IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 88

Suit No 345 of 1995

Between

Tan Bock Leng t/a Kian Seng
Co Pre-Cast Concrete Works

… *Plaintiff*

And

WSP Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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Tan Bock Leng t/a Kian Seng Co Pre-Cast Concrete Works v WSP Pte Ltd

[1997] SGHC 88

Suit No 345 of 1995
Lai Kew Chai J
08 April 1997

Judgment:

Cur Adv Vult

J U D G M E N T

Introduction

The plaintiff claims from the defendants the sum of $131,286.34 with interest being the balance of the price of 536,750 pre-cast tiles ("PC tiles") sold and delivered to them. The defendants deny liability. In fact, they are counter-claiming for (1) the sum of $17,776.79 for overpayment, and (2) the sum of $25,440 being the costs of removal of extra PC tiles delivered to the work site.

Facts

2 In March 1993 defendants were sub-contractors of Hyundai which were constructing the MRT line from Yishun to Sembawang. They were interested

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to procure PC Tiles to lay on the inner side of the viaduct, more or less U-shaped, with the two lines in "U" spreading out like the letter "V". They asked the plaintiff to quote. Plaintiff quoted 60 cents per piece; the rate of delivery was stated to be "2,400 pieces per day".

3 Under the contract of 24 September 1993 the supply was "to be advised, tentatively from November 1993 to August 1994", i.e. over 10 months the supply was to be about 72,000 pieces per month or 2,400 pieces per day. The PC tiles were to be stacked onto 5 pallets for easy transportation.

4 I believe and accept the evidence of Steven Lee Chin Teck, the manager of the plaintiff, and the evidence of the clerk, Toh Lay Hong, who confirmed the evidence of the plaintiff in all material respects.

5 After the contract, the plaintiff casted 1,600 PC tiles per day from 25 October 1993 and by 4 November 1993 had accumulated 16,000 PC tiles. He stopped and enquired of defendants as to when the defendants could take delivery. It was only on 24 February 1994 that defendants instructed the plaintiff's clerk Ms Toh Lay Hong over the phone to deliver 3,500 pieces. The plaintiff delivered on 26 February 1994. The plaintiff was then told to wait for the delivery instructions of the defendants. There were no calls until 26 April 1994 when they were instructed to deliver only 3,000 pieces. After this delivery, the plaintiff still had 9,500 pieces. Therefore the plaintiff had no reason not to deliver if delivery instructions were in fact given.

6 By their letter of 22 February 1994 the defendants asked the plaintiff to advise his earliest possible delivery of 10,000 pieces of PC tiles to their work site in Yishun. This was the first advice of such a big quantity of PC tiles. He was

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asked to liaise with George Yeo. Ms Toh contacted George Yeo upon receipt of this letter and was told to wait for his call. Two days later, Ms Toh called George Yeo again. He ordered the delivery of 3,500 pieces. It is important to note that the plaintiff had 16,000 pieces of PC tiles in stock. There was no reason for him not to have effected delivery. Ms Toh said that although the defendants sent the map of the site, George Yeo had said that the plaintiff could only deliver when defendants' George Yeo or representative telephoned. She did ask George Yeo to take delivery of more PC tiles but he said that the defendants didn't have the access for the lorries.

7 By their letter dated 17 June 1994 the defendants were calling for fixed deliveries at the high average of 36,000 pieces per week. Why was such a randomly high figure stated? The letter DB13 purportedly signed by George Yeo was not received by Ms Toh; she denied having received it. The activities of the defendants at the site did not call for such a large supply immediately. I am of the view that logistics were very poorly maintained at the defendants' site.

8 The plaintiff and Steven Lee told the court that the defendants convened a meeting on 22 June 1994 at Hyundai's site office. Steven Lee, who was present, told the court that Hyundai's representative, one Byun Hong Kuen, told them that they wanted to rush the job and asked whether the plaintiffs could assist by providing a larger quantity for them to finish their work. In the end, parties agreed that plaintiffs supply 7,000-8,000 pieces PC tiles per day. The total quantity was revised to 600,000 pieces. The plaintiff and Steven Lee felt that they could meet this requirement by ordering more moulds and putting in overtime work in their factories here and in Johor. They told them that they could deliver sometime in and from July 1994 onwards. He explained to the court that the question of any revision in the pricing was a matter between the

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plaintiff and the defendants. Understandably, it was not to be discussed in the presence of Hyundai, the main contractors. They later agreed and the terms were set out in their letter 14 July 1994 (AB12). I believe this letter was sent to and received by the defendants.

9 Following the agreement as evidenced in AB12, the defendants ordered the deliveries as set out in a schedule (DB45- 47). In July, August and September 1994 there were many days when the deliveries fell below 7,000 pieces. The defendants alleged that the plaintiff failed to deliver. On the other hand, the plaintiff's Ms Toh alleged that she was told to wait for the instructions of the defendants' employees but they only gave instructions for the quantities delivered and no more. I accept her evidence. The fact of the matter was that the plaintiff had ready stock - in July their daily stock ranged from 13,800 pieces to 20,500 pieces; in August the range was 8,950 pieces to 35,100 pieces; and in September 8,250 pieces to 42,750 pieces. When the defendants stopped the plaintiff from supplying on 28 October 1994, the plaintiff still had 30,750 pieces of PC tiles in their stockpile. On 2 August 1996, at the 3rd day of the trial, these were still stacked on 41 pallets and covered by tarpaulins in the plaintiff's factory in Woodlands Industrial Park E, Singapore. In my view, the defendants were not well served by their employees who did not go back to Ms Toh for reasons best known to themselves.

10 The other issue of fact is whether the plaintiff had in fact and in truth delivered 536,750 pieces of PC tiles as claimed. The defendants had paid the invoices based on the delivery orders. But in the course of preparing for trial, the defendants had re- examined the delivery orders and found that they could only recognise the signatures of George Yeo, the project manager, and Vincent Teo. The defendants then denied the authority of any of the four signatories

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whose names were not identified except for one William Wong. The defendants stated that William Wong was not one of their employees. The number of PC tiles signed by the four "unauthorised" signatories totalled 213,200 pieces. The defendants put the plaintiff to strict proof that he delivered all the PC tiles in question.

11 The system of documentation for each delivery was as follows. After Ms Toh had received an order and the plaintiff had loaded the PC tiles on one or two lorries, his own lorry bearing registration number YH6752K and his contractor's lorry bearing registration number YD2080M, the driver or drivers would be told where to deliver the PC tiles. They were also given 3 pager numbers so that they could contact any one of them to find out precisely where to unload the PC tiles at the MRT work site. That 3 pager numbers were given was not challenged in cross examination by the defendants. They merely asked why it was necessary to page when Ms Toh had told them where to deliver. It was obvious to me that Ms Toh could only have mentioned the MRT site generally. The work site followed the MRT line, more or less, for work to be done. It followed that progressively the site for delivery would shift. One of the owners of the three pagers would call the lorry driver on his handphone and give the precise instructions.

12 At the nominated site, there was always someone to receive the PC tiles, except on one occasion. The one occasion was when the signatory was not present, although the instructions where to unload had been given. And the Administrative Manageress of the defendants had signed this particular delivery order, after she had verified the delivery with the project manager, George Yeo. After unloading, the driver would get the recipient to sign on the delivery order which was in triplicate. He would hand over the original, white copy, to the

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recipient. The drivers kept the two and would return them to the plaintiff's clerk. Both the drivers stated in evidence that they did deliver the PC tiles stated in the delivery orders under dispute.

13 In my judgment, the other significant point to remember is this: all the original white delivery orders found their way to the office of the defendants. If the recipient and signatory had no authority or was not part of the defendants' system to receive and acknowledge the receipt of goods, including the PC tiles, why was it that every one of the many impugned delivery orders was consistently returned to the defendants' office? On top of that they were passed for payment by Ms Kerh who said, however, that she merely checked the numbers in the invoice and not the signatories. I do not accept the explanations.

14 In these circumstances, I have to conclude that every one of the impugned signatories had ostensible authority to sign on the delivery order in question. The signatory was at the site and he directed the driver where to unload. He counted the number of pallets. In this way, 213,200 pieces of PC tiles were delivered to the defendants; there was not a word of protest. The issue of lack of authority was only raised in this trial. I am satisfied that the plaintiff did deliver to the defendants all 536,750 pieces of PC tiles.

15 There will therefore be judgment for the plaintiff in the sum as claimed with interest thereon at 8% per annum calculated from 1 November 1994 and costs. The counter-claims are dismissed with costs.

Sgd: LAI KEW CHAI

Judge

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Tan Bock Leng t/a Kian Seng Co Pre-Cast Concrete Works v WSP Pte Ltd [1997] SGHC 88

Singapore, 8 April 1997.

Lai Kew Chai J

S Santhiran [Santhiran & Partners] for the plaintiff
S H Almenoar [Tan Rajah & Cheah] for the defendants

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