IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1992] SGCA 40

CA 30/1990

Between

Attorney General, Singapore

… *Appellant*

And

Joo Yee Construction Pte Ltd
(in liquidation)

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Appeals

Version No 1: 11 Sep 2026 (01:05 hrs)

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Attorney General, Singapore v Joo Yee Construction Pte Ltd (in liquidation)

[1992] SGCA 40

CA 30/1990
Karthigesu J; Warren Khoo L H J; Rajendran S J
26 May 1992

1 When this appeal came on for hearing before us on 29 April 1992, Mr Jude Benny, counsel for the respondents, raised a preliminary point that we should decline to hear this appeal on the ground that there was no live issue to be decided between the parties. After hearing arguments from both counsel we held that the preliminary point was well taken. Accordingly we dismissed this appeal with costs without hearing arguments on the merits. We now give our reasons.

2 On 12 September 1986, the respondents entered into a building contract with the government of Singapore (Ministry of Health) for the construction of Blood Transfusion Services/Department of Scientific Services Complex at the General Hospital, Singapore. The building contract contained elaborate provisions governing the employment by the respondents of nominated sub-contractors, their contractual obligations with the respondents and how they were to be secured, the manner of payment of the nominated sub-contractors by the respondents and the circumstances or conditions under which direct payments may be made to the nominated sub-contractors by the Ministry of

Health (the building owner) in the event the respondents failed to make payments to the nominated sub-contractors or in the event a petition was presented to the court to wind up or make bankrupt the respondents or a receiver was appointed to manage the affairs of the respondents.

3 Four nominated sub-contractors, namely, Diethelm Industries Pte Ltd, Kian Gwan Engineering Pte Ltd, Esco Scientific Products (Asia) Pte Ltd and Ngee Cheng Electric Co (Pte) Ltd, were duly appointed under the terms of the building contract and entered into sub-contracts with the respondents. The respondents went into liquidation on 10 February 1989 when a winding-up order was made against them. As at the date of the commencement of the liquidation of the respondents the building works under the building contract had been completed, except for some rectification works. Some certificates of payment had still to be issued and there was outstanding at the date of the commencement of the liquidation considerable sums of money earlier certified to be paid to the four nominated sub-contractors which the respondents had failed to pay although they were duly paid by the Ministry of Health.

4 A question had arisen whether it was proper in these circumstances for the Ministry of Health to make direct payments to the four nominated sub-contractors. In other words whether a direct payment by the Ministry of Health to the four nominated sub-contractors pursuant to the provisions of the building contract would contravene the combined operation of ss 280(1) and 327(2) of the Companies Act (Cap 50, 1988 Ed) (`the Act`).

5 In order to resolve this question the liquidators of the respondents took out an originating summons citing the four nominated sub-contractors and the Attorney General, representing the Ministry of Health. The originating

summons was heard by LP Thean J who delivered his judgment on 1 March 1990, which is reported at [1990] 2 MLJ 66 . LP Thean J held that, under the circumstances, if the Ministry of Health made direct payments to the four nominated sub-contractors such payments would contravene the combined operation of ss 280(1) and 327(2) of the Act and would be void as against the liquidators of the respondents.

6 At the hearing before LP Thean J the liquidators of the respondents, the four nominated sub-contractors and the Attorney General were represented by counsel. The position taken by the Attorney General was noted by LP Thean J as follows: `Position of Ministry of Health - no objection to either payment but requires a direction of court.` It is also worthy of note and a matter of some importance that the parties had agreed amongst themselves on the question of costs. The concluding paragraph of LP Thean J`s judgment reads: `I was told that the parties have agreed between themselves on the question of costs, and accordingly I make no order thereon.`

7 It was clear to us that what the parties wanted was a direction from the court, and in our view quite rightly, as there appear to be conflicting views expressed on this issue by the courts of other jurisdictions whose laws have a similar jurisprudential basis as ours. However, the real issue was whether the direction having been given, a party who had taken a neutral stand and who was not affected by the direction given by the court in the sense that whether the payment was made to the one or the other, a payment of no more or no less will nevertheless have to be paid, has such an interest in the matter to maintain the right of appeal. It was not without significance that the parties who would be directly and perhaps adversely affected by the judgment of LP Thean J, namely,

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the four nominated sub-contractors have not appealed, or as we have been told have withdrawn their appeals.

8 Mr Jude Benny found support for his preliminary point in two House of Lords cases, **Sun Life Assurance Co of Canada v Jervis** [1944] 1 All ER 469 and **Ainsbury v Millington** [1987] 1 All ER 929[1987] 1 WLR 379

9 Mr Tan Chee Meng for the Attorney General contended before us that the issue raised by this appeal was still a live issue because the Ministry of Health would be adversely affected if the nominated sub-contractors refused to carry out the remedial work they were contractually bound to do since they were not paid. Further that the statement to the court below that the Ministry of Health had `no objection to either payment` did not amount to an agreement to forgo the right of appeal. Lastly it was submitted that s 34 of the Supreme Court of Judicature Act did not prohibit this appeal. Therefore the appeal should be heard on its merits since an important point of law was raised which had implications generally as well as in the instant case.

10 We were not persuaded by these arguments. The real issue in this case was not whether the contractual obligations survived following the liquidation of the respondents but whether, firstly, the parties could contract out of the insolvency laws and secondly, whether in the instant case payments direct to the nominated sub-contractors would contravene the insolvency laws. That issue was no longer an issue when the court ruled that a direct payment to the nominated sub-contractors would contravene ss 280(1) and 327(2) of the Act ***and*** the four nominated sub-contractors accepted the court`s ruling by withdrawing or not proceeding with their appeals. In so far as the Ministry of Health was concerned, its interest in this issue ceased to exist once the court had

ruled on the issue ***and*** the four nominated sub-contractors had accepted the court`s ruling by withdrawing or not proceeding with their appeals. The Ministry of Health could not thereafter be prejudiced or be exposed to the risk of litigation at either the instance of the respondents or the four nominated sub-contractors if it acted in accordance with the ruling of the court. Accordingly in our view there was no live issue in this appeal.

11 We accepted that the position taken by Mr Tan Chee Meng at the hearing before LP Thean J would not amount to an agreement to forgo the appeal. We also accepted that s 34 of the Supreme Court of Judicature Act (Cap 322) does not state exhaustively those instances in which no appeal lies to the Court of Appeal. The court exercises its inherent jurisdiction in cases of this kind. The principles on which that inherent jurisdiction is exercised were authoritatively stated by the House of Lords in the case of **Sun Life Assurance Co of Canada v Jervis** [1944] 1 All ER 469 and restated by the House of Lords in the case of **Ainsbury v Millington** [1987] 1 All ER 929[1987] 1 WLR 379

12 The action in the ***Sun Life*** case was to rectify a policy of life assurance to make its terms equivalent to a document, the assured, Jervis, had been given before he insured with Sun Life and which purported to describe the benefits which he would receive. The Court of Appeal by a majority of two to one held that the policy should be rectified and that an additional sum was due to Jervis. Sun Life applied to the Court of Appeal for leave to appeal to the House of Lords and the Court of Appeal granted leave on terms stated as follows:

> *On the defendants undertaking to pay the costs as between solicitor and client in the House of Lords in any event and not to ask for the return of any money ordered to be paid by this order, it is ordered that the said defendants be at liberty to lodge a petition of appeal to the House of Lords.*

13 Viscount Simon LC who delivered the only speech in the House of Lords said at pp 470-471:

> *The difficulty is that the terms thus put on the appellant by the Court of Appeal are such as make it a matter of complete indifference to the respondent whether the appellant wins or loses; the respondent will be in exactly the same position in either case. He has nothing to fight for, because he has already got everything that he can possibly get, however the appeal turns out, and cannot be deprived of it. I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing lis between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellant hopes to get decided in its favour without in any way affecting the position between the parties.*

14 What is sometimes called a `friendly action` is not necessarily open to this objection, either in the first court or on appeal, for the respective parties in such an action are arguing for different results and the winner gains something which he would not gain if he lost. But the objection here is that, if the appeal fails, the respondent gains nothing at all from his success.

15 No doubt the appellant company is concerned to get, if it can, a favourable decision from this House because it fears that other cases may arise under similar documents in which others who have taken out policies of endowment assurance with it will rely on the decision of the Court of Appeal. But, if the appellant desires to have the view of the House of Lords on the issue upon which the Court of Appeal has pronounced, its proper and more convenient course is to await a further claim, and to bring that claim, if necessary, up to the House of Lords with a party on the record whose interest it is to resist the appeal. ... I think it is an essential quality of an appeal fit to be

disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue.

16 It cannot be denied that Viscount Simon LC was addressing himself to the particular facts of the ***Sun Life*** case1 and to the special position of the House of Lords in the English judicial system. However that may be, the principles to be extracted from the ***Sun Life*** case1 are that a court will not undertake to decide on issues, which if decided in the appellant`s favour, will not gain him `something which he would not gain if he lost`, and will not decide on issues simply to have a decision that will be useful for similar cases in the future.

17 Applying these principles to this appeal the Ministry of Health`s liability to pay the amounts certified under the building contract would not be affected one bit whether the Ministry of Health succeeded in the appeal or not. If the Ministry of Health succeeds in the appeal it would be able to pay the amounts certified under the building contract direct to the four nominated sub-contractors but what does the Ministry of Health gain by it? Nothing in our view. The parties who are in actual controversy, namely, the four nominated sub-contractors, and who would gain something if the respondents lost are not before this court, they having accepted the judgment of the court of first instance.

18 The ***Ainsbury v Millington*** case2 is much nearer this appeal. The facts in that case were that the appellant lived with the respondent as his mistress and bore him a child. They lived in a council house, 24 Marlowe Close. The respondent was sentenced to 18 months` youth custody. While the respondent was in custody the appellant married another man, who moved into 24 Marlowe Close with her. When the respondent was released he returned to 24 Marlowe

Close and the appellant and her husband moved out to live with the appellant`s mother. Finding this accommodation unsuitable the appellant applied to the county court for custody of the child and an injunction requiring the respondent to vacate 24 Marlowe Close. The county court granted an interim custody order to the appellant but held it had no jurisdiction to grant the injunction. The appellant`s appeal was dismissed by the Court of Appeal. Leave to appeal to the House of Lords was granted. By the time the appeal came to the House of Lords the respondent was again in custody serving a sentence of imprisonment and the local authority had granted the appellant and her husband the tenancy of a different council house.

19 Lord Bridge of Harwich, delivering the opinion of the House of Lords, said at p 930:

20 The ***Sun Life*** case was one where the original issue between the parties related to the terms of a policy of insurance and where leave had been granted by the Court of Appeal on an undertaking by the appellant insurer to pay the respondent`s costs as between solicitor and client in the House of Lords in any event and not to ask for the return of any money which the respondent had recovered in the action. In the instant case counsel for the appellant has submitted that Viscount Simon LC`s principle should be confined in its application to cases where the point of law at issue is peculiar to the facts of the case or arises on the construction of particular documents and should not inhibit the House from resolving, even in the absence of any live issue between the parties, a question of law of general importance which, as is said to be the case here, different decisions of the Court of Appeal have left in doubt. Assuming without deciding that this is such a case, I cannot see that it makes any difference, nor can I accept that the principle as stated by Viscount Simon LC

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is to be limited as suggested. In the ***Sun Life*** case the outcome of the appeal, if the House had been prepared to entertain it, would at least have been of some concern to the appellant, since the ruling it sought would presumably have affected its obligations to other policy holders. ... It has always been a fundamental feature of our judicial system that the courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved.

21 We found these two House of Lords cases extremely persuasive and readily applied the principles stated therein to this appeal. In particular, we were of the view that this court should not be asked to decide a question of law which was of no interest to the Ministry of Health in this appeal but was of interest only to the four nominated sub-contractors who were not parties to this appeal and who were not before this court.

22 For these reasons we held that the respondent`s preliminary point was well taken and we accordingly dismissed the appeal with costs and without hearing arguments on the merits.

23 **Outcome:**

Karthigesu J
Warren Khoo L H J
Rajendran S J

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Tan Chee Meng (Attorney General's Chambers) for the appellant
Jude Benny and Abbas Ali (Joseph Tan Jude Benny & Co) for the respondents

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