IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 101

Suit 1620/1998

Between

Van Oord ACZ BV

… *Plaintiff*

And

Yamazaki Construction (s) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Van Oord ACZ BV v Yamazaki Construction (s) Pte Ltd

[1999] SGHC 101

Suit 1620/1998
S Rajendran J
21 April 1999

1 **Judgment :**

2 1.

3 The defendants were the successful tenderers for the construction of a 7km offshore underwater rock bund and slope protection works in the Pulau Semakau Off-shore Landfill project of the Ministry of the Environment but were not successful.

4 2. In the course of undertaking the project, the defendants entered into negotiations with the plaintiffs for part of the work in connection therewith to be performed by the plaintiffs. It was not disputed that both the parties contemplated entering into a formal agreement. Negotiations stretched from 3 November 1995 to 7 May 1996 when the defendants informed the plaintiffs that they would not be pursuing the sub-contract with the plaintiffs. At the time the negotiations were called off drafts of the proposed contract between the two parties were still being discussed.

5 3. The plaintiffs' claimed that the defendants, by their conduct, had led the plaintiffs to believe that the contract was being awarded to them and this had resulted in the plaintiffs incurring considerable expenses in getting their vessel, the "Pieter", ready for work on the project and in negotiating the terms of the agreement and in preparing for the work. The plaintiffs' claim for repairs carried out on the Pieter was S$1,364,049.63 and Dfl 214,048.84 whilst their claim for time spent by their staff in the conduct of the negotiations and in preparatory for the work was S$242,391.00.

6 4. The pleadings in respect of this claim was as follows:

7 Paragraph 12

8 :

9 At all material times, the defendants assured the plaintiffs that the plaintiffs would be engaged by the defendants to do the sub-contract works. Consequently, the defendants urged the plaintiffs to proceed with the re-fitting works to the "Pieter" as the vessel was required by July 22, 1996.

10 Paragraph 13

11 :

12 On or about March 20, 1996, based on the representations and assurances by the defendants that the plaintiffs would be engaged to do the rock-dumping works, a joint survey of the vessel "Pieter" which was anchored at Tuas Crescent was carried out in late March 1996. At all material times, the defendants were fully aware that the said vessel was not in class and needed substantial re-fitting in order for it to be used for the rock-dumping works. The

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defendants were also aware that the plaintiffs would rely and act on the representations repeatedly made to them by the defendants that they would be engaged to carry out the said works on terms that were already agreed as to price, date of commencement, vessel, its availability and performance including quantity of rock to be dumped per week and the method of work.

13 Paragraph 14

14 :

15 Consequently, the plaintiffs maintain that at all material times, a duty of care existed on the part of the Defendants to ensure that the Plaintiffs would not be put out of pocket or otherwise suffer loss if they carried out the said works on the "Pieter" and brought it to class.

16 Paragraph 19

17 :

18 The defendants had also made the following representations to the plaintiffs during the negotiations between them and by the Second Letter of Intent and the conversations referred to in paragraph 16 above:

19 PARTICULARS

20 (a) …

21 (b) The defendants further represented to the plaintiffs that the signing of the sub-contract document was a mere formality and that the plaintiffs should commence with the re-fitting works to the vessel "Pieter" and be prepared to

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carry out the works commencing mid-May 1996. The defendants knew or ought to have known that the plaintiffs would and have acted to their detriment by relying on the said representations and commenced the re-fitting works required to the vessel "Pieter" and bringing it to class.

22 The evidence in support of these pleadings was however far from satisfactory. There was no evidence that the defendants asked the plaintiffs to repair the Pieter or were even aware that the Pieter was undergoing repairs in order to fulfil the needs of the contract being negotiated. There was no evidence that there had been any joint inspection of the Pieter. There certainly was no evidence that the defendants had "urged" the plaintiffs to commence re-fitting works on the Pieter. All that the defendants knew was that before the plaintiffs could start work on the project the plaintiffs would need some lead time as some repair works had to be done on the Pieter before it could be mobilised.

23 5. In view of the paucity of the evidence it was not surprising that Mr Wu Tchi Chu, Counsel for the plaintiffs, in his closing submission, informed the court that he was not pursuing this head of claim but was relying only on the alternative plea raised in the Statement of Claim: that there was a contract between the parties and that the defendants had breached that contract. This claim was formulated as follows:

24 "22. Further and in the alternative, the plaintiffs aver that a valid and binding agreement had been reached by the plaintiffs and the defendants to engage the plaintiffs for the rock-dumping works. All material terms in respect of the rock-dumping works had been agreed to but the defendants had wrongfully and unilaterally terminated the agreement as aforesaid by a letter purportedly issued on May 3, 1996."

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25 The plaintiffs had provided further and better particulars of what constituted the "agreement". In those particulars they stated that the "agreement" was based on "discussions and agreement" on scope of works that resulted in a "letter of intent" being sent by the defendants to the plaintiffs. Counsel for the defendants, Mr Thomas Lei, characterised the alternative claim as an embarrassing one as the plaintiffs in their main claim had proceeded on the basis that there was no contract between the parties.

26 6. Under this alternative claim, the plaintiffs claimed damages for breach of contract and loss of profit. The loss of profit was quantified at 15% of the total value of the sub-contract (15% of $3,576,000) which worked out to S$536,400. It would appear, incidentally, that the plaintiffs in order to earn a profit of S$536,400 on a contract sum of $3.5m had been prepared to incur expenses of over $1.3m in repairing the Pieter and nearly $250,000 in preparatory work!

27 7. It was the plaintiffs' submission that the discussions held between the plaintiffs and the defendants culminated in agreement on all material terms being reached at a meeting on 15 March 1996. It was submitted that consequent upon this agreement the plaintiffs, by fax dated 16 March 1996, made an offer to the defendants which offer was accepted and a contract brought into existence when the defendants by their fax of 20 March 1996 (referred to as "the letter of intent") unconditionally accepted the plaintiffs' offer. It was the plaintiffs' case that although the formal sub-contract that was envisaged was not signed, a binding and enforceable contract was in place as at 20 March 1996 since by that time all material terms had been agreed upon..

28 8. A perusal of the letter of 16 March 1996 indicates that the parties, at that stage, were engaged in considering the possible methods of transporting

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and dumping the rock at the required locations. One option being considered involved the use of the vessel "Pieter". Another option involved the use of the vessel "Jan Steen". The defendants were informed by this letter that the Pieter would be available from mid-May 1996 and that the Jan Steen would be available "per 1 April to 20 April 1996 approximately". The defendants had to choose between these two options and in the letter the plaintiffs asked for a response before 19 March 1996 "in order to fix the availability of the mentioned equipment".

29 9. To construe the letter of 16 March 1996 as an "offer" and the letter in response as an "acceptance" of the sub-contract is, in my view, somewhat far-fetched. The letter of 16 March 1996 - and on this I accept the evidence of the defendants - reflected the options available for the project in terms of the vessels available and the letter called on the defendants to make a decision on these options so that the plaintiffs could secure the availability of the relevant vessel should the sub-contract be awarded to them. I accept the evidence led by the defendants that their letter of 20 March 1996 was worded in the way it was only in order to ensure that the Pieter would be available for the project should the parties successfully conclude their negotiations.

30 10. Although the letter of 20 March 1996 is not headed "subject to contract" it is clear from the body of the letter itself – which ends on the note "We are presently finalising details of the extent of the sub-contract and will proceed with preparation of the sub-contract documentation shortly – that a contract setting out all the terms was being drafted and if agreed would be entered into. If the letter of 20 March 1996 was in fact an "acceptance" of an offer it would, in the circumstances, be an acceptance that was nevertheless subject to contract. That the parties engaged in the negotiations on the basis that there would be no contract until the sub-contract was signed is evident from a

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letter from the plaintiffs to the defendants dated 5 March 1996 (DBD.93) in which the plaintiffs stated:

31 "… we would need to undertake repairs to the 'Pieter' prior to commencement of the works and this will take approximately 6 to 8 weeks *after receipt of an official sub contract award*."

32 The receipt of "an official sub-contract award" was therefore a necessary pre-condition to any contract between the parties coming into existence.

33 11. The above finding is sufficient to dispose of this matter but as an enormous amount of time was spent addressing the question whether all the material terms had in fact been agreed, I will briefly address that issue. On the evidence, it is clear that there had been agreement on the price per ton, the method of transporting the rocks, the vessel to be used and on a number of other matters. But this was a fairly complex operation and agreement had still not been reached on a number of other material issues. For instance, the parties had not reached agreement on the exact role of the defendants' representative on board the vessel when the dumping operation was being carried out. Was his presence solely to record the amount of rock being dumped or was he also to be responsible for the exact location of each dump as some of the documents emanating from the defendants seemed to suggest. The plaintiffs' main witness, when questioned, told the court that as the plaintiffs were using a sophisticated electronic system for the dump there would be no need for the defendants to pin-point the exact location of each dump and that this matter would easily have been resolved in the course of discussions. That may well be so but the fact remains that at the time the negotiations were called off the matter had not been resolved. Another area where agreement had not been reached was the form the sub-contract was to take. The defendants wanted the sub-contract to incorporate

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the terms of the main contract but the plaintiffs did not want this. These are only two examples. There were a number of other matters, referred to by Mr Lei in his submissions, on which there was dispute over whether agreement had been reached. I do not think that any useful purpose will be served in considering these matters in detail. It will suffice to say that as agreement had not been reached on a number of material terms there could not have been any contract between the parties.

34 12. I find that the plaintiffs have not proved their claims against the defendants and I therefore dismiss their claims with costs.

35 S Rajendran

36 Judge

S Rajendran J

Woo Tchi Chu with Bhajanvir Singh (Robert W H Wang & Woo) for the plaintiffs
Thomas Lei (Chor Pee & Co) for the defendants

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