

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 298

OS 483/1998, RA 284/1998

Between

Safewell Equipment Pte Ltd

... Plaintiff

And

L & M Concrete Specialists
Pte Ltd

... Defendant

GROUND OF DECISION

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Safewell Equipment Pte Ltd v L & M Concrete Specialists Pte Ltd

[1998] SGHC 298

OS 483/1998, RA 284/1998

Amarjeet Singh JC

04 September 1998

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Judgment

:

2 **GROUNDS OF JUDGMENT**

3 1. The Appellants [Defendants], Safewell Equipment Pte Ltd, were the Plaintiffs in D.C. Suit No. 1606 of 1998. They had brought the Suit against the Respondents [Plaintiffs] to claim against them balance of monies due to them under sub-contracts in respect of rectification works, materials supplied and services rendered.

5 (1) all matters in dispute in the contract dated 9 September 1996
between the Plaintiffs and Defendants which contains an arbitration clause be
referred to
arbitration pursuant to Section 7 of the Arbitration Act (Cap 10);

7 3. The relevant clauses of the sub-contracts under which the stay of

proceedings was granted by the Asst. Registrar read as follows:-

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parties affected. An attempt to arrive at a settlement shall be deemed to have failed as

soon as one of the parties so notifies the other party in writing. 17.3 Where the parties are unable to reach an amicable settlement, the

issue(s) in question shall be referred to and finally resolved by **arbitration** in

Singapore in accordance with the Arbitration Rules of the Singapore International

Arbitration Centre (SIAC Rules) for the time being in force which rules are deemed to be

incorporated by reference to this arbitration clause. The award of the arbitration shall

be final and binding upon the parties hereto; and judgment on which award may be entered

in any court or tribunal having jurisdiction thereof.

8 4. It was common ground between the parties that other than entering an

appearance in the District Court, the Appellants took no further step in the proceedings

in the District Court Suit No. 1606 of 1998.

9 5. The issue before me was whether there was a *dispute* between

the parties requiring them to go to arbitration.

10 5.1 The case of the Appellants was that there was no *dispute* between

the parties.

11 6. I examined the above submission made on behalf of the Appellants and

found that it had no merit. I was satisfied on reviewing the Affidavit evidence that there

was a *dispute* between the parties.

12 7. The first sub-contract was contained in a Works Order No. 14629

dated 9 September 1996 with the following details of works:

13 Clause 10 further provided:

10. Interim payment to the sub-contractor shall be made monthly, or as

otherwise agreed, *on measurement and valuation of works executed.* A retention sum

shall be withheld from all payments as stated herewith. All payments shall be held as

"on account" only and that quantities for payment under the sub-contract shall

be those measured and agreed at completion of the sub-contract works.

14 7.1 The sub-contract also stipulated that the terms of payment were to

be 'Back to Back with Main Contractor' and the sub-contract was to be based

on the 'unit rate as per site measurement'.

15 8. There had also been two further sub-contracts awarded to the Defendants relating to Hilltop Apartments on similar terms.

16 9. The Quantity Surveyor of the Respondents, Tan Chye Seng, stated in his Affidavit dated 27 April 1998 that the Appellants carried out their rectification

works and invoiced the Respondents. The Respondents initially would make interim

valuations of the Appellants' invoices and make payments accordingly. However, it

became apparent to the Respondents that the Appellants' claims had started to exceed

the amount of works carried out in respect of the Works Order 14629. In respect of the

other two sub-contracts the Respondents were of the opinion that the works as stated in

the invoices by the Appellants had been inflated. The net result was that the owners, MCST

(Management Committee Strata Subtitle) of Hilltops Apartments had failed or

refused to

certify the amount of works claimed to be done by the Appellants and since then
MCST had

not paid the amounts to them in respect of the invoiced works done by the
Appellants. As a

result, the Quantity Surveyor stated the Respondents disputed the Appellants'

entitlement to be paid in respect of the invoices as claimed. The Quantity
Surveyor

further asserted that the Respondents were only contractually entitled to
payment upon the

Respondents receiving payment from the owners or at the very least upon the
joint

measurement and agreement of the quantity of works carried out at the
conclusion of the

Sub-Contract. In any case, the Respondents' own final assessment of the work
done by

the Appellants was (after 10% retention monies) \$81,403.78 of which
\$46,978.43 had been

paid to the Appellants leaving a balance of \$33,841.34.

17 10. The Appellants on the other hand, had claimed as per their invoices
\$110,914.83 for work done as set out in the Statement of Claim of which they
stated

\$38,561.28 had been paid to them leaving a balance of \$72,353.28.

18 11. The Appellants' Project Manager Gan Beng Huat
(‘Gan’) stated in his Affidavits that the Respondents had themselves been paid

by MCST for work done by the Appellants and it was just a case of the
Respondents refusing

to pay the balance of monies due to them. Counsel for the Appellants said that
he had

faxed a new Affidavit to the Respondents' solicitors the previous day to show
this.

Respondents' Counsel objected saying he had only seen the Affidavit at 4.30pm
after

returning to the office and up to the hearing the original had not been served on
him. In

seeking leave to admit the Affidavit, the Appellants' Counsel could not reasonably

explain why he had so conducted himself. In any case, Appellants' Counsel did not

explain the basis of the monies paid by MCST to the Respondents i.e. whether it was based

on the Appellants' calculations of the area covered or the Respondents'

calculations of the same even assuming the Respondents had been paid. I rejected the

Appellants' Counsel's application to admit the Affidavit in the circumstances.

Appellants' Counsel then stated that he would rely on the Appellants' previously

filed Affidavits. Appellants' Counsel then submitted that prior to raising their

invoice, the Defendants had sought the approval of the site engineer for the works and

quantities were measured at site. There was no *dispute* in respect of the measured

quantities of work since the engineer approved them. Counsel referred to the

Affidavit of

Gan who had referred to Exh. GBH-1 being copies of the documents which purported to show

that the quantities had been jointly measured and agreed upon by the parties. I noticed at

the bottom of each page of the exhibits that the length of the walls or area to be worked

on was stated and there was an endorsement by signature without a stated designation.

19 12. However, in rebuttal, it was the Respondents' case as disclosed in their further Affidavit filed in reply on 25 June 1998 by their solicitor

that his instructions were that the endorsement of the aforesaid signatures in exhibit

"GBH-1" were those of the project consultants' clerk of works. It was

further submitted by Respondent's Counsel that the Respondents' valuation (i.e.

\$81,403.78) was based on the measurements done by their own Quantity Surveyor who had the

necessary figures and have the valuation of the works at \$81,403.78cts. Hence,
there was a

dispute as to the square meters of wall space of the Hilltops Apartment block on
which

the work was performed.

20 13. All this clearly showed, to my mind, that there was a *dispute*.

The simple solution would have been for the parties to appoint jointly a quantity
surveyor

or two if necessary, one from each side, to quantify the "m2" area

worked and to resolve any other minor *dispute*. Since the parties have failed or

neglected to take this sensible course and wish to carry on with their *dispute*,
the

matter has to go to arbitration.

21 14. For all the reasons, I dismiss the Appellants' appeal.

22 Dated this 4th day of September 1998

23 AMARJEET SINGH

Safewell Equipment Pte Ltd v L & M Concrete Specialists Pte Ltd [1998] SGHC 298

24 JUDICIAL COMMISSIONER

Amarjeet Singh JC

Edwin Tay (Edwin Tay & Co) for the appellants/defendants
S Bhaskaran (Rajah & Tann) for the respondents/plaintiffs
