IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 122

Suit No 1840 of 1997, RA 467 of 1997

Between

Gimwah Pte Ltd

… Plaintiff

And

Tokyu Construction Co Ltd

… Defendant

GROUNDS OF DECISION

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

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Gimwah Pte Ltd v Tokyu Construction Co Ltd

[1998] SGHC 122

Suit No 1840 of 1997, RA 467 of 1997
Christopher Lau JC
17 April 1998

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 1. The appeal, which I dismissed, was by the defendants against the decision of the Senior Assistant Registrar allowing the plaintiffs' application for summary judgment in the sum of S$392,725.68 and interest pursuant to Order 14 of the Rules of Court.

4 2. The basis of the plaintiffs' claim was that the sum claimed represented the agreed costs of variations on a building project. The defendants were the main contractors for the project. The plaintiffs were the sub-contractors appointed by the defendants for the granite cladding.

5 3. It was common ground between the parties that the sum of S$392,765.68 represented that part of the plaintiffs' costs of variations that were not in dispute.

6 4. Prior to the plaintiffs' application for summary judgment being heard by the Senior Assistant Registrar, the defendants had applied for these proceedings (including the plaintiffs' summary judgment application to be stayed) on the grounds firstly, that the parties had agreed in their contract documents to refer to arbitration the matters in respect of which the plaintiffs had brought this action, secondly, that the defendants had a set-off and a counterclaim against the plaintiffs in respect of the plaintiffs' work on the project. The defendants' stay application was unsuccessful. It was dismissed by the Assistant Registrar who found that as the sum claimed was not in dispute, there was no basis for the stay; there was nothing to be referred to arbitration. The defendants did not appeal against this dismissal.

7 5. The short point that arose on the defendants' appeal was whether by not appealing against the order dismissing the stay application, there was an issue estoppel against the defendants on the appeal since the whole basis of the defendants' appeal was that they had a set-off and counterclaim, the very same issue that had been argued before the Assistant Registrar on the defendants' unsuccessful stay application and which the defendants had not appealed from. Did the doctrine of issue of estoppel apply in these circumstances ?

8 6. I considered it did. The issue raised on this appeal was the very issue raised in the stay application. This was clear from a comparison of the two affidavits filed by Loh Kok Young, the defendants' Senior Project Manager on 10 November 1997 and 23 January 1998. The 10 November 1997 affidavit, which was the affidavit filed in support of the stay application, in paragraphs 4 and 5 Loh referred to the cross claims they say they had against the plaintiffs and to page 77 of exhibit "LKY-1" to that affidavit where the defendants' final account, after the defendants' alleged cross claims were taken into account, allegedly showed a sum of S$13,680.21 as due from the plaintiffs. The

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defendants also relied on this 10 November 1997 affidavit to oppose the plaintiffs' order 14 application.

9 7. Loh Kok Young's 23 January 1998 affidavit which the defendants filed for the purposes of this appeal covered essentially the same grounds : see paragraphs 3, 5 and page 117 exhibit "LKY-10" to that affidavit. The defendants admitted the amount claimed by the plaintiffs but said they had cross claims, the very issue which they had raised and lost in the stay application.

10 8. As L.P. Thean J. (as he then was) in Kian Gwan Engineering Pte Ltd v Sato Kogyo Co Ltd [1991] 3 CLJ 2301 said :

> "The doctrine of issue estoppel applies in this case as the defendants' cross-claim against the plaintiffs had already been raised, and disposed of ..."

11 9. As in Kian Kwan, in my judgment, issue estoppel applied and I accordingly dismissed the appeal.

12 Dated the 17th day of April 1998.

13

14 CHRISTOPHER LAU JC

15 Solicitors : M/s Myintsoe Mohamed Yang & Selvaraj

16 M/s Wong Partnership

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Yang Yung Chong for the defendants/appellants
Alvin Yeoh and Paul Sandosham for the plaintiffs/respondents

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