Jiangsu Hantong Ship Heavy Industry Co Ltd and Another v Sevan Holding I Pte Ltd [2009] SGHC 288

Case Number : Suit 963/2008, RA 106/2009

Decision Date : 29 December 2009

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Philip Tay Twan Lip (Rajah & Tann LLP) for the appellants/plaintiffs; S Mohan and Bernard Yee (Gurbani & Co) for the respondent/defendant

Parties : Jiangsu Hantong Ship Heavy Industry Co Ltd; China National Aero-Technology Imp & Exp Xiamen Corporation — Sevan Holding I Pte Ltd

Arbitration

29 December 2009 Judgment reserved.

Tan Lee Meng J:

1 The appellant, Jiangsu Hantong Ship Heavy Industry Co Ltd ("Hantong"), a Chinese shipyard, entered into a contract with the respondent, Sevan Holding I Pte Ltd ("Sevan"), for the construction of a vessel called "Hull 29" ("the contract"). Hantong sued Sevan for money owed under the contract but the action was stayed by Assistant Registrar Lim Jian Yi ("AR Lim") so that the dispute between the parties may be resolved through arbitration proceedings in London in accordance with the terms of the contract. Hantong appealed against his decision.

2 Under the contract, Sevan was required to pay progress payments within five banking days following its receipt of Hantong's invoices for the construction of Hull 29. Hantong claimed that as at 12 December 2008, Sevan owed it USD 3,646,208. On that day, Hantong's solicitors demanded the payment of this sum within three days. When this amount was not paid, Hantong instituted Suit No 963 of 2008.

3 Sevan responded by applying for the action to be stayed. At the hearing of Sevan's application on 1 April 2009, AR Lim stayed the action in favour of arbitration proceedings in London in accordance with the terms of the contract. Hantong appealed against his decision.

The court's decision on the appeal

4 The issue before the court is the same as in Suit No 961 of 2008 (SGHC … of 2009), which concerns the construction of another vessel by Hantong for another company within the same group of companies as Sevan. What must be considered is clause 35 of the contract, which requires the parties to resolve their disputes through arbitration proceedings in London. It provides as follows:

> Any dispute arising out of or in connection with this Contract, including any questions regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Maritime Arbitrators Association (LMAA), which Rules are deemed to be incorporated by reference into this Article. The arbitration shall be held in London, England, and the language of the proceedings shall be English.

5 Hantong contended that its action against Sevan should not have been stayed as there was no

"dispute" between the parties that required arbitration pursuant to clause 35 of the contract. It also contended that the question of arbitration does not arise because Sevan had admitted liability for the amount owed.

6 In *Tjong Very Sumito v Antig Investments Pte Ltd* [2009] SGCA 41 ("*Tjong*"), V K Rajah JA, who delivered the judgment of the Court of Appeal, stated at [29] that as the whole thrust of the International Arbitration Act (Cap 143A, 2002, Rev Ed) ("IAA") is geared towards minimizing court involvement in matters that the parties had agreed to submit to arbitration, concurrent arbitration and court proceedings are to be avoided unless it is for the purpose of lending curial assistance to the arbitral process. In view of this, he added at [69] that courts will interpret the word "dispute" broadly and will "readily find that a dispute exists unless the defendant has unequivocally admitted that the claim is due and payable".

7 In the present case, Sevan insisted that it had a dispute with Hantong and that it does not have to pay the amount claimed by the latter because it has substantial counterclaims against the latter. Sevan alleged that Hantong was ill-equipped to perform its obligations and commitments under the contract and that Hantong's defective performance of the construction of Hull 29 raises serious issues relating to quality. Sevan also claimed that Hantong's delayed performance of its contractual obligations entitled it to claim liquidated damages. When considering Sevan's submissions, it is worth noting that it is trite that there can be a dispute between parties even though it can be easily and immediately demonstrated beyond any doubt that one of them is clearly right and the other is clearly wrong: see *Hayter v Nelson Home Insurance Co* [1990] 2 Lloyd's Rep 265. In *Dalian Hualiang Enterprise Group Co Ltd v Louis Dreyfus Asia Pte Ltd* [2005] 4 SLR 646, Woo Bih Li J pointed out at [75] that "if the defendant at least makes a positive assertion that he is disputing the claim… then there is a dispute even though it can be easily demonstrated that he is wrong." In short, it is not for this court to consider whether Sevan's case against Hantong is strong or weak. That is a task for the arbitrator.

8 As for whether or not Sevan had already admitted liability for the amount claimed, Hantong pointed out that Seven had not challenged the invoices issued in the minutes of a meeting on 2 December 2008 or in earlier correspondence between the parties. Hantong added that Sevan had in fact asked for more time to settle the invoiced amounts. Sevan asserted the minutes of the meeting of 2 December 2008 had merely recorded Hantong's view and not any admission of liability on its part. Sevan also submitted that the correspondence relied on by Hantong must be viewed in the context of commercial negotiations that were intended to settle the dispute between the parties on an amicable basis. It also submitted that it is relevant that it had not had the benefit of legal advice at the material time.

9 In *Tjong* (*supra*, [6]), V K Rajah JA pointed out at [61] that, generally speaking, the court should not be astute in searching for an admission of a claim, and would ordinarily be inclined to find that a claim is not admitted in all but the clearest of cases. As the present case is not one of the "clearest of cases" where a defendant has unequivocally accepted liability for the amount claimed, AR Lim was entitled to stay the proceedings in favour of arbitration proceedings in accordance with the terms of the contract.

10 For the reasons stated, I affirm AR Lim's decision and dismiss Hantong's appeal with costs.

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