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

**[2025] SGHC 26**

Originating Claim No 469 of 2022

Between

Georg Alexander Höptner

… *Claimant*

And

Three Fins Pte Ltd

… *Defendant*

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# GROUNDS OF DECISION

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[Employment Law — Contract of service — Termination without notice]
[Employment Law — Unfair dismissal]

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# v
# Three Fins Pte Ltd

**[2025] SGHC 26**

General Division of the High Court — Originating Claim No 469 of 2022
Chua Lee Ming J
29, 30 August, 3–5, 16, 23 September 2024

19 February 2025

**Chua Lee Ming J:**

## Introduction

1 The claimant, Mr Georg Alexander Höptner, was employed by the defendant, Three Fins Pte Ltd, as Group Chief Executive Officer ("GCEO"). The defendant is a holding company incorporated in Singapore. It provides certain services to support a crypto-products trading platform known as "BitMEX".

2 On 20 October 2022, the defendant dismissed the claimant for cause. The claimant commenced this action, claiming wrongful dismissal. The damages claimed by the claimant included a substantial amount which the claimant would have been entitled to under the terms of his employment contract if he had been terminated with notice.

3 The defendant counterclaimed for damages in respect of alleged unauthorised expenses incurred by the claimant and repayment of a loan.

4 I entered judgment for the claimant on his claim in the sum of US$2,464,354.84. I also entered a consent judgment in the sum of US$85,795.95 in favour of the defendant on its counterclaim.

5 The defendant has appealed against my decision on the claimant's claim.

## Background facts

### *The HDR Group*

6 HDR Global Trading Limited ("HDR Global") is the owner and operator of BitMEX. It is also the parent company to a number of subsidiaries worldwide which support the BitMEX platform and business (the "HDR Group"). The defendant is one of these subsidiaries.

7 The HDR Group's main offices are in Singapore and Hong Kong. The defendant operates the Singapore office and Shine Effort Inc Limited ("Shine Effort") operates the office in Hong Kong. The defendant and Shine Effort provide HDR Global with the following services: information technology, engineering, cyber-security, finance, human resources, tax and legal advisory services.

8 BitMEX was founded in 2014 by Mr Samuel Tracy Reed ("Reed"), Mr Arthur Hayes ("Hayes") and Mr Ben Delo ("Delo") (together, the "Founders"). The three of them have been directors of HDR Global since its incorporation in 2014. Each of them holds about 30% of the equity in HDR Global.

9 In June 2020, Mr David Wong ("Wong") joined HDR Global as an independent non-executive director. Wong has since ceased to be a director of HDR Global.

***The claimant's employment with the defendant***

10 From 2018 to 2020, the claimant was the CEO of Euwax AG, a German-based provider of financial services at the Stuttgart stock exchange in Germany. Concurrently, he was also the CEO of the Stuttgart stock exchange and was responsible for launching the Bison mobile trading platform, the BSDX web trading platform and the blocknox cryptocurrency custody service for institutional clients.

11 The HDR Group was looking to hire a GCEO and an executive search consultancy company introduced the claimant to its board of directors ("HDR Global's Board"). By way of an agreement dated 27 September 2020, the defendant employed the claimant as GCEO with effect from 1 January 2021 (the "Employment Agreement").[1]

12 The terms of the Employment Agreement included the following:

(a) Clause 1.3, under which the claimant and the defendant agreed to use their best endeavours to obtain the necessary permits to enable the claimant to work in Singapore, and if the necessary permits could not be obtained by 31 March 2021, the claimant would in good faith discuss and agree on an alternative jurisdiction in which he may perform his

[1] 1 AB 138–156.

duties.[2] The claimant also agreed not to object to Hong Kong or Bermuda as the alternative jurisdiction.

(b) Clause 2.1(b), which required the claimant to use his best endeavours to protect, promote, develop and extend the interests of the defendant.[3]

(c) Clause 2.1(e), which required the claimant to comply with the defendant's rules, regulations, policies and procedures.[4]

(d) Clause 2.1(f), which required the claimant to "work in any place which the [defendant] may reasonably require … and travel on the business of the [defendant] from time to time as determined by the Board".[5] Clause 2.1(d) defined the term "Board" as the defendant's board of directors (the "defendant's Board").[6]

(e) Clause 2.3, which required the claimant to "at all times keep the Board promptly and fully informed (in writing if so requested) of his conduct of the business or affairs of the [defendant] and any Group Company and provide such explanations as required by the Board".[7] For all intents and purposes, the term "Group Company" as defined in cl 2.2 of the Employment Agreement referred to the HDR Group.[8]

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2 1 AB 140–141.

3 1 AB 141.

4 1 AB 141.

5 1 AB 141.

6 1 AB 141.

7 1 AB 142.

8 1 AB 141–142.

(f) Clause 4.3(a), which provided that upon satisfactory completion of the first two years of employment, the defendant would pay the claimant an amount equal to US$5.3m less the total compensation paid to the claimant in those two years (the "Second Anniversary Bonus").[9]

(g) Clause 4.3(b)(i), which provided that if prior to the second anniversary of his employment, the claimant's employment was terminated "by the [defendant] otherwise than by way of Termination for Cause", the defendant would pay the claimant an amount equal to US$5.3m less the total compensation paid to the claimant up to the date of termination (the "Termination Bonus").[10]

(h) Clause 4.3(b)(ii), which provided that if prior to the second anniversary of his employment, the claimant resigned or gave notice to resign, or the claimant's employment ceased for a reason other than the scenario provided in cl 4.3(b)(i), then no payment would be made to the claimant under cl 4.3.[11]

(i) Clause 4.3(c), which defined "Termination for Cause" to mean termination by the defendant in circumstances where the defendant reasonably considered that the claimant had materially failed to comply with his obligations under the Employment Agreement.[12]

(j) Clauses 4.4 and 4.5, which provided that the claimant was entitled to a housing allowance of US$100,000 per annum, and an

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9 1 AB 143.

10 1 AB 143.

11 1 AB 143–144.

12 1 AB 144.

education allowance of USD100,000 per annum, both payable in 12 equal monthly instalments together with his base salary.[13]

(k) Clause 11.1, which provided that either party may terminate the Employment Agreement by giving not less than six months' notice in writing or by paying wages in lieu of such notice.

(l) Clause 11.2(a)(ii), which provided that the defendant may summarily dismiss the claimant without further notice or payment of wages in lieu if the claimant "misconducts himself …, such conduct being inconsistent with the due and faithful discharge of the [claimant's] duties".[14]

13 In October 2020, the United States Commodity Futures Trading Commission ("CFTC") charged HDR Global and certain of its affiliates with violations of CFTC regulations. Simultaneously, the CFTC and the United States Department of Justice ("DOJ") charged Hayes, Delo and Reed with violations of CFTC Regulations and the United States Bank Secrecy Act. In addition, the United States Financial Crimes Enforcement Network ("FinCEN") charged the HDR Group and certain of its affiliates with violations of the United States Bank Secrecy Act.

14 The claimant's employment with the defendant commenced on 1 January 2021. The intent was for the claimant to be based in Singapore (see [12(a)] above). However:

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13 1 AB 144.

14 1 AB 147.

(a) From 1 to 29 January 2021, the claimant worked out of Germany. This was to allow the claimant time to settle his personal affairs in Germany.

(b) From 30 January to 28 March 2021, the claimant worked out of Hong Kong. It was then decided that the claimant would relocate to Hong Kong instead of Singapore.

(c) The claimant returned to Germany to finalise some personal matters and from 29 March to 24 June 2021, he worked out of Germany.

(d) On 25 June 2021, the claimant relocated to Hong Kong and from 25 June 2021 to 5 March 2022, the claimant worked out of Hong Kong.

The defendant did not take issue with the above arrangements.

15 In August 2021, the affected entities in the HDR Group entered into a no admission/no denial settlement with the CFTC to settle the legal proceedings against the HDR Group. The affected entities in the HDR Group also entered into a no admission/no denial settlement with FinCEN.

16 In February or March 2022, Hayes, Delo and Reed entered into guilty pleas with the DOJ.

17 HDR Global's Board decided to scale back its business by implementing significant cost-cutting measures, including reducing the head count of the HDR Group worldwide. In an email dated 2 March 2022 to the claimant (among others), Hayes spoke of a new vision for the BitMEX platform and brand that involved (among other things) a restructuring, substantial reduction of costs and

changes in reporting lines.[15] The claimant voiced his unhappiness at the changes to the reporting lines and management structure and what he saw as the revocation of his role as GCEO.[16]

18 On 5 March 2022, the claimant relocated to Singapore and worked out of Singapore until 6 July 2022. Whether the claimant's relocation to Singapore was authorised was in dispute.

19 In May 2022, Hayes, Delo and Reed entered into a consent order which resolved the legal proceedings commenced by the CFTC against them. Hayes, Delo and Reed were ordered to pay a fine. They were also enjoined from being involved in day-to-day operations of the HDR Group.[17]

20 On 7 July 2022, the claimant relocated to Germany and worked out of Germany until his dismissal on 20 October 2022. Whether the claimant's relocation to Germany was authorised was also in dispute.

21 On 6 September 2022, Mr Eric Nicholas Smith ("Smith") sent an email to the Founders (the "6 September Email").[18] Smith was the Head of Human Resources of the HDR Group from 1 April 2022 to 2 January 2024.[19] In this email, Smith:

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15 1 AB 666–667.

16 1 AB 669–670.

17 NE, 4 September 2024, at 105:14–106:3.

18 3 AB 552–553.

19 Smith's AEIC, at para 1.

(a) queried whether the claimant ought to be paid housing and education allowances since he had relocated to Germany in July 2022; and

(b) set out a summary of the amounts that were contractually payable to the claimant (and two others) and pointed out that the amounts would not be payable if any of them were terminated for cause.

22 Reed replied on 6 September 2022 and Hayes replied on 7 September 2022; both of them agreed that the claimant's housing and education allowances should be terminated.[20]

23 On 12 September 2022, Smith informed Reed that the claimant did not accept the termination of his housing and education allowances and wanted to discuss with Reed.[21] On 14 September 2022, Reed told Smith that the claimant's housing and education allowances should remain because they were not explicitly predicated (in the Employment Agreement) on the claimant staying in Singapore.[22]

24 Two days later, on 16 September 2022, Reed asked Smith (a) when the claimant's request to relocate to Germany was put forward and who accepted it, (b) whether the HDR Group paid for his relocation costs, and (c) whether there were costs related to the claimant's travel between Germany and Singapore that had been charged to the defendant.[23]

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20 3 AB 552.

21 3 AB 552.

22 3 AB 551.

23 3 AB 551.

25 On 19 September 2022, Smith replied to Reed as follows:[24]

> … My understanding is that it was previously approved under [Mr Damain Ordish] earlier in the year. It was likely initiated at the time when [the claimant] and his family moved from Hong Kong to Singapore (March 5 2022). His relocation back home to Germany was July 6 2022 (from Singapore). I can confirm that there were expenses charged to the firm for the relocation back. …

Mr Damian Ordish ("Ordish") was the previous Head of Human Resources of the HDR Group; Smith took over from Ordish on 1 April 2022. Ordish left the HDR Group on 20 May 2022.[25]

26 Then followed email exchanges between Reed and Smith regarding some of the relocation expenses.[26] Smith also told Reed that it "may be possible that submitted expenses are reconciled with Payroll on a regular basis before paying salary" and that there was "an intention to review the full costs after things settled down to see what would be covered by the firm and what would be covered by [the claimant]".[27]

27 On 10 October 2022, Smith sent the claimant a summary of his reconciliation for the claimant's relocation expenses.[28] On 11 October 2022, the claimant sent an email to Reed, copied to Smith, stating (in summary) that he had addressed his decision, to relocate to Singapore and to Germany, to Wong as the then chairman of HDR Global's Board and Ordish as the then Head of

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24 3AB 551.

25 Smith's AEIC, at para 1.

26 3 AB 550–551.

27 3 AB 550.

28 3 AB 576

Human Resources, and that he had fully complied with the relocation policy of BitMEX.[29]

28 On 12 October 2022, Reed sought clarification from Wong regarding the claimant's claim that he "requested the company allow and pay for his relocation to Germany and that it was understood and confirmed by [Wong] verbally".[30] Wong replied that he "[did] not recall there was a specific request by [the claimant] to the [defendant] for approval for his relocation to Germany".[31] This was followed by a call between Reed and Wong.

29 On 13 October 2022, Reed wrote to Delo and Hayes to update them on his conversation with Wong.[32] In brief, Reed said that (a) Wong said that the claimant did not seek his approval and no approval was given, and (b) Wong agreed that since trust had been breached, the best course of action was to terminate the claimant's employment.

***The claimant's dismissal***

30 By way of letter dated 20 October 2022, the defendant terminated the claimant's employment for cause under cl 4.3 read with cl 11.2(a)(ii) of the Employment Agreement, with immediate effect (the "Termination Letter").[33]

31 The Termination Letter accused the claimant of the following:

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29 3 AB 578–579.

30 3 AB 589–590.

31 3 AB 589.

32 3 AB 588–589.

33 3 AB 596–599.

(a) relocating from Hong Kong to Germany without authorisation, in breach of cll 1.3 and 2.1(f) of the Employment Agreement;

(b) dishonestly misappropriating some US$230,000 of the HDR Group's funds to fund his personal and unauthorised relocation from Hong Kong to Germany;

(c) falsely claiming that he had approval for the relocation in order to avoid being financially responsible for the costs of his relocation;

(d) approving payment of some of his unauthorised relocation expenses;

(e) keeping his relocation to Germany from the defendant's Board, in breach of cl 2.3 of the Employment Agreement.

32 The Termination Letter warned the claimant that his actions likely amounted to aggravated criminal breach of trust and demanded payment of the sum of US$157,300 being the balance of the sums allegedly misappropriated by the claimant to fund his personal and unauthorised relocation to Germany.

33 On 19 December 2022, the claimant filed the present originating claim against the defendant.

**The parties' cases with respect to the claimant's claim**

34 In brief, the claimant's case was that his dismissal was wrongful and in bad faith. The claimant also alleged that his dismissal on 20 October 2022 was an attempt by the defendant to circumvent its contractual payment obligations. Under cl 4.3(a) of the Employment Agreement, the Second Anniversary Bonus would have been payable on 1 January 2023. Under cl 4.3(b)(i), if the claimant's

employment was terminated by the defendant before the second anniversary of his employment, the Termination Bonus would have been payable unless it was a Termination for Cause.

35 The claimant sought the following reliefs:[34]

(a) payment of the Termination Bonus (see [12(g)] above);

(b) payment of his salary for the period from 1 to 20 October 2022;

(c) payment of his housing allowance and education allowance for the period from 1–20 October 2022 (see [12(j)] above);

(d) payment of six months' salary in lieu of notice (see [12(k)] above); and

(e) payment of housing and education allowances in lieu of notice (see [12(j)] above).

36 The claimant made the following submissions in his closing submissions:

(a) Section 14 read with s 8 of the Employment Act 1968 (2020 Rev Ed) ("Employment Act") gave rise to an obligation to conduct a due inquiry before the defendant could dismiss the claimant under cl 11.2 of the Employment Agreement. The defendant breached this obligation.

(b) There was no determination by the defendant that there were grounds for Termination for Cause as required under cl 4.3(c) of the Employment Agreement (see [12(i)] above).

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[34] Claimant's Opening Statement, at paras 28–29.

(c) The defendant had no grounds to dismiss him summarily under cl 11.2 of the Employment Agreement (see [12(l)] above). In addition, the court should draw adverse inferences against the defendant for not calling certain witnesses to give evidence.

37 In its closing submissions, the defendant made the following submissions:

(a) The claimant could not rely on s 14 of the Employment Act as it was not pleaded. In any event, due inquiry had been conducted.

(b) The defendant did reasonably consider that there were grounds for Termination for Cause as defined in cl 4.3(c) of the Employment Agreement.

(c) There were valid grounds to dismiss the claimant under cl 11.2 of the Employment Agreement and no adverse inferences should be drawn against the defendant. The defendant relied on the following grounds as justification for the claimant's dismissal:[35]

(i) the claimant's unauthorised relocations to Singapore and Germany;

(ii) the claimant's unauthorised expenses arising out of the unauthorised relocations; and

(iii) the claimant's false claim that he had approval from Wong for the relocations when no approval had been obtained.

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35 Defendant's Closing Skeletal Submissions, at para 4.

38 The Termination Letter did not rely on the claimant's relocation to Singapore as a ground for his dismissal. However, in its Defence and closing submissions, the defendant relied on the claimant's relocation to Singapore as one of the grounds for his dismissal. When asked whether his position was that the move to Singapore was a ground for the claimant's dismissal, Reed was evasive in his responses but finally confirmed that it was not.[36] However, during re-examination, Reed changed his position and said that the claimant's unauthorised relocation to Singapore was also a ground for his dismissal.[37]

**Claimant's reliance on s 14 of the Employment Act**

39 Section 8 of the Employment Act states:

> **8.** Every term of a contract of service which provides a condition of service which is less favourable to an employee than any of the conditions of service prescribed by this Act is illegal and void to the extent that it is so less favourable.

40 Section 14(1) of the Employment Act states:

> **14.**—(1) An employer may after due inquiry dismiss without notice an employee employed by the employer on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of the employee's service, except that instead of dismissing an employee an employer may —
>
> (*a*) instantly down-grade the employee; or
>
> (*b*) instantly suspend the employee from work without payment of salary for a period not exceeding one week.

41 Clause 11.2 of the Employment Agreement provided that the defendant may summarily dismiss the claimant, without further notice or payment of

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[36] NE, 4 September 2024, at 54:6–55:13 and 174:2–5.

[37] NE, 4 September 2024, at 174:6–175:7.

wages in lieu, on the basis of certain prescribed grounds. Clause 11.2 did not expressly require the defendant to conduct a due inquiry first.

42 The substance of the claimant's submission was that s 14(1) read with s 8 of the Employment Act gave rise to an implied obligation on the part of the defendant to conduct a due inquiry before the defendant could summarily dismiss the claimant under cl 11.2 of the Employment Agreement. However, the claimant did not plead ss 8 or 14(1) of the Employment Act or the alleged implied obligation in his Statement of Claim. In my view, the claimant was not entitled to make this submission.

43 The claimant relied on Form 9 in the Supreme Court Practice Directions 2021 which states that points of law and legal arguments and submissions should not be pleaded in a statement of claim and submitted that it was not necessary to plead s 14 of the Employment Act. I disagreed. The claimant's submission went beyond points of law and legal arguments. It was a submission that s 14 read with s 8 of the Employment Act gave rise to an implied obligation to conduct a due enquiry under cl 11.2 of the Employment Agreement. Such an implied obligation had to be pleaded.

44 The claimant submitted that nevertheless an unpleaded point could be raised and determined where there was no irreparable prejudice caused to the other party in the trial that could not be compensated by costs or where it would be clearly unjust for the court not to do so: *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 at [20]. The claimant submitted that it was sufficient for him to plead that there was no due inquiry before he was wrongfully dismissed. I disagreed. An implied term and the circumstances giving rise to the implied term have to be pleaded.

45 Even assuming that it was sufficient for the claimant to just plead that no due inquiry had been conducted, the claimant had not pleaded that there was no due inquiry with respect to the defendant's allegations that the relocations to Singapore and Germany were unauthorised, or that the claimant had lied about having obtained approval for the relocations from Wong. The claimant merely pleaded a failure to conduct a due inquiry with respect to the allegation that the expenses claimed for the relocations were unauthorised. On the assumption that the claimant only had to plead that there was no due inquiry, the claimant would have been entitled to make the submission with respect to the alleged unauthorised expenses. However, even so, I found there was due inquiry with respect to the alleged unauthorised expenses; the claimant was asked, and indeed took up the opportunity, to explain those expenses.[38]

46 I found therefore that the claimant's case, based on an implied obligation in cl 11.2 of the Employment Agreement to conduct a due inquiry, failed.

**Whether there was Termination for Cause as defined in cl 4.3**

47 The relevant provisions of cl 4.3 stated as follows:

> 4.3 (a) Upon satisfactory completion (as shall be assessed and determined by the Board) of the first two years of employment under this Agreement, the [defendant] shall pay the [claimant] an amount equivalent to X (such amount shall be paid within 7 days …), where X [equals USD5,300,000 – (the total compensation paid to the claimant in respect of the first two years of the claimant's employment)].
>
> (b) It is further agreed that:
>
> (i) if prior to the 2nd anniversary of the Commencement Date, the [claimant's] employment is terminated by the [defendant] otherwise than by way of Termination for Cause, the [defendant] shall pay

[38] 3 AB 576, 578, 581 and 583.

> the [claimant] an amount equivalent to A, where A [equals USD5,300,000 – (the total compensation paid to the claimant up to the date of the termination)].
>
> (ii) …
>
> (c) For the purposes of this Clause 4.3, "Termination for Cause" means termination by the [defendant] in circumstances where the [defendant] reasonably considers that the [claimant] has materially failed to comply with his obligations under this Agreement.

48 Clause 11.2 of the Employment Agreement stated as follows:

> 11.2 Notwithstanding anything in this Agreement, the [defendant], without prejudice to any remedy which it may have against the [claimant] for the breach or non-performance of any of the provisions of this Agreement, may summarily dismiss the [claimant] without further notice or payment of wages in lieu:
>
> (a) if the [claimant], in relation to the [claimant's] employment:
>
> (i) wilfully disobeys a lawful and reasonable order,
>
> (ii) misconducts [himself], such conduct being inconsistent with the due and faithful discharge of the [claimant's] duties,
>
> (iii) is guilty of fraud or dishonesty, or
>
> (iv) is habitually neglectful in the [claimant's] duties, or
>
> (b) on any other ground on which the [defendant] would be entitled to terminate the [claimant's] employment without notice at common law.

49 The definition of "Termination for Cause" in cl 4.3(c) was expressly stated to be for the purposes of cl 4.3. It was thus common ground that the definition of the term "Termination for Cause" in cl 4.3(c) applied only to cl 4.3(b)(i) and had no application to summary dismissal under cl 11.2.

50 Since the defendant terminated the claimant's employment before its second anniversary, the defendant had to pay the claimant the Termination Bonus pursuant to cl 4.3(b)(i) unless it was a Termination for Cause, as defined under cl 4.3(c). I agreed with the defendant that under cl 4.3(c), it was sufficient for the defendant to show that it *reasonably considered* that the claimant had materially failed to comply with his obligations under the Employment Agreement. In other words, in deciding whether Termination for Cause was justified, the court only had to decide whether, on the evidence, the defendant's determination was reasonable.

51 In contrast, in determining whether summary dismissal under cl 11.2 was justified, the court had to decide whether, on the evidence, the grounds for summary dismissal were in fact made out. This distinction between cll 4.3 and 11.2 meant that the evidence might be sufficient to support Termination for Cause under cl 4.3(c) even though it might not be sufficient to support the grounds for summary dismissal under cl 11.2. Be that as it may, this distinction was immaterial to the present case.

52 The provision in cl 4.3 with respect to Termination for Cause was penal in nature because it could deprive the claimant of his entitlement to payment of the Termination Bonus under cl 4.3(b)(i). Therefore, in my view, it had to be construed strictly. The defendant had to first show that *it*, and not any other person, had made the determination that the claimant had materially failed to comply with his obligations under the Employment Agreement (see [47] above).

53 I agreed with the claimant that there was no determination by the *defendant* that there were grounds for Termination for Cause as defined in cl 4.3(c) of the Employment Agreement.

54 The Termination Letter was issued by the defendant and signed by Smith. However, it was undisputed that there was no decision or determination by *the defendant's Board* under cl 4.3(c). Reed admitted that *he* made the decision to terminate the claimant's employment for cause although he may have consulted Wong.[39] Any decision by Reed in this regard (regardless of whether it was reasonable) was not a decision by the *defendant* for the purposes of cl 4.3(c). Reed was not even a director of the defendant;[40] neither was Wong.

55 In his Affidavit of Evidence-in-Chief ("AEIC"), Mr Stephan Thomas Oliver Lutz ("Lutz"), a director of the defendant, stated that "[the defendant] reasonably considered that there were grounds to terminate [the claimant] for cause and issued the [Termination Letter]".[41] In my view, this statement was not true. As stated above, the decision to terminate the claimant's employment was made by Reed. In his oral testimony, Lutz claimed that based on Reed's explanation to him, he concluded that the claimant's dismissal was reasonable; however, he could not say whether he came to this conclusion before or after the Termination Letter was issued.[42] I did not find Lutz's testimony persuasive. In any event, as Lutz admitted, the defendant's Board did not meet to decide this matter.[43] In fact, Lutz did not even discuss the issue with the only other member of the defendant's Board.[44] Lutz also agreed that it was Reed who decided to issue the termination letter.[45]

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39 NE, 4 September 2024, at 22:20–23:5 and 27:10–16.

40 NE, 4 September 2024, at 28:7–9.

41 Lutz's AEIC, at para 6.

42 NE, 5 September 2024, at 12:7–13:6.

43 NE, 5 September 2024, at 13:8–10.

44 NE, 5 September 2024, at 14:17–22.

45 NE, 5 September 2024, at 13:11–13.

56 Since there was in fact no determination made by the defendant, it could not be said that there was Termination for Cause as defined in cl 4.3(c). Accordingly, the claimant was entitled to payment of the Termination Bonus pursuant to cl 4.3(b)(i) of the Employment Agreement.

57 For completeness, I should add that in any event, for reasons set out later in these grounds of decision, I found that Reed's decision was not the result of a reasonable consideration that the claimant had materially failed to comply with his obligations.

**Whether summary dismissal under cl 11.2 was justified**

58 As stated in [37(c)] above, in its closing submissions, the defendant relied on the following grounds to justify its decision to dismiss the claimant summarily under cl 11.2 of the Employment Agreement:

(a) the claimant's unauthorised relocations to Singapore and Germany;

(b) the claimant's unauthorised expenses arising out of the unauthorised relocations; and

(c) the claimant's false claim that he had approval from Wong for the relocations when no approval had been obtained.

***The claimant's relocations to Singapore and Germany***

59 The defendant's case was that the claimant's relocations to Singapore and Germany were not authorized by the defendant pursuant to cl 2.1(f) of the Employment Agreement which provided as follows:

> 2.1 The [claimant] shall at all times:
>
> …

> (f) work in any place which the [defendant] may reasonably require for the proper performance and exercise of his duties and powers, and travel on the business of the [defendant] from time to time as determined by the Board.

60 Although cl 2.1(f) referred to the defendant's Board, it was the defendant's case that approval by HDR Global's Board would also suffice.[46] I proceeded on this basis.

61 It was not disputed that there were no formal requests to the defendant's Board or HDR Global's Board for approval for the claimant's relocations to Singapore and Germany in 2022, and that there were no formal approvals given by either Board for those relocations. On the face of it, cl 2.1(f) had not been complied with.

62 However, in my view, any breaches of cl 2.1(f) with respect to the claimant's relocations to Singapore and Germany were at best technical breaches for the following reasons:

(a) I accepted the claimant's assertion that in practice it was sufficient for him to inform the Chairman of HDR Global's Board of his decision to relocate and to proceed accordingly if the Chairman raised no objections, and that he would raise the matter to the Board if so requested by the Chairman.

(b) I found that the claimant had informed Wong and Hayes (in their respective capacities as Chairman of HDR Global's Board) of his plans to relocate to Singapore and Germany and neither Wong nor Hayes raised any objections.

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[46] NE, 16 September 2024, at 29:21–30:12.

(c) I found that Reed was aware of the claimant's relocations to Singapore and Germany.

63 In my judgment, these technical breaches of cl 2.1(f) did not justify the claimant's summary dismissal under cl 11.2. I deal with each of the above reasons in greater detail below.

*The practice of informing the Chairman*

64 I accepted the claimant's assertion that in practice it was sufficient for him to inform the Chairman of HDR Global's Board of his decision to relocate and to proceed accordingly if the Chairman raised no objections, and that he would raise the matter to HDR Global's Board if so requested by the Chairman. This meant that the claimant needed to clear his relocation with HDR Global's Board only if the Chairman requested him to do so. In my view, the claimant's assertion was supported by the evidence.

65 First, the defendant's own case (that approval by *HDR Global's* Board would also suffice) showed that the defendant itself did not require strict compliance with cl 2.1(f) of the Employment Agreement.

66 Second, the defendant did not have a practice of requiring a resolution by its board of directors. It was not disputed that there was no resolution by either the defendant's Board or HDR Global's Board giving approval to the claimant to work out of Germany or Hong Kong (from 1 January 2021 to 24 June 2021), or giving approval for the claimant's relocation to Hong Kong (from 24 June 2021 to 5 March 2022) (see [14] above).

67 Reed claimed that the claimant's "travels" to Germany and Hong Kong (including the relocation to Hong Kong) were approved by the defendant's

Board after HDR Global's Board had first approved these travels.[47] However, this was a bare allegation (save with respect to the claimant's relocation to Hong Kong). There was no evidence of any form of approval, whether by board resolution or otherwise, given by either the defendant's *Board* or HDR Global's *Board* for the claimant to work out of Germany (from 1–29 January 2021 and from 29 March 2021 to 24 June 2021) or Hong Kong (from 30 January 2021 to 28 March 2021). The claimant's relocation to Hong Kong (from 25 June 2021 to 5 March 2022) is dealt with below (at [71]).

68 Third, the manner in which the claimant's relocation to Hong Kong in June 2021 took place supported the claimant's case. On 8 March 2021, the claimant sent an email to inform the Founders that he had "decided to be located in Hong Kong for the time being" and set out his reasons for his decision.[48] Hayes did not raise any objections, Reed said he agreed with the claimant's reasoning, and Wong confirmed that he had no issue with the claimant relocating to Hong Kong.[49] The claimant explained that he sent the email to the Founders after he informed Wong (as Chairman of HDR Global's Board) of his decision to relocate to Hong Kong and Wong told him to send an email to the Founders to explain his decision.[50] The claimant's testimony was not challenged. I also noted that the contents of the 8 March 2021 email were focused on explaining the claimant's reasons for his decision to relocate to Hong Kong. This was consistent with the claimant's evidence.

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47 Reed's AEIC, at para 28.

48 1 AB 252–253.

49 1 AB 252.

50 NE, 29 August 2024, at 38:17–21.

69 The defendant tried to characterise the claimant's email of 8 March 2021 as a "formal request" to HDR Global's Board to relocate to Hong Kong.[51] However, the claimant's email of 8 March 2021 had to be seen in the context of the claimant's unchallenged evidence that he had spoken to Wong and that he sent the email to the Founders because Wong asked him to. The email was not evidence of any requirement or practice to formally seek approval from HDR Global's Board.

70 On 22 June 2021, the defendant wrote to the claimant to "formally confirm that the [defendant had] agreed to continue [the claimant's] secondment to Shine Effort Inc Limited".[52] As mentioned earlier, Shine Effort was the HDR Group's company in Hong Kong. In his AEIC, Reed claimed that on 22 June 2021, the "Boards of HDR Global and [the defendant] approved" the claimant's request to relocate to Hong Kong, and that the defendant issued the 22 June 2021 letter "to inform [the claimant] that his request … was approved".[53]

71 In my view, Reed's claim, that approval was given on 22 June 2021, was not true.

(a) The 22 June 2021 letter itself stated that the defendant was writing to "*formally confirm*" [emphasis added] its agreement to the claimant's relocation, thus acknowledging that agreement had been reached previously.

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51 Defence and Counterclaim (Amendment No 1), at para 12(c) and Reed's AEIC, at para 33.

52 1 AB 278.

53 Reed's AEIC, at paras 35 and 37.

(b) The claimant's unchallenged evidence was that he had returned to Germany on 29 March 2021 to finalise some personal matters prior to his official relocation to Hong Kong with his family.[54] The claimant's evidence was consistent with the fact that his relocation to Hong Kong had been decided and confirmed in March 2021.

(c) It was also the defendant's position, when cross-examining the claimant, that the claimant returned to Germany to make arrangements *after* his relocation to Hong Kong had been confirmed.[55]

(d) It was unbelievable that approval for the relocation would have been given just three days before the relocation took place. The fact that the letter was issued only on 22 June 2021 was more consistent with the fact that it was issued only for the claimant's employment pass and other administrative purposes in Hong Kong (as discussed below).

72 The claimant explained that the issuance of the letter was a "formalistic act"; it was issued for purposes of his work permit in Hong Kong.[56] Reed agreed that a reason for the letter was that it was required for purposes of the claimant's employment pass and other administrative purposes in Hong Kong.[57]

73 I found that the letter was issued for the purposes of the claimant's employment pass and other administrative matters in Hong Kong and was not issued as approval for the claimant's relocation to Hong Kong.

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54 Claimant's AEIC, at para 27.

55 NE, 29 August 2024, at 47:18–21.

56 NE, 29 August 2024, at 42:10–15 and 43:22–44:4.

57 NE, 4 September 2024, at 51:18–21.

74 Fourth, the claimant's assertion that he needed only to speak to the Chairman of HDR Global's Board was also supported by Reed's evidence. Reed testified as follows:[58]

> (a) There was no resolution by either the defendant's Board or HDR Global's Board to dismiss the claimant, and such a resolution was not required.
>
> (b) He (Reed) made the decision, as the Chairman of HDR Global's Board, to dismiss the claimant and he had the authority to do so without needing a resolution by HDR Global's Board.
>
> (c) The role of the Chairman of HDR Global's Board had not changed from when Wong was the Chairman.

75 Reed's evidence showed that the defendant had a practice of letting the Chairman of HDR Global's Board make decisions by himself, at least on matters concerning the GCEO. If Reed, as the Chairman of HDR Global's Board, could make the decision to dismiss the claimant, surely Wong, as the then Chairman, had the authority to make decisions regarding the claimant's relocations.

76 Fifth, in his email to Reed dated 11 October 2022, Smith said that he reviewed the claimant's expenses on the basis "that the relocation was approved by [Wong]/[Ordish] earlier in the year".[59] This showed that Smith's own understanding was that approval by the Chairman of HDR Global's Board was

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58 NE, 4 September 2024, at 26:15–27:21 and 28:25–29:7.

59 3 AB 585.

sufficient. In his reply dated 12 October 2022, Reed did not object or point out that approval by HDR Global's Board was required.[60]

*The claimant did inform the Chairman of his relocations and there were no objections*

77 Wong was the Chairman before Hayes took over as Chairman. Reed testified that Hayes was the Chairman of HDR Global's Board from "approximately" February to March 2022;[61] there was no evidence as to the exact dates.

78 In relation to his relocation to Singapore, the claimant testified that:

(a) From December 2021 to February 2022, he raised it to Wong during weekly meetings and in person in Hong Kong, and that Wong did not raise any issues or object to the same.[62]

(b) From December 2021 to January 2022, Wong consistently asked him about his relocation to Singapore. Wong similarly did not take any issue with or object to his relocation.[63]

79 On 1 March 2022, the claimant informed Hayes (who was then based in Singapore) that he and his family were going to Singapore and that they would most likely stay until the end of June; Hayes' reply was "Nice".[64] Reed agreed that Hayes did not raise any objections.[65] As stated in [77] above, Reed testified

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60 3 AB 585.

61 NE, 4 September 2024, at 29:1–4.

62 Claimant's AEIC, at para 29.

63 Claimant's AEIC, at para 31.5.1.

64 1 AB 505, at [22-03-01 04:36:16–04:36:41].

65 NE, 4 September 2024, at 73:5–14.

that Hayes was the Chairman from "approximately" February to March 2022. I found that on 1 March 2022, Hayes was probably the Chairman of HDR Global.

80 In relation to his relocation to Germany, the claimant testified that:

(a) From December 2021 to January 2022, he had discussed with Wong the potential adoption of a "dual headquarters concept" involving Germany or Switzerland, and Singapore, which would position him in Europe. Wong "did not take any issue with or object to [the claimant's] … plans to relocate" for this purpose.[66]

(b) In March 2022, he discussed his relocation to Germany with Hayes in the Singapore office and Hayes did not take any issue with his relocations to Singapore or Germany.[67]

81 In an email dated 11 October 2022, the claimant also told Reed that he "decided to relocate back to Germany early 2022 for now" and that he had "addressed [his] decision to … Wong as chairman of the board".[68] This corroborated the claimant's evidence.

82 In the same email, the claimant highlighted that Hayes had previously informed him that he (Hayes) did not place any importance on where the executive team worked from.[69] This supported the claimant's case that Hayes had no objections to his relocations.

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66 Claimant's AEIC, at para 31.5.1.

67 Claimant's AEIC at para 31.5.2.

68 3 AB 578–579.

69 3 AB 578–579.

83 During cross-examination of the claimant, the defendant did not challenge the claimant's evidence that he followed the process of informing Wong or Hayes about his relocations; instead, the defendant's focus was on whether the claimant discussed his relocations with HDR Global's Board.[70]

84 The defendant relied on the following:

(a) Wong's email to Reed stating that he "[did] not recall there was a specific request by [the claimant] to the [defendant] for approval for his relocation to Germany"[71] (see [28] above).

(b) Reed's subsequent conversation with Wong during which Wong purportedly told Reed that the claimant did not seek his approval (see [29] above).

(c) On 26 October 2022, Wong sent a WhatsApp message to the claimant saying that he did not "recall a specific request for approval for [the claimant's] relocation to Germany".[72] This was in response to a request from the claimant for Wong's confirmation that he (the claimant) had informed Wong about his relocation.[73]

85 The above evidence merely showed that Wong said that there was no *specific request for approval*. However, it was not the claimant's case that he needed to specifically ask for approval. The claimant's case was that he only had to inform the Chairman of HDR Global's Board, and he could proceed if

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70 NE, 29 August 2024, at 67:5–8 and 147:3–23.

71 3 AB 589.

72 3 AB 639.

73 3 AB 640.

the Chairman did not raise any objections or ask him to raise the matter to HDR Global's Board.

86 I noted that Reed did not ask Wong whether the claimant did speak to Wong about his relocation even though on 11 October 2022 (before Reed's conversation with Wong), the claimant had told Reed that he (the claimant) had "addressed his decision to [Wong] as chairman of the board".[74]

87 I also noted that in response to Wong's message that he did not recall a specific request for approval (see [84(c)] above), the claimant said he did not request an approval but that he informed Wong about his relocation; the claimant also emphasised that he just wanted to confirm that he had informed Wong about his relocation.[75] I found it significant that Wong's reply was simply "I have nothing more to add";[76] Wong did not deny that the claimant had informed him about the claimant's relocation.

88 Wong did not give evidence at the trial. Apparently, he did not wish to be a witness because he was no longer part of HDR Group.[77]

89 The defendant did not call Hayes as a witness. Reed confirmed that Hayes was still on HDR Global's Board although he had no operational role.[78] Reed confirmed that he (Reed) was the person managing the litigation on behalf of the defendant in this case. Reed initially claimed that he did not know why

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74 3 AB 578.

75 3 AB 640.

76 3 AB 640.

77 3 AB 712.

78 NE, 4 September 2024, at 29:8–14.

Hayes was not called as a witness but subsequently changed his evidence to say that it was decided that Hayes was not required as a witness.[79]

90 In my view, it was clear that Hayes was a relevant witness. He was involved in various assertions made by the claimant including, in particular, those with respect to the claimant's relocations to Singapore and Germany. In my view, as the defendant had not given any good reason for not calling Hayes as a witness, it was appropriate to draw an adverse inference against the defendant. I therefore drew the inference that Hayes' evidence would have supported the claimant's case that the claimant only had to speak to the Chairman of HDR Global's Board about his intended relocations, that Hayes was informed about his relocations to Singapore and Germany and had raised no objections, and that Hayes placed no importance on where the executive team worked from.

91 I found that the claimant had informed Wong and Hayes (in their respective capacities as Chairman of HDR Global's Board) of his plans to relocate to Singapore and Germany and that neither Wong nor Hayes raised any objections.

*Reed was aware of the relocations*

92 I found that it was more probable than not that Reed was aware that the claimant had relocated to Singapore and Germany, at least soon after each relocation. The objections raised by Reed which ultimately led to the present dispute were belated and, in my view, an attempt to manufacture grounds for termination for cause (see [126] below).

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[79] NE, 4 September 2024, at 180:5–20.

93 First, in his AEIC, Reed said: "… we were aware that [the claimant] had returned to Germany but we assumed that [the claimant] (being a senior executive) would not do something as bold as relocating without approval and at [the defendant's] expense".[80] The defendant's counsel reiterated this.[81] In his oral testimony, Reed confirmed that he knew the claimant had returned to Germany some time at the end of August 2022.[82]

94 I found Reed's evidence to be unbelievable. How could Reed not have known that the claimant had relocated to Germany if he knew that the claimant had *returned* to Germany?

95 Second, Reed testified that he did not know whether he knew that the claimant was in Singapore from March to June 2022.[83] I did not believe Reed. If he had thought that the claimant was still based in Hong Kong during that period, it should not have been difficult for Reed to say so. Further, there was objective evidence which showed that Reed knew that the intended to be in Singapore at the end of April.[84] In my view, Reed was evading answering the question as to his knowledge.

96 Third, the claimant did not try to hide the fact that he had relocated to Singapore and Germany. He had discussed his relocations with Ordish and Smith in their respective capacities as HDR Global's Head of Human Resource.

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80 Reed's AEIC, at para 52. See also para 98.

81 NE, 3 September 2024, at 25:25–26:3.

82 NE, 4 September 2024, at 112:11–19.

83 NE, 4 September 2024, at 73:24–74:5.

84 1 AB 553; NE, 4 September 2024, at 76:12–23.

Smith admitted that he was aware of the claimant's relocation to Singapore on 5 March 2022 and to Germany on 7 July 2022.[85]

97 Fourth, although employed by the defendant, the claimant was the GCEO for the HDR Group and reported to HDR Global's Board. In my view, it was improbable that Reed would not have known where the GCEO was based, especially after Reed took over as Chairman of HDR Global's Board sometime in March 2022. Reed did not voice any objections until much later, shortly before terminating the claimant's employment.

***Alleged unauthorised expenses***

98 The defendant alleged that the claimant had made unauthorised claims for his own expenses in connection with his relocations to Singapore and Germany. As stated earlier, any breaches of cl 2.1(f) of the Employment Agreement in connection with the relocations were technical and insufficient to justify dismissal under cl 11.2. Thus, to the extent that the defendant claimed that these expenses were unauthorised because the relocations to Singapore and Germany were unauthorised, this did not justify summary dismissal under cl 11.2 of the Employment Agreement.

99 The defendant also disputed the claimant's entitlement to claim the expenses. The defendant argued that in claiming the expenses, the claimant breached his duties under cll 2.1(b) and 2.1(c) of the Employment Agreement. In brief, cl 2.1(b) dealt with the claimant's duty to protect the interests of the defendant and cl 2.1(e) dealt with the claimant's duty to comply with the

[85] Smith's AEIC, at para 12.

defendant's rules, regulations, policies and procedures (see [12(b)] and [12(c)] above).[86]

100 The claimant's case was that although some of his personal expenses relating to his relocations were charged to the defendant, the expenses paid by the defendant would be reviewed at the end of each month and his personal expenses would be paid by him by way of deduction from his salary. In my view, the claimant had proved his case.

101 First, the claimant's then Executive Assistant, Ms Cristal Nora Marissa ("Marissa") corroborated the claimant's case.[87] Marissa also testified that the discussions pertaining to the claimant's hotel and serviced apartment expenses in Singapore involved Ms Pamela Lam ("Lam").[88] Lam was from the finance department; she processed payroll and reported to Mr Dickman Chiu ("Chiu") who was the Financial Controller and who in turn reported to Lutz.[89]

102 During cross-examination, Marissa was referred to certain personal expenses (including the hotel and serviced apartment expenses in question) that ought to have been, but were not, deducted from the claimant's salary.[90] Marissa testified that she had submitted the list of personal expenses to the Finance Department every month to make the necessary deductions from the claimant's salary and that she did not know why the deductions were not made.[91] Strangely,

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86 1 AB 141.

87 Marissa's AEIC, at paras 8–10.

88 Marissa's AEIC, at para 9.2.

89 NE, 3 September 2024, at 28:8–19.

90 NE, 30 August 2024, at 105:11–23.

91 NE, 30 August 2024, at 106:20–107:1 and 115:19–116:11.

when performing a reconciliation exercise, Smith saw that the deductions had not been made, yet he did not ask Lam why she did not make the deductions.[92]

103 It was clear that Lam was the appropriate person to explain why the deductions were not made. However, the defendant did not call Lam to give evidence. Lam was still in HDR Global's employment.[93] Lam could also have given evidence as to the process that was involved. Reed's explanation for not calling Lam as a witness was that it was decided that she was not required as a witness.[94] In my view, the defendant had not given any good reason for not calling Lam to give evidence. I drew the inference that Lam's evidence would have (a) shown that the omission to make the deductions from the claimant's salary had nothing to do with the claimant, and (b) supported the claimant's case as to the process that was in place.

104 Second, the claimant's expenses were transparent and whether an expense was to be borne by the defendant was subject to acceptance by the Finance Department. Marissa testified that the final decision as to whether an expense was a personal expense (to be borne by the claimant) or a business expense (to be borne by the defendant) would always be made by Chiu.[95] Marissa's testimony was not challenged. In her oral testimony, Marissa confirmed that the decision as to whether an expense was a personal expense or a business expense was made by Chiu.[96] Chiu did not give evidence.

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92 NE, 3 September 2024, at 112:9–25.

93 NE, 3 September 2024, at 91:14–18.

94 NE, 4th September 2024, at 180:21 – 23.

95 Marissa's AEIC, at para 13.1.

96 NE, 30 August 2024, at 100:7–101:1 and 101:19–102:5.

105 Third, I agreed with the claimant that the evidence showed that the defendant had a practice of paying first for the claimant's personal expenses and subsequently recovering the same by deductions from the claimant's salary.

106 In April 2021, the defendant paid first for the claimant's personal expenses relating to his relocation to Hong Kong and subsequently deducted the same from the claimant's salary.[97] Smith suggested that the reason may have been that the claimant had not yet set up his bank account in Hong Kong; however, as Smith conceded, this was speculation on his part.[98] As it turned out, Smith's speculation was not well-founded.

107 The evidence showed that defendant again paid first for the claimant's personal expenses from February to April 2022 and deducted the same from the claimant's salary.[99]

108 In my view, the mere fact that the defendant had paid some of the claimant's personal expenses (relating to his relocations to Singapore and Germany) did not justify summary dismissal under cl 11.2 of the Employment Agreement. There was a process in place pursuant to which personal expenses were deducted from the claimant's salary and in the event of dispute, it was Chiu who decided whether the deductions should be made. Further, the mere fact that the claimant disputed whether certain expenses were personal or business expenses also did not justify summary dismissal under cl 11.2.

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97 1 AB 259.

98 NE, 3 September 2024, at 73:7–74:4.

99 1 AB 647, 711 and 755–756.

***Whether the claimant lied about having obtained approval from Wong***

109 The defendant alleged that the claimant had lied about obtaining approval from Wong for the relocations, the defendant relied on a message on 12 October 2022 in which the claimant said to Reed that "[he] discussed [the relocations] several times with [Wong] and [Ordish] and [he] got their approval from the discussions".[100] The defendant argued that this was contradicted by Wong's statements to Reed and the claimant that the claimant did not make any specific request for approval (see [84] above).

110 In my view, the conversation between the claimant and Reed had to be read as a whole and in context. The relevant exchanges between the claimant and Reed were as follows:[101]

| | |
|---|---|
| Reed: | … Do you you [*sic*] have any written approvals from [Ordish]/[Wong] you can send by |
| Claimant: | I will have to look but as said I discussed several times with [Wong] and [Ordish] and I got their approval from the discussions. |
| Reed: | Sure, but it needs to be in writing, especially if you are going to claim that a voluntary move was firm-initiated |
| Claimant: | There is no guideline that requires me to get a [*sic*] up front approval. I informed the Chairman of the Board. |
| Sam: | I don't agree with that. You certainly require up-front approval if you are going to ask the company to pay for it |

111 The claimant explained that when he said that he had "their approval from the discussions" he was referring to the practice of discussing it with the Chairman of HDR Global's Board and that he meant he had discussed the matter

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100 1 AB 568 (2022-10-12 13:07:23 UTC).

101 1 AB 568 (2022-10-12 13:01:36 UTC) to (2022-10-12 13:10:03 UTC).

with Wong and Wong did not raise any objections.[102] I accepted the claimant's explanation. I found his explanation to be consistent with what he said to Reed, *ie*, that he had "their approval *from the discussions*" [emphasis added]. The claimant's very next message also clarified that he "informed the Chairman of the Board". The claimant did not say that Wong had given his approval explicitly. Based on the practice relied upon by the claimant, which I found existed then, if Wong did not raise any objections after the claimant's discussions with Wong, that was tantamount to approval and the claimant could proceed (see [64]–[76] above).

112 In my judgment, the claimant did not lie to Reed.

**The defendant attempted to circumvent its obligation under cl 4.3**

113 The claimant's employment was terminated on 20 October 2022 "for cause under Clause 4.3 read with Clause 11.2(a)(ii) of the Employment Agreement".[103] Had he remained employed until 1 January 2023, the claimant would have been entitled to the Second Anniversary Bonus. If the defendant terminated his employment before 1 January 2023, he would have been entitled to the Termination Bonus, unless it was a Termination for Cause as defined in cl 4.3(c).

114 I agreed with the claimant that Reed decided to summarily dismiss the claimant in order to avoid its contractual payment obligations. In my view, the evidence supported such an inference.

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102 NE, 29 August 2024, at 190:15–191:25.

103 3 AB 598 (at para 8).

115 First, it was undisputed that HDR Global and the defendant had started cost-cutting exercises from around March 2022. During cross-examination, Smith confirmed, twice, that there were emails between the Founders and Mr Peter Wilkinson ("Wilkinson"), HDR Global's Head of Legal, discussing how the HDR Group could avoid paying the claimant the Second Anniversary Bonus under cl 4.3(a), although he denied that he told the claimant about it.[104]

116 During re-examination, Smith changed his evidence and claimed that there were no active discussions to avoid paying the bonus and that any discussions were just to review the contract.[105] Smith explained that when he confirmed that there were emails between the Founders and Wilkinson on how to avoid paying the claimant his bonus under cl 4.3, he had in mind the 6 September Email (see [21] above).[106] Smith claimed that he was confused by, and misunderstood, the question that he was asked during cross-examination.[107]

117 I did not believe Smith's new assertion during his re-examination. I also did not believe his claim that he had misunderstood the question during cross-examination. In his AEIC, Smith had described as "entirely false" the claimant's allegation that Smith told the claimant about active discussions between the Founders and Wilkinson about how the HDR Group could avoid paying the claimant his bonus under cl 4.3 of the Employment Agreement.[108]

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104 NE, 3 September 2024, at 56:24–58:1 and 58:8–14.

105 NE, 3 September 2024, at 184:6–186:6.

106 NE, 4 September 2024, at 2:2–3:13.

107 NE, 4 September 2024, at 3:17–4:1 and 4:15–18.

108 Smith's AEIC, at para 22.

118 During cross-examination, Smith was asked whether he was saying that there were no discussions about how to avoid paying the claimant under cl 4.3.[109] Smith confirmed, twice, that it was true that there were discussions between the Founders and Wilkinson by way of emails, but it was not true that he told the claimant about it.[110] Smith's evidence was clear.

119 In my view, Smith's claim that he had in mind the 6 September Email (which he sent to the Founders) cannot be believed. He could not have been confused between (a) emails between the Founders and Wilkinson, and (b) his own email to the Founders. Smith could not give any credible explanation as to how his alleged confusion arose. I found that Smiths' evidence during cross-examination (that there were emails between the Founders and Wilkinson discussing how to avoid paying the bonus under cl 4.3 to the claimant) was more likely to be the truth.

120 Second, in the 6 September Email, Smith set out the amounts that the HDR Group was contractually bound to pay to the claimant and two other employees.[111] Smith also highlighted the fact that the amounts stated would not be payable if the three employees were terminated for cause; the words "terminated for cause" were in bold font.

121 Smith explained that he was reviewing the Employment Agreement and highlighting key terms, and that the bold font for the words "terminated for cause" was simply a highlight and a reminder.[112] I did not believe Smith's

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109 NE, 3 September 2024, at 57:7–10.

110 NE, 3 September 2024, at 57:21–58:4.

111 3 AB 552–553.

112 NE, 3 September 2024, at 51:17–25.

explanation. Smith was not merely highlighting key terms. Smith admitted that the 6 September Email showed what the defendant had to pay the claimant if he was terminated on notice.[113]

122 The 6 September Email showed what the defendant had to pay in a case of termination on notice and specifically pointed out that the amounts would not be payable if the claimant was terminated for cause. In my view, the intention was to tell the Founders that terminating the claimant for cause was a way to avoid having to pay the amounts set out. This showed that the Founders were not only considering terminating the claimant's employment, they were also looking at ways in which they could avoid the contractual payment obligations. Why else would Smith have referred to termination for cause when he was *not* saying that grounds for termination for cause existed?

123 In an attempt to play down the purpose of the 6 September Email, Smith lied about why he sent the email to the Founders. Smith started the 6 September Email to the Founders by saying that he had reviewed outstanding compensation commitments in the executive contracts.[114] In his oral evidence, Smith claimed that he carried out the review on his own initiative.[115] Smith also denied that his 6 September Email was in response to a request by a member of HDR Global's Board to review executive compensation.[116] Smith's evidence was shown to be false. Reed confirmed that he had discussed termination on notice with Smith

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113 NE, 3 September 2024, at 49:24–50:25.

114 3 AB 552.

115 NE, 3 September 2024, at 36:16–23.

116 NE, 3 September 2024, at 43:14–19.

and he asked Smith for the information that was set out in the 6 September Email.[117]

124 Reed denied that he had discussed termination for cause with Smith. However, his denial was contradicted by the fact that Smith had made it a point to highlight (in the 6 September Email) what the position would be if termination was for cause. Even if Reed had not discussed termination for cause specifically, the 6 September Email showed that his discussions with Smith involved looking into how to avoid the contractual payment obligations.

125 The fact that termination for cause was being considered was also supported by Smith's own evidence that he had discussed with Wilkinson regarding the potential litigation risks that may arise in the event of the claimant's termination.[118] In my view, there was no reason for them to discuss potential litigation risks if they were not considering termination for cause. There would have been no potential risks of serious concern in terminating the claimant's employment with notice since that would have meant that the claimant would have been entitled to payment of a substantial amount under cl 4.3 of the Employment Agreement. The claimant himself had told Reed in February 2022: "you want me off … no prob [*sic*] just be fair pay me off and I'll be gone …".[119] On the other hand, terminating the claimant with cause would give rise to significant litigation risks since it would deprive the claimant of his entitlement under cl 4.3.

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117 NE, 4 September 2024, at 181:13–182:9.

118 Smith's AEIC, at para 23.

119 1 AB 543, at [2022-02-24 13:32:04 UTC].

126 Third, as discussed earlier, Reed had to have known of the claimant's relocation to Germany much earlier. However, Reed started questioning about approval for the claimant's relocation to Germany and about the claimant's relocation/travel costs only on 16 September 2022, *ie*, after receiving the 6 September Email.[120] I drew the inference that Reed was looking for grounds on which he could terminate the claimant's employment for cause.

**Damages awarded to the claimant**

127 As the claimant's summary dismissal on 20 October 2022 was wrongful, the termination of his employment was to be treated as a termination on 20 October 2022, with payment of six months' salary in lieu of notice as provided for under cl 11.1 of the Employment Agreement (see [12(k)] above).

128 The claimant was entitled to:

(a) his unpaid salary, housing allowance and education allowance for the period from 1–20 October 2022; and

(b) payment of six months' salary in lieu of notice.

129 In my view, the defendant was also liable to pay the claimant his housing and education allowances for the six-month notice period. It was not disputed that these allowances were payable under the Employment Agreement. Under cll 4.4 and 4.5, the housing allowance and education allowance were payable together with the base salary.[121]

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120 3 AB 551.

121 1 AB 144.

130 As the termination took place before the second anniversary of the claimant's employment, the Termination Bonus under cl 4.3(b)(i) was also payable. Under cl 4.3(b)(i), the Termination Bonus was an amount equal to US$5,300,000 less "the total base salary (inclusive of any payment of wages in lieu of notice payable under Clause 11.2) and any Bonus and Profit Sharing Amount paid to the Executive up to the date of termination".[122]

131 In the present case, the six-month notice period would have expired in April 2023, *ie*, after the second anniversary of the claimant's employment (1 January 2023). The issue before me was whether the phrase "wages in lieu of notice" in the computation of the Termination Bonus under cl 4.3(b)(i) meant wages *up to* the second anniversary of the claimant's employment or wages for the full six-month notice period.

132 In my view, the phrase "wages in lieu of notice" meant the wages for the full six-month notice period. Clause 4.3(b)(i) referred to the amount paid to the claimant up to the date of termination. It was clear that this would include the wages in lieu of the full six-month notice period.

133 On 23 September 2024, I awarded the claimant damages in the total amount of US$2,555,752.69 as computed by the claimant.

134 By way of letter dated 30 September 2024, counsel for the defendant informed me that, by consent of the parties, the amount of damages should be reduced to US$2,464,354.84. The reason was that the claimant's salary, housing allowance and education allowance for the period from 1–20 October 2022 had already been taken into account (by way of set off) in the computation of the

[122] 1 AB 143.

damages that the claimant had agreed to pay in respect of the defendant's counterclaim. The defendant's counterclaim is dealt with below. As the judgment had not yet been extracted, I amended the amount of damages awarded to the claimant to US$2,464,354.84.

**The defendant's counterclaim**

135 The defendant counterclaimed against the claimant for the following:

(a) repayment of the sum of US$107,442.69, being the balance amount of allegedly unauthorised relocation expenses paid by the defendant to the claimant after setting off against housing and education allowances and wages due to the claimant up to the date of his dismissal; and

(b) repayment of the sum of 50,000 Swiss Francs owing by the claimant to the defendant pursuant to a loan agreement between them.

136 During the trial, the parties reached agreement on the defendant's counterclaim, with the claimant agreeing to pay the defendant the sum of US$85,795.95.

**Conclusion**

137 For the reasons set out above, I entered judgment for the claimant for the sum of US$2,464,354.84 with interest at 5.33% from the date of the Originating Claim until judgment.

138 With respect to the counterclaim, I entered a consent judgment for the defendant for the sum of US$85,795.95 with interest at 5.33% from the date of the counterclaim until judgment.

139 I ordered defendant to pay costs to the claimant on his claim in the sum of $150,000 plus disbursements to be fixed by me if not agreed.

140 I ordered the claimant to pay costs to the defendant on its counterclaim in the sum of $10,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge of the High Court

Suresh Divyanathan, Leong Yu Chong Aaron and Sarah Khan Shu Hui (Oon & Bazul LLP) for the claimant;
Tan Tse Hsien, Bryan (Chen Shixian), Alex Chia Yao Wei and Joshua Goh Zemin (PK Wong & Nair LLC) for the defendant.