Wah Heng Glass Holdings Pte Ltd v Diethelm Keller Engineering Pte Ltd
[2006] SGHC 29

Case Number : Suit 421/2005

Decision Date : 22 February 2006

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : James Yu and Harpal Singh Bajaj (Yu and Co) for the plaintiff; Subramaniam A Pillai (Acies Law Corporation) for the defendant

Parties : Wah Heng Glass Holdings Pte Ltd — Diethelm Keller Engineering Pte Ltd

Contract – Contractual terms – Express terms – Whether both parties breached the terms of the contracts – Whether evidence sufficing to prove the contracts existed and to prove that there had been breach

22 February 2006

Choo Han Teck J:

1 The defendant is a company in the business of designing and installing external wall façades and glass curtain walls. The plaintiff is a company that carries on the business of supplying and installing glass products, including glass material for the defendant's projects. The two companies had a history of doing business together for at least 20 years. This is the first and only litigation between them.

2 In this action, the plaintiff claimed a total of $281,134.80 for work done and material supplied in a total of 11 projects for the defendant. The contracts were not disputed. The defendant pleaded that it had a defence of a set-off and counterclaim on account of defective work and material. The defendant, however, did not plead the nature of those defects and the plaintiff did not ask for better particulars of them. The plaintiff, in turn, applied on the day of trial to amend its defence to the counterclaim, pleading new facts showing, *inter alia*, how some defects were caused by the defective design of the defendant. In respect of a project known as the Yishun Church project, the plaintiff sought to amend its pleadings to show a subsequent agreement in respect of the alleged defective glass in that project. I did not think that the plaintiff had shown sufficient reasons why the amendments sought could not have been pleaded at an earlier stage. These were amendments that could and should have been pleaded before the trial. The plaintiff filed its defence to the counterclaim on 3 August 2005. There were no apparent reasons why it could not have applied to amend the defence to the counterclaim within a month or two. Instead, it only applied to make the amendment on 21 December 2005 and the application was heard and dismissed by the assistant registrar on 28 December 2005. It could then have asked for an expedited appeal before trial but it did not. The plaintiff did not appear to have made its claim with the requisite diligence and thought. If the amendments were allowed, the defendant would have to adduce additional evidence to meet the facts alleged in the proposed amendments. That would have necessitated the trial to be adjourned on the very first day. Given the overall circumstances, this is one case in which I was not inclined to grant the application sought. Consequently, the additional affidavit of evidence-in-chief filed to support the disallowed amendments was also expunged.

3 Reverting to the claim, the defendant in its defence averred that the plaintiff had adduced no evidence in respect of seven of the ten projects in question, namely:

(a) China Square Parcel ($1,932.00)

(b) DMRI ($2,566.37)

(c) Sports Complex ($8,069.51)

(d) GEL Condominium ($37,312.00)

(e) Yishun Church ($12, 061.82)

(f) Seagate ($10,140.00)

(g) MOE ($4,863.00).

The sum total from the above claims is $76,944.70. In respect of two of these projects, namely the Yishun Church project and the Seagate project, the defendant had also counterclaimed for defective work and material. The defendant had also counterclaimed in respect of two other projects, the Raffles Junior College project and the UMCI project. No submission was made in respect of the project known as Trumps ($80,226.62). Mr Pillai, counsel for the defendant, submitted that the only witness it had in respect of the material supplied and work done was one Ong Zee Zon, its executive manager. Counsel argued that no reference was made to any purchase orders from the defendant or invoice from the plaintiff to support the plaintiff's claim. He emphasised that there was no formal contract between the parties and each project was contracted on its own by the quotation-purchase order-invoice method that had been adopted by the parties. The burden of proving the existence of the contracts as well as non-payment lay, of course, with the plaintiff. Although Mr Pillai argued that the evidence-in-chief made little reference to evidence of the purchases to prove the contracts in question, I am, however, satisfied that that was not the case. Furthermore, in determining the existence of such contracts on a balance of probabilities, a court is entitled to take oral and other evidence into account and then, on the strength of such evidence, determine whether it was more probable than not that the contracts existed. In the present case, I am satisfied that the plaintiff's executive director and principal witness, Ong Zee Zon, was competent to give evidence of the contracts. His evidence was supported by the purchase documents and the correspondence between the parties in which the plaintiff asked for payment. The defendant as a company, as well as its witnesses at trial, appeared to accept that the contracts existed. Indeed, they were concerned about claiming damages from the plaintiff for breach of the very same contracts. I thus find that the plaintiff had proved its case. I shall now deal with each of the defendant's specific counterclaims. In this regard, it will be noted that the burden of proof of breach lay with the defendant.

Raffles Junior College

4 In the Raffles Junior College project, the only evidence relating to the alleged breach of the contract was the evidence that there were some stains on the glass supplied and installed by the plaintiff. While the evidence also showed that the stains consisted of a "white powdery substance", it also showed that the stains had been cleaned off and had not recurred since. The claim was made only because, as counsel conceded, the defendant wanted a warranty that such stains would not recur. The plaintiff refused to provide the warranty. No one knows whether the stains would recur because there was no evidence as to what the stains were. Mr Pillai informed me that they were a white powdery substance but that was not sufficiently helpful. Furthermore, the warranty sought was a post-contract warranty and the plaintiffs were not obliged to give such a warranty. I am of the view that there was no merit in this counterclaim.

UMCI

5 It was not disputed that the defendant did not plead particulars of the defects alleged in the UMCI project. In the absence of specific pleadings, the defendant adduced evidence that the defects were in fact de-lamination of the glass supplied. Initially it claimed a sum of $106,860 being the cost of replacement. However, it then amended the claim to $74,031.81. There was little, if any, evidence to establish that there was indeed a problem of de-lamination, and, if so, to what extent the glass was affected. There was inadequate evidence other than the bare assertion that the defects were found in the glass when it was delivered to the defendant. Neither the architect nor the quantity surveyor testified as to what the defects were that resulted in the architect's direction that some of the glass be replaced. There was no evidence which identified that the defects in question were due to de-lamination as opposed to broken or damaged glass for which the plaintiff would not have been liable. The purchase orders for replacement adduced by the defendant referred to such broken and damaged glass. It was therefore required to identify which were broken, or damaged, and which were de-laminated. I am not satisfied that the defendant had proved its case on the counterclaim for this project.

Yishun Church

6 The same points relating to the UMCI project, also apply to the Yishun Church project. In this project, the defendant amended its claim from $114,000 to $75,453 without explanation. I am unable to ascertain which of the glass panels the two figures relate to. It is not known which of the glass panels were affected. The pastor or other representative of the church whom the defendant said had spotted the de-lamination was not called to testify. It is not sufficient to claim that glass panels were damaged without identifying the damaged pieces and the actual damage. The supplier is entitled to know if he was responsible for the damage if it had, in fact, occurred. The correspondence showed that there was a dispute as to what the actual cause of de-lamination was. No conclusive determination was subsequently made. Hence, all that I could find was that the client had complained to its architect of water seepage and the complaint was directed by the architect to the defendant, who then blamed it on the plaintiff. I am not able to say that the seepage was caused by defective glass supplied by the plaintiff. The plaintiff's supplier, Best Safety-Glass MFG (S) Pte Ltd, wrote on 16 October 2003 to say that the defect was due to the design of the structure and not inherent in the glass. There was no evidence to refute this sufficiently. I would therefore dismiss the counterclaim in respect of this project.

Seagate

7 The claim as to the defect in the Seagate project was that 428 pieces of the spandrel glass supplied were distorted beyond the internationally accepted tolerance level. There was, remarkably, no evidence of either the defective glass or the distorted glass, save for the oral testimony of the defendant's witness, Ramesh. His evidence was to the effect that he knew what distorted glass was like. Perhaps he was qualified to tell whether there was distortion in glass, but in a claim for damages, such evidence requires some tangible proof such as photographs, for example, so that an accurate identification and itemisation of the pieces affected can be made. Furthermore, there was also no evidence that the distortion was beyond the accepted tolerance level – no evidence was led to show what that was. Hence, the defendant made a late attempt to put in a report made by SETSCO, but I rejected that report because it was sprung in the midst of trial. If that was permitted, the plaintiff would be entitled to challenge the report and that, in turn, would re-open the entire case because the pleadings might have to be amended and the identification of the affected glass made and rebutted. I am not convinced that there was any prejudice because this was evidence that the defendant had and ought to have pleaded and produced before the trial. The defendant had to stand or fall by the case it presented. The counterclaim for this project, therefore, also failed.

8 For the reasons above, the plaintiff's claim was allowed and the defendant's counterclaim was dismissed.

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