**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[1989] SGHC 117**

Suit 2706/1987

Between

Yong Tai Loong Pte Ltd

… *Plaintiff*

And

Kian Giap Contractors

… *Defendant*

And

Pacific Construction Co Ltd

… *Third Party*

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# GROUNDS OF DECISION

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# Yong Tai Loong Pte Ltd v Kian Giap Contractors (Pacific Construction Co Ltd, Third Party)

**[1989] SGHC 117**

Suit 2706/1987
Chan Sek Keong J
23 October 1989

1) On 15 January 1988, the plaintiffs, the judgment creditors ("YTL") entered final judgment against the defendants, the judgment debtors ("KGC") for the sum of $162,043.65 and interest and costs ("the judgment debt") on a claim for the balance of the price of goods sold and delivered and work and services rendered. KGC did not appeal against the judgment.

2) On 21 January 1988, YTL obtained a garnishee order nisi against the garnishee ("PCC"), who was the main contractor of KGC, a sub-contractor, in a construction project in respect of which the claim by YTL against KGC arose, to show cause on 5 February 1988. Hereafter, the chronology of events was as follows:

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| 1. | 22.1.88 | Garnishee Order Nisi served on Garnishee |
| 2. | 2.2.88 | Garnishee's short (1st) Affidavit-Bare denial of indebtedness |
| 3. | 4.2.88 | Judgment Creditors' Affidavit challenging this |

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| 4. | 3.3.88 | Garnishee in (2nd) Affidavit denying indebtedness, exhibiting copy letter of termination and its letter to Judgment debtor of latter's indebtedness. |
| 5. | 7.3.88 | By consent, hearing adjourned to 28.3.88 |
| 6. | 28.3.88 | Argument. Assistant Registrar directed Garnishee to file Affidavit, exhibiting Agreement between Garnishee and Judgment Debtor |
| 7. | 5.4.88 | Judgment Creditor's solicitors telexed to Garnishee, requesting early filing of Affidavit. |
| 8. | 9.4.88 | Garnishee's solicitor telexed to say, Affidavit would be filed. |
| 9. | 20.4.88 | Judgment Creditors solicitors requested Registrar to restore hearing. |
| 10. | 13.5.88 | Hearing. Adjourned to 27.5.88. Court ordered Garnishee's Affidavit to be filed by 20.5.88 |
| 11. | 24.5.88 | Garnishee's (3rd) Affidavit filed. |
| 12. | 27.5.88 | Hearing. Adjourned to 8.7.88. |
| 13. | 4.7.88 | Judgment Creditors' (2nd) Affidavit filed. |

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| 14. | 8.7.88 | Hearing. Registrar hears arguments, but half way at request of Garnishee, adjourns to 18.7.88, for Garnishee's Affidavit, to be filed, if any, by 18.7.88. |
| 15. | 18.7.88 | Hearing. Court ordered Garnishee Order Nisi to be made absolute to $155,900.55 and costs. |
| 16. | 21.7.88 | Notice of appeal by Garnishee. Appeal fixed on 30.11.88 |
| 17. | 22.8.88 | Garnishee applied for a stay of execution. |
| 18. | 13.10.88 | Order of Court, dated 16.9.88, filed, dismissing application for stay, with costs. |
| 19. | 26.9.88 | Counsel for Garnishee requests Registrar, date of Appeal to be advanced. |
| 20. | 28.9.88 | Judgment Creditors' solicitors request counsel early filing of Garnishee's Affidavit, to avoid necessity of adjournments. |
| 21 | 20.10.88 | Judgment Creditors' solicitors request Counsel, affidavit of Garnishee |
| 22. | 27.10.88 | Judgment Creditors' solicitors asks |

| | | |
|---|---|---|
| | | Counsel confirmation no Affidavit will be filed. |
| 23. | 16.11.88 | Garnishee's Affidavit (4th)filed. |
| 24. | 29.11.88 | Judgment Creditors' Affidavit (3rd) filed. |

3) As the above chronology shows, the Registrar made the garnishee order nisi absolute on 18 July 1988. PCC appealed against this decision and the appeal came before me for hearing on 1 December 1988 when its counsel raised two main grounds of appeal. The first ground was that the Registrar had failed to exercise his discretion when he made the order nisi absolute without regard to the fact that on 8 June 1988 a winding up petition had been presented against KGC. The second ground was that the Registrar was wrong in making the nisi order absolute when there was evidence that PCC was not indebted to KGC as it had a set off or counterclaim against KGC in excess of its indebtedness to KGC.

4) The first ground was abandoned at the adjourned hearing when the Official Receiver informed the court that he would not be taking any steps to challenge the garnishee order absolute if PCC's appeal were dismissed. The hearing proceeded solely on the ground of PCC's claim to a set off and counterclaim. So far as the law was concerned, it was common ground that in garnishee proceedings, the garnishee was entitled to rely on a set off and counterclaim against the judgment debtor: see HALE v VICTORIA PLUMBING CO LTD [1966] 2 All ER 672. The only issue before me was whether PCC had adduced sufficient evidence to raise an arguable defence.

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5) The defence of PCC was set out in paragraph 5 of the affidavit of its branch manager, James Li, sworn on 24 May 1988. He deposed that up to 31.8.87 (when KGC was alleged to have suspended its works) , PCC had overpaid KGC the amount of $129,609.69 and the following particulars were given:

PARTICULARS

| | | |
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| (I) | Value of work executed up to 31.8.87 (as per HDB Certificate No.20) | $24,897,000.00 |
| | Less | |
| | Materials supplied to and expenses incurred for the said Project | $6,103,490.24 |
| | Amount paid to the Garnishee by HDB for the said Project | $18,793,509.76 |
| (II) | Total payments made to the three sub-contractors for the said Project | $17,726,622.54 |
| (III) | Amount debited to the Judgment Debtors' Account | $1,196,496.91 |
| (IV) | Amount overpaid by the Garnishee | $129,609.69 |

6) PCC was the main contractor of the Housing and Development Board ("HDB") for the construction and completion of a total of 686 dwelling units and 4 lock-up shops ("the Project") at Yishun Neighbourhood 3 under an Agreement dated 21.1.86. PCC subcontracted the Project to 3 subcontractors. They were KGC, Keng Ann Construction ("KAC") and Hua Gee Building Contractor ("HGBC"). HGBC agreed to carry out all the carpentry works as set out and comprised in the main contract at the value of $3,828,976. KAC agreed

to carry out all the concreting works set out and comprised in the main contract at the value of $3,902,381. KGC agreed to carry out all the works except the concreting and carpentry works at the value of $16,807,333. Save as aforesaid, the form of this subcontract signed by PCC with KGC, KAC and HGBC were in identical terms: all 3 agreements were dated 5.11.86 and all of them contained a provision (clause 23) that the subcontract should take effect on 22.1.86.

7) In view of the fact that PCC had 3 separate agreements with 3 different subcontractors for 3 different types of works in the Project, it was patently clear that what was disclosed in paragraph 5 of James Li's affidavit was not PCC's state of accounts with KGC alone but its state of accounts in respect of the Project vis-a-vis not only HDB but also the 3 subcontractors. Accordingly, objection was taken by counsel for YTL as to the validity of the amounts that were debited against KGC. For example, the sum of $6,103,490.24 shown in item I was the balance of materials supplied to the Project by the HDB after deducting the amount of retention money released to KGC. There was prima facie evidence that these materials were supplied to the whole Project and that a sum much larger than the judgment debt ($697,841.16 as worked out by counsel for YTL) could have been wrongly debited to YTL's account.

8) Objection was also taken against the debit of $1,196,491.91 to KGC's account. This debit was made up of a large number of debit notes from 26.3.86 to 15.10.87. Amongst them were 4 debit notes PC/027/07/87 (for $85,000), PC/029/08/87 (for $50,009.50), PC/032/08/87 (for $80,186.53) and PC/042/09/87 (for $50,506) totalling $265,702.03, which were largely made up of debit items in round figures. It was pointed out that PCC had proffered no evidence that KGC had accepted these items or as to the nature of these debits. Also included in this item of debit was the sum of $298,232 for supply of light

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weight concrete. This item was, on the face of it, chargeable only to KAC who was responsible for the concreting works. PCC had, under this debit, also included for each month commencing from March 1986 to March 1987 the monthly sum of $25,300 for administrative expenses. No evidence was produced to show why KGC had to pay these expenses to PCC when PCC had subcontracted the whole Project to the 3.

9) The nature and probative value of the evidence adduced by PCC at this stage were so unsatisfactory that the Registrar made the garnishee order nisi absolute on 18 July 1988.

10) After filing this appeal, PCC on 16.11.88 filed another affidavit affirmed by James Li on 15.11.88 to explain the earlier unexplained deductions. Paragraph 5 of this affidavit admitted that the amounts deducted by HDB were debited to the entire Project account, but there was no denial that some of the amounts deducted by HDB were attributable to the works which were the responsibilities of KAC and HGBC. Paragraph 9 explained that the debit of lightweight concrete was in respect of payments made by PCC to KGC's subcontractor. However, only a copy of a single receipt given by the supplier was exhibited to support this explanation, and even then, the receipt did not support such explanation as no where did it say that the concrete was supplied for the account of KGC.

11) In the same affidavit of 15.11.88 exhibited for the first time a copy of an agreement dated 5.11.86 entered into with the 3 subcontractors under which, PCC alleged, KGC agreed to represent KAC and HGBC in all their dealings with PCC and that this entitled PCC to debit all deductions attributable to the entire Project to KGC's account. In my view, this agreement could not justify PCC debiting all the expenses in relation to the entire Project as if they had been

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incurred by KGC alone. The said agreement merely provided that the progress payments payable under the 3 subcontracts would be paid to KGC whose receipt - should be a good discharge of PCC's liabilities to each of them. The agreement also provided, as a consequential provision, that KGC would indemnify PCC against all claims by KAC and HGBC.

12) As regards the debit of administrative expenses of $25,300 per month, no evidence was proffered.

13) In the circumstances, I was of the view that the new affidavit had not advanced the case for PCC and in fact made it worse in that PCC had admittedly treated KGC as the only subcontractor of the Project and had wrongfully loaded onto KGC all debts, claims and expenses relating to the Project, a substantial portion of which were payable by KAC and HGBC. The onus was on YTL to prove that PCC owed at least the amount of the judgment debt stated in the order nisi. I was satisfied that YTL had proved its case.

14) The appeal was accordingly dismissed with costs.

Chan Sek Keong J

Michael Khoo for Appellant/Garnishee
David Wee for Respondents/Judgment Creditors

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