the Appellant for his position as head of engineering in RO Solutions and this was separate from his project management services.[12] While the respondents contend that Mr Chia's evidence should not be accepted because when he was managing director of RO Solutions in 2019, he had agreed "with the Defence case theory that services rendered for the [MODEC Project] should be covered under the 15,000 salary and [the Appellant] is thus not entitled to any of the further sums claimed",[13] we accept his explanation that his memories were triggered after having read through the affidavit.[14] In our view, his evidence at trial cohered better with the negotiations and the need for separate agreements for the MOPU BOSS1 Project and the MOPU D18 Project. If the Respondents' case was to be believed that all the project management services were to be included within the $15,000 salary, there would have been no need for Mr Chia to persuade or convince the Appellant to be compensated via some other way (via ROSE for the MOPU BOSS1 Project) or not to be compensated (for the MOPU D18 Project). Mr Chia could have simply directed the Appellant to do the necessary because he was already being paid for it. Finally, this is supported by contemporaneous evidence in a letter dated 3 April 2018 from RO Solutions to the Immigration & Checkpoints Authority which states that the Appellant's

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11 RC at para 72.

12 RA Vol III(15) at pp 143 (lines 19) to 144 (line 1), 149 (lines 11 to 17).

13 RSCB Vol I at p 59.

14 RA Vol III(15) at p 292 (lines 13 to 17).

designation at RO Solutions was Engineering Director and his fixed salary was $15,000.[15] There is no reason to suspect the authenticity of this letter.

20 Given that there was no agreement reached as to the quantification of reasonable compensation, the court may determine a reasonable sum on the evidence. The Appellant adduced evidence that his rate for project management services for similar projects is $200 per hour.[16] We consider this a reasonable estimate for what he would have been paid as project manager of the MODEC Project. As regards the number of hours the Appellant had worked on the MODEC Project, this was not recorded by him. We note that the Appellant's documentary evidence on this point is weak. Nevertheless, considering that the Respondents do not deny that the Appellant worked on the MODEC Project and in considering the Appellant's time sheets as project manager for a similar project with DRL Engineering LLC,[17] we consider 40 hours per week to be a fair estimate of the time the Appellant was likely to have spent on the MODEC Project each week. It is clear from the Preliminary Works Order from MODEC that the MODEC Project started on 8 January 2015.[18] While the Appellant sought for reasonable compensation from November 2014 to June 2015 (a period of 8 months),[19] it is not clear why he should be compensated during the bidding process for the MODEC Project before 8 January 2015 under cl 5.5 of the ROSE Agreement. Parties agree that the Appellant left the MODEC Project in June 2015 to work on the MOPU D18 Project but there is no specific date as to when this was. The best the court can do in the circumstances is to award

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15 ASCB at p 69.

16 RA Vol III(4) at pp 238 to 239 (para 67).

17 RA Vol III(7) at pp 37 to 39, 79 and 81.

18 RA Vol V(7) at pp 23 to 30.

19 AC at paras 93 to 94.

reasonable compensation from 8 January 2015 to end June 2015. This would be a period of 24 weeks and five days. We thus award reasonable compensation of $197,800 in favour of the Appellant (based on 40 hours per week over 24 weeks and five days multiplied by $200 per hour).

Conclusion

21 Accordingly, we allow CA 101 in relation to the MODEC Project and enter judgment in favour of the Appellant for the sum of $197,800. The appeal is otherwise dismissed. We also vary the costs order made below to increase the percentage of the Appellant's costs from 25% to 33%. As the Appellant has only been partially successful, we make no order as to costs. There will be the usual consequential orders.

Quentin Loh
Judge of the Appellate Division

Kannan Ramesh
Judge of the High Court

Hoo Sheau Peng
Judge of the High Court

Ronald Wong Jian Jie and Stuart Andrew Peter (Covenant Chambers LLC) for the appellant;
Ramachandran Doraisamy Raghunath and Kyle Gabriel Peters (PDLegal LLC) for the respondents.