IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 232

Suit No 942 of 1992

Between

Gammon Pte Ltd

… *Plaintiff*

And

Jimmy Koh
Chan Chin Choo
Go Sua Kui
Koh Han Kok

… *Defendant*

And

Antara Koh Pte Ltd

… *Third Party*

GROUNDS OF DECISION

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

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Gammon Pte Ltd v Jimmy Koh and Others (Antara Koh Pte Ltd, Third Party)

[1997] SGHC 232

Suit No 942 of 1992
Choo Han Teck JC
03 September 1997

Judgment:

GROUNDS OF DECISION

1. This was an appeal against the decision of an assistant registrar in respect of an application by the Defendants for further and better discovery. The Plaintiffs are a company carrying on the business of civil engineering contractors in Singapore. The Defendants are the shareholders of Antara Koh Pte Ltd a company carrying on the business of construction contractors. The Plaintiffs and the Defendants entered into a joint venture to carry out a construction project under the title "MRT Contract 310". The Defendants were guarantors to Antara Koh Pte Ltd pursuant to the agreement. The project started in late 1986 or early 1987 and was completed in 1989 with the joint venture suffering substantial loss. The Plaintiffs consequently called upon the Defendants to bear their share of that loss which, including interests, is currently about $10,000,000. The Defendants' defence was founded on misrepresentation by the Plaintiffs as well as mismanagement by the Plaintiffs which caused the loss.

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2. By an order of court dated 27 March 1995 the Plaintiffs were ordered to disclose documents referred to in an annexed schedule within 60 days. The documents in this schedule included audio tape recording of meetings, internal memoranda, correspondence, engineer's instructions, drawings, and variation orders, among others. By an affidavit sworn by David John Palmer dated 25 May 1995 the Plaintiffs purport to comply with the order for discovery made on 27 March 1995.

3. The Defendants were not satisfied with that disclosure and applied for a further and better list, or alternatively, that the Plaintiffs enumerate the documents referred to in Palmer's affidavit of 25 May. On 15 August 1995 the learned assistant registrar ordered that the Plaintiffs do within 60 days file and serve a further and better list of documents disclosed in the Palmer affidavit. Inspection was to take place within 30 days thereafter. The Plaintiffs appealed. Efforts were made by the parties to settle the dispute out of court and consequently proceedings were held in abeyance. The matter was not settled and trial dates were fixed and the action will be tried in November 1997. The Plaintiffs therefore, restored this appeal.

4. The Plaintiffs' contention was that the order should not have been made because Palmer's affidavit had fully complied with the original order for disclosure. The terms of the disclosure was the crux of the Defendants' grievance and it would be useful to set out the relevant portions. Paragraph 2 of the affidavit reads as follows:

"In relation to the documents or class of documents referred to in the Schedule to the said Order the Plaintiffs have in their possession, custody or power the following:

a) Item 2 Internal memoranda of the Plaintiffs relating to the MRT Contract 310 project. These are available for inspection;

b) Item 3 Correspondence between the Plaintiffs and Gammon Construction Ltd relating to the MRTC Contract 310 project. These are available for inspection;

c) Item 4 Correspondence, memoranda and documents pertaining to the British Steel Corporation IBXN sheet piles, etc which were purchased for the MRTC Contract 310 project. The bulk of these documents are stored in boxes in the Plaintiffs' storage yard and available for inspection;

d) Item 5 Engineer's instructions stored in box numbered 21 in the Plaintiffs' storage yard and available for inspection;

e) Item 6 Drawings stored in boxes numbered 31, 31A, 46, 46A and approximately 10 other unmarked boxes in the Plaintiffs' storage yard and available for inspection;

f) Item 7 Daywork Orders and variation Orders in

and 8 correspondence with MRTC stored in boxes numbered 26, 27, 28 and 126 and 127 in the Plaintiffs' storage yard and available for inspection except for the correspondence for July 1987 which the Plaintiffs have been unable to locate.

g) Item 9 Engineer's comments/consent forms stored in boxes numbered 28 and 144 in the Plaintiffs' storage yard and available for inspection.

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h) Item 11 Minutes of meetings and/or resolutions of the board of directors of the Plaintiffs relating to the MRTC contract 310 project and available for inspection.

i) Item 12 Employment contracts with persons and/ or staff employed directly from Hong Kong by the Joint Venture and/or seconded to the Joint Venture, including but not limited to the employment contracts and/or correspondence relating to the employment of Herbert Lee, George Chen and John Clarke. These have already been disclosed in the Plaintiffs' Supplemental List of Documents filed in these proceedings."

5. Discovery and inspection go hand-in-hand. The objective is to enable the parties to know what documents each has and, consequently, the trial or hearing of the main action or dispute can proceed expeditiously. As a supplementary aid to proper pleadings and other interlocutory steps leading to trial, discovery and inspection will enable the parties to narrow the issues to be determined since a proper discovery may result in a party conceding or admitting points or facts which he might otherwise dispute. In order, therefore, that discovery and inspection will meet this objective, the party making the disclosure is obliged to be forthright in disclosing all that is relevant, and secondly, he must do so expeditiously. Thirdly, he must make his disclosure in the form prescribed under the Rules of Court. The form prescribed under the rules was designed to facilitate an orderly disclosure and inspection.

6. It is understandable that in complex cases involving voluminous documents, the task of sorting and setting out the documents for discovery and inspection may be tedious, but that is an unavoidable part of litigation. It must be the duty of the person having possession, custody or power over the documents to

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prepare them in a way that will facilitate and not hinder inspection. To this end, Order 24 Rule 5(1) of the Rules of Court provides as follows:

"5 - (1) A list of documents made in compliance with Rule 2 or with an order under Rule 3 must be in Form 40, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified."

7. Counsel for the Plaintiffs submitted that Palmer's affidavit was adequate because the documents disclosed were of the same nature. I do not accept that submission because all that Palmer's affidavit stated was, effectively, "we have a bunch of memoranda. Come and inspect them at the warehouse". The same applies to the other documents disclosed. That will not do. If the pages of various documents are mixed up the Defendants cannot be expected to sort or arrange them for the Plaintiffs. The documents belong to the Plaintiffs and the burden is on them to sort them. In the Supreme Court Practice 1997 of the United Kingdom, a commentary on their Order 24 Rule 5 (at page 431) which is in *pari materia* with ours, the following practice, which I accept as appropriate and necessary, was advocated:

"The provisions in regard to bundles of documents now embody the strict Chancery practice, in existence for many years but not always followed in the Q.B.D. They only apply where there is a large number of documents of the same nature. In such a case each of the documents must be numbered, as in other cases, but the bundle may be described as a whole - e.g. "letters (or copy letters) from A to B, tied up in a bundle marked A and numbered 1 to 50 and initialled by me"."

This is what the Plaintiffs ought to do with the documents they disclosed.

8. This procedure applies to all parties. However, the party seeking discovery has the corresponding obligation to inspect disclosed documents expeditiously, and both parties ought to decide by the time of the trial which documents are necessary and which are not. Thus, an Agreed Bundle may be meaningfully submitted for the trial. Unnecessary documents need not therefore appear to create clutter. The parties need not agree that the documents represent the true position but merely that they exist and each side may wish to comment on the true meaning and import of those documents. Even documents which a party denies as genuine may be included in the Agreed Bundle so long as it is clear that their inclusion is qualified.

9. The Plaintiffs in this case had not disclosed their documents in the form that would facilitate inspection and the learned assistant registrar was right in allowing the Defendants' application. The appeal before me was, therefore, dismissed.

- Sgd -

Choo Han Teck

Judicial Commissioner

Choo Han Teck JC

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Loo Dip Seng [Ang & Partners] for the plaintiffs
Alvin Yeo and Edwin Lee [Wong Partnership] for the defendants

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