IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 316

Suit 1835/1995, RA 263/1998

Between

Min Thai Wood Product (S) Pte Ltd

… Plaintiff

And

Lee Khiok Tuan trading as Lee Khiok Tuan General Contractor

… Defendant

GROUNDS OF DECISION

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Min Thai Wood Product (S) Pte Ltd v Lee Khiok Tuan trading as Lee Khiok Tuan General Contractor

[1998] SGHC 316

Suit 1835/1995, RA 263/1998
Lee Seiu Kin JC
24 September 1998

Judgment:

1 This is an appeal by the Defendants against my decision on 21 July 1998 in RA 263/1998, in which I allowed in part of the Defendants' appeal against the assessment of damages made by the learned Assistant Registrar on 13 June 1998 in NA 21/1998 and reduced the assessment by $32,513 comprising (i) $22,800 reduction in respect of store rental and (ii) $9,713 reduction in respect of loss of profits for goods cancelled. The Defendants have appealed against my order dismissing the rest of his appeal and I now give my grounds of decision.

2 The brief background to this matter is as follows. On 19 September 1997, after a 5-day trial, the Plaintiffs obtained judgment against the Defendants and the court ordered damages to be assessed. At the same time the Defendants' counterclaim was dismissed. As there are no written grounds of decision, the facts can only be ascertained from the Statement of Claim and they are, in brief, as follows:

> (a) The Plaintiffs are a Singapore company in the business of the import and export of teak and other wood products.

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(b) The Defendants are a sole proprietorship in the business of construction work in the local construction industry.

(c) By a written agreement dated 29 November 1994 the Plaintiffs undertook to sell to the Defendants 323,000 square feet of teak flooring at $3.20 per square foot. This quantity would fill about 15 twenty-foot containers.

(d) By a further agreement dated 6 January 1995, the 29 November 1994 agreement was amended by increasing the contract price from $3.20 to $3.30 per square foot, with all other terms and conditions remaining the same.

(e) The agreement called for payment by way of "local irrevocable Letter of Credit at sight" for 50% of the total price, with the balance 50% by "60 days post-dated cheque".

(f) In reliance on the agreement, the Plaintiffs proceeded to place orders for the teak wood from various suppliers in Indonesia.

(g) In breach of the agreement, the Defendants did not procure any letters of credit or make any payment pursuant to the terms of the agreement.

(h) The Plaintiffs took the Defendants' conduct as constituting a repudiation of the agreement, accepted it and gave notice of discharge of their contractual obligations.

(i) By reason of the Defendants' repudiation of the agreement, the Plaintiffs claimed for damages, arising principally from loss of profits.

(j) The learned Assistant Registrar conducted a hearing to assess damages and on 13 June 1998 made the following findings:

(i) Trust Receipts Interest: $ 7,307.05 (ii) Administration Cost: $ 9,000.00 (iii) Store rental: $ 22,800.00 (iv) Loss of profit for goods arrived and sold in small quantities: $ 75,159.73 (v) Loss of profit for goods that were stopped: $150,696.00 (vi) Interest at 6% from date of writ to 13.6.98: $ 42,394.04 Total: $307,356.82

(i) Trust Receipt Interest

3 The Defendants submitted that this claim should not be allowed, firstly because the Plaintiffs had not produced any documentary evidence to support it. However the Plaintiffs contended that the sales contracts were exhibited and

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that the interest was calculated from the date of sales. Although payment was made to the bank after accumulation, the Plaintiffs claimed against the Defendants only for interest incurred up to date of receipt of payment of each sales contract. This would mean that the Defendants paid less than the interest actually incurred by the Plaintiffs and would not be paying for any delay on the part of the Plaintiffs in making payments into the bank to reduce the amount outstanding. In the circumstances I cannot hold that the learned Assistant Registrar was wrong to hold that the evidence was sufficient to prove the loss.

(ii) Administration Cost

4 The learned Assistant Registrar had allowed administration cost of $500 per month for 18 months from June 1995 to November 1996. During this period the Plaintiffs were selling the teak wood from their warehouse and incurred some cost in conducting the sale.

5 The Defendants submitted that this claim should not be allowed because the Plaintiffs could have arranged to auction off the goods instead of selling them piecemeal, and therefore the administrative cost would not have been incurred. However I note that there would be auction charges involved and there is no evidence of how much this would come up to.

6 The law imposes a duty on the Plaintiffs to mitigate their losses. In this instance it would be incumbent on the Plaintiffs to make reasonable efforts to obtain the best possible price for the goods. However I do not see anything unreasonable in the Plaintiffs taking the view that a higher revenue would be obtained by selling the goods piecemeal than if they were to dispose of them in bulk, such as by way of an auction. The Defendants have not produced any

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evidence to show that it was so clear that disposal by auction would fetch a better price that it would have been unreasonable for the Plaintiffs to sell piecemeal. Accordingly I did not agree with counsel for the Defendants on this point. Therefore the Plaintiffs would be allowed reasonable administration cost in conducting the piecemeal sale. The Plaintiffs' claim is based on 30% of the cost of 1 worker over the 18-month period that they conducted the sales. Given the volume of teak wood and quantum of money involved, I find that the cost claimed of $500 per month, or a total of $9,000, is not unreasonable.

(iii) Store rental

7 Although the Defendants do not appeal against this part of my decision, for completeness I record my grounds for it. The Plaintiffs submitted that they had a warehouse for which they paid rent of about $6,000 to $7,000 per month for their normal operations. Consequential to the Defendants' breach of contract, the Plaintiffs had to use 28% to 30% of their warehouse space for storage of the teak wood and to conduct the sales. Accordingly they claimed part of the rent for the period amounting to $22,800, i.e. $1,800 for 12 months and $200 per month for 6 months, presumably on the basis of percentage of space utilised during the corresponding period.

8 However in order for them to be entitled to recover this sum, the Plaintiffs must show that if not for the need to store or conduct the sale of the teak wood in question they would not have expended this amount in rental of the warehouse. This is because the Plaintiffs rented the warehouse in the normal course of their operations and whether it was used or not, the full rent would have to be paid. Alternatively they would be entitled to recover if they had to rent additional space because of the breaches in question. The Plaintiffs were

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not able to submit that either was the case and accordingly I allowed the appeal on this item.

(iv) Loss of profit for goods arrived and sold in small quantities

9 The contract was for 323,000 square feet. By the time the Plaintiffs accepted the Defendants' repudiatory breach, it was too late to stop some of the shipments. In the event the Plaintiffs brought in 182,016 square feet of teak wood and claimed the difference between the contractual price of $3.30 per square foot and the prices for which they managed to sell the teak wood piecemeal. This came up to $75,159.73, from which one could compute the average price to be $2.89 per square foot. The actual prices for the sales conducted during the 18 month period varied from $2.00 to $3.40 per square foot.

10 The Defendants submitted that sale in piecemeal fashion was not reasonable and I have dealt with this argument above. Another argument that the Defendants put up was that they had offered to purchase the teak wood at $3.30 and that the Plaintiffs should have accepted this offer. Counsel for the Defendants did not refer me to, and neither could I find, anything in the evidence-in-chief of the Defendants' witnesses on this. It turned out that the only mention of such an offer was in cross-examination, where counsel for the Defendants referred the Plaintiffs' witness to a letter from the Defendants' solicitor dated 3 July 1995 and asserted that this was an offer to buy the "last shipment of wood at $3.30 under protest". The witness replied to the effect that he did not view the "offer" as a serious one. A perusal of the relevant documents reveal the following:

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(a) There was a dispute between the parties as to whether the agreement was conditional upon the Defendants being awarded a certain building contract. The Plaintiffs maintained their position that it was not and insisted on the delivery of the letter of credit for 50% of the total price and the issuance of the post-dated cheque for the balance. In their letter dated 24 April 1995, the Plaintiffs' solicitors advised the Defendants that 2 twenty-foot containers were ready for shipment and gave them until 27 April to deliver the letter of credit and post-dated cheque.

(b) The Defendants' solicitors replied on 27 April to re-state their position that they were not obliged to pay before delivery. To this, the Plaintiffs' solicitors replied on 28 April that the Plaintiffs maintained their position.

(c) On 11 May the Defendants' solicitors replied that the Defendants had instructed that they "may be prepared to issue a Letter of Credit for 50% of the value of the contract provided that the delivery of all goods under this contract can be completed by October 1995."

(d) By their letter dated 18 May the Plaintiffs' solicitors advised the Defendants' solicitors that the Plaintiffs insisted on delivery of the letter of credit and post-dated cheque before any shipment was delivered. They also advised that in view of the Defendants' failure to deliver those documents, the delivery would be delayed. There being no reply to this, the Plaintiffs' solicitors wrote another letter on 7 June and said as follows:

"Our client's instructions is that your client has to date yet to comply with the terms of payment … We have also been informed by our client that the first shipment load of teak wood under this contract is due to arrive in Singapore soon. …Our client's instructions is that he is willing to give our client another five days … to comply with the payment terms under the contract." (emphasis added)

(e) To the 7 June letter the Defendants' solicitors replied on 12 June, reiterating their position that payment was concurrent with delivery of the goods. However they also said, at sub-paragraph (b):

"Our clients are prepared to accept your clients' "… first shipment load of teak wood under this contract … due to arrive in Singapore soon …" under protest and without prejudice to our clients' rights to claim damage in respect of your clients' contractual breach, late delivery or non-delivery."

(f) In their reply dated 15 June, the Plaintiffs' solicitors asserted that the Defendants were in repudiatory breach of contract and

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> gave notice that they considered themselves discharged of all obligations under the contract and that they would claim against the Defendants in damages. In a further letter dated 27 June, the Plaintiffs gave notice to the Defendants that 3 containers of teak wood had arrived.
>
> (g) In reply to the Plaintiffs' solicitors' letters of 15 and 27 June, the Defendants' solicitors wrote on 3 July with the usual denial and included the following paragraph:
>
> "Our clients, as reiterated before, are prepared to accept your clients' "… first shipment load of teak wood under this contract … due to arrive in Singapore soon …" under protest and without prejudice to our clients' rights to claim damage in respect of your clients' contractual breach, late delivery or non-delivery."

11 It can be seen therefore that the "offer" to purchase the "last shipment" (presumably counsel meant the first, not last, shipment) was this ambiguous letter in which price and payment terms were not clearly spelt out. Given that the Plaintiffs' position was that the Defendants had breached the clear terms of the agreement, which position was subsequently upheld by the court and not appealed against by the Defendants, it is not unreasonable for the Plaintiffs to distrust any "offer" made on such ambiguous terms. Further, if the Defendants were sincere in wishing to purchase the teak wood, they could easily have contacted the Plaintiffs during the 18 months that they were disposing of the wood in piecemeal fashion. The Defendants themselves certainly did not deem this "offer" worthy of mention in their evidence-in-chief. In the circumstances I cannot accept their submission that this constituted an offer that the Plaintiffs ought reasonably to have accepted. I should also add that this pertains, at most, to 3 container loads.

(v) Loss of profit for goods that were stopped

12 The learned Assistant Registrar had allowed the Plaintiffs' claim under this head on the basis of a loss of profit of $1.00 per square foot for 150,696 square

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feet of teak wood. The Plaintiffs' witness gave evidence that the profit margin was $1.00 per square foot which the Assistant Registrar presumably accepted.

13 The Defendants pointed out, quite rightly, that the contractual quantity was 323,000 square feet and the quantity arrived and sold piecemeal was 182,016 square feet. Therefore the balance that were stopped would come to 140,983 square feet, not 150,696. I agreed with this and reduced the quantum under this head by the amount of $9,713, corresponding to the reduction in quantity of wood.

14 The Defendants disagreed with the use of the profit margin of $1.00 per square foot. The basis for their alternative is not altogether clear but I got the impression that they are saying that it should be the same quantum of loss per square foot of wood as that under the previous head, i.e. goods that arrived. I am afraid I fail to see the logic. Surely if the Plaintiffs would have made a profit of $1.00 per square foot had the Defendants kept to their bargain, this was what the Plaintiffs were entitled to recover as a consequence of their breach of contract. It is fallacious to compare this with the smaller "margin" in respect of the goods that had arrived. For such goods the Plaintiffs recovered $0.41 per square foot, based on the average price of $2.89. But their costs being $2.30 per square foot, they had already obtained an average of $0.59 per square foot from the piecemeal sales. This might have meant that had the Plaintiffs not managed to stop delivery, or managed to stop delivery of much less goods than they did, the damages awarded against the Defendants could have been even less, ameliorated by the Plaintiffs making some profit from the piecemeal sales. But this is predicated on the Plaintiffs being able to sell the wood at a price higher than his cost. The market could equally have collapsed and then the wood would have been brought in at a loss. It was therefore entirely reasonable for the

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Plaintiffs to reduce his commitment to his suppliers as much as possible. There is therefore no merit to the Defendants' submissions under this head.

LEE SEIU KIN

JUDICIAL COMMISSIONER

SINGAPORE

Lee Seiu Kin JC

K Subramanian (Winston Low & Partners) for the defendants
Choo Kwun Kiat (Tan Lu Seng & Co) for the plaintiffs

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