Island Concrete (Pte) Ltd v Sim Lian Construction Co Pte Ltd
[2008] SGHC 245

Case Number : Suit 389/2007

Decision Date : 30 December 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : K Muralidharan Pillai, Sim Wei Na and Luo Qingui (Rajah & Tann LLP) for the plaintiff; David Ong Lian Min (David Ong & Co) for the defendant

Parties : Island Concrete (Pte) Ltd — Sim Lian Construction Co Pte Ltd

Contract

Civil Procedure

30 December 2008

Tay Yong Kwang J:

Introduction

1 The plaintiff, a subsidiary of Hong Leong Asia Ltd, is in the business of production and supply of ready-mixed concrete ("RMC"). The defendant and its related company, Delta Link Development Pte Ltd ("Delta Link") are in the building and real estate industry. The parties have been dealing with each other since 1998. The plaintiff agreed to supply RMC to the defendant and Delta Link for construction projects in which either the defendant or Delta Link was involved. These projects may be compendiously referred to as:

(a) the Kallang project;

(b) the Holland (or Queensway) project;

(c) the Gerald Drive project; and

(d) the Lower Delta project.

2 In 2007, the plaintiff commenced two actions. High Court Suit No. 247 of 2007 ("the Sim Lian suit") was against the defendant while District Court Suit No. 1287 of 2007 ("the Delta Link suit") was against Delta Link. These two actions were for money owed under a number of the plaintiff's invoices for RMC supplies to the said projects. The Sim Lian suit involved a claim of $548,665.52 in respect of the Kallang, Queensway and Gerald Drive projects while the Delta Link suit was for a relatively small amount of $79,797.68 for RMC supplied for the Delta Link project. In this action, the plaintiff claims $606,031.23 pursuant to an oral compromise agreement which it contends was reached between the plaintiff and the defendant at a meeting held on 25 May 2007 ("the settlement conference") in the plaintiff's solicitors' office. The plaintiff's position is that the said compromise agreement conclusively settled the litigation and all claims between the plaintiff, the defendant and Delta Link. Although the defendant agrees that the Delta Link suit was settled at the settlement conference, it denies that a settlement of the entire Sim Lian suit was also reached at the settlement conference. Delta Link has made full payment of the amount agreed at the settlement conference to the plaintiff and is therefore not a defendant in this action.

The factual background

3 The RMC supplied by the plaintiff is of various grades, ranging from grade 15 to grade 80. Grades 15 to 45 are the standard grades. Grades 55 to 80 are the high-strength specialised concrete. Each cubic metre of RMC weighs about 2,320 kg and consists of about 800 kg of sand, about 1,000 kg of granite and/or stone aggregates, about 360 kg of cement, together with water and various chemical additives.

4 In early 2007, Indonesia imposed a ban on the export of sand from its shores. That ban had serious repercussions for the construction industry in Singapore as sand was an essential ingredient for RMC and Indonesia was Singapore's and the plaintiff's main source of sand at that time. The ban disrupted the supply of RMC and resulted in numerous disputes between RMC producers and RMC purchasers.

5 At the end of 2005, the plaintiff entered into a number of fixed price supply contracts with the defendant and Delta Link to supply RMC for the projects listed in [1] above. By April 2007, the defendant and Delta Link owed the plaintiff about $650,000 for the RMC supplied since November 2006. In addition to this, the sudden shortage of sand and, subsequently, of stone aggregate, both needed for the production of RMC, made it difficult for the plaintiff to fulfil further orders for RMC from its customers. The severe shortage of sand caused the Singapore government to begin releasing sand from its strategic stockpile from 1 February 2007. However, this source of sand was available for purchase only to contractors such as the defendant and not to RMC suppliers.

6 The Singapore Contractors Association Ltd ("SCAL") issued an advisory dated 3 February 2007 informing its members (which include the defendant) that:

(a) the Singapore government would be selling sand to contractors upon request made by main contractors at $25 per tonne in February 2007 and $60 per tonne from March 2007 until further notice;

(b) the Singapore government, as the employer in public sector projects, would absorb 75% of the increase in the price of sand and the remaining 25% would be shared between the main contractor and the RMC supplier for the particular projects;

(c) the Singapore government recommended and encouraged private developers, main contractors and RMC suppliers to adopt the same cost-sharing ratio.

7 The Building Control Authority ("BCA") also issued a notice on 15 February 2007 to inform contractors that sand to be released from the BCA stockpile would be sold at $60 per tonne from 1 March 2007.

8 At that time, the defendant sent the plaintiff correspondence indicating that the plaintiff was not able to supply the RMC contracted for, while failing to make payment for RMC already supplied. In March 2007, the plaintiff sent letters of demand for payment to both the defendant and Delta Link. The defendant and Delta Link replied deny owing any money to the plaintiff. As a result of this, the plaintiff suspended supply of RMC around the middle of March 2007 and eventually commenced the Sim Lian suit and the Delta Link suit (see [2] above).

9 The parties then decided to see if they could resolve their dispute amicably. When Delta Link's solicitors proposed discussions to settle the Delta Link suit, the plaintiff's solicitors replied to say that the plaintiff was willing to explore settlement only if both actions were discussed globally. The parties

then agreed to have a settlement conference to try to resolve all claims in the two actions. Accordingly, the settlement conference was held in the morning of 25 May 2007, Friday, in the premises of the plaintiff's solicitors, Rajah & Tann. The following persons attended the settlement conference:

(a) Victor Leong, the plaintiff's general manager;

(b) Peggy Quek, Head of Procurement, Hong Leong Asia Ltd (the majority shareholder of the plaintiff);

(c) Julian Lim, the plaintiff's general manager in charge of sales and marketing;

(d) Harveen Singh Narulla ("Harveen"), then a solicitor in Rajah & Tann and one of the lawyers handling the two actions on behalf of the plaintiff. His departure from the firm had nothing to do with the present action;

(e) George Wan, the defendant's director in charge of contracts administration and project management and the settlement of disputes arising therefrom. He was authorised to represent the defendant and Delta Link at the settlement conference; and

(f) David Ong, the solicitor handling the two actions on behalf of the defendant and the defendant's counsel in the present action.

10 At the settlement conference, the representatives of the parties discussed the two actions and further invoices rendered by the plaintiff to the defendant and Delta Link due for payment after the commencement of the two actions. The total amounts claimed by the plaintiff were then $719,349.76 (from the defendant) and $109,049.40 (from Delta Link).

11 After lunch, at around 2.15pm, David Ong had to leave the settlement conference for another engagement. George Wan was comfortable with continuing with the settlement conference without his solicitor. David Ong had no objections to Harveen being present at the settlement conference. The rest of the representatives present that morning therefore carried on with their discussions in the afternoon with Harveen walking in and out of the room every now and then.

12 Sometime between 3pm and 4pm, Harveen returned and wrote out some terms on two pieces of paper ("the note") which were acknowledged by George Wan who signed on the pieces of paper. The one essentially instructing Harveen on what to write was Peggy Quek. The settlement conference ended on a happy note. After a copy of the note was given to George Wan, the parties' representatives left the offices of Rajah & Tann.

13 The handwritten note is in the following terms:

Settlement Terms

Delta Link

$90280.10 by 30 May 2007

Sim Lian

Gerald Drive

$6331.50 rcvd tdy (25 May 2007)

Sim Lian

Total	-----	$719349.76	
Less	(1) Sand supplied	($80545.90)	
	(2) Gerald Drive	($6331.50)	
		$632472.30	
Less	February bills discount	($7000.00)	
	March bills discount	($6700.00)	
	Interest	($12741.07)	
		$606031.23	by 30 May 2007

Future supply @ special rate for RMC

Grade 30 @ $170/cubic metre.

No further reductions/increases to this.

Valid for maximum 2000 cubic metres, for

Viz@Holland project, or until 30 Sep 07

whichever is earlier.

Subject to Sim Lian's confirmation on

accuracy of invoices &

amount of concrete ordered from other RMC

suppliers for Holland project.

Settlement to be on principle of cost sharing

for Holland & Kallang projects.

Confidentiality of above arrangement

to be maintained by both parties.

14 In compliance with the terms of the note, Delta Link's solicitors sent a cheque for $90,280.10 to Rajah & Tann in full and final settlement of the Delta Link suit and all related disputes between the plaintiff and Delta Link. Wednesday 30 May 2007 was the deadline for the defendant to respond on the accuracy of the invoices for RMC supplied to the Kallang and the Holland projects as well as for the payment of the amount of $606,031.23. Thursday 31 May 2007 was a public holiday (Vesak Day). On Friday 1 June 2007, Victor Leong discussed with Peggy Quek the failure by the defendant to pay the agreed amount. Peggy Quek said she would call George Wan the following Monday.

15 On Monday 4 June 2007, Peggy Quek spoke to George Wan about the payment that was due and the other outstanding matters. George Wan told her that he was still checking through the defendant's records. Peggy Quek then asked him to contact her as soon as he had done so.

16 On 6 June 2007, Peggy Quek called George Wan again. George Wan told her that the plaintiff ought to have given the defendant a much higher discount of more than $100,000 because of the higher prices which the defendant had to pay other RMC suppliers. According to the plaintiff, this issue had already been raised at the settlement conference and the plaintiff had made clear its stand that it was not providing any discount for this. George Wan's words therefore made Peggy Quek so angry that she ended the telephone call curtly. Shortly after this, instructions were given to commence the present action.

The decision of the court

17 The defendant's stand is that any settlement agreed by him was subject to the approval of the

defendant's board of directors. Secondly, it argued that the terms of the alleged settlement were not certain and complete as all amounts were estimated figures. Further, they were subject to the defendant's confirmation on the accuracy of the plaintiff's invoices and the plaintiff's agreement to compensate the defendant for the additional cost of RMC ordered from other suppliers for the Kallang and the Holland projects on the principle of cost-sharing.

18 During the settlement conference, it was made clear to George Wan that any settlement would be on the basis that both the Sim Lian suit and the Delta Link suit be settled together or not at all. The plaintiff even refused a cheque offered by George Wan in respect of the Gerald Drive project at the start of the settlement conference because the overriding aim was to achieve a global and not a piecemeal settlement. That cheque was left on the table while the parties worked out their differences. George Wan also agreed during cross-examination that he remained at the settlement conference after the defendant's solicitor had to leave because he was aware that the plaintiff wanted a global settlement of both actions.

19 The plaintiff accepted Delta Link's payment on 29 May 2007 because that was in compliance with the terms of the settlement conference and the plaintiff was expecting a cheque from the defendant as well.

20 None of the plaintiff's representatives at the settlement conference heard George Wan's alleged remark that whatever decisions he made on settlement would be subject to approval by the defendant's board of directors. If they had, it was indeed surprising that they did not protest since it would then be obvious that nothing definite could be concluded at the settlement conference. George Wan confirmed to Harveen at the start of the settlement conference that he had the authority to settle on behalf of the defendant as well as Delta Link. When Harveen was writing the note on the agreed terms, George Wan, although directing him to include certain terms, did not ask that words be added to make it clear that everything was subject to the defendant's board of directors' approval. Neither was this issue about authority mentioned in any of the defendant's solicitors' correspondence sent after the settlement conference. Indeed, it would be strange that a board resolution was not also required for the settlement of the Gerald Drive project since payment was made on the spot at the settlement conference.

21 An objective test is applied for deciding whether or not there is a complete agreement between the parties and whether or not its terms are sufficiently certain to be capable of enforcement.

22 The parties have their own interpretations on the terms of the note. Where "$606031.23 by 30 May 2007" was concerned, the plaintiff understands it to mean that the defendant would verify the amount of RMC received for the Kallang and the Holland projects and would pay the said amount to the plaintiff by 30 May 2007 to settle the Sim Lian suit. The defendant's case is that it would revert on its acceptance of the plaintiff's proposal for the Sim Lian suit by that date.

23 On the words "Subject to Sim Lian's confirmation on accuracy of invoices & amount of concrete ordered from other RMC suppliers for Holland project", the plaintiff's understanding is that the payment of the agreed amount of $606,031.23 is subject to the defendant checking its invoices to verify the amount of RMC received by the defendant from the plaintiff while the defendant understands the words to mean that the settlement of the Sim Lian suit is subject to the defendant checking its invoices as George Wan had no way of verifying the figures used to calculate the settlement amount for the Kallang and the Holland projects at the settlement conference.

24 Where the further supply of 2,000 cubic metres of RMC was concerned, the plaintiff claims that the performance of its obligation to supply a maximum of 2,000 cubic metres of RMC to the defendant

for the Holland project is subject to the defendant checking the amount of RMC that it has ordered from other suppliers. The date 30 September 2007 is the completion date of the Holland project. The defendant, however, alleges that the settlement of the Sim Lian suit is subject to the defendant checking the details of its claim for compensation for the higher prices which it has paid for RMC supplied from sources other than the plaintiff.

25 The penultimate sentence in the note, according to the plaintiff, means that the settlement of the Sim Lian suit was based on the principle of cost-sharing, with the plaintiff and the defendant each bearing 12.5% of the price increase for sand and stone aggregates. However, the defendant claims that the sentence means that the parties are to consider a settlement of the defendant's claim for the higher prices paid to other RMC suppliers on the principle of cost-sharing.

26 The plaintiff's testimony is that the defendant's claim for compensation for the higher prices paid to other RMC suppliers was discussed and rejected outright and very early during the settlement conference because the plaintiff's decision to suspend the supply of RMC to the defendant was due to the defendant's persistent failure to pay on the previous invoices and if the defendant chose to purchase RMC from other sources, it could not look to the plaintiff for compensation. George Wan's evidence is that the claim for compensation was in respect of the Kallang and the Holland projects. Clearly, the words in the note referred only to concrete ordered from other suppliers for the Holland project. Subsequently, the defendant abandoned its claim for the Kallang project, claiming that the Kallang project was at the tail end and the loss suffered there was within tolerable limits. This contradicted its stand in correspondence demanding that the plaintiff compensate it for the higher prices paid for RMC from other suppliers.

27 As far as the further supply of 2,000 cubic metres of RMC was concerned, if the defendant subsequently indicated that it needed more than 2,000 cubic metres, the plaintiff was willing to consider supplying the excess needed, perhaps with a revised price. After all, that meant more business for the plaintiff. The plaintiff needed the defendant to confirm the further quantity of RMC required for the Holland project as it wanted to ensure that its facilities were ready to produce the amount needed.

28 The defendant argues that the penultimate sentence is a "future-looking" statement in the sense that subsequent proposals made by the defendant on settlement would be based on the principle of cost-sharing. The plaintiff's witnesses refuted that argument by pointing out that the settlement amounts stated in the note were computed using that principle and that the sentence therefore referred to what was already agreed at the settlement conference and not something in the future. The computations and the guiding formula were demonstrated in evidence.

29 Parties to a compromise are at liberty to accept approximations as the basis for their computations. There would be give and take on both sides. For instance, late payment interest was waived at the suggestion of George Wan. The fact that the amounts stated in the note were estimated ones therefore does not make the agreement uncertain. After all, there is no dispute that the figures for the Delta Link suit and the Gerald Drive project were accurately reflected in the note. Further, the figures used for the calculations at the settlement conference were actually derived from the plaintiff's records with a copy thereof having been supplied to George Wan. George Wan was in fact invited to verify the figures with the invoices but he wanted to go ahead with the discussions and take time later to check the accuracy of the invoices. The computations for the Sim Lian suit were reflected in the note so that there was a record of how the final agreed amount was arrived at. There was no breakdown of the computations for the Delta Link suit and for the Gerald Drive project as the parties had agreed quite quickly on the fairly straightforward computation in those matters.

30 The deadline of 30 May 2007 stated in the note was for the defendant to verify the accuracy of the invoices put forward by the plaintiff to George Wan and to pay the settlement amount for the Sim Lian suit. The original deadline, 31 May 2007, fell on Vesak Day, a public holiday. It was George Wan who suggested bringing the date forward by one day. The two payment cheques, one for the Delta Link suit and the other for the Sim Lian suit, were supposed to be received by the same deadline but only that for the Delta Link suit was received. Plainly, the settlement amount had already been agreed upon subject only to the grace period of a few days for payment so that George Wan could satisfy himself that the figures in the invoices tallied with those in the plaintiff's statement of account. However, George Wan did not revert to say that there were inaccuracies even as late as the telephone conversation on 4 June 2007 with Peggy Quek. The plaintiff kept its side of the bargain by discontinuing the Delta Link and the Sim Lian suits on 13 June and 25 June 2007 respectively.

31 The defendant claims that George Wan initialled on both pages of the note to acknowledge receipt thereof and to confirm the contents of the discussions without thereby expressing agreement with the contents. It should be noted that only the defendant (i.e. George Wan) signed on the note. None of the plaintiff's representatives did so. This was obviously because the principal obligation (to pay the substantial amounts stated in the note by the deadline of 30 May 2007) rested solely with the defendant. The note was written simply as proof of the deal struck at the settlement conference. Its heading ("Settlement Terms") puts this beyond doubt or dispute.

32 On the totality of the evidence, I accept the veracity and accuracy of the plaintiff's witnesses' testimony which also accorded with the terms of the note read objectively. Clearly, a compromise agreement as evidenced by the note was reached at the settlement conference on 25 May 2007 to put an end to the disputes arising from the Delta Link and the Sim Lian suits. Accordingly, I awarded judgment to the plaintiff for the amount of $606,031.23 with interest thereon at 5.33% per annum from 27 June 2007, the date of the commencement of this action, until payment. An offer to settle at $580,000, with costs on a standard basis from the date of writ, was served on the defendant on 4 February 2008. This was not accepted by the defendant. As the judgment was clearly more favourable than the offer to settle, I awarded costs on the standard basis to the plaintiff up to 18 February 2008 and thereafter costs on an indemnity basis pursuant to O 22A r9 of the Rules of Court (Cap 322, R 5), taking into account the 14-day period for the defendant to accept the offer to settle (see O 22A r 3).

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