IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 396

Suit 1432/1998, SIC 8272/1998

Between

Lian Soon Construction Pte Ltd

… *Plaintiff*

And

Guan Qian Realty Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Lian Soon Construction Pte Ltd v Guan Qian Realty Pte Ltd

[1998] SGHC 396

Suit 1432/1998, SIC 8272/1998
Lai Kew Chai J
30 November 1998

Judgment :

GROUNDS OF JUDGMENT

By summons-in-chambers filed on 28 October 1998 the defendants sought orders that they be at liberty to file an additional affidavit for the purpose of appeal to the Judge in Chamber, that the execution of the judgment of the Deputy Registrar given on 16 October 1998 be stayed pending the disposal of the defendants' appeal and that the costs of the application be costs in the appeal. On 2 November 1998 the application was heard by me. At the conclusion of the hearing, I made the orders in terms of the application and fixed the costs of the application at $2,000.00. I certified that no further arguments would be required. The plaintiffs filed a notice of appeal to the Court of Appeal on 6 November 1998. I now set out the background and give my reasons.

The background

2 By a building contract dated 18 July 1996, which incorporated the Singapore Institute of Architects' Conditions, the defendants engaged the plaintiffs to

construct a building project at Kim Yam Road. The plaintiffs claimed substantial sums for work done and materials supplied under the contract.

3 Upon the plaintiffs' application for summary judgment under Order 14 judgment was entered against the defendants who were ordered to pay the plaintiffs the sum of $2,212,435.63 together with interest and costs.

4 On 16 October 1998 the plaintiffs' solicitors sent a Statutory Notice to the defendants threatening to present a winding up petition in the High Court unless the defendants paid the judgment sum.

5 On 20 October 1998 the defendants lodged an appeal to the Judge in Chamber against the summary judgment and the appeal was fixed to be heard on 17 November 1998.

6 The defendants requested the plaintiffs to agree to stay execution upon the judgment pending the hearing of the appeal but the plaintiffs did not accede to the request. The defendants pointed out that, if a stay of execution was not granted, a winding up petition filed against the defendants would have serious consequences for them and their several building projects which were still in the course of construction.

7 The defendants further relied on the real risk that if the execution on the judgment was not stayed, any successful appeal by them would be rendered nugatory. There was a serious risk that the plaintiffs would not be able to repay. They referred to the latest accounts of the plaintiffs. I was taken through the plaintiffs' accounts for year ended 31 December 1997. The fixed assets of the company were valued at $6 million in round figures. The company was worth $3.5 million. However, the current assets comprised of trade debtors amounting

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to $7.2 million. In the light of the current recession, it was fair to ask how much of it would be collectible. It was noted that the directors of the plaintiffs were owing the company $4.2 million. Trade creditors totalled $5.2 million. All told, the sum of $19 million would be at stake. The company incurred a lost of $759,347 in 1997. Its landed asset, though booked at $4.85 million, could have fallen significantly, which fall would be in line with current trend in property prices.

8 On the other hand, the plaintiffs alleged that the defendants were in fact adopting delaying tactics. Mr Alex Lee set out the writ actions taken out against the defendants. Among the claims are (a) the sum of $385,835.36 for credit facilities granted by Sime Bank Berhad; (b) the sum of $23,656,975.05 for credit facilities granted by Tat Lee Finance Ltd; and judgments in two suits in the total sum of about $1 million had been entered against the defendants. It was pointed out in Mr Alex Lee's second affidavit filed on 30 October 1998, for what it was worth, that other judgment creditors of the defendants' related companies had commenced execution proceedings. Having regard to these adverse developments against the defendants, it was submitted on behalf of the plaintiffs that they would suffer prejudice and injustice if a stay was granted.

New affidavit evidence of the architect

9 The architect's affidavit evidence confirmed that in October 1998 he issued the Delay Certificate. His draft affidavit explained the reasons for the delay in issuing the Delay Certificate. According to the architect, the plaintiffs had to show the causes of delay in the critical parts of the stages of construction. They failed to provide the architect with the necessary data. According to the architect, the plaintiffs were seriously in delay. The defendants' claims arising out of the delay was put at $3 million which would overtop the judgment sum.

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10 Though the defendants and their previous solicitors at the O.14 hearing only made a cursory reference to the architect's evidence in the face of the plaintiffs' submission that the Delay Certificate of the architect was invalid because it was issued after the termination of the building contract, it was submitted by Senior Counsel for the defendants that, contrary to the submissions of plaintiff's counsel, in an appeal to a Judge in Chamber, unlike one before the Court of Appeal, a judge may in his discretion on judicial grounds admit fresh evidence and, as often happens in the United Kingdom, he may do so even in the absence of special reasons: see the first complete paragraph in 14/4/45 of the Supreme Court Practice 1999.

11 Counsel for the plaintiffs relied on the High Court decision of *Hua Khian Ceramics Pte Ltd v Torie Construction* [1992] 1 SLR 884. He said the well-known three-fold conditions set out in *Ladd v Marshall* (1954) 1 WLR 1123, which were applied in *Hua Khian Ceramics Pte Ltd*, had to be satisfied by the defendants.

12 In my view, a distinction has to be drawn between admission of fresh evidence by an Judge in Chamber on the one hand and by the Court of Appeal on the other. A Judge in Chamber may in his discretion, which has to be judicially exercised, admit fresh evidence, even in the absence of special reasons so long as the materiality of the fresh evidence is an important though not conclusive piece of evidence. It was at least in part I apprehend this lower threshold for the admission of fresh evidence before an appellate Judge in Chamber that the *Ladd v Marshall* conditions were imposed at the Court of Appeal stage.

13 With regard to *Hua Khian Ceramics Pte Ltd*, the decision of the learned Judge in Chamber to apply the *Ladd v Marshall* conditions was based on his

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finding that the defendants in that case had abused the process of court by attempting to present a new case based on the introduction of new evidence in the course of further arguments allowed by the learned judge. They were, not surprisingly, firmly rebuffed.

14 I was mindful that an appeal did not operate as a stay of execution and that the likelihood of success was not by itself sufficient ground for a stay: *Lee Sian Hee v Oh Kheng Soon* [1992] 1 SLR 77. I was persuaded, however, that there was a real risk that unless execution on the judgment was stayed, its repayment by the plaintiffs upon a successful appeal was seriously in doubt. That would be wholly unjust in view of the strong counterclaim which could overtop the judgment debt.

Sgd: Lai Kew Chai J

Judge

Lai Kew Chai J

Christopher Chuah and Lee Chau Ee [Drew & Napier] for the plaintiffs
Giam Chin Toon and Peter Chow [Wee Swee Teow & Co] for the defendants

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