IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 112

Suit 1731/1993

Between

China Resources Purchasing Co Ltd

… *Plaintiff*

And

Yue Xiu Enterprises (S) Pte Ltd

… *Defendant*

And

Bulsing (Private) Limited

… *Third Party*

GROUNDS OF DECISION

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China Resources Purchasing Co Ltd v Yue Xiu Enterprises (S) Pte Ltd (Bulsing (Private) Limited, Third Party)

[1995] SGHC 112

Suit 1731/1993
Goh Joon Seng J
25 April 1995

1 **Judgment:**

2 Coram: GOH JOON SENG J

3 JUDGMENT

4 The Plaintiff commenced action against the Defendant for non-delivery of goods on 17 August 1993.

5 On 3 September 1993 the Defendant brought third party proceedings against the Third Party for indemnity.

6 On 1 December 1993 the Plaintiff obtained interlocutory judgment before the deputy registrar under o.14 r.3 of the Rules of the Supreme Court against the Defendant for damages to be assessed.

7 On 2 March 1994 the Defendant obtained interlocutory judgment against the Third Party by way of judgment or declaration that the Defendant is

entitled to recover from the Third Party such damages and costs for which the Defendant may be held liable to pay to the Plaintiff or its customers.

8 The claim came up for assessment before the assistant registrar who awarded the Plaintiff US$110,000 for loss of profits that the Plaintiff would otherwise have made on its string contracts for the purchase from the Defendant and the sale of the same goods being 10,000 metric tons plus-minus 10% of Deformed Steel Round Bars to Success Honour Development Ltd < `Success Honour' > . The 10,000 metric tons were to comprise 2,000 metric tons each of 12, 16, 18, 20 and 22 mm diameter. The assistant registrar in addition also ordered that the Plaintiff's claim for damages in respect of the potential action by Success Honour be reserved for assessment if and when the Plaintiff meets Success Honour's claim.

9 Both the Defendant and the Third Party appealed against this said order of the assistant registrar. The Defendant contended that only nominal damages of US$100 should be allowed. The Defendant raised two grounds:

10 (i) There was no admissible evidence of a contract between the Plaintiff and Success Honour. The Plaintiff's contract with Success Honour called for 10% deposit. The Defendant contended there was no admissible evidence that the 10% deposit had been paid without which no contractual obligation arose. That the evidence of Plaintiff's chief officer, Finance Department, Chen Jin Ming < `Chen' > that Success Honour had US$800,000 with the Plaintiff and that the Plaintiff had deducted US$306,000 from that US$800,000 for the 10% deposit was inadmissible without the accounts being produced. The Defendant relied on s.67 of the Evidence Act and Popular Industries Ltd v Eastern Garment Manufacturing Sdn Bhd (1989) 3 MLJ 360. I reject this argument because

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unlike the Popular Industries case Chen's knowledge of the US$800,000 and the appropriation of $306,000 thereof for the 10% deposit was not derived from the accounts alone. He had personal knowledge;

11 (ii) Res Judicata.

12 The Defendant contended that the Plaintiff's claim in its amended statement of claim was for loss of profit of US$110,000 and banking and other charges of HK$10,654.69 or alternatively damages. Since the deputy registrar at the o.14 stage only gave interlocutory judgment, it must have been on the premise that the specification for the goods sold by the Plaintiff to Success Honour was grade ST25 whereas the Defendant agreed to supply Plaintiff grade ST18, that is, not the same type of goods and there were available markets for the Plaintiff to obtain alternative supply to perform its contract with Success Honour, otherwise the o.14 judgment would have been for loss of profits as claimed at US$110,000 and not for damages to be assessed. This argument had been advanced before the assistant registrar in the assessment proceedings and rejected as pure conjecture. I agree with this view of the assistant registrar.

13 The Third Party however submitted that the assistant registrar in awarding loss of profits at US$110,000 was in error. I agree that the amount should be reduced as follows:

14 (i) In both the Plaintiff's sale and purchase contracts, the quantity was 10,000 metric tons plus-minus 10%. So if the Defendant had supplied 9,000 metric tons the contract would have been fulfilled. The same applied to Plaintiff's obligation to Success Honour. US$110,000 is based on the price difference of 10,000 metric tons at US$306 per metric ton sold to Success

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Honour by the Plaintiff and US$295 per metric ton sold by the Defendant to the Plaintiff, that is, a difference of US$11 per metric ton. 10,000 x US$11 = US$110,000. For 9,000 metric tons at US$11 per metric ton, the amount is US$99,000.

15 (ii) Success Honour was entitled to a commission of US$3 per metric ton to be paid by the Plaintiff. For 9,000 metric tons this works out to US$27,000. This should be set off against the US$99,000. Therefore the amount should be US$72,000.

16 (iii) The Plaintiff's sale price to Success Honour was $306 CIF but its purchase price from the Defendant was US$295 C&F. Therefore the Plaintiff would have to pay for insurance. I accept the evidence that insurance would have cost US$1 per metric ton. For 9,000 metric tons, this works out to US$9,000. US$72,000 minus US$9,000 works out to US$63,000.

17 (iv) US$63,000 is the profit that the Plaintiff lost because of the non-supply by the Third Party of 9,000 metric tons to the Defendant and via the Defendant to the Plaintiff. There was an offer by the Third Party to supply 2,000 metric tons for each of the contractual descriptions of 12, 16 and 18 mm diameter making a total of 6,000 metric tons. This offer was made to the Defendant. But the Defendant, when informing the Plaintiff of this offer, suggested that the Third Party be required to furnish a performance bond for 3% of the contract value. The Plaintiff however came back with an additional condition of price reduction. The offer by the Third Party should have been accepted. See Ebrahim Dawood Ltd v Heath (Est. 1927) Ltd. Dalal (London) Ltd Third Party (1961) 2 Lloyd's List Law Report 512. If this had been accepted, the Plaintiff could have reduced its loss by 6/9. By failing to accept the 6,000

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metric tons of the contractual descriptions, the Plaintiff had not mitigated its damages. Its damages should therefore be reduced by 6/9 of $63,000. This works out to US$21,000.

18 (v) On the reservation for assessment of the Plaintiff's claim for damages in respect of the potential action by Success Honour for assessment if and when the Plaintiff meets the claim, the proceedings before the assistant registrar on 23 January 1995 was for assessment pursuant to the o.14 judgment. If there was no such claim by Success Honour on that date, the Plaintiff had not proved its loss.

19 Accordingly I allow the appeals with costs to the Third Party to be paid by the Plaintiff to the Third Party direct. The judgment in the court below is set aside. There will be judgment for the Plaintiff against the Defendant in the sum of US$21,000 with interest at 6% per annum from date of commencement of proceedings to date of this order. The Defendant is to be indemnified by the Third Party in respect of the judgment in favour of the Plaintiff. I affirm the order of costs in the court below in favour of the Plaintiff.

20 Dated this 8th day of May 1995.

21 GOH JOON SENG JUDGE

22 Solicitors for the Plaintiff - M/s Allen & Gledhill Solicitors for the Defendant - M/s Wong & Lim Solicitors for the Third Party - M/s Winston Chen & Co

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Goh Joon Seng J

Julia Loh for the plaintiff
James Ponniah for the defendant
Jason Lim (with Simon Lee) for the third party

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