IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 315

Suit No 1448 of 1992, Suit No 1449 of 1992

Between

The Management Corporation
Strata Title Plan No 1166

… Plaintiff

And

Chubb Singapore Pte Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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The Management Corporation Strata Title Plan No 1166 v Chubb Singapore Pte Ltd

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Suit No 1448 of 1992, Suit No 1449 of 1992
G P Selvam J
28 November 1997

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 *Defects in pleadings*

4 The writs in this action were filed on 22 July 1992. It was an action for damages for breach of contract for the supply and installation of a communication system in a condominium known as Mandarin Gardens.

5 When the case came up for trial on 22 August 1997 I was alerted by certain unsatisfactory features in the pleadings. The statement of claim included a prayer for damages without indicating the quantum. In other words it was a claim for damages at large.

6 The defence for its part manifested no positive case. It was a purely negative case. When no positive case is pleaded defendants have a propensity to assert a positive case which is not permitted. The only evidence of the

defendants that can be admitted is to demolish the plaintiffs' case and to vociferate the denial. The defendants thus had placed themselves at a disadvantage for positive evidence is entitled to greater weight than negative evidence. I therefore directed counsel for both sides to consider repair work on the pleadings. The trial commenced and the plaintiffs' leading witness of fact was called. In addition to his affidavit evidence-in-chief he gave supplemental evidence-in-chief. This was during the morning session.

7 *Application to amend defence*

8 At the commencement of the afternoon session, before cross-examination began the plaintiffs applied for and were given leave to amend their statement of claim to quantify their damages.

9 The defendants for their part also applied to amend their defence. There was partial objection to the proposed amendments. The part which the plaintiffs' counsel took issue with related to cl 30(7) of the SIA Conditions. SIA was the acronym of Singapore Institute of Architects. The relevant part read as follows :

10 "30(7) Unless a written request to concur in the appointment of an arbitrator shall have been given under clause 34 of these Conditions by either party before the Final Certificate has been issued or by the Contractor within 14 days after such issue the said certificate shall be conclusive evidence in any proceedings arising out of this Contract (whether by arbitration under clause 34 or these Conditions or otherwise) that the Works have been properly carried out and completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of this Contract which require

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an adjustment to be made to the Contract Sum, except and in so far as any sum mentioned in the said certificate is erroneous by reason of -

11 (a) Fraud, dishonesty or fraudulent concealment relating to the Works, or any part thereof, or to any matter dealt with in the said certificate; or

12 (b) Any defect (including any omission) in the Works, or any part thereof which reasonable inspection or examination at any reasonable time during the carrying out of the Works or before the issue of the said certificate would not have disclosed; or

13 (c) Any accidental inclusion or exclusion of any work, materials goods or figure in any computation or, any arithmetical error in any computation." (This was irrelevant)

14 *Arguments*

15 Mr Richard Tan for the plaintiffs raised two principal objections. The first was that if the proposed amendment was allowed there would be a substantial reply pleading and that would cause a delay of the trial. The second was that the plaintiffs would need to rely on provisos (a) and (b) of cl 30 (7) and this would require further investigation and evidence. A third point he made was that objections had already been raised.

16 The defendants said that there was no prejudice in that cl 30 (7) was already in the pleadings and the plaintiffs said that they had raised the objection.

17 *The decision*

18 In my view provisos (a) and (b) would go to the heart of the matter and these provisos did not exhibit themselves in the pleadings as they stood. I could not allow the proposed amendment without giving leave to the plaintiffs to file a reply. That would cause disruption and difficulties to the plaintiffs because in view of the long passage of time.

19 More importantly, there was an ironical side to the defendants' application. Clause 30 (7) is a time limitation clause. This was to encourage promptness and prevent stale matters being raised. The plaintiffs were by this clause required to act promptly. It meant that the defendants who complained about the plaintiffs' delay should not themselves be guilty of an inordinate delay. The defendants' delay would cause serious prejudice to the plaintiffs for they would have great difficulties in collecting the evidence necessary to invoke the provisos. They did not deserve that punishment.

20 Accordingly I disallowed the amendment.

21 G P SELVAM

22 JUDGE

23 *Solicitors: Lee & Lee*

Drew & Napier

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Richard Tan with Shalita Jayakumar for the plaintiffs
Indranee Rajah with Christopher Chuah for the defendants
