

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1989] SGHC 118

Suit 3342/1987

Between

Wah Heng Glass Holding Pte
Ltd

... Plaintiff

And

Haxxon Pte Ltd

... Defendant

And

Union Aluminium Co (S) Pte
Ltd

... Third Party

GROUND OF DECISION

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Wah Heng Glass Holding Pte Ltd v Haxxon Pte Ltd (Union Aluminium Co (S) Pte Ltd, Third Party)

[1989] SGHC 118

Suit 3342/1987
Chan Sek Keong J
01 November 1989

1 1) The defendants have appealed against my decision dismissing their appeal from the decision of the Assistant Registrar giving leave to the plaintiffs to enter final judgment against them in the sum of \$51,687, with interest and costs

2 2) The defendants were the main contractors for the construction of a building at Holland Avenue owned by the Post Office Savings Bank ("POSB"). A company called Union Aluminium Co (S) Pte Ltd ("UAC") were the sub-contractors engaged by the defendants to undertake glazing works for the project. The plaintiffs were suppliers of glazing materials and services.

3 3) By a letter dated 23 December 1986, the plaintiffs submitted a quotation to UAC, copied to the defendants, for the supply and installation of glass windows at the price of \$42,807 and \$8,880 for labour charges on the following payment terms:

"Payment:	1) initial claim 75% of the value of the materials or 40% of the contract value for materials on site.
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	2) Monthly payment shall be made directly by Haxxon Pte Ltd to us at the end of each month for the value of work done in the previous month on the said project.
	3) In the event that Haxxon Pte Ltd or you shall be in default in paying any amount due to us and such default continues for 14 days from the service on Haxxon Pte Ltd or you of notice from us requesting such payment, we reserve the right to suspend execution and/or rescind the remaining unperformed part of the contract and to recover all amount due to us by you from you and Haxxon Pte Ltd.
Assignment:	Union Aluminium Co (S) Pte Ltd and Haxxon Pte Ltd agree irrevocably and unconditionally that Haxxon Pte Ltd shall pay directly to Wah Heng Glass Holdings Pte Ltd from the account of Union Aluminium Co (S) Pte Ltd all monies which are overdue and payable by Haxxon Pte Ltd to Union Aluminium Co. (S) Pte Ltd so as to settle the billing or monies due and payable by Union Aluminium Co (S) Pte Ltd to Wah Heng Glass Holdings Pte Ltd in respect of the supply and installation of glass at the said project."

4 4) The said quotation and the terms thereof were accepted by both UAC and the defendants. Pursuant to the said arrangement, the plaintiffs supplied the glazing materials and services. The plaintiffs' case was that both UAC and the defendants had failed to pay them: hence this action.

5 5) The defendants raised three defences. The first was that the said arrangement was not binding on them on the ground that there was no consideration for their promise to be liable for all amounts due to the plaintiffs from UAC. In my view, this was a hopeless argument as the plaintiffs' offer to supply the materials and services on the condition that the defendants, together with UAC, were responsible for payment thereof was accepted by the defendants.

6 6) The second defence was that the defendants' liability was that of a surety and that there was no evidence that UAC had defaulted in payment to the plaintiffs. This defence also had no substance as the plaintiffs' had filed two affidavits stating that they had not been paid and UAC (which have been joined as a third party) had also filed an affidavit admitting that the amount claimed was the amount owing to the plaintiffs.

7 7) The third defence was that the plaintiffs breached an implied stipulation of the guarantee that notice of any default by UAC should be given to the defendants, failing which no recourse might be had to the defendants. In my view, no such stipulation could be implied, as by the terms of the said letter of 23 December 1986, the defendants agreed, irrevocably and unconditionally, to pay the plaintiffs directly from the account of UAC, their sub-contractors. This was in the nature of an equitable assignment which was ignored by the defendants in their subsequent dealings with UAC and the plaintiffs.

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8 8) The appeal was accordingly dismissed with costs.

Chan Sek Keong J

Peter Chan for Appellants/Defendants
Jimmy Yap for Respondents/Plaintiffs
