IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 175

Suit 1668/1997

Between

Chua Hock Soon trading as Jai Li Home Interior Design

… *Plaintiff*

And

Tropical Associated Construction Co Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Chua Hock Soon trading as Jai Li Home Interior Design v Tropical Associated Construction Co Pte Ltd

[1999] SGHC 175

Suit 1668/1997
Lai Kew Chai J
30 June 1999

JUDGMENT:

GROUNDS OF DECISION

Cur Adv Vult

Introduction

1 The plaintiff, who supplied labour for the installation and other services in respect of door frames and doors, parquet flooring, wardrobes and vanity cabinets of two substantial housing condominiums, claims against the defendants for the refund of the retention sum of $8,251.35 relating to the Kew Drive project and the retention sum of $35,058.38 relating to the Anchorage Condominium project. As the retention sum in respect of the Kew Drive project was not disputed, judgment for the plaintiff in that sum plus interest at 6% p.a. from 1 January 1998 until payment and cost fixed at $750.00 was entered at the commencement of the trial. The claims of the plaintiff for work done in the Anchorage Condominium are not challenged but they overlap the counterclaims

of the defendants. Those counterclaims are made up of 12 items set out in the exhibit marked "A (Revised)", which was admitted on the third day of the trial, and which later emerged as 17 items in the schedule annexed to the defendants' submissions dated 24 March 1999. They total the sum of $143,011.39. The items will be set out later. As the burden of proving the counterclaims rested with the defendants, they were ordered to begin the case.

2 On 1 September 1997 the plaintiff commenced this action to recover sums due to him for work done and services rendered at various projects. They were the Kew Drive project, NUS(Block 7) project, Citrus Grove project and the Anchorage Condominium project. He applied for summary judgment and obtained judgment for the sum of $211,823.34. What remained for this trial were these: (1) Kew Drive project 2.5% retention of $8,251.35; (2) Anchorage project 2.5% retention of $35,058.38; and (3) the balance sum of $18,725,75 which the defendants had counterclaimed and for which unconditional leave was given to the plaintiff. As stated earlier, there was no dispute that the plaintiff is entitled to the Kew Drive retention sum. Accordingly, the issues in dispute in this trial all centre on the work done and services rendered in respect of the Anchorage project.

Background

3 The main contractor of the Anchorage Condominium project at Alexander Road is Hazama Corporation. They constructed 775 apartment units in 9 building plots in the project. They appointed the defendants to be their sub-contractor for the supply and installation of vanity cabinets in the apartments. That appointment was made in February 1995. About two months later, they appointed the defendants to supply and install timber doors and frames,

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wardrobes and parquet flooring for part of the project. By an agreement in September 1995 they engaged the defendants to carry out some painting, staining and varnishing works to timber door, door frames and architraves.

4 The defendants in turn appointed the plaintiff, who is trading as Jai Li Home Interior Design, as their sub-contractor to undertake the following works:

> (a) supply labour for the installation of door frames, door leafs and locksets for Plots 4 to 6; the engagement was oral and terms were reduced into writing in a letter dated 29 January 1996;
>
> (b) supply labour for the installation of wardrobes (including vanity cabinets) for Plots 1 to 9; again the engagement was oral and terms were reduced into writing in a letter dated 4 March 1996; and
>
> (c) supply labour for the installation of parquet floor and skirting including material and application of varnishing at Plot 4; once again the engagement was oral and terms were reduced into writing in a letter dated 12 August 1996.

It will be noted that all three contracts were for the supply of labour. The materials such as the door frames were to be supplied by the defendants, who were manufacturers of these items. The co-ordination between the timeous supply of materials and the execution of the works between the plaintiff and the defendants was crucial. Such a situation often, as it did in this case, lend itself to disputes with one party seeking to blame the other for any delays. Secondly, the engagements were all oral and terms were reduced into writing after the plaintiff had begun their supply of labour and work had been in progress. In this case, the plaintiff raises the issue whether the terms in writing are binding on him or are they merely "for record". In my view, the terms which were reduced into writing are clearly binding on the parties.

5 The 3 contracts contained the following terms which are relevant for present purposes:-

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> (a) The plaintiff shall strictly follow in accordance with the main contractor's working schedule and all work shall be completed within the times given. The plaintiff shall ensure that the speed of works shall not be at any time slower than that required by the main contractor in accordance with the main contractor's working schedule and the rate of progress of other works at site.
>
> (b) In the event of any delays due to the plaintiff's default, the plaintiff is required to reimburse the defendants all losses, damages and expenses incurred by the defendants as a result of the plaintiff's delays.
>
> (c) The plaintiff shall at his own costs and expense make good all defective works during the Defects Liability Period to the main contractor's and Architects' satisfaction.
>
> (d) The plaintiff shall be responsible to keep the site clean and safe condition during the construction period. All debris which comes from the works shall be gathered and removed periodically or as instructed by the main contractor.

6 In October 1995 one Ms Luah See Hong, an employee of the defendants responsible for contract documentation, who left their employ in mid 1997, orally engaged the plaintiff to install the doors at Plots 4, 5 and 6 in place of another sub-contractor, one Mr Lim Bin Huang. Mr Lim had partially installed the door frames in the three building plots. The plaintiff started installation of the door frames in December 1995. They completed installation of the door frames for Plots 4, 5 & 6 in May 1996.

7 Following the oral agreement between Ms Luah and the plaintiff, the plaintiff commenced installation of the wardrobes for Plots 1 to 6 in February 1996. As noted earlier, the written agreement for the work was signed on 25 March 1996.

8 In April 1996 the plaintiffs commenced installation of the door leafs and architraves for Plots 4, 5 & 6.

9 In July 1996 the plaintiff commenced the installation of parquet flooring for Plot 4 under an oral agreement. He completed the job and varnished the parquet

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floor in November 1996. The written agreement for the jobs was signed in September 1996.

10 By December 1996 the plaintiff completed the installation of the door leafs and architraves for the apartments in building Plots 4 to 6. In the same month the plaintiff completed the installation and varnishing of the wardrobes and vanity cabinets for Plots 1 to 6.

11 In end January 1997 the plaintiff stopped going to the Anchorage Condominium site at Alexander Road.

Changes in the Counterclaims

12 As noted earlier, the plaintiff filed this writ on 1 September 1997. On 25 September 1997 the defendants filed their defence and counterclaim which was first stated to be $73,285.75. On 15 June 1998 the defendants amended their counterclaim to $419,311.38 (inclusive of liquidated damages). In October 1998 the counterclaim was reduced to $326,191.48. Just before the case first came up for trial in November 1998 the counterclaim was reduced to $247,803.50. At the opening, counsel for the defendants maintained the claim. As a result of another look at the evidence presented in court, the defendants' counterclaim now stands at $143,011.39. It is made up of the following claims:-

> (a) Re-entry costs by developer $14,497.00 developer for varnishing to parquet floor for Plots 1 to 9 (b) Clearing and cleaning of materials $ 1,473.44 and housekeeping for Plots 1, 4, 7, 8 and 9 (c) Housekeeping, clearing and cleaning $ 4,431.25 (Plot 5) (d) Parquet floor, clearing of sanding dust $ 9,060.00 at $60.00 per unit (Plot 4: 151 units) (e) Parquet hollow rectification work $ 9,540.00 (f) Door knobset damaged and wrong $ 90.65 installation (g) M & E riser shaft door frames - $27,800.00 double handling costs at $200.00 per door frame (Plot 4, 5, 6) (h) Double handling due to

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misalignment $ 840.00 of door frame installation (Plot 6) (i) Double handling due to misalignment $ 5,320.00 of door frame installation (Plot 4) (j) Rectification works for misalignment $ 5,200.00 of door frames (Plot 5) (k) Misalignment in installation of door $ 8,600.00 frames (Plot 6) (l) Misalignment of door frames (Plot 5) $ 960.00 (m) Costs incurred by defendants in carrying $29,370.00 out re-varnishing works to wardrobes (n) Material costs $ 1,735.30 (o) Administrative costs $12,270.00 (p) Unauthorised purchases $ 1,021.97 (q) Loss/damage to machineries borrowed $10,801.78 by plaintiff
_____ 143,011.39 ========

13 In view of the many changes, it was inevitable that the claims of the defendants had to be scrutinised with care. Substantiation of each item had to be proved on the many issues raised. These issues were as follows: (1) Are the defects complained of within the scope of the plaintiff's work?, (2) Were the defects caused by the plaintiff's workers?, (3) Was the plaintiff given an opportunity to rectify the defects?, (4) Were the rectification costs properly incurred by the main contractor and properly claimed from the defendants or properly incurred by the defendants, as the case may be?

The Evidence

14 Mr See Boon Chai, who joined the service of the defendants only in September 1995, was the first witness for the defendants. He was the operations manager. By the time he gave evidence, he had obtained a Master of Science degree and was the defendants' Assistant General Manager. He has been in the construction industry since 1983 after his ROD from national service. Upon joining the defendants, he inspected the quality of work of the plaintiff. The quality of work and workmanship of the plaintiff's workers were of poor quality. The manpower was insufficient and the datelines were difficult to keep. He therefore instructed the defendants' quantity surveyor to certify the work

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done up to a limit of 80% so that the remaining margin could take care of the poor quality of the plaintiff's work. He was regularly at the site.

15 He said they had weekly meetings with Hazama. The plaintiff or his brother Michael Chua was present. Defects and delays were identified and the plaintiff or his brother was instructed to proceed with despatch or rectify the defects. He gave evidence of the defects he found. Regarding the door frames and doors, he said they were not aligned correctly. There were wide gaps between the door panels and flooring. The doors could not open or close properly. They were scratched. The hinges were not screwed properly, the locks were aligned wrongly and could not close. Parts were loose and faulty. He described the defects of the wardrobes and vanity cabinets. There were gaps between different panels of wood. The joints were not tightly secured. There were scratches and dents on the doors and cabinets. As regards the parquet flooring, there were gaps in the joints between the timber strips and at the thresholds. The joints were not level and flushed. The nailing of the timber strips were not properly patched up. Sanding of the parquet flooring was badly done, resulting in unevenness and patchy roughness.

16 Mr See Boon Chai referred to the daily record of the manpower on site kept by Hazama from 9 November 1995 to 31 January 1997, especially for the door frame installation. The record shows that the plaintiff did not provide enough workers on site to keep up with the schedule for the door frame installation for Plots 4 to 6. Shortage of manpower was the main reason for the delays in the installation. He candidly admitted that the defendants themselves were unable to provide enough workers to work in the other Plots. Hazama through their site managers sent memos on the defects and delays in the installation of the door frames.

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17 During the period of construction, the defendants were informed by Hazama that they would claim back charges from them for defects and housekeeping responsibilities which Hazama had to do themselves since the plaintiff failed to do so. Hazama also took photographs which were produced at the trial. By a letter of 19 May 1998 Hazama submitted their back charges against the defendants. The claims total $713,072.91. They were for varnishing to the doors and parquet flooring, touch up of the main door, double handling of plastering, and housekeeping items. However, the letter did not give a breakdown of the back charges payable in respect of which unit or Plots.

18 On 3 April 1998 the defendants commenced proceedings in the High Court against Hazama claiming $666,498.24 being the balance due for work done and materials supplied in relation to vanity cabinets, timber doors and frames, wardrobes, parquet flooring, painting, staining and varnishing works to timber doors, door frames, architraves and variation orders thereto at the Anchorage Condominium project. The claim was based on a total contract value of $7,877,614.29. The suit was settled and compromised between the defendants and Hazama. One condition of the settlement was that the defendants had to accept the back charges incurred by Hazama and set out in their letter of 19 May 1998. Mr See Boon Chai told the court that he accepted the back charges as they were supported by documents and what he had seen with his own eyes. Eventually, the settlement agreement was reached on the basis of the defendants receiving a net sum of $7.45 million for all their works and materials supplied after deducting the back charges. This meant that the defendants had to re-adjust the total contract amount to $8,163,072.91 notwithstanding the fact that the defendants' own quantity surveyor had put the contract value at about $8.275 million.

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19 (a) Pursuant to the Hazama settlement, the defendants were given 3 files containing the documents in support of the back charges. Mr See and the defendants' quantity surveyor went through the documents and apportioned the sum of $192,864.12 out of $713,072.91 as payable by the plaintiff. Upon scrutiny in court, the sum has been reduced to $143,011.39. Apart from the claim for administrative costs in the sum of $12,270.00, all the other items set in paragraph 12 herein are supported by the exhibits referred to in the schedule to the defendants' written submissions.

(b) The strength of the defendants' counterclaims hinges on the evidence of Mr Nobutaka Tegushi, who was the Senior Project Manager of Hazama. He was personally involved in quality control and the monitoring of the schedule of the work in progress. He confirmed the validity of the back charges. He identified all the documents which supported the counterclaims, as finally reduced and in respect of which all the Hazama documents were identified in the schedule to the defendants' written submissions. The contemporaneous documents kept by Hazama, an independent party, tells greatly against the plaintiff.

(c) The plaintiff denies that he is liable for any of the counterclaims. But he could not refute the evidence of Mr Tegushi and, more importantly, the contemporaneous documents and photographs maintained by Hazama.

20 In cross examination, Mr See was asked questions regarding the defendants' counterclaims for double handling of the M & E riser shaft shaft doors. He candidly admitted that the defendants themselves were late in the delivery of the materials; but he said the defendants had properly apportioned the number of doors directly due to the fault of the plaintiff. It is the defendants' case that the plaintiff ought reasonably to have started the installation of the door frames

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from the 8th floor onwards. This contention is not persuasive. The defendants were themselves late in the deliveries; and it was wholly unreasonable to expect the plaintiff to take on the task of co-ordinating and scheduling from which floor installation should take place. In my judgment, the defendants' counterclaim of $27,800 in connection with the M & E shaft door frames was not made out.

21 The other items that are not made out, in my judgment, are the claim for administrative cost of $12,270.00 and the loss and damage to the machineries borrowed by the plaintiff. The administrative cost is normally an item that is factored into the price of the contracts. No basis for quantifying it at $12,270 was effectively shown. As regards the claims concerning the machineries, the records were not reliable enough. No system of its reliability was shown and it would be wrong to accept the mere word of the defendants' employees. The item was not raised and there was no complaint about the machineries at all.

22 There will be judgment for the defendants on their counterclaims as set out in the schedule to their written submissions except for the items mentioned above. There will also be judgment for the plaintiff in respect of their retention monies. On the costs of both parties, I must say that there has been several amendments to the counterclaims. With the help of schedules ordered by this court, there was a much clearer joining of issues and the identification of the proper documents and photographs, which resulted in the defendants reducing their counterclaims. Taken as a whole, the defendants should be awarded only half of the costs of these proceedings. Parties are directed to settle the draft orders, failing which they have liberty to apply to me.

Sgd: Lai Kew Chai

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Judge

Singapore

Lai Kew Chai J

Conrad Campos [Colin Ng & Partners] for the plaintiff
Tan Yew Cheng and Chin Li Ling [Edmond Pereira & Partners] for the defendants

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