

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 38

Suit No 1240 of 1994

Between

Econ Piling Pte Ltd

... Plaintiff

And

Eltraco International Pte Ltd

... Defendant

GROUND OF DECISION

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Econ Piling Pte Ltd v Eltraco International Pte Ltd

[1998] SGHC 38

Suit No 1240 of 1994
Judith Prakash J
04 February 1998

1

Judgment:

2 **Cur Adv Vult**

3 1. The plaintiffs and defendants both carry on business in the
construction industry.

In December 1992, the defendants engaged the plaintiffs to carry out piling
works on a

site at Senoko South Link. The plaintiffs' claim arises out of that contract.

4 2. As originally pleaded, the plaintiffs' claim was for the sum of
\$537,785.29 which

was the balance due for the piling works conducted by them. From the outset,

the

defendants admitted that this sum was the balance of the contractual price
agreed for the

works. They claimed, however, that they did not have to pay it because they
were entitled

to set off against the same damages resulting from breaches of contract on the
part of the

plaintiffs.

5 3. The defendants did not completely particularise their damages in their
pleadings.

However, in the affidavit of evidence-in-chief made on their behalf by Mr Louis
Ee, a

manager in their construction and contracts department, which was filed in
March 1997,

details of these damages were given. These amounted to a total of \$358,341.66
which the

defendants wished to set off against the plaintiffs' claim of \$537,785.29.
Accordingly, at

the beginning of the trial, there was a sum of \$179,443.63 due to the plaintiffs
for which

the defendants had no defence. At the request of the plaintiffs, I entered
judgment in

their favour on that date for the said sum of \$179,443.63 with interest at 6% p.a.
from 1

August 1994 to the date of judgment and costs.

6 4. The trial proceeded in respect of the remaining \$358,341.66. In the
course of the

trial, it was conceded by the plaintiffs that, as a result of defects in the piling
works,

they were liable to pay the defendants \$23,420. This sum must be set off against
the

\$358,341.66. The consequence is that only two of the defendants' claims to set
off remain

to be decided by me. The first is their claim for reimbursement of liquidated
damages of

\$228,800 which they incurred by reason of delay in the works and the second is
their claim

for \$106,121.66 being additional labour expenses incurred during the period of delay.

7 **Background**

8 5. The project in which the parties were involved related to the erection and

completion of four factories with ancillary facilities at Senoko South Link, Singapore.

The developers of the project were the Jurong Town Corporation ('JTC'). The JTC

awarded

the contract for the project to Sin Huat Construction Co (Pte) Ltd ('Sin Huat') who

in

turn appointed the defendants as their main sub-contractor. The defendants were in

fact

the main builders on the site having taken over all of Sin Huat's obligations to the

JTC

for the construction.

9 6. Although the project involved the immediate construction of only four factories,

the

contract called for piling works to be carried out to ten plots of land at the site. These

plots were numbered from 1 to 10 and plots 1 to 4 were the plots on which the defendants

had to construct the factory buildings after piling was completed whereas their work for

plots 5 to 10 ended with the completion of piling.

10 7. It appears from the documents adduced before me that JTC first called for tenders

for the project on or about 25 September 1992. Mr Ee's evidence, however, was that he had

the tender documents in either July or August 1992. From the beginning the defendants had

wanted to be the main contractor for the project but, as they did not have the necessary

licence, they put their tender through Sin Huat on the basis that if Sin Huat was awarded

the project, they would be appointed the latter's sub-contractor. In the course of

preparing the tender, the defendants contacted the plaintiffs in order to get a quotation

from them for the piling works. The plaintiffs responded by sending in a written quotation

on 12 October 1992.

11 8. Some time thereafter, the exact date is not clear, the defendants were informed that

JTC was awarding the contract to Sin Huat. In anticipation of this, and although the

actual contract between JTC and Sin Huat would take some time to be signed (it was in fact

concluded on 16 December 1992 and the defendants' own contract with Sin Huat was concluded

on 9 February 1993), the defendants went ahead to negotiate with the plaintiffs on their

original quotation.

12 9. On 3 December 1992, the plaintiffs sent in a revised quotation and this was accepted

by the defendants in writing the next day. These two letters formed the main

written

component of the contract. The letters did not specifically mention the time frame for the

piling works. The plaintiffs, however, stated in para 4 of their letter that 'the works

shall be handed over in stages programmed not to cause any delays'.

13 10. The dispute which has arisen between the parties relates to the piling works for

plots 1 to 4. There is no quarrel over plots 5 to 10 which were less affected by time

constraints since no building was to take place upon completion of piling. In respect of

plots 1 to 4, however, the defendants had been given what they considered to be tight time

schedule. They had to complete the factory on plot 1 within 14 calendar months and the

factories on plots 2 to 4 within 12 calendar months. For this purpose, time ran from the

14 11. Some time in late 1992, Mr Chung Mun On, an engineer working
for the defendants,

the piling work schedule. It provided for preliminaries to commence on 1 December 1992 and

days were provided, for plot 3, 15 days, for plot 2, 16 days and for plot 1 also 16 days.

The original programme was sent to the plaintiffs on 29 December 1992.

delays in the JTC obtaining the piling permit. Plot 4 which was the first plot to be piled

was only handed over to the plaintiffs on 15 January 1993 and work on it started on 18

16 13. From the beginning, there were complaints about delays in the piling
works. On 2

work would not be completed within the contract period if no action was taken. The

to complete the works within the contract period, 16 piles per day had to be driven. The

that they might subsequently suffer. The next day, the defendants passed on to the

plaintiffs a complaint from the JTC that one of the driving machines was not in proper

condition and it could not install the piles in a steady and proper manner.

17 14. On 5 February 1993, both parties wrote letters. The defendants stated
that they

were disappointed that the plaintiffs had disregarded their request to increase
the number

of piling machines on site and repeated their concern that the project would be
delayed if

the speed of piling was not increased. They asked the plaintiffs to take
immediate action

to expedite the works. The plaintiffs in their letter asserted that during the

negotiations for the project they had agreed to finish the first plot within four to
five

weeks and to complete the next three at three to four week intervals thereafter.
They also

asserted that they had only agreed to try and keep to the defendants' original
programme

'if it was possible'. Attached to the plaintiffs' letter was a masterworks
programme which

they had revised in accordance with their own time table. I shall call this the 'plaintiffs' programme'.

18 15. At about the same time, Mr Chung prepared a revised masterworks programme for the

defendants. His explanation was that when he received the plaintiffs' programme, he knew

that if the plaintiffs followed it they would not be able to complete the work on time. He

therefore came up with a new programme, the revised programme, as a response to the

plaintiffs' programme. The plaintiffs, however, contend that the revised programme

pre-dated their programme and that they had prepared the latter because it was not

possible for them to comply with the revised programme. They also asserted that the

defendants had agreed to the plaintiffs' programme.

the driven piles to the required levels. The sixth step was for the plaintiffs'

surveyor

to check the eccentricities of the piles driven and produce and certify
eccentricity plans

which had to be approved by the JTC. If those plans were approved, the
plaintiffs' work

for that plot would be complete. However, if the plans were rejected, the
plaintiffs would

have to rectify the works by either piling additional piles or providing the JTC
with a

design for other corrective works.

20 17. In the final analysis both parties were agreed on the fact that the
piling works

were not completed on schedule. However, they disagreed on the extent of delay
and on who

was responsible for the delay. The defendants ascribed all the delays to the
plaintiffs'

default whereas the plaintiffs asserted that the defendants had been responsible
for a

substantial portion of delay because they had not carried out their excavation works for

each site, ie step four, with sufficient despatch. The plaintiffs' main witness, Mr

Charles Lee, changed his position on delay several times during the course of his

testimony. Finally, he admitted there had been some delay on the plaintiffs' part. He

conceded that based on the revised programme and assuming that under the contract the

completion date was the date on which the load test for each plot was completed, the

plaintiffs had been late in completing two of the plots. He estimated the delays as being

22 days for plot 4 and 11 days for plot 1. He asserted, however, that in respect of plots

3 and 4 the plaintiffs had been ahead of schedule by 12 days and 28 days respectively.

21 18. The defendants' position as put to the plaintiffs' Mr Lee during cross-examination

was that even if the revised programme was looked at, that was a programme which had been

designed to help them complete their work at a time when they were already behind schedule

and that it had not extended the contractual periods within which each site had to be

completed. Accordingly, for plot 1 which should have been completed within 22 days of 18

January, completion on 24 March meant that the period taken was 66 days and the plaintiffs

were 44 days late. In respect of plot 3, the plaintiffs took 28 days to complete the work

when the original programme prescribed 15 days making a delay of 13 days. For plot 2, 16

days were given and 48 days actually taken making 32 days delay and for plot 1 the

programme allowed 16 days whereas the plaintiffs took 49 days and were therefore 33 days

late. It should be noted, however, that under cross-examination, the defendants' main

witness, Mr Ee, took inconsistent positions. At one stage he claimed a delay of 40 days

for plot 1, 60 days for plot 4 and 30 days each for plots 2 and 3. Later, he agreed that

based on the dates given in the revised programme and the actual completion dates as

computed by JTC (ie up to completion of load tests), the delay for plot 4 was 19 days, for

plots 2 and 3 the plaintiffs were ahead of schedule and for plot 1 they were late by 28

days. This last admission was, however, based on a question which put the starting date

for plot 1 as 19 April when in fact the scheduled start date was 16 April. If the correct

date had been given to Mr Ee, he would have calculated the delay for plot 1 as being 31

days.

26 (2) if the answer to the above question is yes, what was the contractually agreed

period of time;

27 (3) were the plaintiffs in fact late in completion and if so, by how many days;

28 (4) if the plaintiffs were late:

29 (a) are the defendants entitled to recover damages based on the liquidated damages paid

to the JTC; and

30 (b) additionally, can the defendants recover the administrative and staffing costs

incurred during the period of delay.

31 (1) *Was there delay?*

32 21. The two letters evidencing the terms of the piling contract did not specifically

provide either for the date on which the plaintiffs were to begin work nor for the date on

which work had to be completed. The only indication in the letters that there was some

time constraint involved in the contract was the paragraph in the plaintiffs' letter which

stated that 'the works shall be handed over in stages programmed not to cause any delays'.

The plaintiffs argued that this meant that the defendants would hand the site over to them

in stages so that the plaintiffs would not be delayed in their piling works. I do not

accept this as the correct interpretation of that paragraph as the factual matrix shows

that it was the defendants who were operating within a tight time frame and it was they

who had additional work to do after the piling was completed so that they would be

adversely affected if there were delays in the piling work. The plaintiffs did not adduce

any evidence that showed that they would be prejudiced by such delays. I

therefore hold

that this paragraph in the plaintiffs' letter was an undertaking by them to do their work

with due despatch.

33 22. I also hold that there was a contractual term that the work on the various sites

would be completed within specified periods. This must have been agreed by the parties

during negotiations. Alternatively, it is a term which has to be implied into the contract

in order to give it business efficacy. Both parties are experienced in the building

industry and are, and would have been, fully aware that construction work has to be

completed according to a schedule. The plaintiffs would have known from the start that

there was no question of their simply taking their own sweet time about carrying out their

works and that they did have to follow some sort of schedule. The plaintiffs did

not in

fact try to argue very hard that there was no contractually agreed schedule at all.
What

they did contend was that the agreed periods had been fixed at four to five weeks
for plot

4 and three to four weeks for each of the other three as stated in their letter of 5
February 1993.

34 23. I do not accept the plaintiffs' argument. In my judgment, the
plaintiffs had agreed

to follow the defendants' schedule as submitted to them and this was evidenced
by the fact

that when they first received the original programme, at the end of December
1992, they

did not raise any questions about the duration of the piling period for each plot
as

allocated by Mr Chung. Work started on 18 January 1993 without any objection
by the

plaintiffs to the schedule. It was not until some six weeks after they received it,

when

they were way behind in their piling work, that they wrote to the defendants protesting

that they had agreed only to try to complete within the time periods stated in their own

letter.

35 24. Despite the assertion in their letter of 5 February 1993, it is significant that

thereafter instead of insisting on their right to do the work within the periods specified

in that letter, the plaintiffs did their best to comply with the defendants' revised

programme. Although initially they took the position that their letter of 5 February was

written in response to the revised programme, they did not maintain this position

consistently. Their main witness Mr Lee was evasive on several points. Having analysed his

evidence and that of Mr Chung who was the defendants' man on site, I prefer the evidence

of the latter. I accept that the revised programme was prepared in response to the

plaintiffs' letter of 5 February and that Mr Chung told them that they had to comply with

it if they were not to delay the project even further. Mr Lee did at certain points of his

testimony concede that after 5 February the schedule that the plaintiffs followed and

tried to meet was the revised programme. His concession that the plaintiffs had been late

in completing work on plots 1 and 4 only makes sense if the schedule that was applicable

was the revised programme.

36 25. Accordingly, I hold that, initially at least, it was a term of the contract that

the plaintiffs complete piling of the various plots within the relevant periods specified

in the original programme. The next question that arises is whether there was

any

variation of that programme by reason of the introduction of the revised programme. At

first, the defendants maintained that the revised programme was drawn up in order to deal

with the situation in which they found themselves by reason of the plaintiffs' delay and

not in order to give the plaintiffs an extension of time in which to complete. The

defendants were not consistent in this stand. If they had been, they would have maintained

right up to the end that the number of days by which the plaintiffs were late in respect

of each plot were as set out in paragraph 18 above. However, as also pointed out in that

paragraph, Mr Ee changed his position on this issue several times in the course of

cross-examination. He ended up by conceding that the plaintiffs had completed plots 2 and

3 on schedule and were late by 19 days for plot 4 and 28 days for plot 1. In his closing

submissions, counsel for the defendants stated that the defendants' final claim was for 75

days delay, 44 in respect of plot 4 and 31 in respect of plot 1. No claims were made for

plots 2 and 3.

37 26. It appears to me that the defendants have conceded that whilst they might not have

intended to do so initially, by putting forward the revised programme they in fact gave

the plaintiffs an extension of time in which to complete the piling works. I therefore

hold that the completion dates appearing in the revised programme are the ones that have

to be considered for the purposes of ascertaining whether the plaintiffs were late in

completing their work.

38 27. In the course of the trial, there was an issue about what exactly had to be done in respect of the piling works by the completion dates mentioned in the revised programme. On

the evidence that was given, it appears to me that the correct position is that the plaintiffs were obliged to have completed both physical piling and load tests by those

dates. In the end, this was the position that was accepted by the main witnesses for both parties.

39 28. The consequence of the foregoing findings is that the plaintiffs should have completed physical piling and carried out the load tests for plot 4 by 2 March. Instead

these tasks were only completed on 24 March. That makes a delay of 22 days for plot 4. As

for plot 1, completion should have been on 16 April but actually occurred on 17 May

resulting in a delay of 31 days.

40 (2) *What damages can the defendants claim?*

41 29. The plaintiffs have argued that even if there were delays in the piling works they

are not liable to pay the defendants any damages for the same because the defendants

obtained extensions of time from the JTC and these extensions of time totally wiped out

the delay. The defendants admit that they were given extensions of time. They say, however

(and the evidence they adduced shows) that none of those extensions related to the piling

works and therefore the plaintiffs cannot rely on them to relieve themselves of liability.

42 30. The defendants' argument appears to me to reflect the correct position. The

plaintiffs were late. The defendants were able to catch up with their schedule by dint of

employing extra workers and accelerating the speed of the works. They were also given

extensions of time in accordance with the contractual terms. Unfortunately, these

extensions of time did not enable them to complete on time because of bad weather

encountered in December 1993 and thereafter. The fact is that because the plaintiffs were

late, the defendants in turn lost time. If the plaintiffs had not been late, then the

defendants would have had an extra 22 days for plot 4 and an extra 31 days for plot 1 in

which to carry out the rest of their construction work and they would have finished work

on those plots 22 days and 31 days earlier. These days were lost to them because of the

plaintiffs' default and the plaintiffs cannot rely on unrelated extensions to exonerate

them from liability.

being contained in any construction contract and that, as the main sub-contractor
to Sin

Huat, the defendants would have to take on similar liability. He should therefore
have

contemplated that delays on his part could lead to the defendants having to pay
liquidated

damages to the main contractor/JTC. It is established law that in order to
establish

liability for the damage caused by a breach of contract, the party who had
suffered damage

has simply got to show that the contract breaker should have contemplated that
damage of

the kind suffered by the innocent party was not unlikely in the circumstances.
See *Hill*

v Ashington Piggeries [1969] 3 All ER 1496.

44 32. I therefore hold that the defendants are entitled to claim from the
plaintiffs the

sum of \$1,300 per day for the total of 53 days delay which the plaintiffs caused

them. The

total payable by the plaintiffs which can be set off against the amount which the defendants owe them for the piling works is therefore \$68,900.

45 33. The next issue is whether the defendants are entitled to recover the extra labour

and administrative costs they allegedly incurred during the period of delay. My judgment

on this issue is that the defendants have failed to prove these costs. As far as the office and administrative costs were concerned, the defendants did not adduce any evidence

of the actual costs of the items. They are not entitled to claims based on estimates. Mr

Ee admitted that the defendants would have incurred these costs in any case even if the

project had not existed. As regards the salaries, each of the five persons for whom claims

were made was a full time employee. Each was paid a fixed monthly salary and none was

employed solely or specifically for the project. There was no evidence that because of the

delay in the project the defendants were prevented from transferring these persons to

other sites or had to employ other personnel to undertake work that these five would have

undertaken if there had been no delay. Mr Ee admitted that he never found it necessary to

take on additional staff because of delays in the project. As the defendants would have

had to pay all these salaries in any event, they cannot now claim that these payments

resulted because of the plaintiffs' breach of contract.

46 **Conclusion**

47 34. In the result, the defendants are only entitled to set off against the balance of

\$358,341.66 due to the plaintiffs, the sums of \$23,420 (for defective works) and \$68,900

(for delays). The plaintiffs are therefore entitled to judgment in the sum of \$266,021.66

and interest thereon at 6% p.a. from the date of the writ. As regards the costs, the

defendants have, to a certain extent, been successful on their claim to set off and

therefore I do not consider that the plaintiffs should be entitled to recover full costs.

I will therefore hear the parties on the appropriate costs order to be made.

48 JUDITH PRAKASH

49 JUDGE

Judith Prakash J

Chia Chor Leong (Chia Chor Leong & Co) for the plaintiffs
Pavan Kumar Ratty (P K Ratty & Partners) for the defendants
