

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

[2024] SGHC 114

Originating Claim No 314 of 2022

Between

Ruth Fitzgerald

... Claimant

And

Dulwich College (Singapore) Pte Ltd

... Defendant

JUDGMENT

[Contract — Discharge — Anticipatory breach]

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Fitzgerald, Ruth
v
Dulwich College (Singapore) Pte Ltd

[2024] SGHC 114

General Division of the High Court — Originating Claim No 314 of 2022
Choo Han Teck J
20 – 21 March, 18 April 2024

3 May 2024

Judgment reserved.

Choo Han Teck J:

1 The claimant is an Irish citizen, and employed by the defendant, an international school in Singapore as a school counsellor under a 3-year fixed term employment contract from 1 August 2020. The claimant's husband and their two children moved to Singapore under employment and dependant passes arranged for them by the defendant as part of the contract benefits. The claimant and her family also enjoyed medical insurance coverage paid by the defendant. The children attended the defendant's school with their tuition fees fully waived.

2 The claimant's contract was terminated on 5 August 2021. The claimant left Singapore on 28 June 2021 for Ireland for the summer vacation. The defendant's school term was scheduled to recommence on 18 August 2021, and all staff were told to return to Singapore and be ready for school by then. Before the claimant could return to Singapore, she received an emailed letter, dated

5 August 2021, notifying her that she had been terminated. The first paragraph of that letter read:

In a call with your line manager, Lynne Millar, on 4th August 2021 you confirmed that you do not intend to return to Singapore until January 2022. I am therefore writing to notify you that as you will not be returning to Singapore to commence work at the start of the academic year commencing on 18th August, you are in breach of contract and your employment with the College has been terminated.

3 The claimant commenced this action against the defendant for wrongful termination of her employment contract. The defendant claims that the termination was justified based on the claimant’s anticipatory breach of the employment contract. The defendant alleges that the claimant had told her line manager, Ms Lynne Millar, over a video conferencing call, that she would not return to Singapore until January 2022. The claimant denies she had told Ms Millar so. The main issue at trial is whether the claimant did tell Ms Millar that she did not intend to return to Singapore until January 2022.

4 Due to the COVID-19 pandemic and the measures imposed by the government, the defendant had informed its staff that travel during the summer vacation in 2021 (June to 18th August) was going to be restrictive and uncertain. Entry approval may be required to re-enter Singapore, and a 14-day stay home notice or quarantine may be imposed upon their return. It was communicated to them that these measures could change at any time and with little notice. It was also expressly stated, in the school headmaster’s letter dated 16 March 2021, that “all staff are required to be at College on the first day back of the new academic year in August (with quarantine completed if applicable)”.

5 As early as 21 March 2021, the claimant had indicated her intent to travel overseas to Ms Millar, her direct manager. She was one of five employees who had decided to travel overseas. Consequently, Ms Susan Worthington, the

head of Human Resources (HR), wrote to the claimant to inform her of the HR guidelines surrounding travel during the summer vacation. In that email dated 26 April 2021, Ms Worthington informed the claimant that she has to provide her full travel itinerary so that the defendant can apply for her entry approval. It was also stated that “[a]s a gentle reminder, if you are unable to return to Singapore and complete your [stay home notice] by the first day of the new academic year, you may be placed on unpaid leave.” The claimant responded with “[m]any thanks [Ms Worthington]” on 27 April 2021.

6 A subsequent email from HR, dated 10 May 2021, was sent to the claimant to inform her of the updates to the travel restrictions. The government had reduced the number of entry approvals for work pass holders and their dependants entering Singapore. It would thus be more difficult for the defendant to secure entry approval for employees. The claimant did not respond to this email.

7 In a follow-up email from Ms Worthington, dated 17 June 2021, she asked the claimant if she could “please update [her] on [her] travel plans for the summer” and whether she is “still intending to travel”. The claimant’s response on the same day was that she was intending to travel to Ireland as her husband “has some medical matters that require him to return to Ireland”.

8 Ms Worthington replied to the claimant on 22 June 2021. She asked for the claimant’s flight itinerary and planned return date by the end of the day. She also stated that if the claimant were to leave Singapore in the summer, there was a “strong indication” that the claimant would not be given approval to return in August. Ms Worthington further mentioned that “if you are not back in College for the start of the academic year you will go [on] unpaid leave. Should the

situation remain unchanged as the first term progresses, there may also be an impact on your contract of employment.”

9 The claimant’s response on 22 June 2021 was as follows:

Dear [Ms Worthington],

Thank you for your Email.

I have not booked my return flight to Singapore yet. When I do, I will of course forward the details to you.

Kind regards,

Ruth

10 When the claimant and her family left for Ireland on 28 June, she remained in contact with Ms Millar, over WhatsApp, regarding her date of return from Ireland. On 13 July 2021, Ms Millar asked the claimant if there was any news on returning to Singapore, to which the claimant replied that her husband was waiting for his blood test results, he had two MRIs and an X-ray scheduled, and that she would update Ms Millar as soon as she had a “clear picture of his situation”.

11 On 27 July 2021, the claimant informed Ms Millar that they were expecting to have her husband’s final results over the coming days, so she would be in touch again very soon. On 1 August 2021, the claimant confirmed that she had “a clearer picture of [her husband’s] situation now” and wanted to update Ms Millar by way of a video call. They scheduled to have the call on 3 August 2021 on Microsoft Teams, but Ms Millar was unable to answer the call due to technical difficulties. When Ms Millar texted back on 3 August 2021, she asked for the claimant’s plans, either over email or text, because she was going to speak with HR the morning after. In particular, she asked the claimant:

Do you have a flight date and if so when is that?

If not, what's your predicted return date?

Do you require help from HR to secure your approval for return?

12 As it transpired, the claimant and Ms Millar managed to have a WhatsApp call on 4 August 2021. The content of the conversation over the video call is disputed. Ms Millar testified that the claimant had mentioned three things over that call:

- (a) The claimant's husband was going to have an operation in Ireland;
- (b) The claimant would not be back until January 2022; and
- (c) The claimant suggested that she could do some remote work.

13 Ms Millar also said that she recalls telling the claimant that the defendant would need her back in August 2021 several times during the call, as she knew that the defendant would not countenance any later return date and as the claimant's manager, she had to communicate the defendant's position in clear terms. Ms Millar said that the claimant simply responded "well, I won't be back until January next year".

14 As for the claimant's request for remote work, Ms Millar said that she told the claimant that that was for the defendant to decide, and she would convey the claimant's request to the defendant. She also told the claimant that the defendant, as a college, would have to consider the needs of the students above all.

15 Ms Millar raised one final point on that call, that at the start of the conversation, the claimant had mentioned that she had bought bunnies (pet rabbits) for her children in Ireland.

16 The claimant's position is that she had never said she was returning only in January 2022. Her version of events, in affidavit, is that she told Ms Millar that her husband was required to undergo further tests and X-rays, which would take a week or two to complete. That meant that they had to stay in Ireland beyond the first day of the school term on 18 August 2021, for a few days. Thus, she suggested to Ms Millar if she could work remotely from Ireland. She said that Ms Millar had told her that she would discuss that possibility with Ms Worthington and would get back to her. According to the claimant, Ms Millar did not insist that she needed to be back in Singapore by any particular date.

17 After the call, Ms Millar informed HR about her discussion with the claimant. Ms Millar then followed up with another text message to the claimant on 4 August 2021:

Hi Ruth

Hope the bunny is ok and you're having a good day

I spoke to HR earlier and [Ms Worthington] was joining a [College Leadership Team] meeting this afternoon

They'll discuss your situation and let us know the outcome

You may hear before me as they often come direct and then we can discuss things going forward

As I said I think they'll take on board the student support perspective but will also consider their position as a college

Let's see

18 On 5 August 2021, the claimant received the emailed letter of termination from Ms Worthington. The first paragraph of that letter is reproduced at [2] above, and the last sentence of that letter reads:

If you have any questions regarding the end of your employment, please contact me at [Ms Worthington's email address].

19 The claimant did not respond to that email with any clarificatory questions. Later the same day, Ms Millar reached out to the claimant on WhatsApp:

Morning Ruth

Hope you are doing ok. I'd asked if I can reach out to you first but you may see that HR have emailed you today.

[College Leadership Team] came to an agreed decision that they feel it's right to end your contract as you are unable to return until January. They know that I regard you as an exceptional Counsellor but they'll have felt the need to take many factors into consideration.

You can imagine that I am really sad about this and the team will be too. I don't want to assume how you'll feel about it.

Let's arrange a call? Sorry to text with difficult news.

20 The claimant's response was as follows:

Hello Lynne, You are so kind, as always. Thank you. I am not surprised ... I understand how corporates work. I have really enjoyed working with you. You are a wonderful person. I am spending a few days at Lough Derg at the moment and am about to head out on the boat. It is another beautiful morning! It would be lovely to talk next week. Take care, Ruth

On 1 September 2021, the claimant instructed her solicitors to write to the defendant seeking compensation for wrongful termination of her employment.

21 Counsel for the claimant, Mr Samuel Sharpe, submits that the claimant's failure to correct Ms Millar's message and to respond to Ms Worthington's email was not because she accepted the truth of the statement that she would not be returning until January 2022. Instead, the phrase "I am not surprised ... I understand how corporates work" was a "sardonic reference to the callous corporate nature of the defendant". The claimant claims that while she was still shocked by the letter, the "right approach was to consult a solicitor", which was what she did shortly after.

22 Mr Sharpe further submits that the claimant could not have said that she would not be returning until January 2022 because no rational person in her position would do such a thing. The claimant was the sole breadwinner of her family. Her two children attended the defendant's school, and it was particularly important for her son, who was about to begin his final year of school before his General Certificate of Secondary Education (GCSE) exams, to continue attending the defendant's school. They were also entitled to access to comprehensive private medical care which was important for her husband who was recovering from cancer. For these reasons, Mr Sharpe argues that it would be nonsensical for the claimant to walk away from her job.

23 I am not persuaded by these arguments. If it were true that the claimant did not actually say that she was not returning until January 2022, then she ought to have corrected what was to her a misperception of the school, at the first opportunity available, with the relevant people involved. If she were indeed concerned about her children's schooling and her husband's access to comprehensive private medical care, the reasonable response would have been to clear up the misunderstanding, do her best to retain her job and its accompanied benefits, especially given that the mistake could have been easily rectified. The claimant had two separate chances to clarify the defendant's position or correct the mistake — one, when she received the email from Ms Worthington, and two, when she received the message from Ms Millar — but she did not even attempt to do so.

24 The claimant says that she would be returning merely a few days later than the start of the school term, as she only intended to remain in Ireland until her husband completes a few more tests and X-rays, which would take a week or two. This is different from what Ms Millar says, which is, that the claimant had intended to stay in Ireland for her husband's operation. I find the claimant's

evidence to be inconsistent with what she said on the witness stand. There, she said that she had gotten “the result of [her] husband’s test and X-rays which indicated he needed further X-rays and a potential operation on his back and knee and hip”. That is a significant contradiction, not only because it aligns with what Ms Millar says, but also because it is simply not possible for the family to remain in Ireland for merely one or two weeks more. It is admitted by the claimant herself that healthcare services in Ireland, at that material time, were experiencing substantial delays not only due to the pandemic but also because of the ransomware attack on the Health Service Executive of Ireland on 14 May 2021 that caused all of its IT systems nationwide to be shut down. Thus, if an operation were indeed scheduled for her husband, I am of the view that it would have taken a substantial amount of time for him to undergo further diagnosis, treatment and recuperation.

25 That said, these arguments would have been easily substantiated by the husband’s medical records in August 2021. However, what was adduced before me were his medical records that were not from the material time in August 2021. The claimant was asked specifically to provide documents relating to the husband’s medical appointment schedule evidencing his appointment days and surgery days, pursuant to a specific discovery order granted on 7 July 2023. She failed to do so, giving the excuse that she had become estranged from her husband since the termination of her employment with the defendant, and her husband had informed her that he did not have any other documents to disclose.

26 In my view, these documents, if adduced, would have easily proved the claimant’s case that she was only staying in Ireland for a couple more weeks, as the medical appointment schedule would have shown when and for what those medical tests were scheduled. The failure to adduce these key documents makes it difficult for me to accept the claimant’s case on her bare claim.

27 The claimant says that her intention was to return to Singapore in August 2021, just a few days later than the start of the school term, and she understood that that was possible given the HR's emails representing that employees may be placed on unpaid leave (at [5] and [8] above). In my view, the defendant's policy for employees to take unpaid leave does not lend itself to the claimant. Her request to Ms Millar was to work remotely from Ireland, while she waited until further tests and perhaps even her husband's medical operation were conducted. However, the defendant's policy was targeted at those who have returned to Singapore and were already in the process of completing the 14-day stay home notice. That is starkly different from the claimant's request to remain in Ireland after the school term had commenced.

28 Further, I am of the view that the claimant's intention to return to Singapore in August 2021 is not consistent with the rest of the objective evidence available. Ms Millar mentioned in affidavit that the claimant had bought pet rabbits for her children, and I find this to be corroborated by the WhatsApp conversation between the two of them (at [17] above). One does not buy pet rabbits in Ireland during a temporary stay of less than two months. That is more consistent with the defendant's case that the claimant was intending to remain in Ireland for an extended period.

29 I address Mr Sharpe's arguments that the defendant could have sought to clarify the claimant's position via an email before issuing the letter of termination. If that had been done, he submits that the claimant would have told the defendant in writing that she would return to Singapore as soon as required. But that would mean that she would be telling Ms Millar something that was not true. In any event, counsel's arguments do not lend themselves to the claimant. The defendant had no reason to doubt Ms Millar's representation of the claimant's intentions, given that Ms Millar was the sole point of contact with

the claimant. Thus, there was no reasonable need to have issued a clarificatory email to the claimant. More importantly, as I found above (at [24]), both Ms Worthington and Ms Millar had given the claimant the opportunity to clarify her position, but she did not even attempt to do so in the first and second instances. It is therefore contradictory for the claimant to now say that she would have clarified her position had the defendant written to her before terminating her contract.

30 Finally, I assess Ms Millar to be a forthright witness who, though formerly employed by the defendant, did not appear to lean in their favour and she gave her testimony with no garnishing. I have no hesitation accepting her evidence to be both clear and truthful. The claimant, on the other hand, seemed more dismissive of the defendant than seriously proving her case.

31 For the reasons above, I find that on a balance of probabilities, the claimant had told to Ms Millar that she was only returning to Singapore in January 2022. That was an anticipatory breach of the employment contract which deprived the defendant of substantially the whole benefit of the employment contract. The claimant would not have been able to report to work in person not just by the start of the school term, but also for a substantial period (five months) after the commencement of term. In particular, it would be an anticipatory breach of the clause:

The Teacher shall be available to perform his or her Professional Duties at such time and places as the College may reasonably require during the School Year.

32 Although I do not doubt nor fault the claimant's well-intentioned decision to return to Ireland for her husband's medical condition, the defendant was justified in terminating the claimant's employment contract based on her anticipatory breach.

33 Accordingly, I dismiss the claimant's claim. Costs is to follow the event and be paid by the claimant to the defendant. If the parties are unable to agree on costs, I will fix the costs at a later date.

- Sgd -
Choo Han Teck
Judge of the High Court

Samuel Richard Sharpe (Sharpe & Jagger LLC) for the claimant;
Goh Seow Hui and Cristel Chong Kar Yee (Bird & Bird
ATMD LLP) for the defendant.
