

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 242

Suit No 2105/85

Between

Tele Construction (Pte) Ltd

... Plaintiff

And

Mellow Aluminium Products
Pte Ltd

... Defendant

GROUND OF DECISION

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Tele Construction (Pte) Ltd v Mellow Aluminium Products Pte Ltd

[1992] SGHC 242

Suit No 2105/85
Chua F A J
15 September 1992

1 **Judgment:**

2 Coram: F A Chua J

3 **Cur Adv Vult**

4 JUDGMENT

5 The plaintiffs' claim is for labour charges for the installation of the suspended ceiling at Kent Ridge Hospital (Phase 1) (the Project) in 1983.

6 The principal contractors for the Project was Fletcher-Lum Chang which contracted out the ceiling job to Intraco which in turn sub-contracted it to the defendants.

7 The defendants entered into an agreement with the plaintiffs on 16 May 1983 (the Agreement) whereby the plaintiffs were to provide the necessary labour and tools and carry out the installation of the suspended ceiling and the

defendants were to supply the T-bars (ceiling grids), ceiling panels, fabrications and other materials.

8 The claim of the plaintiffs against the defendants is for the sum of \$52,398.80 of which \$39,630.30 was the balance due for the installation work under the Agreement and \$12,768.50 was for remedial works and the supply of additional labour.

9 The defendants refused to pay on the grounds that the plaintiffs did not carry out their work satisfactorily to completion and thereby necessitated the defendants to employ Capitol Building Contractors (Capitol) to complete the work and to whom the defendants paid \$41,200 which is counterclaimed.

10 The main issue is whether the plaintiffs carried out their installation of the ceiling completely as required under the Agreement.

11 Erection of the T-bars

12 The defendants alleged that the T-bars were not installed correctly. As a consequence thereof, the ceiling panels did not sit properly and were not in alignment. The only evidence adduced on this point by the defendants was the evidence of Madam Tng Bee Muay (DW 1), a director of the defendant Company and the person in charge of the administration work of the Agreement. She alleged that the T-bars were not installed correctly with the result that the ceiling panels did not sit properly and were not in alignment and that the plaintiffs had forced the ceiling panels which caused the panels to be curved and to be dirty with finger marks.

13 The evidence was that before the Agreement was signed the plans supplied to the defendants by Intraco were given by the defendants to the plaintiffs to study. A month later at the request of Indeco, the architects for the PWD, the owners of the Kent Ridge Hospital, a mock-up section of the ceiling pattern was erected by the plaintiffs with the necessary materials supplied by the defendants. Indeco was satisfied with the mock-up which was according to the plans given to the defendants by Intraco. Indeco gave the defendants approval to carry out the work in accordance with the mock-up.

14 The plaintiffs were erecting the T-bars for one year and completed it in April or May 1984. Throughout this period there were no complaints that the T-bars were erected wrongly. The defendants have adduced no evidence other than the oral testimony of DW 1 that the T- bars were erected wrongly.

15 DW 1 under cross-examination was unable to explain why throughout the course of defending this action, she did not make any mention that the T-bars were not installed correctly.

16 The T-bars have to be erected first and must follow closely the specifications given. Chan Kok Yeow (DW 2) who was working for Intraco in 1985 as a supervisor agreed that if the T-bars were out of alignment it might affect the position of the lights, the sprinklers and the airconditioning ducts. He also said that as soon as the supervisor found out that the T-bars had been erected out of alignment he should point it out straightaway and ask that it be set right.

17 The defendants had paid the plaintiffs a total sum of \$226,302.90. DW 1 said that the plaintiffs' work was worth that much. This would indicate that the defendants were at least satisfied with the plaintiffs' erection of the T- bars.

18 The defendants made no mention of the T-bars being out of alignment in the correspondence which passed between them. It was not raised in the Defence filed on 24 February 1987; and it was not raised when the list of Shoddy Workmanship was filed on 26 August 1991 by the defendants.

19 I find that the T-bars were erected in compliance with the specifications given. The ceiling panels

20 The plaintiffs alleged that some of the panels supplied by the defendants were of the wrong dimensions, they were too big to sit at the T-bars. The defendants' workers took them back for corrections but the same size panels were sent back to them and they fitted them into the space between the T-bars by bending one side of the panels and they caused the panels to be out of alignment.

21 When Intraco complained to the defendants on 20 September 1984 (PB 9) and the defendants complained to the plaintiffs that the panels were uneven, the plaintiffs promptly replied on 22 September 1984 (PB 10) that it was due to the defendants supplying them with panels of different sizes.

22 There appears to be no reply by the defendants to the plaintiffs' allegation that they had supplied panels of a bigger dimension.

23 As the T-bars were erected in compliance with the specifications, then the problem regarding the alignment of the panels must be that some of the panels supplied by the defendants were of the wrong dimensions.

24 Shoddy Workmanship

25 The defendants' complaints of shoddy workmanship are set out in the list filed on 26 August 1991.

26 The plaintiffs contended that they had completed all works due under the Agreement sometime in August 1984. After completing the installation of the ceiling panels they discovered that some of the panels which they had installed had been damaged by other contractors. They informed the defendants who told them to redo the damaged ceiling and that the defendants would pay for the extra labour supplied to redo the works (remedial works).

27 The evidence was that the shoddy workmanship complained of by the defendants were not attributable to the plaintiffs but to the other contractors doing electrical and airconditioning works and installing sprinklers. Even while the plaintiffs were installing the ceiling panels these other contractors had lifted the ceiling panels. Whilst the plaintiffs were carrying out the remedial work the other contractors continued to lift up the panels and in the process the panels were left dirty and not sitting properly on the grids. The plaintiffs had written to the defendants on this on 22 September 1984 (DB 10).

28 The plaintiffs had in their letter of 16 October 1984 to the defendants (DB 15) explained that their work was delayed due to the defendants' failure to supply the ceiling panels in time. In their letter of 12 December 1984 to the defendants (DB 33) they complained that the defendants failed to supply sufficient fibreglass. The defendants, however, have not rebutted those explanations of the plaintiffs.

29 Intraco complained that a majority of the areas were found to have short lengths fibreglass blanket and requested the defendants to replace the fibreglass to full length ceiling panels (DB 50). The supply of fibreglass was the

responsibility of the defendants and they sought to blame the plaintiffs when the defendants themselves supplied a short length of fibreglass to the plaintiffs to install.

30 It would appear that the defendants had accepted the explanations of the plaintiffs. If the defendants were unhappy with the plaintiffs' work it is inconceivable that the defendants would ask the plaintiffs on 6 December 1984 to quote for labour cost to lower the ceiling at the Hawker Centre areas at the Project and to proceed with the work (DB 25). When there was no response from the plaintiffs, the defendants sent a reminder on 10 December 1984 asking if the plaintiffs were interested in doing the job (DB 31).

31 I find that the alleged shoddy workmanship was not the fault of the plaintiffs who had completed their part of the bargain.

32 Claim for remedial/variation works

33 The plaintiffs had completed all the works due under the Agreement in August 1984. The defendants agreed that the plaintiffs had completely laid out the ceiling panels in August 1984. Subsequently the plaintiffs at the request of the defendants, supplied labour to replace the panels damaged by the other contractors. The defendants alleged that the plaintiffs did not do the remedial work properly and they had to engage Capitol Building Contractors to carry out the work in November 1984 which was completed in May 1985.

34 The plaintiffs rendered two bills to the defendants, one on 14 December 1984 (DB 55) and the other on 31 December 1984 (PB 36).

35 DB 55 was for remedial works amounting to \$14,768.50 less payment on 24 November 1984 of \$2,000 leaving a balance of \$12,768.50.

36 PB 36 was for \$39,630.30 being the balance of payment due under the Agreement.

37 The defendants did not adduce any evidence that they had protested against these two bills. They offered no explanation why they paid \$2,000 towards the remedial work. In fact throughout the trial, nothing was asked of the plaintiffs regarding these two bills.

38 The exchange of correspondence between the plaintiffs and the defendants showed that the defendants wanted the plaintiffs to do various remedial works between August and November 1984. The plaintiffs had supplied various manpower to do the remedial work (DB 10, DB 32). Complaints as to the shortage of workers doing the remedial work only arose after 10 December 1984 (DB 32) by which time the plaintiffs were no longer charging the defendants for the supply of labour.

39 The defendants made no protest when bills for remedial works were submitted on 28 August 1984 (DB 56), 5 November 1984 (DB 57), 19 November 1984 (DB 58), 30 November 1984 (DB 59) and 14 December 1984 (DB 55) a summarised bill.

40 The plaintiffs adduced evidence that it was Tan Hian Pang (PW 3), a renovation contractor, who was engaged by the defendants to make the ceiling panels level and replace the missing fibreglass on the ceiling panels. Tan said that he was engaged on 16 January 1985 and completed the work at the end of February 1985. The defendants provided him with two workers: Ahmad b

Abdul Rahim and Jimmy Chua. He engaged two odd job workers. The ceiling panels were uneven because the panels were too big and could not be fitted into the ceiling runner. He also said that when he was carrying out the work, there were many other workers doing the piping, sprinklers and other works on the top of the ceiling and further damage was done to the ceiling panels and some fibreglass was missing and he had to replace the ceiling panels and fibreglass. Tan said that the defendants paid him \$130 every day to pay the four odd job workers. After the work was completed the defendants paid him \$2,000.

41 The defendants denied that they had ever employed PW 3. However, they admitted that one day in December 1984, PW 3 came to their office to buy ceiling materials. DW 1 told PW 3 that she was about to go to the Kent Ridge Hospital worksite to see the bad job done by the plaintiffs and PW 3 asked to go along. There she pointed to PW 3 that the ceiling was not laid evenly. DW 1 admitted that she had a worker by the name of Ahmad b Abdul Rahim but not Jimmy Chua.

42 If the defendants had indeed engaged Capitol in November 1984, the following queries arise:

43 (a) Why did the defendants not ask Capitol in December to quote for the lowering of ceiling at the Hawker Centre areas, instead of which they asked the plaintiffs to quote and proceed with the work. (b) Why did the defendants threaten the plaintiffs on 10 December 1984 (DB 31) and 8 January 1985 (DB 38) that they would engage a new team of workers. (c) Why did Intraco complain on 11 January 1985 (DB 42) and 5 March 1985 (DB 48) that the defendants' workers were not around.

44 The defendants alleged that they paid Capitol a total sum of \$41,200 and that each time they made progress payments Capitol would sign on a payment voucher. DW 1 said she would produce the payment vouchers. However, she did not.

45 Bay Kim Chuan (DW 3), the sole proprietor of Capitol said in evidence that at the end of December 1984 the defendants asked him to replace the ceiling at a certain place which was not properly done. He sent a few workers to the defendants' office every day and DW 1 would take them to the worksite and supervise the workers. He did not go to the worksite and he did not know if his workers were taken to Kent Ridge to work. He paid the workers and rendered a bill to the defendants and collected payment once a week and DW 1 asked him to sign on a document.

46 DW 3 rendered three bills to the defendants; they were all undated. According to DW 3 the bills were typed by his daughter and all the details were provided to her by DW 1.

47 On the evidence before me I find that the defendants did not engage Capitol to do the remedial work.

48 In the result, there will be judgment for the plaintiffs in the sum of \$52,398 with interest at 8% from date of writ to date of judgment and costs.

49 The defendant's counterclaim is dismissed with costs.

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Chua F A J

Lim Boon Kong (Ong Tan Nair & Kwek) for the plaintiffs
K Y Choy (K Y Choy & Co) for the defendants
