IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 274

Suit 1889/1991

Between

Sintalow Engineering Pte Ltd

… *Plaintiff*

And

Nishimatsu Lum Chang J V
(Construction & Civil
Engineering) Pte Ltd
Chevalier (S) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Sintalow Engineering Pte Ltd v Nishimatsu Lum Chang J V (Construction & Civil Engineering) Pte Ltd and Another

[1996] SGHC 274

Suit 1889/1991
C R Rajah JC
30 November 1996

Judgment:

J U D G M E N T

1. The 1st Defendants were the main contractors for Phase 1 of the construction of the office complex known as UOB Plaza ("the Project'). The Plaintiffs were contractors who supplied and installed ceilings in buildings. They were the distributors in Singapore for the Martingale Integrated Ceiling System ("the Martingale System"). The Martingale System comprised of various standard pre-fabricated components which when installed to plan would provide a framework not only to hold the ceiling boards but also for the air-conditioning and lighting systems.

2. The rights to the Martingale System belonged to a company in England known as Martingale Technical Systems Ltd. ("Martingale UK"). In 1985 Martingale UK granted a company in Malaysia known as Martingale Systems (M) Sdn. Bhd. ("Martingale M") the licence to manufacture component parts of the Martingale System in Malaysia and sell them in Singapore.

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In December 1988 Martingale M gave Sintalow Hardware Pte. Ltd. ("SHPL"), a company with essentially the same directors and shareholders as Plaintiffs, the exclusive right to market the Martingale System and all its component parts in Singapore. Martingale M also agreed that SHPL could appoint any of its subsidaries to operate this agreement on SHPL's behalf. Although Plaintiffs were not a subsidiary of SHPL, Plaintiffs at all material times believed and behaved as though they had the benefit of this agreement. Furthermore, Martingale M treated Plaintiffs as though they had all SHPL's rights under the agreement and SHPL obviously agreed to all this. So far as this case is concerned Plaintiffs may be treated as having all SHPL's rights under the agreement.

3. In building works such as the Project it is generally the practice for the main contractor to sub-contract out the ceiling works. Plaintiffs were keen to get this sub- contract. They believed that if the tender documents for the main contract specified the Martingale System for the ceiling, they would more or less be certain of getting this sub-contract.

Plaintiffs therefore sought to convince the architects for the Project, Architects 61, that the Martingale System was the best ceiling for the Project. To this intent Plaintiffs arranged a meeting in February 1989 between their Mr.Stanley Wong, Mr. Au Choo Yoong of Martingale M, Martingale UK's managing director Mr. Peter Tomlin and Mr. Lim Chow Weng, an architect rom Architects 61. Thereafter, there were follow-up discussions between Plaintiffs and the architects and further information on the Martingale System as well as shop-drawings relating to the lay-out and installation of the Martingale System were provided. The architects were impressed by what they learnt through Plaintiffs of the Martingale System and although no such integrated ceiling system had

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ever previously been installed in Singapore, they were satisfied that it was the best ceiling for the Project and specified in the tender documents that the Martingale System be used for the ceilings.

The recommended ceiling boards for use with the Martingale System were Ecophon Focus ceiling boards and they too were specified by the architects.

4. Ecophon Focus ceiling boards were manufactured by Ecophon AB, a Swedish company ("EAB"). In August 1989 EAB had appointed Martingale M as the exclusive distributor of its products in Singapore. Martingale M had at the same time appointed SHPL in turn as its exclusive distributor for Ecophon products in Singapore. As with the Martingale System, for the purposes of this case Plaintiffs may be treated as having all SHPL's rights relating to Ecophon products.

5. Upon the Martingale System and Ecophon boards being specified for the Project, the various contractors interested in tendering for the main contract for the Project (1st Defendants included) contacted Plaintiffs to obtain Plaintiffs' quote for the ceiling sub-contract. Plaintiffs provided them all with quotes. The main contract was eventually awarded by the Project's owners ("the Owners")to 1st Defendant. 1st Defendants pursued their negotiations with Plaintiffs in relation to the ceiling sub- contract. On 15/11/89 Plaintiffs quoted $5,026,386.05 to 1st Defendants for the ceiling works. By 7/8/90 Plaintiffs had revised this quote to $5,331,095.80 of which $3,285,566/- was for the Martingale System, $1,642,783/- was for the Ecophon boards and $402,746.80 was for installation charges.

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6. Despite the Martingale System being specified in the tender documents, it had still not been finally decided if the Martingale System would actually be used for the Project. This decision would only be taken after the Owners inspected a mock- up ceiling made from the Martingale System and using Ecophon boards. This was required as the Martingale System had never before been used in Singapore and accordingly the Owners wished to see what such a ceiling looked like before its use in the Project was confirmed. Until this final decision was made the ceiling sub-contract could not be awarded to Plaintiffs or indeed anyone else.

7. The requirement for a mock-up ceiling was communicated by the architects to 1st Defendants in May 1990. Although there was no provision in the main contract that 1st Defendants were required to provide this mock-up, 1st Defendants agreed to do so. 1st Defendants in turn asked Plaintiffs, also in May 1990, to provide the mock-up.

It is not unknown in the building trade, especially where a new product is concerned, as is the case here, that the contractor promoting the new product is required to provide a visual example or mock-up of what his installed product looks like. Although there is no legal obligation on him to do so, he knows that if he does not his new product is not likely to be used. If he wants to get the contract the contractor will invariably agree to provide the mock-up. Plaintiffs being very keen to get the ceiling sub-contract readily agreed to provide 1st Defendants the mock-up ceiling asked for.

8. Plaintiffs proceeded to make the necessary arrangements for the mock-up which was to be installed in a section of one of the completed floors of the Project. This involved, inter alia, putting up the necessary shop-drawings for the

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installation of the mock-up, obtaining the necessary components of the Martingale System and the Ecophon boards, arranging for the required workforce, liaising with the architects, 1st Defendants and other relevant parties and making all necessary payments for the foregoing. By 27/9/90 Plaintiffs had completed the mock-up for inspection by the architects. This inspection was carried out on 8/10/90. The Architects thereafter wrote to 1st Defendants on 10/10/90 asking for various improvements and adjustments to the mock-up.

1st Defendants sent a copy of this letter to Plaintiffs under cover of 1st Defendants' letter of 12/10/90 asking Plaintiffs in turn to carry out these works. Plaintiffs claim to have done all that was required of them in respect of this letter by 27/10/90 except for two items, both relating to the installing of some ceiling boards and panels to the mock-up. Plaintiffs found that someone else had already put in these boards and panels before Plaintiffs could do so. This someone was 2nd Defendants.

9. By 6/10/90 1st Defendants had begun to have doubts about Plaintiffs' ability to carry out the ceiling sub- contract. They believed Plaintiffs lacked the experience, expertise and financial muscle to satisfactorily carry out what a big and complex ceiling sub-contract such as this one.

They accordingly wrote in strictest confidence to Martingale UK on 6/10/90 expressing these concerns about Plaintiffs who they described as Martingale UK's "locally appointed agent/installer". As there was little doubt that the Martingale System itself was sound and it was only Plaintiffs' capabilities that were in question, 1st Defendants asked Martingale UK if they would supply the materials for the Martingale System direct to 1st Defendants for installation by some other sub-contractor chosen by 1st Defendants. If 1st Defendants'

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concerns about Plaintiffs were primarily with regard to their ability to actually carry out the installation works, it is curious why they could not still have bought the materials from Plaintiffs whilst using someone else for the installation works.

10. Martingale UK were perfectly willing to bypass Plaintiffs and deal direct with 1st Defendants if it meant securing the use of the Martingale System as the chosen ceiling. On 15/10/90, Martingale UK even recommended the 2nd Defendants as suitable ceiling sub-contractors to install the Martingale System. 1st Defendants acccepted this Suggestion and even involved 2nd Defendants in doing some work on the mock-up in October/November 1990.

11. Despite putting afoot moves to bypass Plaintiffs for the ceiling contract, 1st Defendants nevertheless sought to keep Plaintiffs committed to the mock-up and the ceiling sub- contract. As the validity of Plaintiffs' 7/8/90 quote of $5,331,095.80 was only for one month, Plaintiffs on 24/8/90 and 7/9/90 sought and obtained an extension of this quote to 12/10/90 and again on 13/10/90 sought and obtained a further extension of the quote to 15/11/90. 1st Defendants also wanted Plaintiffs to continue to carry out the improvements and alterations to the mock-up required of them by the architects' on 10/10/90 as 1st Defendants' letter of 12/10/90 to Plaintiffs makes plain. So long as Plaintiffs were unaware of 1st Defendants' moves to bypass them, Plaintiffs were happy to remain committed to the mock-up.

12. The mock-up was completed and approved by the Owners following an inspection on 1/12/90. The Martingale System together with Ecophon ceiling boards were thereupon confirmed and approved as the ceiling for the Project. In November 1990 itself, 2nd Defendants had submitted their quote for the ceiling

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works to 1st Defendants, a letter of intent was given to them in December 1990 and the ceiling sub-contract awarded to them in mid-January 1991. Plaintiffs were aggrieved at this turn of events and commenced this action against 1st Defendants and 2nd Defendants. Plaintiffs claim against 1st Defendants for quantum meruit for work done and materials supplied in respect of the mock-up. They claim against 1st Defendants and 2nd Defendants for wrongful use of 14 drawings belonging to Plaintiffs and supplied by Plaintiffs to either the architects or 1st Defendants in relation to the installing of the Martingale System and Ecophon ceiling boards.

13. The initial request for the mock-up was made by the architects to 1st Defendants. At this time 1st Defendants had already been appointed main contractors for the Project. 1st Defendants had no obligation in law to provide a mock-up for the Owners' viewing. They nevertheless agreed to do so confident no doubt that when they passed on this request to Plaintiffs, Plaintiffs would agree to erect the mock-up at their own cost. It was the practice in the building industry that when a product supplier agreed to provide a mock-up,he would bear the cost of erecting the mock-up unless it was otherwise agreed. There was also no obligation for the contract to be awarded to the party putting up the mock-up.

14. When Plaintiffs agreed to erect the mock-up for 1st Defendants both parties went by the industry practice. To ensure there was no doubt on this, 1st Defendants later sent Plaintiffs a letter dated 6/7/90 reiterating that Plaintiffs were undertaking the building of the mock-up without any promise of a contract or reimbursement of cost. That this was also Plaintiffs' understanding is shown by Plaintiffs' letter of 27/10/90 to Martingale M where Plaintiffs state that they were providing the mock-up to 1st Defendants free of charge.

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15. 1st Defendants maintain that industry practice allowed them to award the ceiling sub-contract to someone other than Plaintiffs even if the Martingale System was the chosen ceiling. They adduced evidence from various witnesses on this point. But they were all persons who had either an interest in the outcome of this case or were involved in the events relating to the mock-up. It would not be safe to make a finding on industry practice relying solely on such evidence. The architect Mr. Lim who was called as a witness by Plaintiffs also testified on the issue of industry practice relating to mock-ups. He confirmed that it is the practice that the product supplier pays for the mock-up whether or not the contract is awarded to him and that there is no obligation to award him the contract. However,no Evidence was taken from him as to whether industry practice allowed 1st Defendants to award the contract to 2nd Defendants even though the Martingale System was chosen for the ceiling. All he did say was that if the mock-up succeeded in getting the contract for the product exhibited, the person responsible for the mock-up would be expected to get the contract. I therefore make no finding whether industry practice is as 1st Defendants maintain.

16. Assuming, however, that 1st Defendants are correct and that is the practice, would that allow a main contractor to get a sub-Contractor to construct a mock-up at the sub- Contractor's expense even when the main contractor had no intention at all of engaging the sub-contractor if the mock-up passed? Surely not. It must be implicit even in such practice that when the main contractor asks for a mock-up the main contractor must believe that the party asked to construct the mock-up has a reasonable chance of getting the contract from the main contractor if the mock-up proves satisfactory. But this was not so in the present case. From at least 6/10/90 and no doubt some time earlier, possibly even from May 1990 when 1st Defendants first asked Plaintiffs for the mock-up, 1st

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Defendants had no intention of giving the ceiling sub-contract to Plaintiffs. Even if 1st Defendants had not formed this intention when they first asked Plaintiffs for the mock-up, they continued to require Plaintiffs to work on and provide the materials for the mock-up well after they had formed this intention.

17 Whether or not the practice claimed by 1st Defendants exists, Plaintiffs had a legitimate expectation when required by 1st Defendants to provide the mock-up that Plaintiffs had a reasonable chance to get the contract if the mock-up passed muster. The only reason Plaintiffs would agree to provide the mock-up free was this chance of getting the contract. If Plaintiffs, had no such chance, as was the case here, 1st Defendants had a duty to so inform Plaintiffs if they expected Plaintiffs to provide or continue to provide the mock- up for free. If they failed to inform the Plaintiffs, then they must be responsible to pay Plaintiffs for the mock-up if it is established that Plaintiffs would not then have provided the mock-up for free. If 1st Defendants had so informed Plaintiffs, it is inconceivable that Plaintiffs would have continued to provide the mock-up for free. They would at the very least have charged for the mock-up or perhaps, have stopped work on or even recovered all the materials supplied by them for the mock-up.

18. It is part of 1st Defendants' defence to Plaintiffs' claim that 1st Defendants derived no benefit from the mock-up. If this was so, why then did 1st Defendants not inform Plaintiffs as soon as they decided Plaintiffs would not be given the contract. Why instead did they take pains to keep this from Plaintiffs by asking Martingale UK to treat this issue with the strictest confidence. It was because 1st Defendants had committed themselves to the Owners through the architects that they would have a mock-up of the Martingale System ready for the Owners to inspect. And the only person at the material time who could provide the

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mock-up was Plaintiffs. I do not Therefore accept that 1st Defendants derived no benefit from Plaintiffs' mock-up. In providing the same, Plaintiffs enabled 1st Defendants to fulfil 1st Defendants' mock-up obligation to the architects. I accordingly find that the Plaintiffs are entitled to be paid a quantum meruit by 1st Defendants for the mock-up.

19. Plaintiffs claim that a reasonable amount in quantum meruit would be $300,000/-. This is more than 5% of Plaintiffs' quote for the whole ceiling sub-contract. Plaintiffs' quote for the sub-contract worked out to a price of approximately $100/- per square metre of ceiling. The mock-up comprised of some 150 square metres and at $300,000/- will work out to a cost of $2,000/- per square metre.Plaintiffs' claim is clearly exorbitant. In determining what would be appropriate in this case, regard should be given only to the cost of materials, labour and other expenses incurred by Plaintiffs in erecting the mock-up. Plaintiffs are not entitled to recoup any expenses incurred in relation to any of their other efforts to secure the use of the Martingale System as the ceiling for the Project. After considering the relevant evidence I fix the amount payable by 1st Defendants to Plaintiffs at $30,000/-.

20. As for Plaintiffs' claim against 1st Defendants and 2nd Defendants for wrongful use of the designs in the 14 drawings, in order to succeed Plaintiffs must first establish their rights to the designs. Plaintiffs have failed to do so. The drawings were in any event not prepared by Plaintiffs but by Martingale M. Whether even Martingale M had the rights to these drawings is doubtful because Martingale M's drawings were based on designs belonging to Martingale UK. Furthermore there was no evidence on which I could properly find that either 1st Defendants or 2nd Defendants made any use of these drawings. Plaintiffs' claim in this regard is therefore dismissed.

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21. On costs, in the circumstances of this case and in particular considering that Plaintiffs failed in one of their claims against 1st Defendants and could have proceeded with the one that did succeed in the Subordinate Courts, 1st Defendants shall pay Plaintiffs all their disbursements in this action but only 25% of their costs, such costs and disbursements to be taxed if not agreed. Plaintiffs to pay 2nd Defendants' costs of this action, also to be taxed if not agreed.

C.R. RAJAH,

JC

C R Rajah JC

Aloysius Leng (Abraham Low & Parnters) for the plaintiffs
Kenneth Koh with Lee Li Lian (Koh & Choo) for the 1st defendants
Charles Lin (Donaldson & Burkinshaw) for the 2nd defendants

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