C S Geotechnic Pte Ltd v Neocorp Innovations Pte Ltd
[2005] SGHC 116

Case Number : Suit 368/2004

Decision Date : 30 June 2005

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Chia Chor Leong and Leila Ashraf (CitiLegal LLC) for the plaintiff; Mirza Namazie, Tan Teng Muan and Wong Khai Leng (Mallal and Namazie) for the defendant

Parties : C S Geotechnic Pte Ltd — Neocorp Innovations Pte Ltd

Contract – Assignment – Plaintiff claiming for outstanding payments under contract with defendant – Defendant purporting to assign contractual rights and liabilities to third party – Whether valid assignment of contractual burden – Whether plaintiff consenting to assignment

Contract – Formation – Parties to contract – Whether third party or defendant was true party to contract with plaintiff

Equity – Estoppel – Estoppel by convention – Defendant allegedly giving notice to plaintiff of assignment of contract to third party – Whether plaintiff clearly and unequivocally consenting to assignment – Whether defence of estoppel applied

30 June 2005

Tan Lee Meng J:

1 The plaintiff, C S Geotechnic Pte Ltd ("Geotechnic"), entered into a building subcontract for piling work with the defendant, Neocorp Innovations Pte Ltd ("NIPL"), who represented in the said contract that it was the main contractor at a Housing and Development Board ("HDB") upgrading project at Marine Crescent Precinct (the "building project"). Geotechnic sued NIPL for unpaid sums due to it under the said subcontract. NIPL denied liability on the ground that it had assigned the subcontract to another company, Neo Corporation Pte Ltd ("Neo Corporation"), against whom a winding-up order was made in February 2005.

Background

2 In April 2002, the HDB awarded Neo Corporation the main contractor's job for the building project.

3 Neo Corporation approached Geotechnic to carry out the piling work required in the building project. However, it was NIPL and not Neo Corporation, who signed the piling subcontract that was awarded to Geotechnic in July 2002. The reason for this was that Neo Corporation's parent company, Neo Investments Pte Ltd ("Neo Investments"), was then involved in a reverse takeover of a public-listed company, Presscrete Holdings Ltd ("Presscrete"), now known as Neocorp International Ltd. The takeover arrangements included the transfer of Neo Corporation's assets and building contracts to NIPL, a wholly-owned subsidiary of Presscrete. In turn, through the issue of shares in NIPL and Presscrete, Neo Investments would acquire control of Presscrete.

4 The original plan for the transfer of building contracts from Neo Corporation to NIPL included the main building contract for the building project. Before the transfer of this contract was effected, NIPL took charge of the building project and awarded subcontracts to several subcontractors,

including Geotechnic.

5 Subsequently, there was a change of mind regarding the transfer of the building project to NIPL because it was forecast that the main contractor for this project was likely to make a loss. In its circular to shareholders, Presscrete stated as follows:

> The Marine Crescent Precinct Project with a contract value of approximately $18.0 million and which was secured after the date of the Neo MOU was to have been novated or assigned to NIPL under the Acquisition Agreement. However, having considered the negative forecast margin for the contract, the Directors are of the opinion that it is in the best interests of the Group that the Marine Parade Crescent Precinct Project is not novated or assigned to the Company as provided for under the Acquisition Agreement.

6 Following the decision that NIPL would not take over the building project, arrangements were made by NIPL to disengage itself from the piling subcontract with Geotechnic. These attempts and Geotechnic's subsequent response left much to be desired and led to the present action.

7 NIPL asserted that it assigned all its rights and obligations under its piling subcontract with Geotechnic to Neo Corporation on 7 January 2003. It also claimed to have given notice to Geotechnic of the said assignment in a letter dated 8 January 2003. That letter was so badly drafted and vague that Geotechnic claimed to have understood it as saying that Neo Corporation would be acting as NIPL's agent and that all future progress payment claims were to be addressed to Neo Corporation.

8 After 8 January 2003, Geotechnic addressed many of its letters and claims for progress payments to both NIPL and Neo Corporation. Geotechnic claimed that this showed that it did not agree to any assignment to Neo Corporation of NIPL's obligations under the piling subcontract.

9 Neo Corporation went into judicial management on 5 May 2004 and an order to wind up this company was made on 18 February 2005. Faced with this, Geotechnic insisted that NIPL should shoulder the responsibility of paying the amounts due to it under the piling subcontract. When NIPL refused to do so, Geotechnic instituted the present proceedings to claim the money purportedly owed to it.

Geotechnic's claim and NIPL's defence

10 Geotechnic's case is that it did not release NIPL from the piling subcontract and was thus entitled to claim from the latter the amount still due to it under that contract.

11 NIPL mounted a three-pronged defence against Geotechnic's claim. First, it insisted that Neo Corporation and not NIPL was the "real party" to the piling subcontract with Geotechnic. Secondly, it asserted that it had assigned the contract in question to Neo Corporation in January 2003 and that Geotechnic had consented to this assignment. Thirdly, NIPL alleged that Geotechnic was estopped by its actions from denying that the said contract had been assigned to Neo Corporation.

12 Geotechnic responded to NIPL's defences by pointing out that NIPL was a real party to the piling subcontract, that it had not consented to the assignment of NIPL's obligations under the said contract to Neo Corporation and that it had not acted in a way that prevented it from insisting that NIPL perform its obligations under the piling subcontract.

13 Geotechnic also asserted that NIPL was not entitled to rely on estoppel as it did not come to court with clean hands. NIPL knew, when it decided to assign the piling subcontract to Neo Corporation, that the latter had been stripped of its profitable building projects and key personnel and that the building project was kept in Neo Corporation's hand only because the main contractor in that project was expected to make a loss. Geotechnic submitted that, stripped of its assets and key personnel and saddled with a building project that was bound to make a loss, it was not surprising that Neo Corporation collapsed.

14 Geotechnic urged the court to note that NIPL continued to provide services and other facilities for the building project to Neo Corporation after the purported assignment of the piling subcontract on 7 January 2003. NIPL's project director, Mr Quek Bak Hong, remained a part of the project team and NIPL had furthermore charged Neo Corporation for its services. Geotechnic alleged that NIPL stole a march on the subcontractors in the building project by making itself a secured creditor of Neo Corporation for the sum of almost $1.5m. Geotechnic's counsel summed up the position as follows:

> The net result is that when Neo Corporation went into judicial management, … subcontractors were left high and dry. These subcontractors became unsecured creditors, whilst [NIPL] enjoyed priority as a secured creditor.

15 It was thus argued that if all the circumstances of the case are taken into account, it is inequitable for NIPL to avoid liability under the piling subcontract on the ground of estoppel.

Whether NIPL was a real party to the subcontract with Geotechnic

16 NIPL's claim that it was not a real party to the subcontract with Geotechnic will first be considered. In para 2 of its Re-Amended Defence, NIPL pleaded as follows:

> [NIPL] plead[s] that the true contracting parties of the agreement were [Geotechnic] and [Neo Corporation] and that [NIPL was] not a real party to the same. [NIPL] also plead[s] that [Geotechnic was] aware that the real party to the agreement was [Neo Corporation] and not [NIPL].

17 Why NIPL took the line that it was not a real party to the piling subcontract cannot be fathomed. After all, as NIPL intended at the material time to take over the building project from Neo Corporation, it went so far as to misrepresent in the piling subcontract that it was already the main contractor for the said project even though that contract had not yet been assigned to it. Furthermore, NIPL took actual control of the said project. When cross-examined, NIPL's director, Mr Liew Choon Min, confirmed this as he said as follows:

> Q. [NIPL] had engaged subcontractors for the Marine Crescent project. Do you agree that up to … 7 January 2003, [NIPL] had already been undertaking this Marine Crescent project?
>
> A. Yes.

18 Mr Liew admitted that his contracts department thought that it would save time and energy if NIPL, and not Neo Corporation, entered into the subcontracts required for the building project. As for whether NIPL intended to engage Geotechnic as its subcontractor, Mr Liew conceded as follows during cross-examination:

Q. Therefore, do you not agree that when this subcontract was signed on 23rd August 2002, there was in fact an intention on the part of [NIPL] to engage [Geotechnic] as its subcontractor for piling works? ….

A. Yes.

19 In view of the aforesaid, NIPL's claim that it was not a true party to the piling contract with Geotechnic must be rejected.

Whether Geotechnic consented to the assignment to Neo Corporation

20 NIPL's next line of defence was that it had assigned its rights and obligations under its piling subcontract with Geotechnic to Neo Corporation in a letter dated 7 January 2003, which was as follows:

> We refer to Housing & Development Board's letter of award given on 29 April 2002 to you as main contractors for HDB upgrading to blocks 43 to 47 at Marine Crescent Precinct. …
>
> As agreed, we assign to you all our rights and responsibilities in all sub-contracts we have entered into with the sub-contractors for the above works. This is on the condition that you shall take over the benefits of these sub-contracts as well as be responsible for performing all obligations including payments to the sub-contractors.

21 At the bottom of the same letter, Neo Corporation acknowledged as follows:

> We, NEO CORPORATION PTE LTD accept the transfer and assignment. We confirm that we are responsible for the discharge of all obligations under the Sub-Contracts.

22 NIPL's assertion that it had effectively assigned its rights and obligations under its piling subcontract with Geotechnic to Neo Corporation is fraught with difficulty. Although NIPL pointed out that Neo Corporation's liquidator had confirmed that the latter was the main contractor of the building project and that the retention sum for the piling subcontract was in Neo Corporation's hands, an assignment of contractual burdens by NIPL to Neo Corporation is, without more, not binding on Geotechnic if Geotechnic did not consent to it. In *Tolhurst v The Associated Portland Cement Manufacturers (1900) Ltd* [1902] 2 KB 660 at 668, Collins MR explained:

> It is, I think, quite clear that neither at law nor in equity could the burden of a contract be shifted off the shoulders of a contractor on to those of another without the consent of the contractee. A debtor cannot relieve himself of his liability to his creditor by assigning the burden of the obligation to someone else; this can only be brought about by the consent of all three, and involves the release of the original debtor …

23 NIPL's contention that the assignment was done with Geotechnic's consent cannot be taken seriously as there was no evidence whatsoever of any express or implied consent at the material time.

Whether there was estoppel

24 As has been mentioned, NIPL's third line of defence was that Geotechnic is estopped from complaining about the assignment because both parties acted on the basis that NIPL's rights and

obligations under the piling subcontract had been assigned to Neo Corporation. Its counsel put its case in para 51 of his written submissions as follows:

> There is … a clear course of dealing in which there was a common assumption that [Geotechnic] would look to [Neo Corporation] for payment. In fact, no fewer than 5 letters were written by [Geotechnic] chasing for payment from [Neo Corporation] alone in respect of the Project. [Geotechnic] even then saw fit to enter into instalment arrangements with [Neo Corporation] and also to vary payment terms with [Neo Corporation]. This would be tantamount to … going into a new contractual relationship with [Neo Corporation] on fresh terms. For [Geotechnic] now to turn back and look to [NIPL] for payment is clearly inequitable and unacceptable when [NIPL] were not consulted on or apprised of all these new terms and conditions.

25 More specifically, NIPL relied on estoppel by convention and estoppel by acquiescence. Its counsel referred to *Amalgamated Investment & Property Co Ltd v Texas Commerce International Bank Ltd* [1982] QB 84 and the decision of the Court of Appeal in *Yongnam Development Pte Ltd v Somerset Development Pte Ltd* [2004] SGCA 35.

26 NIPL relied primarily on the fact that after its letter of 8 January 2003 to Geotechnic, the latter submitted progress payment claims to Neo Corporation. Geotechnic retorted that the record shows that it had played safe by forwarding to both NIPL and Neo Corporation some of its claims for progress payments and some of its other concerns regarding the building project.

27 For there to be estoppel, the words or conduct relied on must be clear and unequivocal. In the present case, all parties involved were at fault for not making the position clearer. The problem stemmed from the wording of NIPL's letter of 8 January 2003 to Geotechnic, which was supposed to be a notice of the assignment of its contractual rights and liabilities under the piling subcontract to Neo Corporation. This very badly drafted letter, which was signed by NIPL's project director, Mr Quek Bak Hong, should have been on NIPL's own letterhead but it was on Neo Corporation's letterhead instead. It was as follows:

> We refer to our sub-contract Agreement/Letter of Award to you dated 2nd July 2002.
>
> Please be informed that the project for the caption shall be under [Neo Corporation] and not [NIPL].
>
> The sub-contract that we have entered shall be valid and binding. The terms and conditions shall remain unchanged.
>
> All future progress claims & correspondence shall address to [Neo Corporation].

28 Geotechnic pointed out that when it received NIPL's letter of 8 January 2003, the position was rather confusing because at around the same time, Neo Corporation sent an undated letter to subcontractors on the building project, which was as follows:

> TRANSFER OF OPERATIONS FOR VARIOUS PROJECTS
>
> As reported in the public media, the parent of [Neo Corporation], [Neo Investments], is undertaking a reverse takeover of [Presscrete]. In the exercise, [Neo Investments] is required to inject the main contracting businesses and new projects of [Neo Corporation] into a subsidiary, [NIPL].

We would like to inform you that the operations of the following projects undertaken by [Neo Corporation] had been transferred to [NIPL]:

1. Punggol Primary School

2. Tampines North Primary School

3. Catholic High School

4. PUB Tunnel Sewerage @ Kolam Ayer

5. and any other projects awarded thereafter.

….

Kindly direct all future correspondence for these projects to [NIPL].

29 No concrete evidence was tendered to counter Geotechnic's claim that it received Neo Corporation's undated letter. Geotechnic pointed out that the reference to "any other projects awarded thereafter" in Neo Corporation's undated letter referred to projects awarded to Neo Corporation after the award of the four mentioned projects and that this category included the building project. NIPL's director, Liew, who accepted that Neo Corporation's undated letter was sent out at "about the same time" as NIPL's letter of 8 January 2003, testified as follows during cross-examination:

Q. Therefore we have one letter on 8th January 2003 from Neo Corporation to subcontractors saying that the project shall be under Neo Corporation and not [NIPL], and it says all future claims and correspondence shall be addressed to Neo Corporation. Then you have another letter at about the same time to the same subcontractors telling them about the transfer of operations and telling them that they would be under [NIPL] and asking them to direct all future correspondence to [NIPL]. Do you agree?

A. Yes.

30 Geotechnic's counsel asserted that, given the contradictions between NIPL's letter of 8 January 2003 and Neo Corporation's undated letter, the former letter could not be construed as a notice of assignment. In fact, faced with these confusing letters, his client understood and treated NIPL's letter of 8 January 2003 as a notice that Neo Corporation would be managing the building project and the piling subcontract on NIPL's behalf and that future claims for progress payments should be forwarded to Neo Corporation. That being the case, NIPL should not be surprised that Geotechnic forwarded its claims for progress payments to Neo Corporation.

31 Geotechnic pointed out that it should not be overlooked that after 8 January 2003, it addressed many of its grievances regarding non-payment of money and other matters to both NIPL and Neo Corporation. For instance, on 13 January 2003, just five days after the letter of 8 January 2003, Geotechnic wrote a letter to both NIPL and Neo Corporation. One of the purposes of this letter, which was marked for the attention of NIPL's project director, Quek, was to request for payment for work done in the building project. In the second part of this letter, Geotechnic stated as follows:

As you know, we are carrying out your Marine Crescent job and there is a shortage of operators in market, we hope you will reciprocate with a prompt response to this reminder.

32 Geotechnic's counsel argued with some force that his client's letter of 13 January 2003 made it plain that NIPL was still regarded as the real party to the Marine Crescent piling subcontract.

33 On 19 March 2003, Geotechnic again wrote to both NIPL and Neo Corporation. In this letter, Geotechnic stated as follows:

> In the interim, we request you to fix an immediate meeting with Dr Neo with our CEO, Mr Poh Chee Kuan, to address these issues and to further nurture our mutual good working relationship.

34 The letter of 19 March 2003 was expressly marked for the attention of Dr Ronald Neo, Mr Neo Tiong Kang and Quek. Dr Neo, whom Geotechnic's chief executive officer, Mr Poh, wanted to meet, was then NIPL's managing director, while Mr Neo Tiong Kang was the person who signed the piling subcontract with Geotechnic on NIPL's behalf. As for Quek, he was, as has been mentioned, NIPL's project director. When cross-examined, NIPL's director, Liew, admitted as follows:

> Q. Do you agree that this letter relates to payments under the sub-contract?
>
> A. Yes
>
> Q. So in this letter of 19th March 2003, … addressed … to both [Neo Corporation] and [NIPL] but marked for the attention of [NIPL's] directors, don't you agree [that Geotechnic] asked for a meeting with [NIPL's] managing director, do you agree?
>
> A. Yes.

35 Another letter written on 25 March 2003 in relation to progress payments was addressed to both Neo Corporation and NIPL. This letter was copied to Quek and evidence was tendered that it was read by both Quek and NIPL's director, Neo Tiong Kang. Again, on 7 May 2003, when Geotechnic addressed a letter to Neo Corporation requesting payment, that letter was marked for the attention of Quek and a copy of the letter was forwarded by Geotechnic to Neo Tiong Kang, who read it and placed his initials on the letter.

36 On 1 March 2004, Geotechnic again addressed a letter to both NIPL and Neo Corporation but the letter was expressly marked for the attention of Quek and Neo Tiong Kang. On the letter was a handwritten note from Geotechnic's CEO to NIPL's managing director, Dr Roland Neo, which was as follows:

> Dr Neo,
>
> I called you but not available.
>
> I think we [should] meet to help solve the payment issue amicably.
>
> [Signed]
>
> Poh CK

37 What merits attention is that although NIPL knew that Geotechnic was addressing or copying letters to it and was seeking a meeting with its managing director, its silence was deafening. Neither NIPL nor Neo Corporation sent any letter to point out that NIPL was no longer responsible for the performance of obligations under the piling subcontract or to ask Geotechnic not to send any more

letters to NIPL regarding the Marine Crescent Project. Although NIPL pleaded in its Re-Amended Defence that whenever it found out about any correspondence or documents which were wrongly addressed to it by Geotechnic, it requested Geotechnic to re-direct or re-issue the correspondence or document to Neo Corporation, NIPL's director, Liew admitted as follows during cross-examination:

> Q. [W]as there any … letter that either Neo Corporation or [NIPL] had written to [Geotechnic] to say, "Do not write to [NIPL] anymore ?
>
> A. No.
>
> Q. When demands for payment were made with reference to the subcontract agreement, was there any letter from [NIPL] to [Geotechnic] to say, "Hey chum, by the way, we are not the one liable."
>
> A. No.

38 It follows that there was insufficient evidence of estoppel by convention or any other type of estoppel. There is thus no need for me to consider Geotechnic's assertion that NIPL should be barred from relying on estoppel because they came to court with unclean hands.

Conclusion

39 To sum up, as NIPL did not obtain Geotechnic's consent for the transfer of its obligations under the piling subcontract for the Marine Crescent building project to Neo Corporation and as its assertion regarding estoppel did not rest on solid ground, Geotechnic is entitled to look towards NIPL for outstanding payments due to it under the piling subcontract. The amount due to Geotechnic will be assessed by the Registrar.

40 Geotechnic is entitled to costs.

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