IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 224

OS 520/1998, SIC 3292/1998

Between

L & B Engineering (S) Pte Ltd

… Plaintiff

And

Monocrafts Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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L & B Engineering (S) Pte Ltd v Monocrafts Pte Ltd

[1998] SGHC 224

OS 520/1998, SIC 3292/1998
Lee Seiu Kin JC
01 July 1998

Judgment:

1 In Originating Summons 520/98, the Plaintiffs sought, *inter alia*, a declaration that an unconditional guarantee procured by them from UMBC Insurans Sdn Bhd ("UMBC") in favour of the Defendants had ceased to have effect from 12 January 1998. They also sought an order restraining the Defendants from calling on or receiving any money under that guarantee.

2 In this Summons-in-Chambers, No 3292/98, the Plaintiffs sought an interim injunction pending the trial of the Originating Summons. The parties appeared before me on 2 May 1998 and at the end of the hearing, I granted an interim injunction pending trial in the following terms:

> The Defendants are restrained whether by themselves or by their servants and/or agents howsoever from receiving the sum of $535,000.00 or any and all such sums from UMBC Insurans Sdn Bhd pursuant to their letter of 18 March 1998, or from further calling on the said Performance Bond or further receiving the sum of $535,000.00 or any and all such sums from UMBC Insurans Sdn Bhd until trial of the Originating Summons or further order, subject to: The Plaintiffs procuring an extension of the Performance Bond at least 1 week prior to its expiry if the trial cannot by heard before 18 October 1998.

The Defendants have appealed against my order and I now give my grounds of decision.

3 In submissions before me at the hearing, counsel for the Defendants seemed to have confused the principles governing this application with that governing the substantial hearing for the Originating Summons, and the fact that the Defendants have appealed against this order appears to confirm this. It is instructive therefore to set out the matters in their procedural context. The substantive cause of action in the Originating Summons is in contract - the Plaintiffs seek a declaration that the performance bond issued by UMBC is no longer valid and an order that the Defendants be enjoined from calling on or receiving money under it. Pending the hearing of the Originating Summons, the Plaintiffs have applied in this Summons-in-Chambers for an interim injunction to preserve the *status quo* until trial.

4 When the Originating Summons is heard, the relevant considerations will be whether the bond is still valid and in force and whether the Defendants are entitled to call on the bond or receive any money pursuant to the call that was made. The court will consider, *inter alia*, whether there was any fraud on the part of the Defendants. What will not be relevant is any consideration of balance of convenience, as the court there will not be dealing with an interlocutory injunction to preserve the *status quo* but with a final determination of rights - see *Bocotra Construction Pte Ltd v Attorney-General (No 2)* [1995] 2 SLR 733 at p 746E.

5 What was before me however was an application for an interim injunction pending trial. As such the considerations set out in *American Cynamid v Ethicon* [1975] AC 396 are applicable and I have applied them in reaching my decision.

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6 The background to this case is as follows. On 6 December 1996 the Defendants contracted with the Plaintiffs, a building contractor, to construct a block of 8-storey light industrial building for a lump sum of $10.7 million. The contract adopted the Singapore Institute of Architects Conditions of Building Contract (Lump Sum) - 5th Edition. Pursuant to this contract the Plaintiffs procured for the benefit of the Defendants a performance bond from UMBC for the sum of $535,000.00.

7 On 23 January 1998 the Plaintiffs filed a Writ of Summons, Suit No 122 of 1998, claiming the sum of $1,275,576.21 which was the total of the Architect's Certificates No 5, 6 and 7 that the Plaintiffs alleged the Defendants had failed or refused to pay. The Defendants were served with the writ on 4 February and they entered appearance on 10 February. On 14 February, in Summons-in-Chambers 1076/98, the Plaintiffs applied for summary judgment. On 18 March, before the Plaintiffs' application for summary judgment could be heard, the Defendants wrote to UMBC to make a demand under the performance bond for the entire sum of $535,000.00.

8 On 20 March, the Plaintiffs applied, *ex parte* in Summons-in-Chambers 2124/98, for an interim injunction to restrain the Defendants from receiving any money pursuant to their call on the performance bond on 18 March. The application was heard the same day by Goh J who granted the interim injunction on the usual undertaking as to costs, with leave to the Defendants to apply to set aside the order with 48 hours' notice.

9 On 23 March the Plaintiffs obtained judgment against the Defendants in the sum of $1,275,576.21 plus interest and costs. On 29 April the Defendants applied, in Summons-in-Chambers 2756/98, for the interim injunction granted by Goh J to be discharged. This application was heard by Tay JC who

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discharged the injunction on the ground that there was no prayer in the application for summary judgment for such an injunction. I also note that there does not appear to be any cause of action in relation to the bond disclosed in the statement of claim. However Tay JC made the discharge effective only on 2 May 1998 in order to give the Plaintiffs an opportunity to commence the appropriate proceedings to restrain the Defendants in relation to the bond.

10 The Plaintiffs immediately filed Originating Summons No 520/98 on 30 April. On the same day they filed this Summons-in-Chambers for an interim injunction pending the hearing of the Originating Summons. Although they were entitled to apply *ex parte* for the interim injunction, the Plaintiffs served the papers on the Defendants' solicitors. The Defendants' solicitors attended the hearing of this Summons-in-Chambers, making it what is known as an opposed *ex parte* application, a practice described by Megarry J in *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd & another* [1972] 3 All ER 384 and which Coomaraswamy J dealt with in *Castle Fitness Consultancy Pte Ltd v Manz* [1989] SLR 896.

11 The Plaintiffs relied on the same affidavits that they had filed in Suit No 122/98, i.e. the affidavits of Tan Tian Hong filed on 14 February, 20 March and 28 April 1998. These set out the background facts to the matter which I have summarised above. At the hearing, counsel for the Defendants asked for and was granted leave to rely on the affidavit of Betsy Sim filed on 14 April 1998 in the same Suit.

12 In their affidavits the Plainitffs alleged that the Defendants' call on the bond was fraudulent and/or unconscionable because the Plaintiffs had, by way of a Notice of Termination dated 12 January 1998, terminated the Contract between them. The ground for this is the Defendants' failure to pay the sums due under

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the Interim Certificates No 5 and 6, which together with their claim under Interim Certificate No 7, make up the subject matter of Suit 122/98.

13 The Defendants opposed the application for the interim injunction firstly on the ground that the Plaintiffs were precluded from applying for another interim injunction. In their affidavit, the Defendants also alleged that they had a legitimate claim against the Plaintiffs in respect of which they were entitled to call on the bond. In response to the latter point, the Plaintiffs stated in their affidavit that they had completed the remedial works the subject of the Defendants' complaints some 6 months before the call on the bond on 18 March. The Plaintiffs also pointed out that the call was made after they had terminated the contract on 12 January and after they had commenced the action to recover payment of the interim certificates. This, they said, showed bad faith and unconscionability on the part of the Defendants.

14 The matter before me was only an application for an interim injunction pending the hearing of the Originating Summons. At that hearing, the parties will have opportunity to bring up all the facts relevant to the matter and make their full submissions to the court. In particular, in relation to the allegation of fraud, there will no doubt be the need for parties to cross-examine each other's witnesses. All I was concerned with in this Summons-in-Chambers was whether the applicant-Plaintiffs had made out a *prima facie* case and if they had, whether an analysis of the circumstances based on the *American Cyanamid* principles would favour the grant of the interim injunction. The Plaintiffs had alleged fraud, which is a ground for the grant of injunction in the circumstances. They had also alleged unconscionable conduct on the part of the Defendants. Although I have my doubts as to whether that would constitute an adequate ground for an injunction in this case, I accepted that there was some basis for this contention in view of certain remarks of the Court of Appeal in the *Bocotra*

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case. Whatever may be the position in law, the court hearing the Originating Summons would be the appropriate forum to adjudicate on this. The Plaintiffs had given the usual undertaking as to damages which, in view of the fact that this relates to payment of money, is an adequate remedy. I could not see any irreparable damage to the Defendants flowing from the grant of the interim injunction and neither did counsel for the Defendants allege any. On the other hand, refusal of the interim injunction would mean that the Defendants would be able to collect on the bond and the consequences of this could be disastrous to the Plaintiffs. I found that the balance of convenience was in favour of the Plaintiffs in the circumstances.

15 The Defendants did not satisfy me that I should refuse the interim injunction. In particular, their point about the Plaintiffs being precluded from making this application is one that should be made at the hearing of the Originating Summons. As damages would not be an adequate remedy for the Plaintiffs whereas it would be for the Defendants, and the balance of convenience was in the Plaintiffs' favour, I granted the interim injunction with the proviso that the bond should be renewed by the Plaintiffs if the matter could not be heard before the bond expires.

LEE SEIU KIN

JUDICIAL COMMISSIONER

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Lee Seiu Kin JC

Koh Tien Hua (Shook Lin & Bok) for the plaintiffs
Lee Kuan Choon (Khoo & Co) for the defendants

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