

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 78

Suit 2295/1996

Between

Group Industries Pte Ltd

... Plaintiff

And

Joint Piling & Construction Pte
Ltd
Lee Eu Hwa
Ng Buay Chai

... Defendant

GROUND OF DECISION

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Group Industries Pte Ltd v Joint Piling & Construction Pte Ltd and Others

[1998] SGHC 78

Suit 2295/1996
Lee Seiu Kin JC
20 March 1998

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Judgment:

2 **ORAL JUDGMENT**

3 1 I would dismiss the claim of the plaintiff against the three defendants.
The

principal reason is that on my finding of the facts, I find that the plaintiff is
estopped

by reason of express oral representations that he would not enforce the interest
provision

in the contract.

4 2 The case hinges on, I think basically, the contradiction between the
evidence of PW1

and DW1, and I have to analyse the two contradicting evidence. I find that the DW1's

evidence is much more likely to be correct than PW1's evidence principally because in the

circumstances, DW1's evidence is more consistent with the surroundings facts particularly

the fact that there was no mention of interest in the invoices although the accounts were

way overdue for a very long period. Also, in the preamble to the letter of guarantee sent

in June 1994, the indebtedness of the first defendant does not include the interest that

would have accrued to the plaintiff. And in the various reminders sent by the plaintiff to

the defendants from mid 1995 to about August 1996, there was also no mention of [REDACTED] interest.

In one of these reminders the plaintiff mentioned that one of the consequences

of pay

would be the suspension of supply, but did not mention interest.

5 3 I agree with Mr Kumaran that this does not, by itself, necessarily
remove the

contractual right to claim for interest as the plaintiff is entitled to do so under
the

terms of the contract. But what these facts indicate to me is that the defendant's
version

of the evidence, ie., that there was an express representation from the plaintiff
that he

would not enforce the interest clause is more likely to be true. On top of that, I
find

also from the demeanour of the two witnesses that DW1 was the more forthright
witnesses in

the witness box. So these are my principal grounds for the holding of facts.

6 4 I am of the opinion that these verbal assurances amounted to
representations which

are capable of raising an estoppel against the plaintiff. And I find that the

defendant

did rely on these representations and altered his position. I think the facts do
show that

he altered his position to his detriment and that it would be inequitable in the

circumstances, particularly, in the light of the plaintiff's claim for interest of all

invoices, whether or not already paid on the date of the first demand for interest
which

is sometime in September 1996. In the light of that, it would be inequitable for
the

plaintiff to insist on its strict legal rights.

7 5 Having made the finding in relation to the estoppel, it follows that the
liability of

the second and third defendant under the letter of guarantee would also not arise
and,

that therefore, the actions against the second and third defendant will also be
dismissed.

8 6 There are only two other points which I do not propose to make
findings on at this

stage, which I will, if I am required to do so later, ie, if there is an appeal. That is,

on the point of whether even if no oral representation was made, the conduct of the

defendants would amount to a representation. And the other point, of course, is whether

there is a collateral contract. So I do not propose to make a finding on these questions

at this time. It only remains for me to order costs. I order that the plaintiff pay the

defendants costs in this suit.

9 **Sgd:**

10 LEE SEIU KIN

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11 JUDICIAL

COMMISSIONER

Lee Seiu Kin JC

Muthu Kumaran (W T Woon & Co) for the plaintiff
Tan Liam Beng (Drew & Napier) for the defendant
