

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 141

Suit 1523/1998

Between

United Eng Contractors Pte
Ltd

... Plaintiff

And

L & M Concrete Specialists
Pte Ltd

... Defendant

GROUND OF DECISION

Arbitration — Stay of court proceedings; Contract — Formation; Contract —
Variation; Words and Phrases

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**United Eng Contractors Pte Ltd v L & M Concrete Specialists
Pte Ltd**

[1999] SGHC 141

Suit 1523/1998
G P Selvam J
26 May 1999

1 : This is a Registrar's appeal. By the decision appealed against these proceedings were stayed pursuant to s 17 of the Arbitration Act (Cap 10). I allowed the appeal because there was no written agreement to arbitrate. I shall now elaborate my ground.

2 The claim was for work done and services rendered. The amount of claim was \$385,008.32. The defendants asked for the action to be stayed pursuant to s 7 of the Arbitration Act (Cap 10) or alternatively, under the inherent jurisdiction of the court. The application was taken out 23 days after an application for summary judgment had been filed to be heard on 30 October 1998. The application for stay was interposed to be heard two days earlier, that is 28 October 1998. The claim had not been disputed before the commencement of the action.

3 The Arbitration Act defines 'arbitration agreement' as a written agreement to submit present and future differences to arbitrators.

4 In this case the plaintiffs said that there was neither a written agreement, nor a dispute for arbitration. It was, therefore, up to the defendants to establish a written agreement which contained an agreement to arbitrate. The defendants sought to achieve this on the basis of a `letter of award` dated 11 october 1996. This contained the following clause:

The subcontract documents shall comprise this letter, our Standard Conditions of Sub-Contract, terms and conditions as per the Main Contract with full compliance and relevancy.

5 The defendants` case was that the special conditions of sub-contract contained the arbitration clause.

6 At the bottom of the letter of award there was space for acceptance signature as follows:

Acknowledgment

I/ We the undersigned hereby agree to the terms and conditions in this Letter of Award

Signature	:	
Name in full	:	
Designation	:	
Date	:	
Company Stamp	:	

7 This space remained blank. In that the plaintiffs had not signified their agreement by appending their signature. The plaintiffs claimed that there was oral rejection of it.

8 I could not find any `Standard Conditions of Sub-Contract`. The expression `Standard Conditions`, like `standard terms` or `general conditions`, signifies a model form which has been used in the past. The model, therefore, would in the usual case be incorporated by reference or by a course of dealing

between the parties. Standard conditions, therefore, do not include the provisions of a special contract. I, therefore, asked to be shown the `Standard Conditions`. What I was shown was the form of a special contract with the year `1996`, but the particulars of sub-contractor were missing. The form and contents were such that the document was intended to be signed by both parties. The point of importance is that in a given trade one knows what `general conditions` of those in the trade know them to be because they would have encountered them as the usual terms in the past.

9 With that observation I shall now state the reasons why there was no written agreement to arbitrate in this case. The evidence before the court showed clearly that an oral contract had been concluded by conduct in May 1996 and mobilisation by the plaintiffs had been undertaken in the same month. Actual work had started in June 1996 and was well under way by October 1996. This was clear evidence therefore that there was an agreement in May 1996. Much of such evidence was from the defendants themselves. Accordingly, neither party can withdraw from that agreement without breaching it. The plaintiffs were bound to perform the works and the defendants were obliged to give the works. Given that neither party may unilaterally impose terms on the other party as the work progresses under the guise that all terms had not been agreed upon. This was what the defendants sought to do five months later. They sent the so-called letter of award dated 11 October 1996 when there was already a contract by conduct and both parties had acted on it. It was, therefore, an attempt to unilaterally impose onerous terms on the plaintiffs. If all terms had not been agreed upon they had to live with what had been agreed and acted on.

10 The so-called letter of award and the so-called standard conditions were in such a form that they required the signature of the parties to signify their

agreement to all the terms by signing them. The plaintiffs signed neither and accordingly they were not bound by them.

11 I am mindful of the principle that the terms and form of an offer may be such that they may be accepted by acting on the offer with the intention of accepting them. In this case both elements were absent. The form of the so-called letter of award was such that it was intended to be accepted by signature of the plaintiffs. Next, as the parties had already acted on an earlier quotation by the plaintiffs a contract had already been concluded as early as May 1996. The defendants could not unilaterally impose new terms unless the plaintiffs specially accepted them.

12 It is not the law that an offeree who remains silent after receipt of an offer accepts the offer by his silence. The general rule is that he is not bound by the terms of offer if he merely remains silence even if the offer provides that silence will be deemed to be acceptance. More so if the terms are contained in a document which he is required to sign to signify his intention to accept. It is even more so, if the parties have already been acting on an oral contract and one party unilaterally tries to impose onerous terms after the original oral contract has been acted upon.

13 The so-called letter of award was not accompanied by any standard conditions. Further it introduced two onerous terms. One stipulated liquidated damages at \$1,000. Another required a performance bond. Very naturally the plaintiffs ignored all these terms and went ahead in accordance with the original arrangement. The plaintiffs said that they never provided the bond because they never accepted the terms. To hold that the plaintiffs by their silent conduct

accepted the terms of the letter of award would mean an absurd result of there being two contracts by conduct, one made in May and another made in October.

14 The case of **Caerleon Tinplate Co v Hughes** [1891] 60 LJQB 640 is relevant. It was an action for price of goods sold on a `bought-note` signed by the defendants which contained a provision for arbitration, while in a `sold-note` signed by the plaintiffs that provision was absent. It was held that there was no written agreement for arbitration because both parties had not signed their agreement. Denman J said,

*In my judgment there can be no written agreement unless in writing signed by the parties as their agreement, and "written agreement" means one in which the terms of both sides are reduced into writing.` Wills J who was of the same opinion said: It seems to me doubtful if, in such a case as the present, there is any agreement at all until the goods are delivered and accepted, for it may well be that the parties never were **ad idem**. It may be said that when the plaintiffs here supplied the goods, they did so on the terms of the defendants` memorandum; and, on the contrary, it may equally be said that when the defendants accepted the goods, they did so upon the plaintiffs` memorandum. But supposing there were a contract, and the parties were *ad idem*, yet there was no submission under the Act unless there were an agreement in writing by both parties. **Re Lewis; ex p Munro** [(1876) 1 QBD 724] is conclusive on this point.*

15 The case establishes that in some cases where the intention to be bound by an arbitration clause can be manifested only by the signature of the parties. On the facts of this case there was no written agreement to arbitrate because, the terms of the so-called letter of award were not accepted by the plaintiffs and in any event there were no `standard conditions` which the plaintiffs could agree to accept.

16 **Outcome:**

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17 Appeal allowed.

G P Selvam J

Ramalingam Kasi (SH Tan & Associates) for the plaintiffs
Wilson Hue (Helen Yeo & Partners) for the defendants
