IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 38

Suit No 1240 of 1994

Between

Econ Piling Pte Ltd

… *Plaintiff*

And

Eltraco International Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Econ Piling Pte Ltd v Eltraco International Pte Ltd

[1998] SGHC 38

Suit No 1240 of 1994
Judith Prakash J
04 February 1998

Judgment:

Cur Adv Vult

1. The plaintiffs and defendants both carry on business in the construction industry. In December 1992, the defendants engaged the plaintiffs to carry out piling works on a site at Senoko South Link. The plaintiffs' claim arises out of that contract.

2. As originally pleaded, the plaintiffs' claim was for the sum of $537,785.29 which was the balance due for the piling works conducted by them. From the outset, the defendants admitted that this sum was the balance of the contractual price agreed for the works. They claimed, however, that they did not have to pay it because they were entitled to set off against the same damages resulting from breaches of contract on the part of the plaintiffs.

3. The defendants did not completely particularise their damages in their pleadings. However, in the affidavit of evidence-in-chief made on their behalf by Mr Louis Ee, a manager in their construction and contracts department,

which was filed in March 1997, details of these damages were given. These amounted to a total of $358,341.66 which the defendants wished to set off against the plaintiffs' claim of $537,785.29. Accordingly, at the beginning of the trial, there was a sum of $179,443.63 due to the plaintiffs for which the defendants had no defence. At the request of the plaintiffs, I entered judgment in their favour on that date for the said sum of $179,443.63 with interest at 6% p.a. from 1 August 1994 to the date of judgment and costs.

4. The trial proceeded in respect of the remaining $358,341.66. In the course of the trial, it was conceded by the plaintiffs that, as a result of defects in the piling works, they were liable to pay the defendants $23,420. This sum must be set off against the $358,341.66. The consequence is that only two of the defendants' claims to set off remain to be decided by me. The first is their claim for reimbursement of liquidated damages of $228,800 which they incurred by reason of delay in the works and the second is their claim for $106,121.66 being additional labour expenses incurred during the period of delay.

Background

5. The project in which the parties were involved related to the erection and completion of four factories with ancillary facilities at Senoko South Link, Singapore. The developers of the project were the Jurong Town Corporation ('JTC'). The JTC awarded the contract for the project to Sin Huat Construction Co (Pte) Ltd ('Sin Huat') who in turn appointed the defendants as their main sub-contractor. The defendants were in fact the main builders on the site having taken over all of Sin Huat's obligations to the JTC for the construction.

6. Although the project involved the immediate construction of only four factories, the contract called for piling works to be carried out to ten plots of

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land at the site. These plots were numbered from 1 to 10 and plots 1 to 4 were the plots on which the defendants had to construct the factory buildings after piling was completed whereas their work for plots 5 to 10 ended with the completion of piling.

7. It appears from the documents adduced before me that JTC first called for tenders for the project on or about 25 September 1992. Mr Ee's evidence, however, was that he had the tender documents in either July or August 1992. From the beginning the defendants had wanted to be the main contractor for the project but, as they did not have the necessary licence, they put their tender through Sin Huat on the basis that if Sin Huat was awarded the project, they would be appointed the latter's sub-contractor. In the course of preparing the tender, the defendants contacted the plaintiffs in order to get a quotation from them for the piling works. The plaintiffs responded by sending in a written quotation on 12 October 1992.

8. Some time thereafter, the exact date is not clear, the defendants were informed that JTC was awarding the contract to Sin Huat. In anticipation of this, and although the actual contract between JTC and Sin Huat would take some time to be signed (it was in fact concluded on 16 December 1992 and the defendants' own contract with Sin Huat was concluded on 9 February 1993), the defendants went ahead to negotiate with the plaintiffs on their original quotation.

9. On 3 December 1992, the plaintiffs sent in a revised quotation and this was accepted by the defendants in writing the next day. These two letters formed the main written component of the contract. The letters did not specifically mention the time frame for the piling works. The plaintiffs, however, stated in para 4 of their letter that 'the works shall be handed over in stages programmed not to cause any delays'.

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10. The dispute which has arisen between the parties relates to the piling works for plots 1 to 4. There is no quarrel over plots 5 to 10 which were less affected by time constraints since no building was to take place upon completion of piling. In respect of plots 1 to 4, however, the defendants had been given what they considered to be tight time schedule. They had to complete the factory on plot 1 within 14 calendar months and the factories on plots 2 to 4 within 12 calendar months. For this purpose, time ran from the time the site was handed over to the defendants.

11. Some time in late 1992, Mr Chung Mun On, an engineer working for the defendants, prepared a masterworks programme for the project ('the original programme'). This included the piling work schedule. It provided for preliminaries to commence on 1 December 1992 and actual piling on 15 December 1992. Varying piling periods were provided. For plot 4, 22 days were provided, for plot 3, 15 days, for plot 2, 16 days and for plot 1 also 16 days. The original programme was sent to the plaintiffs on 29 December 1992.

12. In fact, it proved impossible for work to start as originally scheduled due to delays in the JTC obtaining the piling permit. Plot 4 which was the first plot to be piled was only handed over to the plaintiffs on 15 January 1993 and work on it started on 18 January 1993.

13. From the beginning, there were complaints about delays in the piling works. On 2 February 1993, the defendants wrote to the plaintiffs to state that after repeated reminders by them the piling was still behind schedule and it was foreseeable that the work would not be completed within the contract period if no action was taken. The defendants complained that an average of four piles a day had been driven whereas in order to complete the works within the contract period, 16 piles per day had to be driven. The defendants also stated that they

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would hold the plaintiffs responsible for any penalties that they might subsequently suffer. The next day, the defendants passed on to the plaintiffs a complaint from the JTC that one of the driving machines was not in proper condition and it could not install the piles in a steady and proper manner.

14. On 5 February 1993, both parties wrote letters. The defendants stated that they were disappointed that the plaintiffs had disregarded their request to increase the number of piling machines on site and repeated their concern that the project would be delayed if the speed of piling was not increased. They asked the plaintiffs to take immediate action to expedite the works. The plaintiffs in their letter asserted that during the negotiations for the project they had agreed to finish the first plot within four to five weeks and to complete the next three at three to four week intervals thereafter. They also asserted that they had only agreed to try and keep to the defendants' original programme 'if it was possible'. Attached to the plaintiffs' letter was a masterworks programme which they had revised in accordance with their own time table. I shall call this the 'plaintiffs' programme'.

15. At about the same time, Mr Chung prepared a revised masterworks programme for the defendants. His explanation was that when he received the plaintiffs' programme, he knew that if the plaintiffs followed it they would not be able to complete the work on time. He therefore came up with a new programme, the revised programme, as a response to the plaintiffs' programme. The plaintiffs, however, contend that the revised programme pre-dated their programme and that they had prepared the latter because it was not possible for them to comply with the revised programme. They also asserted that the defendants had agreed to the plaintiffs' programme.

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16. At this stage, I should note that the sequence of piling works was as follows. First, upon handover of the site to the piling contractor, the plaintiffs had to mobilise their plant and machinery and deliver pre-cast piles to the site. The next step was to set out the piles and drive them to the required depths in accordance with JTC's drawings. Thirdly, as piling on each plot was completed, the plaintiffs had to conduct load tests on selected piles in the plot in accordance with the JTC's engineer's instructions and requirements. Once the load tests had been successfully completed, the defendants had to take over and excavate the pile caps in order to expose the piles to the levels required by the JTC drawings. The fifth step was undertaken by the plaintiffs and that was to cut the driven piles to the required levels. The sixth step was for the plaintiffs' surveyor to check the eccentricities of the piles driven and produce and certify eccentricity plans which had to be approved by the JTC. If those plans were approved, the plaintiffs' work for that plot would be complete. However, if the plans were rejected, the plaintiffs would have to rectify the works by either piling additional piles or providing the JTC with a design for other corrective works.

17. In the final analysis both parties were agreed on the fact that the piling works were not completed on schedule. However, they disagreed on the extent of delay and on who was responsible for the delay. The defendants ascribed all the delays to the plaintiffs' default whereas the plaintiffs asserted that the defendants had been responsible for a substantial portion of delay because they had not carried out their excavation works for each site, ie step four, with sufficient despatch. The plaintiffs' main witness, Mr Charles Lee, changed his position on delay several times during the course of his testimony. Finally, he admitted there had been some delay on the plaintiffs' part. He conceded that based on the revised programme and assuming that under the contract the completion date was the date on which the load test for each plot was completed, the plaintiffs had been

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late in completing two of the plots. He estimated the delays as being 22 days for plot 4 and 11 days for plot 1. He asserted, however, that in respect of plots 3 and 4 the plaintiffs had been ahead of schedule by 12 days and 28 days respectively.

18. The defendants' position as put to the plaintiffs' Mr Lee during cross-examination was that even if the revised programme was looked at, that was a programme which had been designed to help them complete their work at a time when they were already behind schedule and that it had not extended the contractual periods within which each site had to be completed. Accordingly, for plot 1 which should have been completed within 22 days of 18 January, completion on 24 March meant that the period taken was 66 days and the plaintiffs were 44 days late. In respect of plot 3, the plaintiffs took 28 days to complete the work when the original programme prescribed 15 days making a delay of 13 days. For plot 2, 16 days were given and 48 days actually taken making 32 days delay and for plot 1 the programme allowed 16 days whereas the plaintiffs took 49 days and were therefore 33 days late. It should be noted, however, that under cross-examination, the defendants' main witness, Mr Ee, took inconsistent positions. At one stage he claimed a delay of 40 days for plot 1, 60 days for plot 4 and 30 days each for plots 2 and 3. Later, he agreed that based on the dates given in the revised programme and the actual completion dates as computed by JTC (ie up to completion of load tests), the delay for plot 4 was 19 days, for plots 2 and 3 the plaintiffs were ahead of schedule and for plot 1 they were late by 28 days. This last admission was, however, based on a question which put the starting date for plot 1 as 19 April when in fact the scheduled start date was 16 April. If the correct date had been given to Mr Ee, he would have calculated the delay for plot 1 as being 31 days.

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19. At the end of the day, although the JTC gave Sin Huat some extensions of time for completion, construction on plots 1, 2, 3 and 4 was completed late and the JTC imposed liquidated damages of $1,300 per day's delay for each of the plots. In respect of plots 2 to 4, liquidated damages were levied on the basis of 47 days delay per plot and for plot 1, damages were levied for 35 days delay. The defendants bore these liquidated damages which amounted to $228,800.

Issues and findings

20. On the above facts, the issues which I have to decide are as follows:

(1) whether it was a term of the contract between the parties that the plaintiffs should complete their piling works within any specified period of time;

(2) if the answer to the above question is yes, what was the contractually agreed period of time;

(3) were the plaintiffs in fact late in completion and if so, by how many days;

(4) if the plaintiffs were late:

(a) are the defendants entitled to recover damages based on the liquidated damages paid to the JTC; and

(b) additionally, can the defendants recover the administrative and staffing costs incurred during the period of delay.

(1) Was there delay?

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21. The two letters evidencing the terms of the piling contract did not specifically provide either for the date on which the plaintiffs were to begin work nor for the date on which work had to be completed. The only indication in the letters that there was some time constraint involved in the contract was the paragraph in the plaintiffs' letter which stated that 'the works shall be handed over in stages programmed not to cause any delays'. The plaintiffs argued that this meant that the defendants would hand the site over to them in stages so that the plaintiffs would not be delayed in their piling works. I do not accept this as the correct interpretation of that paragraph as the factual matrix shows that it was the defendants who were operating within a tight time frame and it was they who had additional work to do after the piling was completed so that they would be adversely affected if there were delays in the piling work. The plaintiffs did not adduce any evidence that showed that they would be prejudiced by such delays. I therefore hold that this paragraph in the plaintiffs' letter was an undertaking by them to do their work with due despatch.

22. I also hold that there was a contractual term that the work on the various sites would be completed within specified periods. This must have been agreed by the parties during negotiations. Alternatively, it is a term which has to be implied into the contract in order to give it business efficacy. Both parties are experienced in the building industry and are, and would have been, fully aware that construction work has to be completed according to a schedule. The plaintiffs would have known from the start that there was no question of their simply taking their own sweet time about carrying out their works and that they did have to follow some sort of schedule. The plaintiffs did not in fact try to argue very hard that there was no contractually agreed schedule at all. What they did contend was that the agreed periods had been fixed at four to five weeks

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for plot 4 and three to four weeks for each of the other three as stated in their letter of 5 February 1993.

23. I do not accept the plaintiffs' argument. In my judgment, the plaintiffs had agreed to follow the defendants' schedule as submitted to them and this was evidenced by the fact that when they first received the original programme, at the end of December 1992, they did not raise any questions about the duration of the piling period for each plot as allocated by Mr Chung. Work started on 18 January 1993 without any objection by the plaintiffs to the schedule. It was not until some six weeks after they received it, when they were way behind in their piling work, that they wrote to the defendants protesting that they had agreed only to try to complete within the time periods stated in their own letter.

24. Despite the assertion in their letter of 5 February 1993, it is significant that thereafter instead of insisting on their right to do the work within the periods specified in that letter, the plaintiffs did their best to comply with the defendants' revised programme. Although initially they took the position that their letter of 5 February was written in response to the revised programme, they did not maintain this position consistently. Their main witness Mr Lee was evasive on several points. Having analysed his evidence and that of Mr Chung who was the defendants' man on site, I prefer the evidence of the latter. I accept that the revised programme was prepared in response to the plaintiffs' letter of 5 February and that Mr Chung told them that they had to comply with it if they were not to delay the project even further. Mr Lee did at certain points of his testimony concede that after 5 February the schedule that the plaintiffs followed and tried to meet was the revised programme. His concession that the plaintiffs had been late in completing work on plots 1 and 4 only makes sense if the schedule that was applicable was the revised programme.

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25. Accordingly, I hold that, initially at least, it was a term of the contract that the plaintiffs complete piling of the various plots within the relevant periods specified in the original programme. The next question that arises is whether there was any variation of that programme by reason of the introduction of the revised programme. At first, the defendants maintained that the revised programme was drawn up in order to deal with the situation in which they found themselves by reason of the plaintiffs' delay and not in order to give the plaintiffs an extension of time in which to complete. The defendants were not consistent in this stand. If they had been, they would have maintained right up to the end that the number of days by which the plaintiffs were late in respect of each plot were as set out in paragraph 18 above. However, as also pointed out in that paragraph, Mr Ee changed his position on this issue several times in the course of cross-examination. He ended up by conceding that the plaintiffs had completed plots 2 and 3 on schedule and were late by 19 days for plot 4 and 28 days for plot 1. In his closing submissions, counsel for the defendants stated that the defendants' final claim was for 75 days delay, 44 in respect of plot 4 and 31 in respect of plot 1. No claims were made for plots 2 and 3.

26. It appears to me that the defendants have conceded that whilst they might not have intended to do so initially, by putting forward the revised programme they in fact gave the plaintiffs an extension of time in which to complete the piling works. I therefore hold that the completion dates appearing in the revised programme are the ones that have to be considered for the purposes of ascertaining whether the plaintiffs were late in completing their work.

27. In the course of the trial, there was an issue about what exactly had to be done in respect of the piling works by the completion dates mentioned in the revised programme. On the evidence that was given, it appears to me that the correct position is that the plaintiffs were obliged to have completed both

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physical piling and load tests by those dates. In the end, this was the position that was accepted by the main witnesses for both parties.

28. The consequence of the foregoing findings is that the plaintiffs should have completed physical piling and carried out the load tests for plot 4 by 2 March. Instead these tasks were only completed on 24 March. That makes a delay of 22 days for plot 4. As for plot 1, completion should have been on 16 April but actually occurred on 17 May resulting in a delay of 31 days.

(2) What damages can the defendants claim?

29. The plaintiffs have argued that even if there were delays in the piling works they are not liable to pay the defendants any damages for the same because the defendants obtained extensions of time from the JTC and these extensions of time totally wiped out the delay. The defendants admit that they were given extensions of time. They say, however (and the evidence they adduced shows) that none of those extensions related to the piling works and therefore the plaintiffs cannot rely on them to relieve themselves of liability.

30. The defendants' argument appears to me to reflect the correct position. The plaintiffs were late. The defendants were able to catch up with their schedule by dint of employing extra workers and accelerating the speed of the works. They were also given extensions of time in accordance with the contractual terms. Unfortunately, these extensions of time did not enable them to complete on time because of bad weather encountered in December 1993 and thereafter. The fact is that because the plaintiffs were late, the defendants in turn lost time. If the plaintiffs had not been late, then the defendants would have had an extra 22 days for plot 4 and an extra 31 days for plot 1 in which to carry out the rest of their construction work and they would have finished work on those plots 22 days

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and 31 days earlier. These days were lost to them because of the plaintiffs' default and the plaintiffs cannot rely on unrelated extensions to exonerate them from liability.

31. The next question is whether the defendants are entitled to recover the $1,300 per day liquidated damages which they paid for the delays. The plaintiffs argued that they had no knowledge of the liquidated damages clause in the main contract and therefore cannot be made responsible for this liability. The evidence of Mr Charles Lee on this point was not satisfactory. Although he denied it I find that he knew that there was a liquidated damages clause in the main contract since he had been given copies of the relevant documents by the defendants at the time they first asked him to quote for the piling job. In any event, Mr Lee had long experience both in the construction trade generally and in particular in relation to the JTC's contractual requirements. Even if he had not seen the contract, he must have known that the JTC would insist on a liquidated damages clause being contained in any construction contract and that, as the main sub-contractor to Sin Huat, the defendants would have to take on similar liability. He should therefore have contemplated that delays on his part could lead to the defendants having to pay liquidated damages to the main contractor/JTC. It is established law that in order to establish liability for the damage caused by a breach of contract, the party who had suffered damage has simply got to show that the contract breaker should have contemplated that damage of the kind suffered by the innocent party was not unlikely in the circumstances. See *Hill v Ashington Piggeries* [1969] 3 All ER 1496.

32. I therefore hold that the defendants are entitled to claim from the plaintiffs the sum of $1,300 per day for the total of 53 days delay which the plaintiffs caused them. The total payable by the plaintiffs which can be set off against the

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amount which the defendants owe them for the piling works is therefore $68,900.

33. The next issue is whether the defendants are entitled to recover the extra labour and administrative costs they allegedly incurred during the period of delay. My judgment on this issue is that the defendants have failed to prove these costs. As far as the office and administrative costs were concerned, the defendants did not adduce any evidence of the actual costs of the items. They are not entitled to claims based on estimates. Mr Ee admitted that the defendants would have incurred these costs in any case even if the project had not existed. As regards the salaries, each of the five persons for whom claims were made was a full time employee. Each was paid a fixed monthly salary and none was employed solely or specifically for the project. There was no evidence that because of the delay in the project the defendants were prevented from transferring these persons to other sites or had to employ other personnel to undertake work that these five would have undertaken if there had been no delay. Mr Ee admitted that he never found it necessary to take on additional staff because of delays in the project. As the defendants would have had to pay all these salaries in any event, they cannot now claim that these payments resulted because of the plaintiffs' breach of contract.

Conclusion

34. In the result, the defendants are only entitled to set off against the balance of $358,341.66 due to the plaintiffs, the sums of $23,420 (for defective works) and $68,900 (for delays). The plaintiffs are therefore entitled to judgment in the sum of $266,021.66 and interest thereon at 6% p.a. from the date of the writ. As regards the costs, the defendants have, to a certain extent, been successful on their claim to set off and therefore I do not consider that the plaintiffs should be

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entitled to recover full costs. I will therefore hear the parties on the appropriate costs order to be made.

JUDITH PRAKASH

JUDGE

Judith Prakash J

Chia Chor Leong (Chia Chor Leong & Co) for the plaintiffs
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