Chye Heng Huat Engineering Pte Ltd *v* Concept Builders Pte Ltd [2010] SGHC 165

Case Number	: Suit No 1089 of 2009 (Registrar's Appeal No 171 of 2010)
Decision Date	: 27 May 2010
Tribunal/Court	: High Court
Coram	: Woo Bih Li J
Counsel Name(s)	: Roy Yeo Kan Kiang (Sterling Law Corporation) for the plaintiff/appellant; Wijaya Ravana Sivanathan (R S Wijaya & Co) for the defendant/respondent.
Parties	: Chye Heng Huat Engineering Pte Ltd — Concept Builders Pte Ltd

Civil Procedure

27 May 2010

Woo Bih Li J:

Introduction

1 The plaintiff Chye Heng Huat Engineering Pte Ltd ("CHHE") is in the business of fabrication and installation of steel fittings and general construction work. CHHE was the sub-contractor of the defendant Concept Builders Pte Ltd ("Concept Builders") who was in turn the main contractor for the development of 18 double-storey strata bungalows. CHHE's claim was for $390,257.93 being the outstanding payment for material supplied and installed under its various contracts with Concept Builders for the development.

2 Concept Builders' sole defence was that certain items supplied by CHHE, which it referred to simply as U-channels, were of poor quality and were rusting. As the U-channels had to be replaced, Concept Builders was withholding payment of the entire sum claimed to meet the cost of replacing those U-channels which had rusted and in anticipation of replacing the rest of the U-channels which might also rust.

3 CHHE had applied for summary judgment of its claim. It was not successful before an assistant registrar. It then appealed and I allowed its appeal in that I granted judgment to it for $304,458.06 which was arrived at as follows: $390,257.93 less a sum of $85,799.87. I granted Concept Builders leave to defend for this sum of $85,799.87 on condition that it pay the sum into court or provide a bank guarantee for that sum, on terms acceptable to CHHE, by 4pm of 27 May 2010, failing which CHHE would be entitled to enter judgment for that sum as well.

4 I set out my reasons below.

The court's reasons

5 The Writ of Summons was filed on 29 December 2009. The Defence was filed on 27 January 2010. However, the Defence was vague on the reason for not paying the sum claimed by CHHE. Para 3 of the Defence merely stated:

> 3. In breach of said terms and conditions:-

a) the said work and services was done badly without skill or care and in an improper manner;

b) the said materials were not suitable and applied improperly resulting in various defects, of which the Plaintiffs are well aware of, that are contained in the exchange of correspondence inclusive of photographs between the Plaintiffs and Defendants.

6 After the Defence was filed, CHHE applied for summary judgment. The first affidavit for Concept Builders to oppose the application was from Mdm Soh Lee Siang, its managing director, filed on or about 30 March 2010. It was only then that the issue of rusting U-channels was raised. She alleged that CHHE had intimated that there would be no rust after an observation period of four to six months but yet complaints of rusting U-channels for some of the units were made and "rectification had to be assigned to a responsible third party at a great cost …". The average cost of rectification (including associated work to allow the replacement to be executed) was $17,000 and five units of bungalows were said to be affected with rusting U-channels.

7 Yet, the only document she produced to substantiate the rectification cost was Concept Builders' own itemisation of details for the cost of rectification. There was no supporting document from a third party. Even then, Concept Builders' own itemisation revealed a total amount of $16,734.80 (inclusive of GST), not $17,000, as replacement cost.

8 She also exhibited a letter which Concept Builders wrote to its solicitors dated 22 March 2010 stating that "the building surveyor shall be giving his assessment to the rectification works of the rusty U-channel on the 01 April 2010".

9 The second affidavit for Concept Builders came from Halog Anthony Palitayan ("HAP"), its project manager. He exhibited an email dated 6 January 2010 from one owner at unit 45G about a rusting U-channel below glass railings on the third floor balcony.

10 According to HAP, Concept Builders had to engage AG Construction Pte Ltd ("AG") to rectify the problem as CHHE refused to do so. AG had quoted $5,200 which it then reduced to $4,700 to replace the U-channels for one unit. Other associated work had to be done by Concept Builders to allow the replacement work to be executed and this other work cost Concept Builders $9,245.53. Together with AG's costs, the total cost was $9,245.53 plus $4,700 = $13,945.53.

11 Yet, in the same affidavit, HAP also said that the cost of replacing the U-channels (including associated work) for each unit was $17,159.97 inclusive of GST (instead of $13,945.53). I was informed that this cost multiplied by 18 units, if all were affected by rusting U-channels, would work out to $308,879.54 (the correct figure should be $308,879.46). I was also informed that the cost for rectifying five units where the problem of rust had allegedly already occurred would be $85,799.87 (whereas the correct figure should be $85,799.85).

12 HAP then exhibited a report from Colsult Consultants which is an engineering firm dated 16 April 2010. That report stated that they had checked a typical unit at 45C and confirmed that "the 'U' channel supporting the 15mm thick tempered glass has rust stains…". It stated that the U-channel at 45G did not have any visible signs of rust and they were told by Concept Builders' supervisor that the U-channel at 45G was replaced with a galvanised one.

13 The temporary occupation permit for the 18 units was issued on 21 July 2009. It was common ground that CHHE's works would have been completed before then. Since 21 July 2009 up to the date of the hearing of the appeal before me on 18 May 2010, there were alleged complaints of rusting U-

channels for five units only.

14 In my view, Concept Builders was not entitled to retain money longer than the four to six months (mentioned by Mdm Soh) after 21 July 2009. They had to pay the balance first and if indeed there was evidence that further replacement works had to be done, then they had to claim subsequently for the cost of the same.

15 CHHE's claim was for $390,257.93. The replacement cost for U-channels (including associated work) for five units was said to be a total of $85,799.87. Using that figure, I therefore granted judgment for the difference being $304,458.06.

16 However, even the allegation about rusting U-channels for five units and the cost of replacement (including associated work) was suspect.

17 First, as I mentioned above, the Defence was vague.

18 Secondly, although Concept Builders had written to its solicitors on 22 March 2010 to say that the assessment of the building surveyor would be given on 1 April 2010, there was no such assessment from a building surveyor but a report by engineers. That report was dated 16 April 2010 and referred to an inspection done just one day earlier on 15 April 2010. I agreed with CHHE that this report was hastily conjured up. Significantly, that report did not refer to rusting U-channels for five units but only two, *ie*, 45C and 45G. Even then, the inspection was done only for 45C. It was not clear from the report whether the engineer had inspected 45G as well or had simply adopted information provided by Concept Builders.

19 Thirdly, the cost of replacement (including associated work) was suspect because Concept Builders had bandied about various figures for such a cost, as I elaborated above. One figure was $17,000, another $16,734.80, a third was $13,945.53 and a fourth was $17,159.97. It also seemed to me that Concept Builders had deliberately inflated the figures especially for associated work so as to try and justify their refusal to pay the claim or part thereof.

20 Accordingly, I granted Concept Builders leave to defend the claim for the remaining $85,799.87 on the condition mentioned above.

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