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

[2022] SGHC 82

Suit No 311 of 2021

Between

Zhong Lingyun

… *Plaintiff*

And

Yuan Fang

… *Defendant*

JUDGMENT

[Contract — Breach]

Zhong Lingyun
v
Yuan Fang

[2022] SGHC 82

General Division of the High Court — Suit No 311 of 2021
Choo Han Teck J
22 February 2022; 5 April 2022

12 April 2022 Judgment reserved.

Choo Han Teck J:

1 The plaintiff was the sole director Fu Xin Construction Pte Ltd ("the Company") and appeared to be managing the Company although his daughter, Zhong Rong, was the 100% shareholder. On 2 October 2017, the defendant was employed by the Company as a manager.

2 On 27 April 2018, the plaintiff handed over the management of the Company to the defendant because the plaintiff had to attend to financial disputes in China and may not be able to return to Singapore. On the same day, the plaintiff drafted a memorandum under which the plaintiff would transfer 70% shareholding in the Company to the defendant, with the remaining 30% shareholding held by Zhong Rong ("the Memorandum"). Under the Memorandum, the defendant shall pay the salary and CPF of the plaintiff, Zhong Rong, and one Shen Jing for a period of five years. Only the plaintiff and the defendant were present at the signing of the Memorandum.

3 On 9 May 2018, the plaintiff returned to Singapore and the parties entered into a Cooperation Agreement which similarly stated that the plaintiff was to transfer 70% of the shareholding in the Company to the defendant by May 2018, with the remaining 30% shareholding held by Zhong Rong. The Cooperation Agreement contains an appendix which lists out the Company's various assets, which includes:

(a) total office supplies valued at $32,593.07;

(b) an Audi A8 car valued at $203,442.00;

(c) construction tools valued at $5,060.65; and

(d) $113,778.58 in cash.

4 Based on the aforementioned assets, the Company was valued at $350,000.00. The Cooperation Agreement further provides that the defendant shall $350,000.00 to the plaintiff, Shen Jing and Zhong Rong in the form of salary and CPF, for a period of five years and at an annual return rate of 12%. This amounts to a total monthly payment of $9333.00 for a period of five years. The Cooperation Agreement also contains a provision stating that "both parties shall not go back on their words, if one party goes back on his words, he shall pay a penalty of $500,000.00 to the other party for breach of contract".

5 Pursuant to the Cooperation Agreement, the plaintiff's daughter, Zhong Rong, transferred 70% of the shares in the Company to the defendant on 11 May 2018. The plaintiff says that the defendant failed to make the necessary payments under the Cooperation Agreement and that the defendant terminated Zhong Rong's employment pass at the end of May 2018 without consulting the plaintiff. This resulted in disputes between the parties.

6 On 14 June 2018, the parties entered into a settlement agreement ("Settlement Agreement") which was written in both Chinese and English. The preamble of the Settlement Agreement expressly states that the Settlement Agreement shall take precedence over the Cooperation Agreement that was previously signed by the parties. The Settlement Agreement also provides that:

(a) the plaintiff shall procure the transfer of the remaining 30% of shares of the Company held by Zhong Rong to the defendant within 5 working days from the date of the Settlement Agreement;

(b) the defendant shall pay $350,000.00 to the plaintiff within 2 years from the date of the Settlement Agreement;

(c) in the event that the defendant fails to pay the prescribed sum, the plaintiff shall be entitled to apply to the court for judgment entered against the defendant; and

(d) the Settlement Agreement constitutes the entire and final settlement.

7 Consequently, and pursuant to the Settlement Agreement, the plaintiff's daughter transferred the remaining 30% shares of the Company to the defendant on 21 June 2018. However, the defendant failed to make payment to the plaintiff by 14 June 2020. The plaintiff instructed his solicitor to send a letter of demand to the defendant on 1 September 2020 for the payment of the $350,000.00. The defendant sent the plaintiff's solicitors an email dated 26 October 2020, stating that he tried to contact the plaintiff since 1 May 2020 but to no avail. In the same email, the defendant acknowledged that he signed the Settlement Agreement with the plaintiff and sought to extend the payment deadline stated in the Settlement Agreement because he was affected financially by the COVID-19

pandemic. It should be noted that nowhere in this email did the defendant dispute his liability to pay the plaintiff under the Settlement Agreement.

8 The plaintiff then instructed his solicitors to send the defendant a letter dated 2 November 2020 which stated that the plaintiff agrees to extend the payment deadline to 31 December 2020, on the condition that a monthly interest of 8% will accrue on the outstanding debt from 15 June 2020 until full payment has been made by the defendant ("the Extension Letter"). The defendant failed to make payment on 31 December 2020. Thereafter, another letter of demand dated 4 March 2021 was sent to the defendant requesting payment, but no payment was received from the defendant. The plaintiff, therefore, commenced the present proceedings against the defendant for the sum of $350,000.00 as well as interest calculated at 8.00% per month from 15 June 2020 until the date of full payment.

9 The defendant raised four points in his defence and counterclaim:

(a) First, he says that he signed the Cooperation Agreement and Settlement Agreement under the deception of the plaintiff and his lawyers.

(b) Second, he says that since he was only receiving 30% of the shares in the Company under the Settlement Agreement, he should only be required to pay 30% of the $350,000.00 which amounts to $105,000.00.

(c) Third, he claims that he has paid $180,774.96 on behalf of the Company to repay debts that were previously incurred by the plaintiff, and that he should be entitled to counterclaim against the plaintiff for that sum.

(d) Lastly, he says that the plaintiff, in preparing the Settlement Agreement, has breached the Cooperation Agreement and should pay him $500,000.00 as prescribed under the Cooperation Agreement.

10 I am of the view that none of these defences has any merit. The defendant had breached the Settlement Agreement and should be liable to pay the plaintiff $350,000.00 as prescribed under the Settlement Agreement. My reasons are as follows. First, the Settlement Agreement states in clear and unequivocal terms that the defendant shall pay $350,000.00 to the plaintiff in exchange for the remaining 30% of the shares in the Company, as a final settlement of the disputes between the parties. The settlement amount is therefore fixed at $350,000.00 and it is not open to the defendant to argue that he is only required to pay $105,000.00 because he is only receiving 30% of the shares.

11 Second, the preamble of the Settlement Agreement expressly states that the Settlement Agreement shall take precedence to the Cooperation Agreement. Clause 6 of the Settlement Agreement also provides that the Settlement Agreement constitutes the "entire and final settlement" between the parties. By signing the Settlement Agreement, the parties had agreed to settle their disputes in regard to the Cooperation Agreement, and comply with the terms of the Settlement Agreement instead. It is therefore not open to the defendant to argue that the plaintiff should pay him the penalty of $500,000.00 under the Cooperation Agreement since the Cooperation Agreement has been superseded by the Settlement Agreement.

12 Third, the defendant failed to prove that there was any fraud or misrepresentation on the part of the plaintiff or the plaintiff's lawyers that would vitiate the contract. The defendant says that he was unrepresented when he

signed the agreements and that his subsequent valuation of the Company's assets is significantly lower than the valuation provided by the plaintiff in the appendix to the Cooperation Agreement. However, this alone is insufficient to prove fraud. The defendant cannot vitiate the contract merely because he made a bad bargain. He cannot claim that he had not sought legal advice, as a cover for his own bad bargain. In the absence of specific evidence proving that the plaintiff fraudulently induced the defendant to enter into the Settlement Agreement, I find that the Settlement Agreement is a valid agreement that is legally binding and enforceable between the parties.

13 Fourth, the defendant also failed to prove his claim that he has personally paid $180,774.96 on behalf of the Company to repay debts that were previously incurred by the plaintiff. The only evidence the defendant tendered to the court is a one-page United Overseas Bank ("UOB") Account Statement showing that the Company had an outstanding loan with UOB. There is no evidence suggesting that the loan was fully repaid by the defendant. Furthermore, even if the defendant has fully repaid the loans, there are no provisions in the Settlement Agreement that entitles the defendant to recover sums incurred in repaying the Company's debts from the plaintiff. The defendant cites Clause 2 of the Cooperation Agreement which provides that the debts incurred by the Company "has nothing to do with [the defendant]". However, as mentioned above, the Cooperation Agreement has been superseded by the express terms of the Settlement Agreement and given my finding that the Settlement Agreement is legally binding and enforceable between the parties, the defendant is not entitled to rely on Clause 2 of the Cooperation Agreement.

14 For the reasons above, I am of the view that the Settlement Agreement is valid and binding between the parties and the defendant has breached the

Settlement Agreement by failing to pay the plaintiff the settlement sum of $350,000.00 by 14 June 2020.

15 I now deal with the consequential issue of interest. The plaintiff says that pursuant to the Extension Letter, the condition for the extension of the deadline for payment is that the defendant should be required to pay interest of 8.00% per month from 15 June 2020 until the date of full payment. However, I find that there is no evidence suggesting that the defendant has agreed to this condition. The plaintiff cannot unilaterally impose an interest rate on the defendant for outstanding payments without the approval of the defendant.

16 Therefore, I find that the defendant should pay the plaintiff $350,000.00, with interest to be calculated based on the statutory default rate, from the date of this judgment until the date of full payment. I will hear the question of costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Chung Ting Fai, Ong Hui Jing and Ong Xiang Ting Charmian
(Chung Ting Fai & Co) for the plaintiff;
Defendant in person.