IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 114

Suit No 281 of 1996;Suit No 286 of 1996

Between

Tulip Furniture Enterprise Pte Ltd

… Plaintiff

And

Roberto Building Material Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Tulip Furniture Enterprise Pte Ltd v Roberto Building Material Pte Ltd

[1997] SGHC 114

Suit No 281 of 1996;Suit No 286 of 1996
C R Rajah JC
02 May 1997

Judgment:

1. The Plaintiffs had a contract with the owners of the Golden Horse Hotel in Xiaoshan, China ("the Hotel") to do various building works with regard to the Hotel. Among these works was the laying of marble on various

parts of the floor, walls, staircases and pillars in the Hotel. The Plaintiffs entered into a contract with the Defendants for the Defendants to supply the various kinds of marble required for these marble works. The Plaintiffs claimed that it was a lump sum contract in that the Defendants were provided with all the relevant plans and drawings in respect of these marble works and that the parties then agreed that the Defendants would supply all the required marble as per these plans and drawings for a lump sum of $1,050,000/-. This agreement is contained in a letter of agreement dated 22/5/95 signed between the parties. This agreement also stipulated that all the marble was to be delivered by mid-September 1995. The Defendants were only obliged to supply the marble. They had no obligations with regard to the laying of the marble. This was to be done by the Plaintiffs.

2. The Plaintiffs claim that the Defendants breached their obligations under the contract in that,

(a) they failed to deliver the required marble necessary for the completion of the marble works.

(b) some of the marble they did deliver was sub-standard.

The marble works therefore could not be completed on time resulting in the Plaintiffs being unable to complete on time all the works that they had to do for the Hotel's owners. The Hotel owners therefore terminated the Plaintiffs' contract with them. To add insult to injury, the Hotel owners then engaged the Defendants to complete that portion of the Plaintiffs' contract with them relating to the supply and laying of marble.

3. The Plaintiffs commenced this action against the Defendants for recission of the contract and damages. They are no longer proceeding with their claim for recission. They then applied under the provisions of Order 14 of the Rules of Court 1996 for interlocutory judgment on the grounds that the Defendants had no defence to their claim and for damages to be assessed thereafter. The Defendants opposed this application.

4. The Defendants do not dispute that they entered into the contract dated 22/5/95. There is, however, a dispute between the parties as to exactly what the drawings referred to are. Although the Defendants admit they were shown all the relevant drawings by the Plaintiffs, they say they were only given copies of some of them. The Defendants also admit visiting the Hotel site and making their own drawings in relation to the marble works. They suggest that from the plans they were given it was not possible for them to properly ascertain how

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much marble was required for the marble works. The Plaintiffs' response to this was that with the plans the Defendants had and the schedule of finishes for the marble works supplied to them, the Defendants had all the necessary information to make a quote for the lump sum contract. Furthermore, if the Defendants did not know what comprised the required marble works they could not have contracted as they did to supply all the required marble for $1,050,000/-.

5. The Defendants also dispute that they failed to supply all the required marble within the time stipulated in the contract. They say that some of the marble alleged not to have been delivered on time had in fact already been sent to the port in Shanghai and was awaiting collection by the Plaintiffs. There was a delay in the collection of these goods because of a dispute relating to who should pay the custom dues. As for the rest of the marble not delivered on time, the Defendants say this was not part of the marble works as originally envisaged and depicted in the drawings when the contract was made. This was marble which was additional to or different in type, colour or dimension to what was required under the original drawings. This additional or different marble represented variations to the marble works required by the Plaintiffs after the contract was made. The Defendants set out copies of documents which they say either were or evidenced these variation orders. The Plaintiffs admitted that they did ask for 4 items of variation works but these were so minor that it would not have substantially affected cost of or time for performance of the contract. The Plaintiffs were also prepared to give such allowance as to time or price, if any, as may be required in respect of these 4 items. As for the rest of the variations claimed by the Defendants, they were either not variations at all because they simply reflected what was required in the original drawings and schedule of finishes or they were variations necessitated by the Defendants' inability or

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failure to supply the marble as required by the drawings resulting in alternative types or colours or sizes of marble having to be used.

6. The Defendants also dispute that the marble which they supplied was sub-standard either as to quality, cut, colour or finish. They say that if any of the marble they supplied did end up looking or otherwise being sub-standard it was because of poor handling, management or laying of such marble by the Plaintiffs after they had taken delivery thereof from the Defendants. The Plaintiffs denied this allegations and showed from the documents various instances where the marble delivered clearly did not meet with the required specifications.

7. The Plaintiffs' application for summary judgment was first heard before the Assistant Registrar who gave the Defendants unconditional leave to defend the action. The Plaintiffs appealed to this Court. I heard extensive arguments from both Counsel and was referred to many of the documents exhibited to the several affidavits filed herein. The Plaintiffs had in my view established a sound basis for their claim and significantly rebutted the Defendants' line of defence. However, because of the plethora of detail involved it would not be an appropriate case for summary judgment or conditional leave to defend being ordered unless the Defendants could be shown either by their conduct or through the documents to have sufficiently admitted the breaches alleged against them. It is in this regard that the minutes of the meeting dated 19/12/95 is important.

8. On 19/12/95 day there was a meeting at the Hotel site at which the Plaintiffs' Mr. Eric Quek Ling Huat and the Defendants Mr. Thomas Tan Heng How were present. After the meeting, minutes were typed up and signed by Mr. Quek and Mr. Tan on behalf of the Plaintiffs and the Defendants respectively. These minutes reflect admissions by the Defendants that they had failed to deliver even

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as at 19/12/95 various items of marble as listed in a fax dated 14/12/95 from the Plaintiffs to the Defendants and that some of the marble they had delivered was sub-standard. The minutes also contains nothing to show that the Defendants were being asked to deliver such extra or different marble as to entitle them to be paid something more than the contract price of $1,050,000/-.

9. The Defendants say they should not be taken to have agreed that the minutes correctly reflect what was discussed at the meeting or to be bound by what is stated therein for the following reasons:-

(a) Mr. Tan was pressured by Mr. Quek to sign the minutes there and then. Mr. Tan was in a hurry to leave the Hotel site as he had to go to Shanghai which was some 2 hours away to catch a flight to Singapore that same day. He therefore signed the minutes without reading it. In this rush he said he even dated his signature as having been signed on 20/12/96 instead of 19/12/95.

(b) In any event, Mr. Tan does not understand much English and would not have appreciated the effect of what was set out in the minutes.

10. The Plaintiffs say that the Defendants' claims in this regard are a sham. Their reasons for saying so are as follow:-

(a) Mr. Tan is not only sufficiently conversant in English to understand clearly what was set out in the minutes but also read through the minutes carefully before signing it. This can be seen from the many handwritten additions and amendments to the minutes made by Mr. Tan in his own handwriting before he signed it. It is not disputed that the handwriting is Mr. Tan's.

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(b) Mr. Tan was not pressured by Mr. Quek or anyone else to sign the minutes. Furthermore the minutes could not have been signed by Mr. Tan unthinkingly by reason of his being in a rush to leave for Singapore that day because Mr. Tan did not go to Singapore that day. Furthermore, the minutes were in fact not signed by him on the day of the meeting i.e. 19/12/95 but the day after the meeting i.e. 20/12/95. His dating his signature 20/12/95 was therefore correct and not a mistake as claimed by him. This is also established by the fact that the minutes were prepared in Xiaoshan and then faxed to the Plaintiffs' office in Singapore for them to type up the minutes on the Plaintiffs' letterhead and then fax it back to Xiaoshan for the parties to sign. By the time this was done it was 20/12/95. The minutes on the Plaintiffs' letterhead which was signed by Mr. Tan and Mr. Quek therefore bears the fax date of 20/12/95 at the top of the first page. This proves that Mr. Tan could not have signed the minutes on 19/12/95 but only on 20/12/95 or later. The Plaintiffs had requested the Defendants to produce a copy of Mr. Tan's passport to prove that he left Shanghai for Singapore on 19/12/95 as they claim. The Defendants have failed to do so.

(c) The Defendants also never raised as an issue that Mr. Tan had been unduly pressured into signing the minutes until the Plaintiffs' solicitors sent them a letter of demand dated 23/1/96 which set out the Plaintiffs' claims and in support of these claims referred to the matters set out in the minutes. Only then did the Defendants claim undue pressure.

11. In support of their claim that Mr. Tan was pressured to sign the minutes, the Defendants filed an affidavit of one of their sub-contractors who claimed he was present at the meeting of 19/12/95 and saw Mr. Tan being pressured to sign the minutes. However, in light of the arguments and evidence raised by the Plaintiffs on this issue I regard this affidavit with some circumspection. The

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Defendants also refer to a police report Mr. Tan made on 13/1/96 relating to an alleged incident of assault and threats made against him which he says he believes were instigated by the Plaintiffs' Mr. Quek. There is nothing in this report to link this incident, even if it actually took place, to the signing of the minutes by Mr. Tan. In any event the incident only took place on 13/1/96 and would therefore have no bearing on why Mr. Tan signed the minutes as he had already signed the minutes by then.

12. Having considered all the factors and in particular the minutes, although I still did not consider this to be a proper case to grant summary judgment, I nevertheless believed that leave for the Defendants to defend should be made conditional. As the Plaintiffs claim as it stands is unliquidated what would be an appropriate condition did not immediately suggest itself. However, after taking into account all the facts and circumstances, I formed the view that the condition should be that the Defendants either pay into Court or provide a bank guarantee in the usual form for the sum of $100,000/- and I so ordered. I also ordered the costs of the appeal to be costs in the cause.

C.R. RAJAH

JUDICIAL COMMISSIONER

C R Rajah JC

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Lim Kim Hong (Mas & Partners) for the plaintiffs/appellants
Rebecca Tai-Yeo (Michael Khoo & Partners) for the defendants/respondents

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