

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 112

Suit No 2758 of 1985

Between

Van Hin Furniture Company
(Pte) Ltd

... Plaintiff

And

Pinetree Resort Pte Ltd

... Defendant

GROUND'S OF DECISION

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Van Hin Furniture Company (Pte) Ltd v Pinetree Resort Pte Ltd

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Suit No 2758 of 1985
Goh Joon Seng J
05 August 1991

1 **Judgment:**

2 Coram: The Honourable Justice GOH JOON SENG

3 **GROUND OF DECISION**

4 The Plaintiffs are a company incorporated in Singapore and carry on business as contractors for furniture, building interior works and renovations. The Defendants are a company incorporated in the Republic of Singapore and they carry on business of operating a private club known as Pinetree Country Club (formerly the City Country Club).

5 In this action the Plaintiffs claim against the Defendants the sum of \$194,584.40 for interior works carried out and furniture supplied at the request of the Defendants. The amount claimed should be \$194,584.20 and is made up of three claims namely :

6 (1) under paragraph 5 the sum of \$132,675.00 for the main works ('the first claim'); (2) under paragraph 6, the sum of \$54,990.20 for additional works carried out at the request of the Defendants ('the second claim'); and (3) under paragraph 6, the sum of \$6,919.00 for additional works carried out at the request of the Defendants ('the third claim').

7 The First Claim

8 In respect of the first claim, the Plaintiffs originally claimed the sum of \$136,095.00. The claim was submitted on 9th September 1984 to M/s Chhada Siembieda and Associates Pte Ltd ('CSA') who were at all material times acting as the interior design consultants for the Defendants. The claim was approved by one Jimmy F Doctor (PW1) an associate of CSA with deductions of \$890.00 and \$2,530.00, leaving a sum of \$132,675.00. The Defendants' defence in paragraph 4 of their defence on this claim reads:

9 "The Defendants admit that the Plaintiffs did make their claim for payment as stated in paragraph 5 of the Amended Statement of Claim and that the Defendants' consultants had verified and certified payment of part of the Plaintiffs' claim. However, the Defendants contend that the certification and verification done by the said consultants was based on the Plaintiffs' quotation for the works dated the 28th November 1983 which had at no time whatsoever been accepted by the Defendants."

10 So the central issue is whether the quotations relating to this claim had been accepted by or on behalf of the Defendants.

11 PW1 Mr Jimmy F Doctor's evidence at page 71 of the Notes of Evidence is a follows:

12 "Q: AB20-24 you had checked and verified as in AB31. When you verified the amounts did you consider the costing of each item or follow the quotation?

13 A: We followed the quotation as the quotation had been accepted. No contractor would start work without the quotation having been accepted.

14 Q: Can you recall if the client had told you that the quotation had been accepted?

15 A: AB20-24 had been cc to client, so either the quotation had been accepted, if not, the client would at least know of the claim.

16 Q: PB2-7 is supposed to be the quotation in which the AB20-24 claim was based, when you certified you assumed that the quotation in PB2-7 had been accepted?

17 A: Yes. The client most probably would have accepted the quotation otherwise they would not allow the work to proceed. But I do not have the documents before me to confirm that.

18 Q: What documents could that be?

19 A: For example the letter accepting the quotation."

20 PB2-7 is Plaintiffs' quotation dated 28th November 1983. AB20-24 is the claim submitted on the 9.9.84 by the Plaintiffs to CSA based on PB2-7 and AB31 is CSA's certification of the Plaintiffs' claim for \$136,095.00 less deductions of \$890.00 and \$2,530.00 leaving the sum of \$132,675.00.

21 PW1's evidence is supported by one Derrick Chong (PW2). PW2 was one of the original promoters and shareholders of the Defendants. He also worked for the Defendants under a joint venture agreement. It was his duty to see to the completion of the club house and its facilities. After the original promoters and shareholders had sold their interest to one Chng Heng Tiu (DW1), PW2 remained as a consultant under an agreement dated the 17th May 1984 under which his duties were to see to the completion of the club house and the facilities. But pending the completion of DW1's purchase of the shares from the original promoters, PW2 had interim authority given by DW1 in PB8 dated 2.12.83 which reads:

22 "The bearer of this letter Mr Derrick Chong has been authorised by our company to negotiate to purchase gymnasium and hair dressing equipment and accessories for the club house at 30, Stevens Road, Singapore 1025."

23 So at all material times PW2 was overseeing the construction of the club house complete with facilities on behalf of the Defendants.

24 At page 13 of the Notes of Evidence he said: "A: The quotations in AB20-24 were accepted before work commenced."

25 See his evidence at page 17 of the Notes of Evidence:

26 "Q: PB2-7 was submitted to Mrs Huang? A: Yes."

27 "Q: Put it PB2-7 had in fact been approved by you? A: No. By Mrs Huang."

28 On this claim DW1 Mr Chng Heng Tiu's evidence appears

29 at page 48 of the Notes of Evidence :

30 "Q: Did you know the prices claimed in AB20-24 were on the basis of
the rates quoted in PB2-7? A: Yes. Q: So the Plaintiffs' claims were according
to quotation? A: Yes.

31 Q: Then why did you not pay according to their quotation? A: We did
not accept their quotation because right from the beginning I told Derrick that I
did not agree to the quotation but if the Plaintiffs want to do the job they could
proceed but subject to the prices to be negotiated later.

32 Q: Do you know Derrick told them about this? A: I believe so though
there is nothing in writing.

33 Q: Is your belief also based on the fact that the Plaintiffs proceeded with
the work? A: Yes."

34 Even if DW1's evidence is to be accepted, there is no evidence that PW2
Derrick Chong conveyed to the Plaintiffs what DW1 alleged to have said to him.
On the contrary PW2 confirmed that the quotations had been accepted. DW1
never dealt with the Plaintiffs direct on this claim.

35 I therefore accept the evidence given on behalf of the Plaintiffs that the
quotations had been accepted by the Defendants. As the claim has been duly
certified by CSA, I allow this claim at \$132,675.00.

36 The Second Claim

37 The second claim is for the sum of \$54,990.20. This claim was submitted
to the Defendants on the 9.9.84 for the attention of PW2, Derrick Chong. This

claim appears in pages 25-27 of the Agreed Bundle and is referred to in the evidence as AB25-27. According to the Plaintiffs these are additional works ordered by the Defendants as the other works progressed. At page 48 of the Notes of Evidence DW1 himself testified as follows :

38 "Q: See AB25-27, can you remember how these works were ordered?

39 A: Some of these works were in the original quotation or original drawings except for a few items which I instructed Plaintiffs to do e.g. AB25 B(5) on the change to teak skirtings. But I did not agree to the price."

40 I set out the evidence of PW2 (Derrick Chong) whilst under cross-examination by counsel for the Defendants at page 18 of the Notes of Evidence:

41 "Q: I put it to you that the works in AB25-27 were in fact not approved by Mr Chng but by Mrs Huang?

42 A: If it was approved by Mrs Huang, CSA would have approved. But since CSA had not I assumed that they were not approved by Mrs Huang. Mrs Huang would not approve any of the interior items if CSA had not approved. Only AB20-24 could have been approved by Mrs Huang because they had been approved by CSA but not AB25-27. AB25-27 was approved by Mr Chng."

43 Mrs Huang is the wife of one of the original promoters

44 of the Defendants.

45 At page 13 of the Notes of Evidence, PW2 said:

46 "A: The \$54,990.20 in AB25-27 was instructed by Chng to Dr Tan direct. I do not know if the price was agreed before work commenced."

47 Dr Tan is PW3 Dr Tan Thiam Yong, the Managing Director

48 of the Plaintiffs.

49 From the above, it is quite clear that the works for the second claim was carried out on the instructions of the Defendants. The only dispute is whether the prices had been accepted or were they subject to negotiation upon completion.

50 See PW2's evidence at page 20 of the Notes of Evidence on this point:

51 "Q: See AB20-24, AB25-28 and AB31. What did you do with these claims when you received them? A: Pass them on to Mr Chng.

52 Q: What were his comments? A: On AB20-24 to my recollection no comment. On AB25-27 he indicated that the prices were too high on some items."

53 "Q: Is it not possible that these prices had not been agreed? A: Not likely. Why would the Plaintiffs proceed with the work without the prices having been agreed?"

54 The evidence of Dr Tan Thiam Yong PW3 at pages 25-26 reads:

55 "Q: Tell us about the second claim - A: On 9.9.84 we applied for verification of our claim for additional works as requested by Pinetree. These were not within PB1-7. The request came from Chng and a Caucasian who was

consultant to the health club. This Caucasian asked for the counters in A1, B1, D1 and E1 in AB25-26. Chng in particular asked for changes in skirtings from nyatoh to teak, to put up D3 wood partition and D5 on screen, F3 and F4 partitions. These additions were requested as the other works were in progress at the site. Derrick Chong was present on some of the occasions. The requests were made to me either by Chng himself and some times by the caucasian and occasionally Chng Heng Tat was also present.

56 Q: The prices were given to Pinetree a few days after each respective request? Did you get any response? A: The response was 'hurry up'. There was no written confirmation on price for these additional works. Because the main works were already confirmed we proceeded with the additional works without asking for confirmation."

57 Does 'hurry up' mean the prices were agreed or 'do it first and we will negotiate on the price later'? Assuming that the Plaintiffs agreed to do the work first and have the prices agreed to later, at what rates would the prices have to be based. In my view it should be at those rates, which applied to the first claim in respect of which the rates quoted by the Plaintiffs had been accepted. The Defendants however contend that they should only pay reasonable price for those additional works on a quantum meruit basis. To establish what is the reasonable price, the Defendants called a quantity surveyor one Yeo Siong Hock (DW3) as a witness. According to DW3, the reasonable price for the works in the first claim is 70% of the Plaintiffs' claim. On the second claim the reasonable price should be between 60% and 70% of the Plaintiffs claim and on the third claim 80% of the Plaintiffs' claim.

58 In other words over all according to DW3 the reasonable prices for the works in all three claims should be 70% of the Plaintiffs' claims. That means

the Plaintiffs were pricing their second and third claims at the same rates as their first claim. Since I find that the quotation in the first claim had been accepted, I allow the Plaintiffs' second claim at \$54,990.20 as claimed in AB25-27.

59 The Third Claim

60 This claim is for \$6,919.00. This is in respect of works ordered by a Ms Ngui who was managing the Ladies Hair Dressing Saloon in the Pinetree Country Club. Were these works authorised by the Defendants? See the evidence of PW3 at page 36 of Notes of Evidence:

61 "Q: She was the one who ordered these works? A: Derrick Chong asked me to go to the Ladies Hair Dressing Saloon to look for this lady Ms Ngui, not Mui. She was the one who requested me to do this work. I was asked by Derrick Chong to see her."

62 At page 50 of the Notes of Evidence DW1 himself testified as follows:

63 "Q: In AB28-29 (3rd claim) what do you know about this claim? A: I know nothing about this.

64 Q: Who instructed these works to be done? A: Must be Derrick Chong who gave the authority to the lady to do what they want. The saloon was let out to Ms Ngui."

65 This claim was submitted on the 7.11.84 to the Defendants for the attention of PW2 whose evidence at page 13 is as follows:

66 "Q: AB28-29 from the Plaintiffs for your attention dated 7.11.84 for \$6,919.00. Why? A: Because it was outside the scope of CSA. They were authorised by Mr Chng."

67 In view of PW2's role in the Defendants' Pinetree Country Club, I accept that he had ostensible authority to act for the Defendants. I therefore hold that those items of works were carried out at the request of the Defendants.

68 On the price, on this claim being submitted to PW2, PW2 raised objection to item 3 for which \$930.00 was charged for the settee and item 8 for which \$980.00 was charged for the teak door. After discussion between PW2 and PW3, PW3 agreed to reduce the bill to \$6,500.00. I therefore allow the third claim at \$6,500.00.

69 The Defendants' Counterclaim

70 (1) The Defendants alleged that there was over payment to the Plaintiffs by \$84,094.85. To put the Defendants' case very simply it is that the Plaintiffs were paid the total of \$407,092.85 for the loose furniture manufactured and supplied by them. It is contended that this must have been based on the draft statement of final account prepared by the project quantity surveyors Partnership International McDonald & Partners Pte ('P.I.') of 2.4.85 which gave a valuation of the loose furniture made and supplied by the Plaintiffs at \$407,118.00. The Plaintiffs received payment of the sum of \$407,092.85. Subsequent to the draft statement of final account, P.I. prepared a revised statement of final account dated 17.6.85 showing an adjusted valuation of the loose furniture at \$322,998.00 as against the sum of \$407,092.85 paid to the Plaintiffs. The difference is \$84,094.85 and hence the Defendants' counterclaim

for the amount allegedly overpaid. The Defendants have no other evidence. It is to be noted as follows:

71 (i) the Plaintiffs never agreed to the revised statement of final account and have not acceded to request to sign the same;

72 (ii) P.I. in the letter of the 17.6.85 enclosing the revised statement of final account qualified their valuation stating that the same did not include items of work done on the direct instructions of the Defendants and not through the consultants. The qualification reads : " The additional items executed, as claimed by the Nominated Sub-Contractor as arising from direct instructions from the City Country Club are excluded from the Final Account, and will require to be verified and if found correct to be honoured by the City Country Club direct."

73 (iii) the amount of the alleged over payment is almost equal to the additional amounts of \$47,649.00 in AB14 dated 17.8.83 and \$36,480.00 in AB15 dated 27.9.83 both being letters from Plaintiffs to Defendants relating to costs of alterations to the loose furniture instructions whereof were given by the Defendants to the Plaintiffs direct and not through the project consultants. The total of the two amounts is \$84,129.00.

74 The claim for over payment was never raised until the Plaintiffs applied for summary judgment in these proceedings. This is confirmed by DW1 at page 56 of the Notes of Evidence:

75 "Q: Put that the first time the question of over payment was raised was after the Plaintiffs sued and you were resisting the order 14 application on 5th July 1985? A: Yes, I agree."

76 At page 60 of the Notes of Evidence, DW1 conceded

77 as follows:

78 "Q: Put it to you that your counterclaim for \$84,094.85 represents the
additional works ordered directly by the Club as per AB7? A: This was before
my time. I do not know." (emphasis added)

79 AB7 is a letter dated 28.7.83 from the Defendants to the Plaintiffs direct
requesting for changes to the loose furniture. On balance of probabilities I reject
the Defendants' allegation of over payment and dismiss their counterclaim for
the same.

80 (2) The Defendants also counterclaim for damages for defects in the
furniture supplied by the Plaintiffs. The chairs were made according to the
design and specifications of CSA. CSA was satisfied with the quality and
workmanship. PW1 confirmed that he had tested the mock-up and did random
tests on the furniture while they were being manufactured at the Plaintiffs'
factory. The breakages were all on their front legs at the narrowest point. No
expert evidence has been adduced by the Defendants as to the cause of
breakages, other than the alleged high rate of breakages, 88 out of the total of
128 chairs are said to have broken in that manner within two years. But the issue
was never raised until very late in the day. This appears in the evidence of DW1
at pages 60 to 61 of the Notes of Evidence:

81 "Q: You never raised the complaint of breakages when negotiating to
reduce Plaintiffs' bill? A: That is correct.

82 Q: Why didn't you? A: Because at that time the breakage did not involve so many chairs yet. We thought if the Plaintiffs could settle amicably we would overlook the breakage issue. But if he wanted to be fussy we would claim.

83 Q: Derrick Chong said when he left in July 1985 he recalled a dozen or so chairs were broken. Dr Tan said he gave warranty for a year and had you brought up this point he would have replaced them. Each chair costs \$535 (AB2 #65). So I put it to you if the complaint was genuine you would have brought it up?

84 A: When we took over the Club we found the chairs too bulky, not of good design. Since we bought the Club lock, stock and barrel, we did not want to complain about the chairs. Plaintiffs had already done the work and if they were reasonable we would pay and be reasonable. That was our stand." (emphasis added).

85 Perhaps the Defendants' dissatisfaction is with the design for which the Plaintiffs are not responsible. In any case the Defendants have not discharged their burden of proving that the chairs were defective in workmanship.

86 Accordingly I award the Plaintiffs the sum of \$194,165.20 with interest at 6% per annum from the date of filing of the writ to date of judgment and costs. The Defendants' counterclaim is dismissed with costs.

Goh Joon Seng J

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Lai Siu Chiu for the plaintiffs
Tan May Tee for the defendants
