King Lung Trading Pte Ltd v Tiong Seng Contractors (Pte) Ltd
[2008] SGHC 217

Case Number : Suit 619/2007

Decision Date : 24 November 2008

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Joseph Liow Wang Wu and Ramesh Bharani (Straits Law Practice LLC) for the plaintiff; Andrew Ang Chee Kwang and Basil Ong (P K Wong & Associates LLC) for the defendant

Parties : King Lung Trading Pte Ltd — Tiong Seng Contractors (Pte) Ltd

Contract

24 November 2008 Judgment reserved

Tan Lee Meng J:

1 The plaintiff, King Lung Trading Pte Ltd ("King Lung"), supplied tiles to the defendant, Tiong Seng Contractors (Private) Limited ("Tiong Seng"), who was the main contractor for the construction of the Park Green executive condominium development at Sengkang East Avenue ("the building project"). King Lung sued Tiong Seng for $283,832.32, which was allegedly the unpaid balance of the price for the tiles that were supplied from January 2003 to April 2004. Tiong Seng asserted that it did not owe King Lung any money because it had a right of set off or deduction as the tiles in question were defective. Tiong Seng also filed a counter-claim against King Lung for $822,518.95 with respect to damages suffered as a result of rectification work required to replace the allegedly defective tiles.

Background

2 By a letter of award dated 26 December 2002, King Lung undertook to supply various tiles for the 391 units in the building project. These tiles included rectified white glazed tiles ("Pure White Tiles") for the bathroom walls of all the units in the building project at the rate of $15 per square foot.

3 After Tiong Seng's tiling sub-contractors had installed some of the Pure White Tiles in the bathrooms of the units in the building project, it was discovered that these tiles suffered from discoloration and/or tonality problems. In September 2003, Tiong Seng notified King Lung of the discolouration and/or tonality problems in relation to the Pure White Tiles.

4 King Lung agreed to replace the Pure White Tiles at its own cost. Subsequently, it was agreed between the parties that another type of tiles, known as "Super White Tiles", would be the replacement tiles supplied to Tiong Seng.

5 After Tiong Seng's tiling sub-contractors installed some of these new Super White Tiles, fine hairline cracks were found on the said tiles. Such fine cracks, known as "crazing", appeared within the glaze layer of the tiles. Crazing may be contrasted with "cracking", which is a term used when a crack has propagated through the tile body. Crazes tend to be much finer and are not as easily detected as cracks.

6 According to Tiong Seng, the alleged crazing appeared on the Super White Tiles about four to eight weeks after installation and became more noticeable over time.

7 On 2 March 2004, Tiong Seng engaged Setsco Services Pte Ltd ("Setsco") to evaluate the quality of the unlaid Pure White Tiles with respect to the crazing and tonality phenomenon observed on site. Setsco was also asked to assess the quality of the Super White Tiles with respect to crazing and tonality resistance. Setsco's findings, which are set out in a report dated 31 March 2004, would be as follows:

(a) Both the Pure White Tiles and the Super White Tiles, which are classified under the category of BIII in accordance with Singapore Standard 483:2000, met the minimum requirements stipulated in ISO 13006.

(b) The Pure White Tiles failed both the crazing resistance and the reverse staining tests.

(c) The Super White Tiles passed the crazing resistance test but failed the reverse staining test.

8 Tiong Seng arranged for the Super White Tiles to be hacked off and replaced with tiles supplied by another company, Nam Huat Tiling and Panelling Co Pte Ltd. It refused to pay King Lung for the Super White Tiles. As a result, King Lung instituted the present proceedings against Tiong Seng on 28 September 2007.

King Lung's claim

9 During the trial, the parties agreed that tiles worth $372,097.42 had been delivered by King Lung to Tiong Seng for the building project. It was further agreed that the sum of $80,655.30 for the Pure White Tiles should be deducted from the sum owed by Tiong Seng to King Lung. Furthermore, the parties accepted that the sums of $56,296.35 and $46,796.99 paid by Tiong Seng in November 2003 and March 2004 as well as the abandonment by King Lung of a claim for $4,003.90 with respect to Invoice No 28778 had to be taken into account. As such, only the sum of $184,344.88 was due to King Lung for the tiles.

10 The parties next agreed that King Lung would be responsible for rectification work for the sum of $141,094.00 with respect to the Pure White Tiles. This left a nett sum of $43,500.88.

11 As a gesture of goodwill, King Lung agreed to round off its claim for the price of the tiles delivered to Tiong Seng to $43,000. As a result of this agreement, Tiong Seng would, without more, have to pay King Lung $43,000.

Tiong Seng's counter-claim

12 Tiong Seng's counter-claim relates to the damages arising from the crazing of the Super White Tiles, including the cost of hacking them off and replacing them with new tiles. Although Tiong Seng initially counter-claimed for the sum of $822,518.95, on the third day of the trial, it reduced the amount claimed to $462,916.74.

13 In his opening statement, Tiong Seng's counsel, Mr Andrew Ang, stated as follows (at [15]):

In support of its case the Defendants will be calling its Senior Project Manager and the Project Manager of the owners to give evidence of the fact of the Defective Tiles. In addition, the Court

appointed expert will also give evidence on the possible causes of the crazing in the Super White Tiles. The Defendants' Senior Project Manager will give evidence in support of the Defendants' counterclaim herein.

The expert's view

14 At this juncture, it must be pointed out that by virtue of an Order of Court dated 18 April 2008, the parties agreed to appoint Mr Wong Chung Wan ("Mr Wong") from Maek Consultant Pte Ltd as the expert for the purpose of shedding light on the possible causes of the alleged crazing of the Super White Tiles. As a matter of interest, Mr Wong was formerly from Setsco and he was involved in preparing Setsco's 2004 report (see [7] above).

15 Both King Lung and Tiong Seng made submissions to Mr Wong, whose task was made more difficult because no photographic evidence or samples of the cracked tiles were available for him to see what Tiong Seng meant when it complained of fine, mainly map-patterned and random crazes in the Super White Tiles. Neither did Tiong Seng, whose own sub-contractors had installed the Super White Tiles give Mr Wong details of the adhesive used for putting up the tiles or the application method even though he had made it clear in a letter to the solicitors for both Tiong Seng and King Lung dated 29 April 2008 that he required information on the adhesive used for the tiles in question and the installation method.

16 Contrary to what Tiong Seng thought, Mr Wong's report lent no support to its counter-claim. In his report, Mr Wong concluded that the probable cause of the fine map pattern cracks on the tiles was the bedding adhesive applied to the tiles in question. As the installation of the tiles and the application of the adhesive was the responsibility of Tiong Seng's tiling sub-contractors, King Lung contended that it was not liable for the rectification work undertaken by Tiong Seng to replace the tiles with the said pattern cracks.

17 Mr Wong explained that crazing is normally associated with poor agreement between the thermal expansion of the glaze layer and the tile body. However, a similar pattern of crazing can also occur as a result of excessive shrinkage of the bedding adhesive layer. He explained in his report as follows (at [7.3.7]):

> Such shrinkage can lead to the build-up of tensile stresses on the surface of the glaze layer and eventual crazing. In more severe cases, the cracks within the glaze layer (crazes) can propagate into the tile body resulting in cracking through the entire tile. This could well be a problem of poor compatibility between the ceramic tiles and bedding adhesive. As most, if not all, cement based bedding adhesive will invariably shrink, albeit at varying extent, the degree of which will depend on both the adhesive and application method. However, in this case, details with regards to the bedding adhesive are not available for review.

18 What would be even more pertinent would be that Mr Wong stated at [8.4] of his report that the fine map pattern cracks complained of by Tiong Seng was probably induced by excessive shrinkage of the bedding adhesive applied by Tiong Seng's own tiling sub-contractors.

19 Mr Wong highlighted the fact that the Super White Tiles had passed the crazing resistance test (conducted by Setsco in 2004) and explained his conclusion in his report as follows (at [8.4]):

> The tiles essentially complied with SS 483 with regards to crazing resistance whilst the moisture expansion results did not show excessive expansion. *The fine map pattern cracks are most probably induced by excessive shrinkage of the substrate, which in this case is the bedding*

adhesive. *Excessive shrinkage could have arisen from poor application of the adhesive or simply the use of adhesive that is incompatible with the Super White tiles*. The former could entail wrong mixing and application of too thick of the adhesive layer. Incompatible adhesive on the other hand could include the use of a very rich or too strong an adhesive for such "weak" tiles. In this case therefore selection of appropriate and suitable adhesive is of paramount importance. Unfortunately, however, no details with regards to the adhesive and application method were available for review.

[emphasis added]

Tiong Seng's witnesses

20 As has been mentioned, Tiong Seng's counsel informed the court that Mr Ivan Lim Kok Howe ("Mr Lim"), the project manager of NTUC Choice Homes Pte Ltd, the developers of the building project, and its own project manager, Mr Ong Eng Hwa ("Mr Ong"), would lend support to its counter-claim.

21 The evidence of Mr Lim will first be considered. Admittedly, Mr Lim had stated in his AEIC as follows (at [8]):

In the circumstances, the conclusion I arrived at was that the Super White Tiles were somehow prone to crazing and/or forming hairline cracks.

22 He also stated in his AEIC as follows (at [10]):

The failure of the Super White Tiles cannot be explained away, since these other wall tiles did not have this problem.

23 However, when cross-examined, Mr Lim readily admitted that he was not qualified to comment on the Super White tiles and he agreed with King Lung's counsel, Mr Joseph Liow, that his comments in his AEIC at [8] and [10], as stated above, could be "safely ignored".

24 Mr Lim also conceded, when cross-examined, that his statement in his AEIC at [13], that "it would be fair to conclude that by virtue of the extent of the defects … that these were defective products", was not to be read as meaning that the Super White tiles were inherently defective.

25 In the light of his concessions, Mr Lim did not advance Tiong Seng's case at all.

26 When cross-examined, Tiong Seng's Senior Project Manager, Mr Ong, accepted that Mr Wong's report did not lend any support to his company's counter-claim as Mr Wong had concluded that the most likely cause of the defects was the misapplication of adhesive materials to the tiles. Mr Ong also agreed that this could be one of the factors causing the defects but he opined that in his view, this was not the cause. In the face of the conclusion of Mr Wong, the court-appointed expert, that the probable cause of the crazing of the Super White Tiles was due to the excessive shrinkage of the adhesive applied, the personal opinion of Tiong Seng's own project manager is clearly not good enough to salvage the company's counter-claim against King Lung.

Conclusion on the claim and counter-claim

27 In the absence of any credible evidence to contradict Mr Wong's findings, Tiong Seng did not substantiate its claim that the problems with respect to the Super White Tiles were of King Lung's

making. That being the case, its counter-claim against King Lung is dismissed. This means that Tiong Seng has no answer to King Lung's claim for $43,000 and I order that this sum be paid to King Lung.

Costs

28 After taking all the circumstances into account, including the fact that King Lung reduced its claim from $283,832.32 to $43,000 during the course of the trial while Tiong Seng reduced its counter-claim from $822,518.95 to $462,916.74 on the third day of the trial, I award King Lung 50% of the costs for its claim and 100% of the costs for the counter-claim.

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