IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 62

S1795/1990

Between

Oke Ah Lek t/a Lek Chuan Mechanical Construction Co

… *Plaintiff*

And

Hexacon Construction Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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Oke Ah Lek t/a Lek Chuan Mechanical Construction Co v Hexacon Construction Pte Ltd

[1994] SGHC 62

S1795/1990
Karthigesu JA
10 March 1994

1 **Judgment:**

2 Coram: Karthigesu JA

3 GROUNDS OF JUDGMENT

4 The plaintiff is the sole proprietor of a small civil engineering firm called Lek Chuan Mechanical Co. The defendants are a private limited company also engaged in civil engineering works. They are well established in the field of civil engineering works and are on the list of accredited tenderers for all large civil engineering works of the government which the plaintiff is not. This means that the plaintiff will not be able to tender for large civil engineering projects of the government.

5 In or about July 1987 tenders were invited for the National Stadium car parks. The plaintiff was interested in securing the contract but since he was not an accredited tenderer for government related civil engineering works could not tender for it. He knew Michael Tai Chin Choy the technical director of the

defendants. He approached Michael Tai Chin Choy and suggested that his firm tenders for the project in the defendants' name and do the work as the defendants' sub- contractor. Michael Tai Chin Choy agreed and with the assistance of Michael Tai Chin Choy the tender documents were obtained by the plaintiff's quantity surveyor, Kwok Kam Sing.

6 The plaintiff then submitted a figure to the defendants for which he would undertake the construction of all the car parks at the National Stadium as the defendants' sub- contractor. This figure was $4,368,548. Based on this figure the defendants submitted their own tenders for the project. The defendants had submitted alternative tenders. The defendants' second alternative won the contract for the project. This was for the sum of $5,731,020 and accordingly the defendants entered into a contract with the Public Works Department for the construction of the National Stadium car parks for $5,731,020.

7 In the meanwhile there were negotiations between the plaintiff and Michael Tai Chin Choy as to the price at which the plaintiff would undertake the construction of the car parks at the National Stadium as the defendants' sub-contractor. Obviously the defendants thought that the price named by the plaintiff of $4,368,548 was too high. These negotiations went on, unresolved, up to December 1987 when the contract for the construction of the car parks at the National Stadium having been awarded to the defendants for $5,731,020, the construction work was due to commence. The defendants were contending for $4,080,000 whereas the plaintiff was contending for $4,226,400. Neither figure was confirmed in writing when the plaintiff commenced work on the construction of the car parks at the National Stadium in December 1987. However, and this is not disputed, the first few progress payment to the plaintiff was based on the sub-contract sum of $4,226,400 until the end of the period of

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construction when the defendants adjusted the figure to $4,080,000 and revised the earlier progress payments. This was one of the areas of dispute on which there was a welter of evidence led by both sides.

8 During the course of the construction of the car parks at the National Stadium the plaintiff fell behind the completion dates set by the Public Works Department. This was attributed by the plaintiff to the soil conditions but the defendants contended that the delays were not solely due to the soil conditions but to the shortage of labour assigned by the plaintiff to the construction works. This delay in the construction works was causing the defendants acute embarrassment with the Public Works Department and in order to resolve it, two car parks, namely those designated car parks E and F were with the agreement of the plaintiff taken out of the construction works of the plaintiff and given to other contractors by the defendants. This created another area of dispute as to the amount that ought to be deducted from the sub-contract sum be it $4,080,000 or $4,226,400.

9 There were also issues of fact as to whether the plaintiff had carried out the remedial works the plaintiff was required to do arising from defective works during the period of the construction of the car parks at the National Stadium by the plaintiff. The defendants' contention was that the plaintiff had not made good defects which had occurred during the construction period and through to the end of the defects liability period. Consequently the defendants had to carry out this work and had incurred expense. The amounts so expended by the defendants was the subject matter of their counterclaim. In particular it was contended by the defendants that the roundabout along the Old Airport Road cracked in several places due to the bad workmanship of the plaintiff and these defects were remedied by the defendants at their cost since the plaintiff refused

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to admit liability therefore. This too was an item of the defendants' counterclaim.

10 The plaintiff basing his claim on the sub-contract sum of $4,226,400 claimed the sum of $355,617.97, particulars of which were given in the statement of claim as follows:-

11 Contract sum $4,226,400.00

12 Add variation orders $ 80,956.71 - Total contract sum $4,307,356.71

13 Less:

14 (i) Works for car parks E & F $ 887,565.56

15 (ii) Materials charged by $2,182,905.95 defendants inclusive of 1% administrative charge

16 (iii)Progress payments $ 881,267.23 - Final balance of contract sum due $ 355,617.97 ======

17 The defendants basing themselves on the sub-contract sum of $4,080,000 claimed that they had overpaid the plaintiff $103,421.07 particulars of which given in the defence and counterclaim are as follows:

18 Plaintiff's scope of works $4,080,000.00

19 Add variation orders $ 70,996.92 - Revised gross sub-contract sum $4,150,996.92 -

20 Less:

21 (a) Works for car parks E & F $1,078,786.26 undertaken by CSK

22 (b) Materials charged by the $2,294,364.50 defendants inclusive of 1% administration charge

23 (c) Total progressive payments $ 881,267.23 to plaintiff - Total overpaid by the defendants ($ 103,421.07) todate =======

24 The defendants therefore counterclaimed the sum overpaid of $103,421.07 together with three other sums of $208,978.63, $9,034.09 and $100,000 totalling in all $421,433.79. The basis of the defendants' counterclaim for $208,978.63, $9,034.09 and $100,000 is pleaded in paras 12 to 15 of the defence and counterclaim which I set out in full.

25 `12. Wrongfully and in breach of the said sub-contract, the defendants say that the plaintiff failed to proceed regularly and diligently with the said sub-contract works and failed to complete the said sub-contract works on time. The defendants had to employ additional personnel and incurred additional expenses to ensure that the said sub-contract works were completed on time and to put the said sub-contract works into the condition in which they ought to have been had the plaintiff not performed his contract properly at a cost of $208,978.63.

26 Particulars

27 (a) The plaintiff failed to complete Phase I of the said sub-contract works by 27th April 1988. Phase I of the said sub-contract works was completed on 11th October 1988.

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28 (b) The plaintiff failed to complete Phase II of the said sub-contract works by 27th December 1988. Phase II of the said sub-contract works was completed with the assistance of the extra staff and with the appointment of CSK by 27 February 1989.

29 Amount

30 (c) (i) Project coordinator $ 85,000.00

31 (ii) Supervisor $ 16,100.00

32 (ii) Office Administration $107,878.63 Total $208,978.63 ======

33 13. Completion of the said sub- contract works took place on 27th February 1989. Thereafter defects due to workmanship not in accordance with the said sub-contract appeared. Full particulars of such defects were served on the defendants with a letter dated 18th April 1989 from the Public Works Department requesting the defendants to make good the same.

34 14. The defendants aver that the plaintiff in breach of the said sub-contract carried out defective work, full particulars whereof exceed 3 folios and are served herewith by way of "Schedule 1" annexed hereto.

35 15. The defendants have thereby suffered loss and damage in incurring the cost of employing another contractor to make good the defects.

36 Particulars

37 Remedial works carried out in: Amount

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38 August 1989 $3,375.87

39 September 1989 $4,473.39

40 October 1989 $ 452.48

41 November 1989 $ 732.35 ---------- Total as at November 1989 $9,034.09 ---------- and still continuing.

42 The defendants are unable to give further particulars of all the said remedial works as they are still continuing but will give them upon completion of the same or during discovery herein. The defendants expect to spend a further $100,000.00 in respect of major remedial works. The defendants will at the trial herein seek to recover in respect of all such remedial works.'

43 I gave judgment for the plaintiff in the sum of $160,633.24 together with interest at 6% per annum from the date of the writ (5 October 1990) to the date of my judgment (29 November 1993). I arrived at this figure as follows:

44 Sub-contract sum as found by me $4,080,000.00

45 Add variation orders (agreed by $ 75,976.80 the parties after much prompting by the court) Total sub-contract sum $4,155,976.80

46 Less deduction for car parks E & F $ 887,565.56 as found by me $3,268,411.24

47 Less previous payments as agreed by$ 881,267.23 the parties $2,387,144.01

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48 Less materials charged by the defendants $2,225,330.00 inclusive of 1% administrative charge (agreed by the parties partially after much prompting by the court and partially as found by me) ---------- ------ $ 161,814.01

49 Add turfing which was omitted from $ 7,853.32 the costing. Figure agreed by the parties $ 169,667.33

50 Less cost of remedial works incurred $ 9,034.09 by the defendants as found by me. (Counterclaim)

51 Amount for which judgment given to the$ 160,633.24 plaintiff =======

52 All the issues canvassed at the trial which covered a period of 11 days were pure issues of fact. In making my findings at the end of the trial I addressed the parties orally as follows:

53 ` I have listened to the arguments very carefully and I have come to certain conclusions which I can now state. I find on the evidence that there was an oral contract between the plaintiff and the defendants to carry out the works at the National Stadium car park at the figure of $4,080,000. I also find that it was agreed between the parties that the car parks E and F were to be deducted from the total works undertaken by the plaintiff and in my opinion the appropriate deduction should be $887,565.56.

54 All other items which are necessary to take into account for arriving at the resultant figure have been agreed. Accordingly I find that the balance due to the plaintiff on the contract of $4,080,000, together with the addition for the variation orders to be $161,814.01 payable to the plaintiffs.

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55 Although this is a lump sum contract it is not disputed that there were some items which were omitted and one of these items is the turfing works. There is no dispute on the amount of $7,853.32. I find that this sum ought to be awarded to the plaintiffs making the total sum payable to the plaintiffs at $169,667.33.

56 As far as the counterclaim is concerned I find that the defendants' costs of additional staff for the two periods claimed should not be allowed. I find that from the evidence that this expense was incurred by the defendants in order to maintain their good relationship with the P.W.D. In any case the nature of the works was supervisory and for that reason I do not allow these two sums.

57 As far as the remedial of works is concerned I will allow the defective claim only in respect of the remedial works incurred in 1989 for the sum of $9,034.09. I am not satisfied on the evidence that the $42,000 odd claimed for the remedial works done in 1990 and 1991 covered the defects liability period for defects arising from the defects liability period. I am also not allowing the claim for the repairs to the roundabout as I am not satisfied from the evidence that the defects there were brought about by the plaintiffs or was attributable to the plaintiff's bad workmanship. The evidence is lacking.

58 So in the result there will be judgment for the plaintiff in the sum of $160,633.24 with interest at 6% p.a. from the date of writ to today.

59 The question of costs creates a bit of a problem but from what I have decided the plaintiff has substantially succeeded in his claim. The defendants have partially succeeded in their counterclaim. I think that the case was unusually prolonged by the plaintiff raising the question of quantum meruit and

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of course there was the costs to that amendment. So the order I make on costs is that the defendants are to pay the plaintiff 2/3rd of the costs of the action i.e prosecuting the claim and defending the counterclaim.'

60 The defendants have now appealed on three aspects of my findings, namely that the amount of the deduction I allowed for car parks E and F was $887,565.56 as contended for by the plaintiff and not $1,157,223.86 as contended for by the defendants; that I disallowed the defendants' counterclaim for $42,039.07 being the costs of the remedial works done by the defendants in 1990 and 1991, which also included the cost of repairing the cracks in the roundabout said to have been brought about by the plaintiff's bad workmanship; and that I allowed 2/3rd of the taxed costs to the plaintiff for prosecuting the claim and defending the counterclaim.

61 I respectfully do not think any useful purpose will be served and I am sure that it will be of no assistance to the Court of Appeal for me to rehearse and analyse the whole of the evidence as my findings were findings of fact. I will state quite shortly my reasons for the conclusions I reached on these three points.

62 The amount of the deductions for car parks E and F was respectively arrived at by a system of accounting. The method of accounting employed by the plaintiff was direct accounting of the cost of construction of car parks E and F based on the sum of $4,368,000, their original sum, whereas the system of accounting employed by the defendants was the cost to them of the materials and the cost of labour paid to the contractor they employed for that purpose. It was not disputed that the defendants had to pay a premium to the contractor they employed. I did not think that it was fair in all the circumstances that the plaintiff

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should bear the premium paid by the defendants to their contractor to get car parks E and F completed within the completion dates plus the time extensions allowed by the P.W.D. Had car parks E and F not been taken away from the plaintiff, albeit with his agreement, he could have, and it was not fanciful to assume, that by bringing in more labour he could have coped with constructing car parks E and F and have then completed within the completion dates plus the time extension allowed by the P.W.D and if he did not then he would himself bear the liquidated damages for late completion. Of the two systems of accounting to arrive at the amount to be deducted I preferred that of the plaintiff as in my judgment it was more realistic, even though it was calculated on his sum of $4,368,000 and not on $4,080,000 which I ultimately found to be the sub-contract sum. The difference was de minimis in my judgment.

63 I disallowed the sum of $42,039.07 because the remedial works done by the defendants in 1990 and 1991 were outside the defects liability period and also because the greater part of it was incurred in repairing the cracks to the roundabout which I found on the evidence were not brought about by the plaintiff or through his bad workmanship of which there was no evidence at all. In my judgment a contractor is not liable to make good defects which manifest themselves after the defects liability period. I found on the evidence that the defects said to have been repaired by the defendants at their cost in 1991 and 1992 arose or manifested outside the defects liability period. I was satisfied that the defendants incurred this expense in order to maintain their good relationship with the P.W.D. That in my view is not a reason for holding the plaintiff liable.

64 Lastly on the question of costs. As I have noted the total of the defendants' counterclaim was $421,433.79 of which they only succeeded in recovering $9,034.09. Further the plaintiff had to bear the cost of the

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amendment of their statement of claim by pleading a quantum meruit which amendment was applied for and allowed on the first day of trial. Taking both these factors into account and exercising my discretion I allowed 2/3rd of the costs of prosecuting the claim and defending the counterclaim to the plaintiff.

Karthigesu JA

Tan Siak Hee for the plaintiffs
Simon Yuen with Amanda Foo and Bernard Ang for the defendants

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