

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1988] SGHC 98

Suit 554/1986

Between

Kian Wah Hung (Pte) Ltd

... Plaintiff

And

Kian Choon & Co Pte Ltd

... Defendant

GROUND OF DECISION

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Suit 554/1986
Chan Sek Keong JC
11 March 1988

1 1) On 3 February 1988, I dismissed this appeal by the Defendants against the decision of the Assistant Registrar giving leave to the Plaintiffs to enter judgment for the sura of \$117,178.22 and \$600 costs being part of a claim for \$138,747.61. As the Defendants have filed a notice of appeal against my decision, I hereby give my grounds.

2 4) The Plaintiffs' claim was for floor and wall tiles sold and delivered to the Defendants at two worksites i.e. 563 East Coast Road, Singapore and 7 Third Avenue, Singapore during the period from August 1982 to November 1984. The Defendants were the sub-contractors for the tiling of the floors and walls of the flats under construction.

3 5) The Plaintiffs' case was based on a statement of accounts dated 12 February 1987 showing a sum of \$138,747.61 due and owing by the Defendants on a running account between the parties. Particulars of the accounts from 1984 i.e. the dates and reference numbers of the bills were given in a letter dated 12 February 1987 from the Plaintiffs to the Defendants. Copies of the invoices were sent to the Defendants at their request on 27 February 1987. Particulars of the

running account since August 1982 were sent to the Defendants on 25 March 1982. On 24 April 1987, the Defendants' solicitors requested for copies of delivery orders from January 1984 to November 1984 and receipts of 20 payments made by the Defendants. These were sent by the Plaintiffs' solicitors on 5 May 1987.

4 6) For the hearing before the Assistant Registrar on 25 September 1987, the Chairman of the Defendants, one Chua Kang Hai, filed an affidavit on 22 September 1987 in which he alleged that the Plaintiffs had

5 (a) arbitrarily overcharged the Defendants in respect of various items (set out in paragraph 7 thereof);

6 (b) agreed to give a 15% discount on the total amount charged (paragraph 8);

7 (c) arbitrarily included transportation charges in the invoices and that some of the invoices were based on numerous delivery delivery orders which have not been endorsed by the Defendants (paragraph 10); a list of these delivery orders was annexed (CKH5).

8 7) At the hearing on 25 September 1987, counsel for the Defendants obtained an adjournment to 2 October 1987 to sort out the invoices. On 30 September 1987, the Defendants filed a second affidavit in which they listed out the delivery orders (CKH4A, CKH4B and CKH5) which they alleged they could not verify because they were not endorsed by authorised person. They therefore disputed evidence of delivery.

9 8) The Assistant Registrar requested the submission of Defendants' counsel in an oral judgment as follows:

10 "I confine myself to the affidavits filed before me. The defendants have already been given an opportunity last week to sort out the invoices and to put all matters before the Court. As for the allegation that there is no evidence of delivery, I rule that that is not a triable issue. The Defendants are saying that so long as the Delivery Orders are not indorsed, there is no evidence of delivery. But this is a running account. The Defendants are forced to concede that they had ordered the goods - albeit in bulk. There is no direct denial that the goods were in fact delivered. The Defendants are apparently taking the position of putting the Plaintiffs to strict proof. Further, there is no evidence of any agreement between Plaintiffs and Defendants that payment was only on presentation of an indorsed Delivery Order; neither is there evidence that the Delivery Order must be indorsed in a specific way.

11 In the circumstances, I rule that the allegation is without merit. My orders are as follows: Judgment for \$117,178.22\$. Leave to defend for \$21,569.394. Costs at \$600.00 to the Plaintiffs. Trial as to the balance of claim be transferred, upon oral application of Plaintiffs, to the Subordinate Courts."

12 9) I agree entirely with the grounds given by the Assistant Registrar. I found that there were additional grounds for holding that the Defendants had no defence. The Defendants' defence was tantamount to saying that tiles with an approximate value of \$94,662.41 + \$3,788.98 out of a total value of \$401,211.32 had not been supplied to them, i.e. a shortfall of 21%. The bulk of the delivery orders in respect of these tiles were for the month of September 1983 (6 delivery orders), October 1983 (8 delivery orders), December 1983 (6

delivery orders) and from 2 to 4 delivery orders for each of the months of January to October 1984.

13 10) Firstly, I found it highly improbable that the Defendants having ordered the tiles on these occasions and having found that they had not been delivered had not once complained to the Plaintiffs that they had not received any tiles on the days and for the periods in question. Secondly, I also found it equally improbable that with a 21% shortfall in the quantity of tiles required by them, the Defendants were able to complete the two housing projects, which they undeniably did. Thirdly, there is no evidence that during the period when no tiles were being supplied (as alleged) but for which bills were sent, the Defendants had not once rejected any such bills sent by the Plaintiffs on the ground that the delivery orders had not been signed by an authorised person.

14 11) Counsel for the Defendants relied on an affidavit filed by the Defendants on 22 January 1988 in which was alleged for the first time that there was an oral agreement as to the manner in which delivery was to be effected and that delivery orders must be signed by the Defendants' authorised personnel. No such person or signature was identified in the said affidavit. No explanation was given as to why this alleged oral agreement was not referred to in the earlier affidavit of the Defendants or relied upon at the hearing before the Assistant Registrar. In my view, this was merely an attempt to assert a highly improbable agreement to bolster the Defendants' appeal.

15 12) For the above reasons, the appeal was dismissed.

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Ng Weng Cheong for Plaintiffs/Respondents
Belinda Lee for Defendants/Applicants
