Chau Kwok Fun Kevin and Another v Etons Management Consultants Pte Ltd formerly known as Eng Kheng Management Consultants Pte Ltd and Others
[2000] SGHC 32

Case Number : Suit 282/1999

Decision Date : 07 March 2000

Tribunal/Court : High Court

Coram : Goh Joon Seng J

Counsel Name(s) : Michael Khoo SC / Cheah Kok Lim / Josephine Low / Marjorie Wee (Michael Khoo & Partners) for the 1st and 2nd plaintiffs; Alvin Yeo SC / Tay Peng Cheng / Lena Wong (Wong Partnership) for the 4th to 10th defendants and 12th defendant; C R Rajah SC / Dave Panaech / Archana Patel (Tan Rajah & Cheah) for the 11th and 13th defendants

Parties : Chau Kwok Fun Kevin; Jay Henry Leung — Etons Management Consultants Pte Ltd formerly known as Eng Kheng Management Consultants Pte Ltd; Stone Overseas Projects Pte Ltd formerly known as Eng Kheng Overseas Projects Pte Ltd; Chan Kung Git; Poon Sau Yuk; Anthony Chan Hing Ka; Chan Xiao Li; Eng Kheng (Singapore) Pte Ltd; Cisco Ltd; Eng Kheng Enterprise Pte Ltd formerly known as Eng Kheng Investments Pte Ltd; Eng Kheng International Development Pte Ltd; Octavus Properties Pte Ltd; Eng Kheng Holdings Pte Ltd; German Automobiles Pte Ltd formerly known as German Motors Pte Ltd

JUDGMENT:

ORAL JUDGMENT

1 These proceedings arise out of the settlement agreement in Suit No. 1112/96 in which the Plaintiffs were the defendants and the 1st to 3rd Defendants were plaintiffs there.

2 On the evidence, I find that there was a binding agreement reached on 11.8.98. The terms are those in Cheo Yeoh & Associates' letters of 27.7.98, 28.7.98 and 6.8.98 plus two additional terms being provision of a banker's guarantee to secure payment of the 2nd tranche which is for $6,000,000 payable six months from date of settlement, i.e. 11.2.99, and the Plaintiffs' related entities Asiatic Alliance Holdings Ltd and Leighton Land Development Co Ltd would not bring any claims against the 1st to 3rd Defendants in respect of claims filed against them by certain Hong Kong contractors. The settlement was to effect total severance of relationship between the Plaintiffs and the 1st to 3rd Defendants and their related entities. It was to be in full settlement of all disputes between the Plaintiffs herein and their related entities on one side and the 1st to 3rd Defendants and their related entities on the other.

3 Following the settlement arrived at on the basis of the three letters and the two additional terms on 11.8.98, it was left to Mr Yeoh Lam Hock to put those terms in writing in a single document. By the agreement reached on 11.8.98, payment obligation was undertaken by only the 1st to 3rd Defendants. This remained the understanding of Mr Yang Ing Loong until January or February 1999.

4 On 12.8.98, Mr Yeoh Lam Hock sent his draft. In it there was a definition of 'our clients'. By this definition, not only were the 4th to 13th Defendants entitled to benefits of releases of claims by the Plaintiffs and their related entities agreed to earlier, they were also made jointly liable with the 1st to 3rd Defendants for the payment provisions of the settlement. There was also a definition of 'your clients'.

5 On receipt of Mr Yeoh Lam Hock's draft, Mr Yang Ing Loong of Lee & Lee on the same day rejected the draft. He stated the terms of settlement were those contained in the three letters of 27.7.98, 28.7.98 and 6.8.98 (PBD/161) and 'your clients' should refer only to the two Plaintiffs.

6 The next day, Mr Yang faxed a memo of the agreed terms as he understood them for confirmation (PBD/164). In this memo (PBD/165), the payment obligations were by the 1st to 3rd Defendants only.

7 The parties through their lawyers then met again on 13.8.98. At this meeting, Yeoh's draft of 13.8.98 (PBD/173) sent on 12.8.98 was used as the working draft on which amendments were made.

8 The definition of 'your clients' was amended when Mr Caplan said he had authority to speak only on behalf of the two defendants who are the two Plaintiffs herein. Unfortunately, the definition of 'our clients' with its unintended implication was left unamended.

9 The amendments to Yeoh's draft were thus incorporated in Yeoh's confirmation letter of 14.8.98 based on which Suit No. 1112/96 was discontinued.

10 That it was never the intention of the parties to cast payment obligation on the part of the 4th to 13th Defendants who were not parties to Suit No. 1112/96 is clear from the evidence of Mr Yang. It is clear from Suit No. 1646/98 in which the Plaintiffs herein took enforcement proceedings for the furnishing of a banker's guarantee against only the 1st to 3rd Defendants herein. Their affidavits and pleadings there and the original statement of claim in this action all relied on the terms of settlement arrived at on 11.8.98 to which the 4th to 13th Defendants were not parties.

11 I therefore find that this incorporation of the definition of 'our clients' importing payment obligation was an oversight and a mistake which mistake or oversight was not appreciated by all present at the discussion on 13.8.98. Accordingly, I allow the application of the 4th to 13th Defendants to rectify the agreement to give effect to the terms of the agreement of 11.8.98, that is 'our clients' to refer to only 'the plaintiffs in Suit No. 1112/96'. The Plaintiffs' claim is dismissed with costs. I make no order for costs in the counterclaim because this rectification largely follows the defence of the claim.

Goh Joon Seng J

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