Xia Zhengyan *v* Geng Changqing
[2014] SGHC 152

Case Number : Suit No 346 of 2013

Decision Date : 30 July 2014

Tribunal/Court : High Court

Coram : Edmund Leow JC

Counsel Name(s) : Chia Boon Teck & Wong Kai Yun (Chia Wong LLP) for the plaintiff; Ng Kim Beng & Cynthea Zhou (Rajah & Tann LLP) for the defendant.

Parties : Xia Zhengyan — Geng Changqing

Contract – Breach

Contract – Misrepresentation

Equity – Remedies – Rectification

30 July 2014

Edmund Leow JC:

Introduction

1 This suit concerned a share transfer agreement ("the Agreement") under which the Plaintiff agreed to purchase certain shares from the Defendant for $1.5m. The Plaintiff claimed that the Defendant had:

(a) breached the Agreement by failing to transfer certain shares to Plaintiff; and

(b) made various misrepresentations which induced the Plaintiff to pay $1.5m for the shares even though they were in fact worth far less.

2 The Defendant denied the Plaintiff's claims and counterclaimed for:

(a) an order that the Plaintiff deposit a sum of $300,000 into the parties' joint account, which was withdrawn by the Plaintiff in breach of the Agreement; and

(b) an order for the Agreement to be rectified in order to correct certain alleged drafting mistakes.

3 On 9 June 2014, I dismissed the Plaintiff's claim and allowed the Defendant's counterclaim in large part. I now give my reasons.

The facts

4 The Plaintiff is a Singapore Permanent Resident from China. She is a homemaker with a background in business and teaching, and holds a master's degree in education from the University of Cardiff.

5 The Defendant was a Singapore Permanent Resident from China until late 2012 when she became a Singapore Citizen. She is the founder of Apple Plus School International Pte Ltd ("the Company"). The Company entered into franchise agreements with the following registered companies ("the Franchisees") to operate education centres under the name of "Apple Plus School":

(a) Apple Plus School (Tampines) Pte Ltd;

(b) Apple Plus School (Bukit Timah) Pte Ltd;

(c) Apple Plus School (Serangoon) Pte Ltd;

(d) Apple Plus School (Thomson) Pte Ltd; and

(e) Apple Plus Sdn Bhd registered in Kuala Lumpur, Malaysia.

6 The Company did not own any shares in the Franchisees. Instead, under the franchise agreements, the Franchisees would pay the Company a fee in return for the training, materials and teaching and operation support provided by the Company. The Defendant owned shares in the Franchisees as follows:

(a) 25% of Apple Plus School (Tampines) Pte Ltd;

(b) 26% of Apple Plus School (Bukit Timah) Pte Ltd;

(c) 25% of Apple Plus School (Serangoon) Pte Ltd (subsequently sold by the Defendant on 22 October 2012);

(d) 25% of Apple Plus School (Thomson) Pte Ltd; and

(e) 50% of Apple Plus Sdn Bhd.

7 Separately, the Defendant is also the sole proprietor of the unincorporated entity known as Apple Plus School ("APS"). The Company is the registered proprietor of the trademarks "Apple Plus School" and "Monkey Abacus" in Singapore, while APS is the registered proprietor of the same trademarks in Malaysia.

8 On 22 September 2011, the Defendant met the Plaintiff at an event held at the Serangoon branch of Apple Plus School organised for people who had previously expressed interest in investing in the Apple Plus School franchise business. At that meeting, the Plaintiff informed the Defendant that she was not interested in entering into a franchise agreement with the Company but wanted to invest in the Company itself. The Defendant indicated that she was open to taking on the Plaintiff as a business partner in the Company, and the Plaintiff said that she would contact the Defendant again.

9 Between late September and mid-October 2011, the Plaintiff visited her family in China and consulted them about investing in the Defendant's business. After the Plaintiff returned to Singapore, she met with the Defendant on 17 October 2011 at the Grand Hyatt Hotel to discuss the form and terms of the investment. The next day, the Defendant sent an email [note: 1] to the Plaintiff requesting the following information:

(a) the Company's general operation profile;

(b) the patents and qualifications that the Company held;

(c) the Company's current financial report; and

(d) the Company's future business plans.

10 The Defendant replied on 20 October 2011 stating that it was difficult for her to provide the documents requested by the Plaintiff because the Company was still in a loss-making state. Nonetheless, she attached a report ("the Report") to her email which:

(a) set out her shareholdings in the Company and the Franchisees;

(b) made reference to collaborations with four PAP Community Foundation ("PCF") kindergartens and three private nurseries;

(c) described the Company's business development plans in Singapore, Malaysia, Indonesia, Australia, China and the Philippines; and

(d) stated that the Defendant was in the process of registering patents in Indonesia, Australia, China and the Philippines.

11 The Plaintiff replied the next day noting that the report contained no relevant data and that the situation was "somewhat special", but nonetheless promised to get back to the Defendant after deliberations with her investment associates. [note: 2]

12 There were conflicting accounts between the Plaintiff and the Defendant on what happened next. The Defendant said that a meeting occurred on 1 November 2011 at the Grand Mercure Roxy Hotel whereby she agreed to sell half of her shares in the Company to the Plaintiff for $1.5m, [note: 3] but the Plaintiff denied that that meeting occurred. [note: 4] Instead, the Plaintiff averred that a meeting took place at Parkway Parade in mid-November 2011, [note: 5] with the price for the sale of shares being agreed sometime between mid- and end-November 2011 (after the Parkway Parade meeting). [note: 6] A number of further meetings and correspondences *via* email, telephone and text messages ensued between the parties, during which the Defendant sent the Plaintiff a draft memorandum of understanding ("MOU") and the parties went through several draft sale and purchase agreements. I will examine these communications in further detail later where they are relevant to the issues raised in this case.

13 Eventually, the parties signed a Chinese version of the Agreement on 17 January 2012, and an English translated version of the Agreement on 20 January 2012. The relevant portions of the English version are reproduced below:

> Both parties have, upon consultation, entered into the following agreement in respect of the transfer of shares in Apple Plus School International Pte Ltd (hereinafter referred to as Company).
>
> 1. Pursuant to the terms of this Agreement, [the Defendant] shall transfer the 50% share in Apple Plus School International Pte Ltd (*specifically including 50% share in Apple Plus School International Pte Ltd, 50% share in Apple Plus School including trade mark and* ***patent*** *of Apple Plus School and Monkey Abacus, 12.5% share in Apple Plus School (Tampines) Pte Ltd, 13% share in Apple Plus School (Bukit Timah) Pte Ltd, 12.5% share in Apple Plus School (Serangoon) Pte Ltd, 12.5% share in Apple Plus School (Thomson) Pte Ltd and 25% share in Apple Plus School*

(Malaysia)) held by her to [the Plaintiff] in accordance with the provisions of the law.

2. [The Plaintiff] agrees to accept the shares to be transferred, the transfer price shall be SGD1,500,000 (Singapore Dollar one and a half million), [the Plaintiff] shall, upon the successful transfer of the shares, enjoy the corresponding rights and interests accorded to a shareholder under the transferred shares and shall assume the corresponding obligations.

3. Mode of payment, time and supplementary notes: [The Plaintiff] to pay in cash (by cheque) in 3 installments, specific dates as follows:

(1) Before 31 January 2012, SGD500,000 (Singapore Dollar half a million) (of which SGD200,000 shall be placed in the Company's account and to be used for the Company's operations; payment of SGD100,000 to be made on the date of signing of the Agreement).

(2) Before 30 April 2012, SGD500,000 (Singapore Dollar half a million).

(3) Before 30 June 2012, SGD500,000 (Singapore Dollar half a million) (of which SGD300,000 is to be deposited into a bank account that requires the joint signatures of [the Defendant] and [the Plaintiff] for withdrawals. And if within 2 years from the effective date of this Agreement, (January 2012 to January 2014), total bonus received by [the Plaintiff], excluding salary, exceeds SGD500,000, all monies in the joint account shall be given to [the Defendant] unconditionally; if within 4 years from the effective date of this Agreement, (January 2012 to January 2016), total bonus received by [the Plaintiff], excluding salary, does not exceed SGD500,000, all monies in the joint account shall be given to [the Plaintiff] unconditionally).

4. Creation of Shareholder: Upon [the Plaintiff's] payment of the 2nd instalment to [the Defendant], i.e. after 30 April 2012, [the Plaintiff] shall be accorded the status of a shareholder and shall become an official shareholder of the Company. The relevant formalities for registration of changes shall be completed within 15 days.

5. Rights and obligations

(1) Within 6 months from the date of signing this Agreement, [the Defendant] shall be responsible for the Company's major decisions while [the Plaintiff] shall participate in its management; after the 6-month period, [the Defendant] and [the Plaintiff] shall be jointly involved in the Company's decision-making process and management.

(2) [The Plaintiff] shall from the day she becomes the Company's shareholder, be jointly responsible with [the Defendant] for the Company's profits and losses.

6. Warranties, Undertakings and Force Majeure

(1) [The Defendant] warrants that she has full disposition rights in respect of the transfer of the Company's shares (no mortgage, pledge or security created and exempted from any 3rd party claims), otherwise, all liabilities arising thereof shall be borne by [the Defendant].

(2) A franchisee currently in operation shall continue to operate as per the agreement entered into with the Company, the signing of this Agreement shall in no way affect the operations of the franchisee.

…

7. Dispute Resolution

...

(2) Both parties agree that for the period between the signing of the Agreement to the time [the Plaintiff] becomes a shareholder officially, if [the Defendant] refuses to transfer the shares to [the Plaintiff], [the Defendant] must return all monies paid by [the Plaintiff] within 1 month and to pay [the Plaintiff] a sum of SGD100,000 in penalty.

...

[emphasis added in italics and bold italics]

14 The Plaintiff paid the two instalments under clauses 3(1) and 3(2) of the Agreement according to the schedule stipulated in the Agreement and started working at the Company on 2 February 2012. On 7 June 2012, the Defendant effected the transfer of 50% of her shares in the Company to the Plaintiff and also appointed the Plaintiff as a director of the Company. On 30 June 2012, the Plaintiff issued a cheque for $200,000 to the Defendant, and on 4 July 2012 they opened a joint time deposit bank account ("the Joint Account") into which the Plaintiff deposited $300,000 ("the Deposit") for a term of 12 months.

15 Unfortunately, the parties' working relationship quickly soured, with the Plaintiff becoming disenchanted with the state of the Company's business and the Defendant becoming dissatisfied with the Plaintiff's job performance. After a series of disputes, they started to explore the possibility of a buyout by one party of the other's shares or a sale of all their shares to a third party. However, no third party could be found and they were unable to agree on the price for a buyout – the Defendant offered to purchase the Plaintiff's shares for $850,000, but this was rejected by the Plaintiff, who wanted at least $1m for them.

16 On 21 June 2013, the Plaintiff commenced the present action against the Defendant. On 4 July 2013, the Deposit was credited into the Plaintiff's account upon maturity of the time deposit, and the Plaintiff refused to transfer it back into the Joint Account.

The Plaintiff's case

17 The Plaintiff submitted that under clause 1 of the Agreement, the Defendant was required to transfer not just 50% of her shares in the Company, but also the following:

(a) 50% share in APS including the trademark and patent of Apple Plus School and Monkey Abacus;

(b) 12.5% share in Apple Plus School (Tampines) Pte Ltd;

(c) 13% share in Apple Plus School (Bukit Timah) Pte Ltd;

(d) 12.5% share in Apple Plus School (Serangoon) Pte Ltd;

(e) 12.5% share in Apple Plus School (Thomson) Pte Ltd; and

(f) 25% share in Apple Plus School (Malaysia).

Since the Defendant had failed to transfer the above shares, the Plaintiff argued that she was in breach of contract and was liable to pay liquidated damages of $1.6m pursuant to clause 7(2) of the Agreement or, alternatively, damages to be assessed.

18 The Plaintiff further alleged that the Defendant had made a large number of fraudulent misrepresentations to induce the Plaintiff into signing the Agreement, and sought damages for fraudulent misrepresentation or alternatively damages for misrepresentation under s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed). In particular, the Plaintiff argued that the Defendant had falsely claimed that APS owned the patent to the "Monkey Abacus" abacus system when in fact the patent was owned by a Taiwanese company.

The Defendant's case

19 The Defendant submitted that there was never any intention or agreement for the Plaintiff to acquire any legal title to the shares in the Franchisees. She further averred that she had mistakenly used the Chinese term for the word "patent" in drafting the Agreement, when in fact she had meant "trademark". Hence, the parties' common intention at all material times was that upon the transfer of 50% of the Plaintiff's shares in the Company to the Defendant, the Defendant would receive the benefit of 50% of the Defendant's personal interests in the Franchisees and the trademarks of "Apple Plus School" and "Monkey Abacus".

20 With respect to the claim in misrepresentation, the Defendant contended that she had never made the misrepresentations alleged by the Plaintiff, and that even if those misrepresentations were made, the Plaintiff had not been induced by any of them to enter into the Agreement.

21 Thus, the Defendant counterclaimed for:

(a) an order for the Plaintiff to return the Deposit into the Joint Account; and

(b) an order to have the Agreement rectified to reflect the parties' common intention as set out in [19] above.

My decision

The Plaintiff's claim for breach of contract

22 Whether the Defendant had breached the Agreement depends on how clause 1 of the Agreement should be interpreted. The Plaintiff contended that the provision contained in parentheses ("specifically including … Apple Plus School (Malaysia)") clearly provided for the transfer of 50% of the Defendant's shares in APS and the Franchisees.

23 In my judgment, however, this provision was ambiguous and did not clearly state that the shares in APS and the Franchisees had to be transferred to the Plaintiff. If the Plaintiff were correct, then it would have made more sense for those shares to be set out individually in clause 1 as shares to be transferred, instead of being encapsulated in parentheses and described as being "included" as part of the Defendant's 50% shareholding in the Company. In my view, clause 1, although clumsily drafted, was more consistent with the Defendant's account that the parties had intended for the Defendant's 50% shareholding in the Company to also include 50% of her *beneficial* interests in the Franchisees and the trademarks, without the need for those shares to be transferred to the Plaintiff.

24 Moreover, it is trite that a contract should be interpreted in a holistic manner having regard to

the document as a whole: *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131]. The interpretation of clause 1 contended for by the Plaintiff was simply inconsistent with the rest of the Agreement:

(a) First, clause 4 only provided a timeline for the transfer of the shares in the Company to the Plaintiff; no provision was made for the transfer of the shares in the Franchisees.

(b) Second, the warranty of full disposition rights in clause 6.1 only covered the Defendant's shares in the Company, and not her shares in the Franchisees.

If the parties' intention was for the shares in the Franchisees to be transferred to the Plaintiff, then surely clauses 4 and 6.1 would have referred to the shares in the Franchisees as well.

25 There was also other evidence indicating that the parties did not intend for an actual transfer of shares in APS and the Franchisees to be effected. First, as APS was a sole proprietorship, it made no sense to speak of the Defendant transferring 50% of her shares in APS to the Plaintiff. Second, since the Defendant was only a minority shareholder in the Franchisees, she would have been unable to compel the board of each Franchisee to register a transfer of shares to the Defendant.

26 Thus, I preferred the Defendant's interpretation of clause 1 and found that she was not in breach of it.

The Plaintiff's claim for misrepresentation

27 The Plaintiff pleaded that the Defendant had made the following list of misrepresentations (for ease of reference, I will refer to these statements later using their corresponding sub-paragraph numbers below):

(a) the Defendant owned a company which was the "headquarters of six franchised companies" which operated the Apple Plus School as of September 2011;

(b) the Defendant owned shares in three of the said six franchise companies as of September 2011;

(c) the Defendant had two Apple Plus Schools in Malaysia as of September 2011;

(d) the Defendant was in the midst of negotiating with Indonesian parties to open Apple Plus Schools in Indonesia as of September 2011;

(e) Apple Plus Schools produced their own children's textbooks as of September 2011;

(f) Apple Plus Schools owned the patent and trademark of the unique nine-beaded "Monkey Abacus" abacus system as of September 2011;

(g) the Defendant was the sole controller of the entire group of Apple Plus companies and schools as of September 2011;

(h) the Defendant had collaboration with four public and three private kindergartens as of October 2011;

(i) the Defendant had expansion plans in Singapore, Malaysia, Indonesia, Australia, China and the Philippines as of October 2011;

(j) the Defendant was in the process of registering a patent for her "Monkey Abacus" abacus system in four countries as of October 2011;

(k) with the Defendant's grand plans for expansion in the near future, half of her shares in all her Apple Plus School companies would be worth $1,500,000 as of November 2011;

(l) the Company was signing a MOU with Indonesia's Ministry of Education as of December 2011;

(m) as of 2 January 2012, representatives from Vietnam and Indonesia had signed agreements with the Defendant to expand the Apple Plus group of companies in Vietnam and Indonesia as of 2 January 2011;

(n) as of 6 January 2012, the Defendant was engaging in talks with representatives from Indonesia to set up Apple Plus Schools in Indonesia;

(o) as of 10 January 2012, the Defendant was negotiating with some parties in Malaysia to open Apple Plus Schools in a few other countries;

(p) as of 13 January 2012, the Defendant was in Malaysia engaged in a second round of talks with representatives from Dubai and the Philippines to open Apple Plus Schools in these two countries;

(q) on 19 January 2012, the Defendant's geomancer colluded with the Defendant to advise the Plaintiff that, among other things:

(i) the Plaintiff was suited to invest in education-related businesses;

(ii) the success of the Plaintiff's investment was totally dependent on the Defendant; and

(iii) the Defendant excelled at running the business and the Plaintiff should not interfere in the Defendant's running of the business;

(r) throughout February 2012, the Defendant was very busy opening new offices and classrooms, and tying up with various kindergartens;

(s) in early May 2012, the Defendant was negotiating with interested parties in China to open an Apple Plus School there;

(t) on 23 May 2012, the Defendant had signed an agreement to open five to six PCF kindergartens in Jurong;

(u) as of late May 2012, four clients from Batam were confirmed to be setting up at least two Apple Plus Schools in Batam in mid-June 2012; and

(v) as of June 2012, there was a company which would connect the Apple Plus group of schools to Government primary schools, and there were business plans on how to charge the students and methods to ensure the Apple Plus Schools' monopoly of the market.

28 Since the Plaintiff was claiming that the Defendant had made these misrepresentations

fraudulently, the Plaintiff had to establish that (*Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [14]):

(a) there was a representation of fact made by words or conduct by the Defendant;

(b) the representation was made with the intention that it should be acted upon by the Plaintiff;

(c) the Plaintiff had acted upon the false statement (*ie*, the Plaintiff was induced by the false statement to enter into the Agreement);

(d) the Plaintiff suffered damage by so doing; and

(e) the representation was made with knowledge that it was false, or at least in the absence of any genuine belief that it was true.

29 Having regard to the evidence, I was of the view that the Plaintiff had failed to establish these elements in relation to each of the alleged misrepresentations. For ease of discussion, I will group the statements according to the date and occasion on which they were allegedly made.

Statements (a)–(g)

30 According to the Plaintiff, the statements listed at [27(a)]–[27(g)] above were made orally by the Defendant on 22 September 2011 when the Plaintiff first met her at the Serangoon branch of Apple Plus School. The Plaintiff admitted that she had made no notes of the meeting and that the alleged statements were based on her recollection. [note: 7] She argued that these statements were false because:

(a) As of 22 September 2011, only four franchises (namely, the Bukit Timah, Telok Kurau, Tampines and Serangoon branches) had been incorporated. The next two franchises (namely, the Bukit Merah, Thomson and West Coast franchises) were incorporated only on 15 November 2011.

(b) There was no evidence of an area licensing agreement for the two Apple Plus Schools in Malaysia. The only evidence that the Defendant was able to produce for the Malaysia franchise were copies of cheques from one Loong Sweet Ying that were purported payments of licensing fees.

(c) The only evidence provided by the Defendant of her plans to expand into Indonesia was the registration of the Apple Plus School trademark in Indonesia and a document sent on 22 March 2011 to the Defendant's franchise agent, Alex Tan, stating brief cooperation terms for the launch of Apple Plus School in Indonesia.

(d) The producer of the textbooks used by the Apple Plus Schools was Taiwan Abacus Publishing House, and the Defendant had merely purchased the copyright to the textbooks.

31 However, I found that the Plaintiff claims of misrepresentation were not made out for the following reasons:

(a) For statements (a) and (e), the Plaintiff appeared to be nit-picking statements made by the Defendant that could be interpreted in a number of ways. For example, when the Defendant made statement (a) (that the Company was the "headquarters of six franchised companies"), she

might have taken into account the two franchises that were in the pipeline and that going to be incorporated shortly. Likewise, for statement (e) (that Apple Plus Schools produced their own children's textbooks), this could be interpreted to mean that Apple Plus School owned the copyright to the textbooks that they used. In the absence of evidence of the *specific* assertions made by the Defendant, I was not prepared to find that these statements amounted to misrepresentations.

(b) For statements (b) and (g), no evidence or reasoning was given by the Plaintiff as to why they were false.

(c) For statement (c), aside from the cheques from Loong Sweet Ying, the Defendant had also produced a MOU signed on 16 April 2010 with one Loong Sweet Ying appointing the latter as franchise manager in Malaysia. [note: 8] The MOU specifically provided that the franchise manager would open a minimum at least two Apple Plus outlets in the first five months of signing the area franchise agreement. Although this MOU was "subject to contract", and the Defendant did not produce a copy of the area franchise agreement, I was satisfied that the MOU together with the cheques were sufficient to prove that the Malaysian franchises existed, and that the onus was on the Plaintiff to prove that they were a sham.

(d) For statement (d), there was clear evidence that the Defendant had plans to expand in Indonesia (as shown by the trademark registration there and the cooperation terms that she sent to her franchise agent), and the mere fact that these plans ultimately did not come to fruition did not make the Defendant's statement false.

(e) I will discuss statement (f) together with statement (j) in the next section as they deal with the same issue.

Statements (h)–(j)

32 These statements were made in the Report. The Plaintiff contended that they were false because:

(a) The Defendant's only evidence for the Company's collaboration with four public and three private kindergartens were two commission agreements with the PCF for conducting courses at three education centres, which were only in effect from 1 January 2010 to 31 December 2010 and 3 January 2010 to 31 December 2012 respectively.

(b) The Defendant's alleged expansion plans were backed up by shoddy proposals that amounted to about four pages each. The proposals for each country were identical in every aspect, with no effort made to distinguish or cater to different markets. Further, the Defendant had tried to support her claim of expansion plans in the Philippines with an email exchange with a Filipino party that only started on 3 July 2012, nine months after the Report.

(c) The Company did not own the patent to the "Monkey Abacus" abacus system and was merely the sole agent of the rights to use the abacus and teaching materials, with the patents being owned by Taiwan Abacus Publishing House.

33 Having read the Report, I was of the view that the Plaintiff's claims of misrepresentations were not made out because:

(a) For statement (h), the Report simply listed "Collaboration with 4 PCF" and "Collaboration

with three private nurseries" as two numbered items under a heading titled "Franchised schools". There was no elaboration in the Report on what the scope of the purported "collaboration" was or what the dates of the collaboration were. Thus, while I accepted that statement (h) was rather misleading, in my opinion it was far too vague to constitute a statement of fact that the Plaintiff could have relied on in entering into the Agreement.

(b) For statement (i), this was a statement as to the Defendant's future intention, and for it to be actionable as a misrepresentation, the Plaintiff must show that the Defendant had no honest belief in the statement: *Deutsche Bank AG v Chang Tse Wen and another appeal* [2013] 4 SLR 886 at [83]. But the fact that the Defendant's expansion proposals were shoddy and lacking in details did not mean that they were a sham. The Plaintiff had failed to provide any evidence to show that the Defendant did not have the genuine intention to carry out her plans at the time statement (i) was made. While the Defendant might have been overly optimistic in her projections and targets, that does not mean that she had committed misrepresentations in communicating her business plans to the Plaintiff.

(c) For statement (j), I accepted the Defendant's evidence that she had inadvertently misused the Chinese term for "patent" and that she had in fact meant "trademark". Therefore, the misrepresentation was not deliberate and did not amount to fraud. Further, the Plaintiff could not have been induced by this misrepresentation into entering the Agreement because she had seen the box containing the abacus used in the "Monkey Abacus" system, and it was obvious from the box that it was a Taiwanese product. The writing on the box was in Traditional Chinese, which is used in Taiwan but not China or Singapore. This distinction would have been obvious to the Plaintiff who came from China. In addition, the box clearly stated on its side that the abacus was patented by Taiwan Abacus Publishing House, and not the Company.

34 Furthermore, I was not satisfied that the Report as a whole had induced the Plaintiff into making the Agreement. This was because in her email reply to the Defendant, the Plaintiff wrote:

> Hi, Fiona:
>
> Received your reply and have read through your report carefully. There is no relevant data and the situation is somewhat special. Your sincerity is appreciated and your enthusiasm has been infectious. I will get back to you as soon as possible after deliberations with my associates in the investment company. Thank you.
>
> Xia Zhengyan

It was evident from this email that the Plaintiff was well aware of the insubstantial nature of the Report and the lack of relevant data to support the Defendant's business plans. Yet the Plaintiff did not probe the Defendant for further details on any aspect of the Report; indeed, it appeared that she was more impressed with the Defendant's sincerity and enthusiasm than by anything that was stated in the Report.

Statement (k)

35 The Plaintiff alleged that at the Parkway Parade meeting in mid-November 2011, the Defendant had initially represented to her that given the Defendant's global expansion plans, half of her shares in the Company would be worth $2m. The Defendant then reduced this figure to $1.5m after some negotiations. In my judgment, this was clearly a puff that no reasonable person would have taken as a serious estimate of the value of the Defendant's shares. The parties were in the process of

negotiating over the price of the Defendant's shares and the Defendant would naturally be trying to argue for a higher price. The fact that the Defendant had so readily reduced the figure from $2m to $1.5m should have made it clear that these were simply negotiating figures and not serious estimates of value. This statement therefore did not amount to a misrepresentation.

Statement (l)

36 The Defendant had sent the Plaintiff an email on 15 December 2011 attaching a three-page draft MOU (which was unsigned) between the Company and Indonesia's ministry of education for the Company to provide training for abacus teachers in Indonesia. The draft MOU was stated to run for five years starting from 17 December 2011. The Plaintiff said that this amounted to a misrepresentation because it would have been impossible for the draft MOU – which the Defendant admitted under cross-examination to be "just at the planning stage" [note: 9] – to be ready to be signed within two days. The Plaintiff thus submitted that the MOU was a sham meant to entice her to entering into the Agreement.

37 I disagreed. The Defendant did not represent to the Plaintiff that she had reached agreement with the Indonesian party or that an agreement was close at hand. The MOU was clearly stated to be a draft and it would have been understood by the Plaintiff that it was subject to further changes and that it might not even be signed in the end. This therefore did not constitute a misrepresentation by the Defendant.

Statement (m)

38 On 2 January 2012, the Defendant sent the Plaintiff a text message stating that "letters of intent for sole agency in Vietnam and Indonesia have been signed". However, the Defendant was unable to produce the Vietnamese letter of intent, and it transpired that the Indonesian letter of intent was never printed out or formally signed. The Plaintiff therefore said that this constituted a misrepresentation by the Defendant.

39 I should note that statement (m), as pleaded by the Plaintiff, was that "representatives from Vietnam and Indonesia had signed *agreements* with the Defendant". But it was clear from the text message in question that the Defendant had merely referred to *letters of intent*, and not actual agreements. As the Defendant explained in her AEIC, in the Company's usual business practice, letters of intent simply operated as minutes of meeting and had no binding contractual effect. Further, even assuming that the Defendant had made a false statement when she said that the letters of intent had been signed, the Plaintiff had provided no evidence that she was induced by the mere signing of these non-binding letters of intent to enter into the Agreement. This statement was thus not an actionable misrepresentation.

Statement (n)

40 The Plaintiff alleged that the Defendant had called her and sent her a text message on 6 January 2012 claiming that she was engaged in talks with representatives to set up franchises in Indonesia. The text message from the Defendant stated:

> I was calling you because of the matter regarding Indonesia. I am talking to them now.

41 I failed to see how this constituted a misrepresentation. It was a fact that the Plaintiff *did* engage in talks with Indonesian parties to set up franchises there; indeed, the Plaintiff stated in her affidavit that she had followed the Defendant to Jakarta in mid-April to discuss the establishment of

Apple Plus Schools in Jakarta with two Indonesian parties. [note: 10] The Plaintiff had therefore failed to prove that this statement was false.

Statement (o)

42 The Plaintiff relied on phone calls and the following text message sent by the Defendant on 10 January 2012:

> I am going to Malaysia in a while to discuss matters relating to the school curriculum. Do you have visa? We can go together in the future

43 Plainly, this text message did not say that the Defendant was going to Malaysia to negotiate with some parties to open up Apple Plus Schools in other countries; it simply stated that the Defendant was going to discuss "matters relating to the school curriculum". In any event, even if it could be read in the manner contended for by the Plaintiff, the Plaintiff had failed to provide any evidence that the Defendant was lying about negotiating with Malaysian parties. This statement was thus not a misrepresentation.

Statement (p)

44 According to the Plaintiff, the Defendant had told to her over the phone and through text message that she was going to Malaysia to discuss expansion plans in Dubai and the Philippines on 13 January 2012. The Plaintiff relied on the following text message sent by the Defendant on 13 January 2012:

> I am entering Malaysia to discuss sole agency in Dubai and the Philippines. It will be the second negotiation. My husband is bringing me there, we will be back tonight. Don't worry

The Plaintiff pointed out that the Defendant had provided no evidence to show that there was in fact such a meeting in Malaysia. Consequently, the Plaintiff argued, this text message was a sham meant to mislead the Plaintiff into thinking that the Defendant was busy developing global expansion plans for the Company.

45 However, since the Plaintiff was the one claiming a misrepresentation, the onus was on *her* to prove that the negotiations did not occur. She failed to do so. Hence, this claim of misrepresentation was unproven as well. I should further note that the Defendant *did* adduce evidence of draft franchise proposals for Dubai and the Philippines which she said were prepared for the Company's negotiations during the period. There was no reason to believe that the negotiations referred to by the Defendant were a sham.

Statements (q)–(v)

4 6 *Prima facie*, these misrepresentations were alleged to have been made *after* the Agreement was signed on 17 January 2012, and could not have induced the Plaintiff into signing the Agreement. However, the Plaintiff argued that the doctrine of fraudulent misrepresentation does not only apply to situations where the representee was induced to enter into a contract as a result of the misrepresentation. The Plaintiff relied on the following passage from *Halsbury's Laws of Singapore* vol 18 (LexisNexis, 2009 Reissue) at [240.419]–[240.420]:

> **How the representee's position may be altered**

> There are various ways in which a representee may act on the faith of a representation so as to alter his position. He may enter into a contract either with the representor himself, or with a third person, or a class of persons … Further, a person may physically alter his position by … *the doing of or abstention from anything which has a bearing on his material interests, and which he is not legally compellable to do or to abstain from*.
>
> [emphasis added]

47 In the Plaintiff's submission, although she had already entered into the Agreement on 17 January 2012, she had legal recourse to void the Agreement and claim damages for fraudulent misrepresentation at that point in time. However, the Defendant's post-contractual fraudulent misrepresentations induced the Plaintiff to believe that her local and overseas development plans were flourishing, causing the Plaintiff to continue with her performance of the Agreement. Without the Defendant's frequent post-contractual misrepresentations, the Plaintiff would have sought clarification and updates with regards to the Defendant's pre-contractual claims, and would have discovered their falsity and avoided the financial loss and opportunity costs that occasioned from her performance of the Agreement. Thus, the Plaintiff contended that these post-contractual statements were actionable in misrepresentation.

48 In my judgment, however, this submission was plainly untenable because I had already found that none of the alleged pre-contractual misrepresentations had been established by the Plaintiff. The Plaintiff was therefore bound to perform the Agreement and the alleged post-contractual statements could not have caused the Plaintiff to do anything that she was not legally compellable to do. Consequently, those statements were not actionable statements.

Concluding remarks on misrepresentation issue

49 Overall, I was of the view that the Plaintiff was simply trying to get out of a bad bargain that she had made without adequate care and research. The Defendant had been candid in telling the Plaintiff that the Company was not yet profitable (see [10] above), and it was clear from the Report forwarded by the Defendant that her expansion plans were at a very preliminary stage. Indeed, when the Plaintiff consulted her family in China about investing in the Company, they would not allow the Plaintiff to invest using the family funds because there was a lack of important financial data about the Company. [note: 11] Yet the Plaintiff decided to go ahead with the investment using a combination of her own funds and a loan. She chose not to hire a lawyer, who could have made the routine searches to verify information on the Company, including its share capital and its ownership of patents. A lawyer could also have performed a due diligence exercise and helped the Plaintiff to draft an agreement setting out all the representations and warranties that she was relying on.

50 I also found that, as a whole, the Plaintiff's main motivation for investing in the Company was because she was idle in Singapore and wanted something to do. [note: 12] Her investment in the Company bought her a seat on the board and gave her a job that she would otherwise have been unable to obtain on her own merits. Indeed, there was evidence that it was the Plaintiff's own incompetence that contributed to the failure of the Company. She mismanaged the employees, failed to turn up for work, and was often absent when cheques or other important documents needed to be signed. [note: 13] I will not delve in detail into these matters as they were not strictly germane to the dispute, save to say that they impacted on my assessment of the Plaintiff's credibility.

51 A further factor undermining her credibility was the fact that she waited so long before starting this lawsuit. In my view, even assuming that the Plaintiff was unaware of the true state of the

Company's financial affairs and expansion plans when she signed the Agreement, she would have discovered it after she joined the Company and became an equal shareholder and director. Yet she continued working in the Company for many months and only commenced proceedings 1.5 years later – after the parties' relationship had broken down and she wanted to be bought out. In fact, she did not assert her claim even when she was negotiating to sell her shares back to the Defendant. This made it difficult for me to accept that the Defendant's alleged misrepresentations had truly induced her to sign the Agreement.

52 For the foregoing reasons, I found that none of the statements alleged by the Plaintiff constituted misrepresentations, whether fraudulent, negligent or innocent.

The Defendant's claim for the return of the Deposit

53 Under clause 3(3) of the Agreement, the Deposit was supposed to be kept in the Joint Account until at least January 2014. However, when the parties went to the bank, they decided to take up a promotion for a one-year time deposit that was offering a high interest rate. Under the terms of that promotion, the deposit would be transferred back to the personal account of the depositor upon maturity. The Defendant admitted to being aware of this arrangement, but said that she had told the Plaintiff to return the Deposit to the Joint Account when it got transferred into her personal account at the end of one year. The Plaintiff, on the other hand, argued that there had been no agreement for the Plaintiff to return the Deposit into the Joint Account.

54 In my view, the Plaintiff was effectively claiming that there had been an oral agreement to vary clause 3(3) of the Agreement so as to let the Plaintiff keep the $300,000. I found this difficult to believe because it would have meant that the Defendant was simply giving up 20% of the agreed purchase price for her shares. To prove that the Defendant had indeed varied the contract in such a substantial manner, the burden was on the Plaintiff to prove that the Defendant had expressly consented to this contractual variation, and it was insufficient to simply point out that the Defendant was aware of the arrangement whereby the Deposit would be automatically returned to the Plaintiff's personal account after one year.

55 I therefore ordered the Plaintiff to return the Deposit into the Joint Account.

The Defendant's claim for rectification

56 The final issue relates to whether clause 1 the Agreement should be rectified to reflect what the Defendant claimed was the parties' true intention, which was that upon the purchase of 50% of the Defendant's shares in the Company, the Plaintiff would also receive 50% of the benefit of the Defendant's personal interest in (a) the Franchisees, and (b) the trademarks of "Apple Plus School" and "Monkey Abacus".

57 The law on the rectification of contracts was stated by Denning LJ in *Frederick E Rose (London) Ltd v William H Pim Jnr & Co Ld* [1953] 2 QB 450 at 461 as follows:

> … In order to get rectification it is necessary to show that the parties were in complete agreement on the terms of their contract, but by an error wrote them down wrongly; and in this regard, in order to ascertain the terms of their contract, you do not look into the inner minds of the parties - into their intentions - any more than you do in the formation of any other contract. You look at their outward acts, that is, at what they said or wrote to one another in coming to their agreement, and then compare it with the document which they have signed. If you can predicate with certainty what their contract was, and that it is, by a common mistake, wrongly

expressed in the document, then you rectify the document; but nothing less will suffice. …

58 Given my decision on the interpretation of clause 1 (see [22]–[26] above), the prayer for rectification insofar as it related to the shares of the Franchisees was rendered largely superfluous. Nonetheless, I considered it appropriate to rectify a clear error in clause 1 relating to the transfer of shares in APS. As I have noted earlier, APS was a sole proprietorship and it was incoherent to speak of shares in APS. I therefore ordered rectification of clause 1 as follows:

> 1. Pursuant to the terms of this Agreement, [the Defendant] shall transfer the 50% share in Apple Plus School International Pte Ltd (specifically including 50% share in Apple Plus School International Pte Ltd, 50% ~~share~~ of the benefit of her personal interest in Apple Plus School including trade mark and patent of Apple Plus School and Monkey Abacus, 12.5% share in Apple Plus School (Tampines) Pte Ltd, 13% share in Apple Plus School (Bukit Timah) Pte Ltd, 12.5% share in Apple Plus School (Serangoon) Pte Ltd, 12.5% share in Apple Plus School (Thomson) Pte Ltd and 25% share in Apple Plus School (Malaysia)) held by her to [the Plaintiff] in accordance with the provisions of the law.

59 However, I declined to order the deletion of the word "patent" because there was no objective evidence to show that *both* the Plaintiff and the Defendant had intended to refer to "trademark" only. I would note, however, that the continued inclusion of the word "patent" in clause 1 made no difference to the Defendant's obligations under the Agreement, since it was undisputed that APS did not own the patent to the "Monkey Abacus" abacus system (and there was thus nothing to be held for the benefit of the Plaintiff insofar as a "patent" was concerned).

Conclusion

60 For the foregoing reasons, I dismissed the Plaintiff's claim and allowed the Defendant's counterclaim. Costs were awarded to the Defendant, and parties are to try to agree on costs.

[note: 1] Plaintiff's AEIC dated 8 Oct 2013 at p 48.

[note: 2] Defendant's AEIC (Vol 2) at p 986.

[note: 3] Defendant's AEIC (Vol 1) at p 25, para 66.

[note: 4] NE, 20 November 2013, p 2.

[note: 5] Plaintiff's AEIC at p 4, para 13.

[note: 6] Ibid.

[note: 7] NE, 19 November 2013, pp 50–51.

[note: 8] Defendant's AEIC (Vol 1), pp 497–500.

[note: 9] NE, 11 February 2012, p 28.

[note: 10] Plaintiff's AEIC, para 39.

[note: 11] NE, 19 November 2013, p 91.

[note: 12] NE, 19 November 2013, p 92.

[note: 13] Defendant's AEIC, paras 139–155.