IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 98

DA 74/1998

Between

Spandeck Engineering (S) Pte Ltd

… *Appellant*

And

Yong Qiang Construction

… *Respondent*

GROUNDS OF DECISION

Civil Procedure

Version No 1: 29 Oct 2026 (23:45 hrs)

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Spandeck Engineering (S) Pte Ltd v Yong Qiang Construction

[1999] SGHC 98

DA 74/1998
Amarjeet Singh JC
20 April 1999

1 : The plaintiffs carry on the business of building construction contractors.

2 The defendants were appointed the main contractors for the Housing & Development Board (HDB) project at Kallang Whampoa RC2.

3 On 23 May 1993, pursuant to an agreement constituted by a Purchase Order No SDE/1982/93/HDB, the defendants sub-contracted to the plaintiffs the above project in respect of supervision, supply of labour for carpentry, concreting and steel bending works to residential Blks 4, 5 and 6 and Blk 6A being the car park.

4 Clause 13 of the agreement stipulated:

> (i) that the defendants retain 10% of the progress payment initially and that retention moneys be progressively reduced to 5% decrementally by 1% for every 10% work done and thereafter be at 5% and
>
> (ii) the full amount of the retention moneys would be released by the main contractor within three months from the end of the contract period, ie completion.

5 Clause 15 stipulated as regards progress payments:

Payment will be based on final site measurements. ...

6 In or about July 1995 the plaintiffs completed the works and there remained with the defendants the retention sum of 5%.

7 On 7 March 1998 the plaintiffs claimed by writ of summons the said 5% retention sum amounting to $62,275.51 which the plaintiffs aver the defendants failed to release to them since completion of the works.

8 On 19 March 1998 the defendants entered an appearance but failed to file a defence.

9 On 3 April 1998, the plaintiffs obtained judgment as claimed plus costs in default of filing defence.

10 On 4 May 1998 the defendants applied to have the judgment set aside.

11 On 1 June 1998 the deputy registrar granted the application setting aside the judgment.

12 The plaintiffs having appealed against the decision, the learned district judge allowed the appeal and ordered the judgment dated 3 April 1998 to stand.

13 The defendants thereafter having appealed to the High Court against the decision of the learned district judge and after having heard the appeal, I upheld the decision of the learned district judge and dismissed the defendants` appeal.

14 Defendants` counsel relying on the affidavits of Soh Lip San dated 5 May 1998 of the defendants and the defendants` chairman, Tony Chi Chao-Ton

dated 31 July 1998 submitted before me that no final measurement of the work had been done previously; the defendants after the commencement of the proceedings herein had carried out `preliminary` measurements based on the `as-built` drawings and that thus far 50% of the work done had been re-measured and re-cost; the re-measurements showed the plaintiffs` claim to be inaccurate and erroneous and that the plaintiffs had in fact made an over-claim of $79,435. Therefore no further sums were due to the plaintiffs assuming that the remaining 50% of the re-measurements yet to be done by the defendants were to be found correct. In paras 9 and 10 of the affidavit filed by the defendants` chairman it was averred by him and accordingly submitted by defendants` counsel that it was accepted practice in the construction industry that the plaintiffs and defendants are still able to carry out a final re-measurement of the project on the `as built` drawings and the accounts should not be closed without this standard practice.

15 These submissions were refuted by the plaintiffs` counsel. In turn relying on the affidavits and exhibits filed on 14 May 1998 of Tay Chin Kian, plaintiffs` partner as well as the exhibits filed on behalf of the defendants, Counsel referred to the defendants` own documents in the affidavits, showing that the defendants did their own calculations and valued the works as shown by their Progress Claim Calculation Sheets and Sub-Contractors Certificate of Payments for work done after the plaintiffs submitted their claim forms for each progress payment. All measurements calculated had already been achieved by site measurements and site measurements were the correct form of measurement as the parties had already taken into consideration amendments and alterations done at site. It was further submitted that the defendants had been asking payments of the defendants for some three years and they had delayed payment as they wanted to pay a lower sum. In support the plaintiffs produced the

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defendants` payment voucher 6/09 dated 5 June 1995 which confirmed the sum of $62,275.51 as being the retention moneys held and due to the plaintiffs.

16 The setting aside of a judgment obtained in default is governed by clear principles. They were re-stated succinctly by Chao Hick Tin J in **Abdul Gaffer v Chua Kwang Yong** [1995] 1 SLR 484 at p 489, recently as follows:

> ...
>
> (i) it is not sufficient to show merely an arguable defence that would justify leave to defend under O 14; it must both have a real prospect of success and carry some degree of conviction; and
>
> (ii) if proceedings are deliberately ignored, this conduct, although not amounting to an estoppel at law, must be considered `in justice` before exercising the court`s discretion to set aside the default judgment (see ***The Saudi Eagle; Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc***).

17 Having examined the affidavit evidence and reviewed the decision of the learned District Judge, I agreed with him and upheld his decision that the defence did not have a real prospect of success and did not carry some degree of conviction.

18 I am satisfied from the defendants` Progress Claim Calculation documents and the Sub-Contractors Certificate of Payments that the defendants carried out with their quantity surveyor site measurements of the work done and their calculations of work done and amounts due to the plaintiffs were accurate figures and not rough estimates. Thus the sum of $62,275.51 representing 5% retention sum compiled by the defendants in their payment voucher 6/09 dated 5 June 1995 is an exact sum. I may also observe that the sum of $62,275.51 as calculated by the defendants was slightly lower than the figure of $63,052.54

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calculated by the plaintiffs and the marginally lower figure was accepted in deference by the plaintiffs as the sum of 5% retention moneys due. The other figures and sums for progress payments all express exactitude. No purpose would be served by a rough calculation being submitted on the part of the defendants except to double the work. There was nothing in the defendants` case contrary to cl 15 to show that there would later be a re-measurement based on `as built` drawings. If the defendants had in mind re-measurement of the works there should have been some document in support thereof. The defendants` averments in this regard are further diminished by the fact that the defendants did nothing to re-measure the works for three years after their completion. The buildings had already been occupied for a long while making it impossible even for another site measurement to be carried out. They only brought up the averments when they faced this suit brought against them. To my mind, it was an afterthought. Clause 15 clearly and specifically referred to site measurements (and not `as built` drawings) and a measurement would have been done by the defendants each time there was a submission of their calculation by the plaintiffs for a progress payment. Such payments were made upon certification. What further surprised me was:

19 (i) the defendants` chairman`s statement at para 6 that the defendants` figures were estimated and would vary depending on the defendants` staff who were reviewing the particular claim ... and that therefore the plaintiffs` contention that the site measurements were final is erroneous (para 6 Tony Chi Chao-Ton`s affidavit of 31 July 1998).

20 (ii) that the defendants at this very late stage by their affidavit still labelled their re-measurements as to 50% of the area as `preliminary investigation` (para 10 Soh Lip San`s affidavit of 5 May 1998).

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21 Accordingly, I dismissed the defendants` appeal and ordered the defendants to pay the plaintiffs costs of the appeal.

22 **Outcome:**

23 Appeal dismissed.

Amarjeet Singh JC

Ravi Chelliah (Cooma Lau & Loh) for the appellants
Ramalingam Kasi (Raj Kumar & Rama) for the respondents

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