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NG SEO LING

v.

CARDAS RESEARCH & CONSULTING GROUP

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INDUSTRIAL COURT, KUALA LUMPUR
UMI KALTHUM ABDUL MAJID
AWARD NO. 1053 OF 2008 [CASE NO: 1/4-2343/2006]
16 JUNE 2008

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DISMISSAL: Fixed term contract - Whether claimant's contract was a genuine fixed term contract - Claimant not signing Second Contract until 5 months later - Reasons for the delay - Intention of parties - Effect of - Whether dismissal without just cause or excuse - Industrial Relations Act 1967, s. 20(3)

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DISMISSAL: Fixed term contract - Whether claimant had signed under duress - Conduct of claimant - Claimant failing to object or raise protest - Effect of - Claimant believing that her employment was permanent - Whether her belief had been reasonable - Effect of - Whether dismissal without just cause and excuse - Industrial Relations Act 1967, s. 20(3) & Contracts Act 1950, s. 15 & Evidence Act 1950, ss. 102 and 103

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The claimant had been employed by the respondent as an Assistant Research Director under a contract dated 4 May 2005 ('First Contract') for a period of 8 months until the end of December 2005. After the First Contract had come to an end, the parties entered into a second contract dated 31 December 2005 ('Second Contract') but it was only signed by the claimant on 15 May 2006. The claimant's services with the respondent were terminated on 31 May 2006 but there was a disagreement as to whether the termination had come about as a result of a dismissal or by reason of the fixed-term contract having come to an end. There were 2 main issues that arose for determination before this court. First was whether the Second Contract had been a genuine fixed term contract and second was whether the claimant had been dismissed under the Second Contract.

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Held for the company: The claimant's fixed term contract had come to an end and hence there had not been a dismissal

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(1) On the issue of whether the Second Contract had been a genuine fixed term contract, the court had been inclined to believe the respondent's version of facts for the following reasons. Firstly, the terms and conditions of the First Contract between the parties had not been disputed. The increase in the claimant's salary had been explained as being due to the increase in the hours of work put in by her. The claimant's testimony in turn had supported this. Second, the court accepted COW1's explanation as to why the

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Second Contract had only been signed in May 2006 ie. due to the fact that the claimant had been unable to commit to specific working hours with the respondent as she had had prior teaching commitments with Sunway College, which had only come to an end at the end of May 2006. Third the claimant's contention that the respondent by increasing her salary under the Second Contract had intimated an intention to employ her as a permanent staff could not be accepted. The increase in salary had been explained earlier as being due to the increase in the number of her working hours. It had been most unreasonable for the claimant to have concluded that in view of the increase in her salary and the fact that the Second Contract had not been signed, she had had a legitimate expectation that the respondent had wanted to employ her on a permanent basis. Fourth, the facts of the instant case were not even close to the facts in the *Dr. Chandra Muzaffar's* case to enable the claimant to invoke the principle of "legitimate expectation". Fifth there had not been any evidence adduced by the claimant to show that the respondent had in any way promised her a permanent post. Further the claimant could not by her delay in giving the necessary information required by the respondent on her commitment to the number of hours and days she was able to work with them which in turn had culminated in the respondent facing a delay in drawing up the Second Contract, plead that the delay between the date of the First Contract and the Second Contract had shown an intention on the part of the respondent in employing her permanently. Sixth the claimant's contention that she had signed the Second Contract under economic duress/undue influence because of the purported promise made by COW1 had sounded hollow in view of her admission that the payment of a month's salary had purportedly been an advance payment *in lieu* of 'future work' to be given to her by the respondent. From all the above, it followed that the claimant had also failed to prove unfair labour practise and that she had voluntarily signed the Second Contract. The claimant had been a highly qualified person with a Masters in Business Administration and she had been a lecturer in Sunway and Olimpia Colleges as well as a researcher for the respondent. She had thus been highly marketable. By her own admission she had read the Second Contract before signing it and had not raised any protest or objected to it which had clearly shown that she had known what she had been entering into and had voluntarily committed herself to the Second Contract. This voluntariness had been further supported by the fact that she had felt free to email COW1 asking him for a testimonial (paras 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10).

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- A (2) In view of the fact that the Second Contract had been a fixed term contract that had expired on 31 May 2006, it followed that the claimant had not been dismissed by the respondent and her claim for unfair dismissal could not stand. The claimant's claim was therefore dismissed (para 14).
- B Award(s) referred to:
Bandar Penggaram Associates Chinese Schools, Johor v. Gan Chin Piaw & Anor [1997] 1 ILR 906 (Award No. 172 of 1997)
Han Chiang High School Penang Han Chiang Associated Chinese Schools Association v. National Union of Teachers in Independent Schools, West M'sia [1988] 2 ILR 611 (Award No. 306 of 1988)
- C Case(s) referred to:
Dr Chandra Muzaffar v. Universiti Malaya [2002] 2 CLJ 448
M Vasagam Muthusamy v. Kesatuan Pekerja-Pekerja Resorts World, Pahang & Anor [2005] 4 CLJ 93
- D *OCBC Securities (Melaka) Sdn Bhd (formerly known as Syarikat Tan, Chow & Loh Securities Sdn Bhd) v. Koh Kee Huat* [2003] 1 LNS 563
Perlis Plantations Bhd v. Mohammad Abdullah Ang & Another Case [1988] 1 CLJ 670; [1988] 2 CLJ (Rep) 134
Teck Guan Trading Sdn Bhd v. Hydrotek Engineering (S) Sdn Bhd & 2 Ors [1996] 1 BLJ 163
- E *Webster v. Auckland Harbour Board* [1983] 142 CR 646
- Legislation referred to:
Contracts Act 1950, s. 15
Evidence Act 1950, ss. 102, 103
Industrial Relations Act 1967, s. 20(3)
- F For the claimant - *S Devi; M/s P Kuppusamy & Co*
For the respondent - *Royhai'zam Basri (Tan Kim Soon); M/s Tan Kim Soon & Co*
Reported by Sharmini Pillai

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AWARD
(NO. 1053 of 2008)

Umi Kalthum Abdul Majid:

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[1] This is a reference under s. 20(3) of the Act arising out of the dismissal of the claimant by the respondent.

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[2] The court fixed 23 November 2006, 23 January 2007 and 9 March 2007 for mention to enable parties to file in their respective pleadings, bundles of documents and witness statements. The court tried the matter for one day and allowed the parties time to file in their respective submissions.

[3] Each party called one witness to testify at the trial. The respondent called Chong Chin Meng (COW1) and the claimant (CLW1) testified on her own behalf.

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Agreed Facts

[4] The claimant was employed as Assistant Research Director under a contract ("First Contract") dated 4 May 2005 (see COB1, pp. 1-3) for a period of 8 months beginning from May 2005 and ending on 31 December 2005 (see cl. 2). Claimant commenced her employment on 4 May 2005. Her monthly basic salary was RM1,500. The claimant was required to work for a total of 24 hours on a 3-day week basis. She was allowed to carry on with her "teaching arrangement" in Sunway College and Olimpia College.

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[5] After the First Contract had terminated, the parties entered into a second contract *vide* a letter dated 31 December 2005 but which was signed by the claimant on 15 May 2006 ("Second Contract"). The terms of the Second Contract stipulated, amongst others:

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5.1 the contract of claimant's service had been extended for a further 5 months, ie. from 1 January 2006 to 31 May 2006, commencing on 1 January 2006;

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5.2 claimant was required to work a total of 28-30 hours on a 3 1/2 day week basis;

5.3 claimant's basic salary was RM3,500;

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5.4 claimant was allowed to carry on her "teaching arrangement" in Sunway College and Olimpia College.

[6] Both parties agreed that the claimant's services to the respondent had been terminated on 31 May 2006. But they disagreed on whether the termination was by way of dismissal or by reason of the fixed-term contract coming to an end.

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[7] Upon the termination of the Second Contract, the respondent paid the claimant her salary for the month of May 2006, ie. RM3,500 and RM280 for 2 days unused leave, totalling RM3,780.

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Issue

[8] The issue which the court has to decide is whether:

8.1 the Second Contract is a genuine fixed term contract;

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8.2 the claimant had been dismissed under the Second Contract.

A The Respondent's Case

[9] COW1, is the Director of the respondent. In his testimony in court as well as in his Statement COWS1, he stated that:

B 9.1 under the First Contract, as the claimant was also employed by Sunway College and Olimpia College and could not work according to the respondent's normal working hours, the working arrangement between the parties was for the claimant to work a total of 24 hours for 3 days in a week even though the normal working hours of the respondent was from Monday to Friday and the working time from 9am to 6pm;

C 9.2 the claimant's "main job" then was working with Sunway College and Olimpia College, whilst the job she held with the respondent was her "secondary job", *albeit* on a part-time basis;

D 9.3 the main job function of the claimant was to secure new clients for the respondent;

E 9.4 under the Second Contract, the claimant's salary was raised to RM3,500 per month as the claimant's working hours with the respondent had increased since the claimant had reduced her working hours with Sunway College and Olimpia College;

F 9.5 the claimant had voluntarily signed the Second Contract and did not raise any objections to COW1 before signing the Second Contract;

G 9.6 when the fixed term of the Second Contract had ended, the claimant had e-mailed to COW1 on 4 May 2006 (see COB1, p. 7) asking him for a testimonial before she officially "depart". She had also sent a Memo dated 15 May 2006 entitled "Handover" (see COB1, p. 8) to COW1, its contents indicative that claimant all the while knew that the Second Contract was fixed term contract;

H 9.7 on being cross-examined, COW1 explained how the Second Contract came to be signed by the claimant about 5 months later from the date of the letter containing the said Contract. He stated that he had talked to the claimant some time in December 2005 and January 2006 regarding this second letter of appointment/Second Contract. The delay in signing the Second Contract was due to the claimant being unable to give COW1 specific days and hours of work with the respondent due to her teaching commitments at Sunway and Olimpia

Colleges. In fact the claimant never informed COW1 about the number of hours she could work for the respondent under the Second Contract;

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9.8 COW1 had agreed with claimant's counsel's suggestion, that the letter dated 13 December 2005, on p. 4 of COB1, was only handed over to the claimant on 4 May 2006, since the claimant was unable to give him her work schedule before that;

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9.9 COW1 denied that he had held out to the claimant that if she signed the Second Contract she would be paid 1 month's salary; which was why he did not reply to her e-mail on p. 12, COB1 querying about it.

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[10] It was submitted by learned counsel for the respondent that:

Second Fixed Term Contract

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10.1 the Second Contract was for a fixed term of 5 months from 1 January 2006 to 31 May 2006;

10.2 that the respondent handed over to the claimant the Second Contract, which was dated 31 December 2005, on 4 May 2006 and which was signed by the claimant on 15 May 2006. The delay in handing over the Second Contract to the claimant was because of the failure of the claimant to give the respondent the details of her work commitment with Sunway College and Olimpia College;

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10.3 that the claimant knew about the second fixed term contract before the First Contract had expired as there was discussion about the second fixed term contract some time in December 2005 and January 2006;

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10.4 the respondent had never at any time made any express or implied offer to make the claimant a permanent employee of the respondent before and after the First Contract expired;

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10.5 the claimant did not adduce enough evidence to evince the fact that she had been offered a permanent post with the respondent - that the increase in her salary is not sufficient to prove her case especially in the light of the respondent's evidence that the increase was due to her increased working hours, which had been confirmed by the claimant, with the respondent as she had reduced her working hours with Sunway College and Olimpia College;

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- A 10.6 the claimant had agreed to the suggestion by the respondent's counsel that she cannot assume that she was a permanent employee of the respondent just because her salary was increased.
- B **Second Fixed Term Contract Signed Under Duress/Coercion**
- C 10.7 based on the decided case authorities such as *Teck Guan Trading Sdn Bhd v. Hydrotek Engineering (S) Sdn Bhd & 2 Ors* [1996] 1 BLJ 163, *Perlis Plantations Bhd v Mohammad Abdullah Ang & Another Case* [1988] 1 CLJ 670 [1988] 2 CLJ (Rep) 134, *OCBC Securities (Melaka) Sdn Bhd (formerly known as Syarikat Tan, Chow & Loh Securities Sdn Bhd) v. Koh Kee Huat* [2003] 1 LNS 563 which ruled on the concept of coercion/duress as a factor vitiating free consent under s. 15 of the Contracts Act 1950, the claimant failed to prove coercion and economic duress under ss. 102 and 103 of the Evidence Act 1950 as well as undue influence;
- D 10.8 the claimant had 11 days between the date the Second Contract was given to her and the day she signed it. There was sufficient time for her to think or to consult any party, including seeking legal advise on whether to sign or not to sign the Second Contract. During this time also she would have the opportunity to express her disagreement or protest about the terms of the Second Contract - which she did not. Being well educated, with her highest qualification being Masters in Business Administration, she would have understood the contents of the Second Contract, so that when she signed it she had confirmed that she had agreed to be bound by the terms of the Second Contract. All these showed that the claimant had voluntarily signed the Second Contract;
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- G 10.9 the claimant's e-mail dated 4 May 2006 on p. 7 of COB1 asking for a testimonial showed that she had agreed to the Second Contract and had not protested against it. Neither did the claimant protest about her alleged "dismissal" by the respondent. This was more so when she testified that she agreed "I did not write to the company because I accepted the fact that my contract would end as per Mr. Jim Chong's decision". On top of that the claimant had in her e-mail to the respondent dated 1 June 2006 on p. 12, para. 5 of COB1 stated "Furthermore, as I have conveyed, I do look forward to our future venture where opportunities arises.";
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Was There A Dismissal In The First Place

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10.10 the issue of dismissal did not arise in view of the fact that the Second Contract was a genuine fixed term contract and that its term had expired on 31 May 2006;

10.11 the claimant cannot assume that she was a permanent employee without express offer from the respondent. The increase in salary due to the additional working hours was not sufficient to make the claimant a permanent employee;

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10.12 reference was made to the case of *M. Vasagam Muthusamy v. Kesatuan Pekerja-Pekerja Resorts World, Pahang & Anor* [2005] 4 CLJ 93, whilst *Han Chiang High School Penang Han Chiang Associated Chinese Schools Association v. National Union of Teachers in Independent Schools, West M'sia* [1988] 2 ILR 611 (Award No. 306 of 1988) was distinguished on the facts of the case;

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10.13 the main factor for the claimant in bringing her claim in this court against the respondent was to get the alleged additional one month's pay where there was no evidence adduced to support it;

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10.14 in view of all the above, there was no dismissal and therefore the court should find for the respondent.

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The Claimant's Case

[11] CLW1 gave her testimony in court as well as *vide* her statement in CLWS1. According to her:

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11.1 her job functions were:

11.1.1 in charge of Project Planning;

11.1.2 client servicing and presentation;

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11.1.3 field work (execute the project activities);

11.1.4 data entry, analysis, report writing, and presentation of research findings;

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11.1.5 recruitment of respondents;

11.1.6 preparing minutes of meetings;

11.2 after the term of the First Contract had expired on 31 December 2005, the respondent did not renew her contract, but instead increased her monthly salary from RM1,500 per month to RM3,500 per month with effect from 1 January 2006 and continued to employ her thereafter;

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- A 11.3 on 17 April 2006, COW1 told her that her contract will come to an end in May, 2006. She, however, left the respondent on 15 May 2006;
- B 11.4 on 19 April 2006, COW1 verbally offered CLW1 one month's salary in advance in addition to her May 2006 salary to provide for a situation where COW1 may need to use her services on a part-time basis in the future and whereby he would then deduct from the one month advance salary CLW1's part time wages on an hourly/project basis;
- C 11.5 on 4 May 2006, COW1 gave the claimant a new fixed term contract which was backdated to 31 December 2005 stating that the fixed term was to begin from 1 January 2006 to 31 May 2006. The claimant at first refused to sign the Second Contract which led to COW1 insisting that she leave the respondent on the same day ie. 4 May 2006 and that he would reconsider the advance pay which he had promised the claimant;
- D 11.6 on 15 May 2006, the claimant signed the Second Contract alleging that she did so under economic duress and or undue influence to ensure that she received 2 months pay as promised by COW1. That date was the same date she left the respondent;
- E 11.7 she denied that her "primary job" as alleged by the respondent was as lecturer employed by Sunway College and Olimpia College. She asserted that her contract with Olimpia College had ended on 21 August 2005 (see p. 1 of CLB2) and that her contract with both Colleges was on a part-time basis;
- F 11.8 on 1 June 2006, the claimant received her pay cheque for the month of May 2006 only, contrary to the alleged promise of COW1;
- G 11.9 claimant, *vide* e-mail dated 1 June 2006 (see p. 12 of CLB1) requested her additional 1 month's pay from COW1 and as promised by him, but received no response;
- H 11.10 Claimant claimed that she was dismissed without just cause or excuse in that her dismissal was arbitrary, capricious, manifestly unreasonable and harsh and was brought about by economic duress and/or undue influence, motivated by *mala fide* and unfair labour practice. She prayed to be reinstated in her former
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post and consequential orders with regard to backwages, salary increments and adjustments, bonus and other benefits enjoyed by employees in her category.

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[12] It was submitted by learned counsel for the claimant that:

12.1 at the expiry of her First Contract and the fact that the respondent had increased her salary, the claimant had assumed that she was a permanent employee of the respondent. As there was no new contract issued at the end of the First Contract, a new contract of employment between the claimant and respondent came into existence making the claimant a permanent employee beginning 1 January 2006;

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12.2 the claimant had a legitimate expectation that she was a permanent employee when the respondent increased her salary and did not take any action at the expiry of her First Contract. The case of *Dr. Chandra Muzaffar v. Universiti Malaya* [2002] 2 CLJ 448 was cited as the authority on this point;

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12.3 as the terms of the Second Contract were never finalized before the end of the First Contract, the Second Contract was not a fixed term contract;

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12.4 COW1 had not told the truth when he testified that the claimant's hours of working was not finalized for the purposes of the Second Contract since the claimant had proven that her contract with Olimpia College had ended on 21 August 2005;

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12.5 the claimant had signed the Second Contract under economic duress and was compelled to sign it as she was a single parent with two school going children and COW1 had promised her 1 month salary in advance;

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12.6 as COW1 had not denied the contents of the claimant's e-mail in COB1, p. 12 when she stated "may I ask your decision on the additional 1 month pay which you have verbally agreed with me on 19 April 2006", the court should accept the claimant's testimony that COW1 did so promised her the 1 month's pay in advance;

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12.7 by backdating the Second Contract, after inducing the claimant to sign it, the respondent's actions amounted to an unfair labour practice which ought not to be encouraged by the court. The case of *Bandar Penggaram Associates Chinese Schools, Johor v. Gan Chin Piau & Anor* [1997] 1 ILR 906 (Award No. 172 of 1997) was cited as authority on this issue;

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- A 12.8 in view of the above, as the second fixed contract was not a genuine one, the claimant's dismissal was unlawful and she should be reinstated in her former position. Alternatively, if the court is of the view that reinstatement is not the appropriate remedy, the claimant should be awarded full backwages and compensation *in lieu* of reinstatement.
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The Decision

Whether The Second Contract Was A Genuine Fixed Term Contract

- C [13] After a careful perusal of all the available facts and evidence before the court, the court is inclined to believe the version of the facts as put forth by the respondent. That being the case, the court finds that the Second Contract was a genuine fixed term contract for the following reasons:

- D 13.1 the terms and conditions of the First Contract between the parties were not disputed - see para. 4 above - whereby the claimant was employed for a period of 8 months from May 2005 until 31 December 2005 at a salary of RM1,500 for a total of 24 hours on a 3-day week basis, even though the normal working hours of the respondent was from 9am to 6pm Mondays to Fridays and from 9am to 1pm on Saturdays (with alternate Saturdays off). She was engaged by the respondent on the basis that her "teaching arrangement" in Sunway and Olimpia Colleges was not affected by the First Contract. In other words, the respondent had accommodated the teaching commitments of the claimant in the said Colleges. The claimant was paid this salary for the months of May, June, July, August 2005 - see pp. 17-20, COB1. For September, October, November and December 2005, the claimant was paid RM2,500 per month - see pp. 21-24, COB1. COW1 explained the increase in the claimant's salary was due to the increase in the hours of work by the claimant. But COW1 could not remember the increase in the hours of work by the claimant. The testimony of COW1 is supported by the testimony of the claimant when she testified that her contract with Olimpia College had ended on 21 August 2005, which therefore explained the increase in the hours of work she could devote to the respondent. But this means that the claimant still had her contract with Sunway College to fulfil;

- I 13.2 following from para. 13.1 above, the court accepts the COW1's testimony that as the claimant's working hours with the respondent had increased, as her working hours with Sunway

College (and not Olimpia) had been reduced, the respondent raised her salary to RM3,500 beginning from January 2006 till May 2006 - see pp. 25-29, COB1;

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13.3 the court also accepts the explanation given by COW1 as to why the Second Contract came to be signed by the claimant 5 months later from the date of the letter containing the said Contract, that is, that the claimant was unable to give COW1 specific days and hours of work with the respondent due to her teaching commitment with Sunway College at least even though COW1 had broached the subject with the claimant some time in December 2005 and January 2006. The court notes that the claimant stated that her contract with Sunway College had ended on 31 May 2006 (see CLWS1, Question and Answer 6). It stands to reason why the claimant was unable to give a commitment to the respondent as her contract with Sunway College had not ended at the beginning of 2006 but some time thereafter (31 May 2006 to be exact);

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13.4 the court rejects the claimant's contention that the respondent, instead of renewing her contract, had by increasing her monthly salary from RM1,500 to RM3,500 per month with effect from 1 January 2006 continued to employ her as a permanent staff. It must be remembered that the claimant's salary was increased from RM1,500 to RM2,500 per month even before 1 January 2006 because of her increased hours of work with the respondent. The court finds it most unreasonable for the claimant to conclude that as the respondent had increased her salary and there was no new contract signed between her and the respondent, she had the legitimate expectation that the respondent wanted to employ her on a permanent basis. It must be remembered that by her own admission, her contract with Sunway College was still subsisting on 1 January 2006 until 31 May 2006 and the respondent was aware of her prior commitments to not only Olimpia but also Sunway Colleges. Moreover, the claimant had during cross-examination agreed to the suggestion by the respondent's counsel that she cannot assume that she was a permanent employee of the respondent just because her salary was increased;

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13.5 the facts of this case are certainly not even near the facts in *Dr. Chandra Muzaffar's* case (*supra*) for the claimant to invoke the principle of "legitimate expectation". In *Dr. Chandra's* case, when his contract of employment came to an end, University of Malaya ("U.M.") refused to renew his contract. In finding for *Dr. Chandra* on the issue of legitimate expectation, the High

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A Court was very much influenced by the fact that U.M., being a
statutory/public body, "in exercising the contractual power it
might also be restricted by its public law responsibilities; thus a
decision taken by a public body cannot be treated as purely in
the realm of contract; it might at the same time be a decision
B governed by statute *Webster v. Auckland Harbour Board* [1983]
142 CR 646". The learned High Court judge had accepted the
plausible version of *Dr. Chandra*, being someone of international
stature in the academic world and head-hunted to start up and
head a Centre for Civilisational Dialogue ("the centre") in
C U.M., that the Deputy Vice-Chancellor (Academic Affairs) of
U.M., one Professor Dato' Dr. Osman Bakar ("Professor
Osman"), had represented to him that U.M. had Dr. Chandra
in mind to head the Centre until he retired notwithstanding the
fact that Dr. Chandra would be appointed as a contract
D professor on a year to year basis until he was confirmed as a
permanent staff of U.M. Moreover, in the words of the learned
Judge Dato' K.C. Vohrah at p. 466, paragraph (d):

... I find it difficult to believe that a man happily ensconced
in Penang with his family with a house of his own and deeply
E rooted there for over 25 years and with a permanent job
with another University, *albeit* as Associate Professor, would
completely uproot himself and the family, sell his house and
disturb the schooling of one of his children for a mere one
year's term as Professor with no prospect of continuing until
being made a permanent staff. It does not make sense for
F anyone to have acted the way he did but for the
representations ...

Even then, the learned High Court judge was only prepared to
order Dr. Chandra be compensated for another year's extension
contract (the learned judge found there to be no dismissal in
G the first place);

13.6 there was no evidence adduced by the claimant, other than the
one alluded to in para. 13.4 above, that the respondent had in
any way promised her a permanent post. Further, the claimant
cannot, by delaying in giving the necessary information required
H by the respondent on the hours and days of work and
therefore forced the respondent to delay in drawing up the
terms of the Second Contract, plead that between the period of
the expiration of the First Contract and the date the Second
Contract was signed by her as evidence to show the
I respondent intended to employ her on a permanent basis!

- 13.7 the court rejects the claimant's contention that she had signed the Second Contract under economic duress/undue influence because of the purported promise made by COW1, ie. that she was a single parent and presumably needed the one month's salary purportedly offered by COW1 as the incentive for the claimant to sign the Second Contract. The claimant's contention sounds very hollow in view of the fact, and by her own admission, that the one month's salary even then was for purportedly advance payment *in lieu* of "future work" to be given to her by the respondent; A
- 13.8 the court also rejects the claimant's contention that her e-mail to COW1 on p. 12 of COB1, all the more showed that the claimant was forced to sign the Second Contract as she had enquired in the e-mail about her additional one month's pay. COW1 stated that he did not reply to the claimant's e-mail because he did not know what the claimant's request for one month's additional pay was for. The court rejects the argument of the claimant that by COW1 failing to reply to her said e-mail showed all the more the truth of the claimant's allegation that she was forced to sign the Second Contract. On the other hand, it can be said that by sending the e-mail there was an attempt to prevail upon COW1 to make a commitment on behalf of the respondent to pay the claimant on the terms proposed by the claimant for future work to be done by her, which commitment COW1 was not prepared to do. In view of this it is no wonder that COW1 refused to reply to the claimant's e-mail, as he was under no obligation to do so; B C D E F
- 13.9 it follows from the above paragraphs that the claimant had also failed to prove unfair labour practice. The court distinguishes the facts of the case in *Bandar Penggaram Associates Chinese Schools, Johor v. Gan Chin Piaw & Anor (supra)* with those in this case. The contract of employment of the claimants in the former case had been renewed by the company automatically without their having to apply for extensions for eleven times for the 1st claimant and twice for the 2nd claimant, which is not the case in this case; G H
- 13.10 the court finds that the claimant instead had voluntarily signed the Second Contract. It is difficult for the court to accept the claimant's argument that she was forced under duress/undue influence to sign the Second Contract seeing that she is a highly qualified person with a Masters in Business Administration and a lecturer in Sunway and Olimpia Colleges as well as a researcher for the respondent. With such I

A qualifications it is not far fetched to say that the claimant
instead has high marketable value. By her own admission, she
had read the Second Contract before signing it and had taken
11 days to do so. She did not raise any protest or objected to
B the Second Contract. This clearly showed that the claimant
knew what she was entering into and had voluntarily committed
herself to the Second Contract. This voluntariness was further
supported by the fact that she felt free to e-mail to COW1 on
4 May 2006 (see p. 7 of COB1) asking him for a testimonial.
In that e-mail she stated:

C As I was rushing, I have forgotten to request for the above
document from you.

Well ... time passed and its been slightly more than a year
since I join Cardas.

D Hence, I would appreciate if you could provide me
testimonial before I officially depart. This documents will
certainly be useful to support my application in my next
career move.

In her e-mail to COW1 on p. 12 COB1, she further stated:

E Furthermore, as I have conveyed, I do look forward to our
future venture where opportunity arises.

[14] In view of the court's finding that the Second Contract was a
F fixed term contract which had expired on 31 May 2006, it follows that
the claimant was not dismissed by the respondent and that the
claimant's claim for unfair dismissal cannot stand. The claimant's claim
therefore is dismissed.

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