Win-Win Aluminium Systems Pte Ltd *v* Law Society of Singapore
[2012] SGHC 123

Case Number : Originating Summons No 757 of 2011

Decision Date : 07 June 2012

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Nedumaran Muthukrishnan (M Nedumaran & Co) for the applicant/appellant; Prabhakaran N Nair (Derrick Wong & Lim BC LLP) for the respondent.

Parties : Win-Win Aluminium Systems Pte Ltd — Law Society of Singapore

Legal Profession – Professional Conduct – Disciplinary Procedures

7 June 2012

Woo Bih Li J:

Introduction

1 The applicant Win-Win Aluminium Systems Pte Ltd ("Win") was engaged in disputes with two companies. One was Excalibur Land (S) Pte Ltd ("Excalibur") and the other was Excalibur's related company Tavica Design Pte Ltd (now known as Crescendas Pte Ltd) ("Tavica"). Excalibur and Tavica were represented at all material times by a solicitor Marina Chin Li Yuen ("Ms Chin"). Arising from the dispute, Win made a complaint against Ms Chin to the Law Society of Singapore. An Inquiry Committee ("IC") recommended in their report dated 8 July 2011 that Win's complaint be dismissed. The Council of the Law Society accepted and adopted the determination of the IC. The decision of the Council was conveyed in a letter dated 10 August 2011 from the Law Society to Sim Piak How ("Sim") the managing director of Win.

2 Being dissatisfied with that outcome, Win filed the present application to seek an order that the Law Society be directed to apply to the Chief Justice for the appointment of a Disciplinary Tribunal in respect of its complaint. After hearing arguments, I dismissed Win's application. Win has filed an appeal to the Court of Appeal.

Background

3 I now set out the background in some detail. Unless otherwise stated, the background is based on allegations as stated in the affidavit of Sim executed on 24 August 2011 for this application.

4 Excalibur was the developer and owner of an industrial building known as Excalibur Centre ("the Centre") at Ubi Avenue 1. Tavica was the main contractor for the construction works of the Centre. Both companies are controlled by two brothers Michael and Lawrence Leow.

5 In or about September 1998, Win was negotiating with Excalibur for an aluminium work subcontract for the Centre.

6 Win alleged that in or about October 1998, Win's then General Manager Loh Kum Yin, who is also known as William Loh ("William"), and Leck Kim Koon ("Leck"), who was the Chairman of its board

of directors, attended a meeting at Excalibur's office. Excalibur agreed to award the aluminium subcontract ("the Sub-Contract") to Win at $1,713,711.89 on condition that Win agree to purchase a unit in the Centre, *ie*, #08-13 ("the Unit") at $300 per sq ft for the Unit's enclosed area and $70 per sq ft for the Unit's open area. Naturally, Win's Sub-Contract would in effect be with Tavica which was the main contractor.

7 Win alleged that between 4 and 8 October 1998, William told Sim that Lawrence Leow had requested that the sale price of the Unit be inflated by $89,000 and in turn the increase would be included in the Sub-Contract as a design fee. Once payment was due under the agreement for the purchase of the Unit, Win could issue an invoice for the design fee to Tavica and authorise Tavica to pay to Excalibur the inflated amount. William told Sim he had agreed to the request and that Leck had also agreed to it.

8 The arrangement was allegedly contained or evidenced in a letter dated 8 October 1998 from Win (signed by William) to Excalibur and in a fax dated 8 October 1998 from a property agent Colliers Jardine to Win.

9 On 8 October 1998, an option to purchase the Unit was granted to Win followed by the execution of a sales and purchase agreement ("SPA") between Win and Excalibur on 6 November 1998. Win alleged that on 9 December 1998, Excalibur's former solicitors, Messrs William and Allan Wong sent a reminder to Win's solicitors Messrs Hee Theng Fong and Co for the balance due under the SPA. Win's position was that it was not obliged to make any further payment under the SPA till it was awarded the Sub-Contract.

10 By a letter dated 9 March 1999 ("the Set-off letter") from Excalibur to Win, Excalibur said that in consideration of Win's purchase of the Unit, it had procured Tavica to award the Sub-Contract to Win. The letter stated that if Win failed to pay under the SPA, it irrevocably authorised Tavica to use any sum due to Win to meet Win's obligations under the SPA. The letter also stated that if Win failed to complete the purchase of the Unit, the Sub-Contract sum would be reduced by $89,000 without prejudice to any other rights of Tavica under the Sub-Contract or Excalibur under the SPA. This letter was countersigned by Leck for Win and by Michael Leow for Tavica.

11 On 19 March 1999, Tavica awarded the Sub-Contract to Win.

12 On 24 March 1999, Win issued an invoice for the design fee of $89,000 with a letter authorising Tavica to use that sum to set-off the same amount by which the purchase price of the Unit was inflated. Apparently, the set-off was not done. It was alleged that Lawrence Leow informed Win not to worry about the SPA and to concentrate on the Sub-Contract works since the parties already had the Set-off letter.

13 William's employment with Win was terminated in or about April 2000.

14 In mid 2000, disputes arose between Win and Tavica over the works.

15 On 12 February 2001, Win commenced arbitration proceedings against Tavica to recover about $1.8 million said to be due and owing to it ("the Arbitration").

16 Excalibur then commenced Suit No 538 of 2001 ("Suit 538/01") against Win for repudiation of the SPA based on non-payment of sums due thereunder two years ago in 1999.

17 In Suit 538/01, William executed an affidavit on 6 November 2001 for Excalibur. His affidavit was

prepared by Ms Chin. Win alleged that in that affidavit, William (a) denied that there was a link between the SPA and the Sub-Contract; and (b) denied that there was an inflation in the purchase price of the Unit by $89,000. Win stressed that all the affidavits of Ms Chin's other witnesses for Suit 538/01 followed William's affidavit on these points.

18 On 26 November 2001, Suit 538/01 came up for hearing before Kan Ting Chiu J ("Kan J"). He adjourned the Suit pending the outcome of the Arbitration and ordered Excalibur and Win to be bound by the arbitrator's decision. Thereafter, the Arbitration continued.

19 In 2006, Win filed an action in Suit 13 of 2006 ("Suit 13/06") against William for his conduct which led Win to enter into the SPA. Apparently, William acted in person in this suit. According to Win, William's defence filed on 8 February 2006 and his affidavit filed on 24 January 2007 stated that the award of the Sub-Contract was on condition that Win purchased the Unit. I would add that apparently, William's affidavit filed on 19 or 20 June 2006 in Suit 13/06 also accepted that the SPA and the Sub-Contract were intrinsically linked. In Win's view, William had contradicted his own affidavit which he had executed for Excalibur in Suit 538/01.

20 In the meantime, on 9 October 2006, Belinda Ang Saw Ean J ordered a stay of Suit 13/06 pending the outcome of the Arbitration and also ordered that Suit 13/06 be heard by the same judge hearing Suit 538/01.

21 Win alleged that although Excalibur was not a party in Suit 13/06, Ms Chin was aware of William's defence and affidavits filed in that action as William had copied her on his correspondence with the High Court for that action. In any event, Ms Chin was apparently in possession of copies of William's affidavits filed in Suit 13/06 as she had enclosed copies thereof in a Respondents' Bundle Volume III filed for the Arbitration.

22 Win also alleged that in October 2008, in the midst of the hearing of the Arbitration, Tavica applied, through Ms Chin, for a bifurcation thereof and for the arbitrator to determine certain issues first. According to Ms Chin, the bifurcated issues to be decided by the arbitrator ("the Bifurcated Issues") were as follows [note: 1] :

(a) Whether the agreement on 2 October 1998 to award the [Sub-Contract] (at a contract sum of $1.17m) was conditional upon [Win] agreeing to purchase the [Unit].

(b) Whether there was any set-off agreement reached on 2 October 1998 that payments due under the [SPA] between [Win] and Excalibur were to be "set off", whether in part or in full, and at any time, against the payments due under the [Sub-Contract] between [Win] and Tavica.

(c) Whether [Win] was entitled to withhold payment to Excalibur under the [SPA] until the letter of award for the [Sub-Contract] was signed.

(d) Whether [Win] was entitled to an upfront lump sum payment of $89,000 plus GST under the [Sub-Contract].

23 Although Win objected, the arbitrator granted Tavica's application to bifurcate the hearing.

24 On 19 May 2009, the arbitrator decided the Bifurcated Issues in favour of Tavica by way of an interim award ("the Interim Award").

25 According to Ms Chin, the following then took place:

(a) Win filed Originating Summons No 687 of 2009 to seek leave to appeal against the Interim Award. Its application was dismissed by Quentin Loh JC on 2 October 2009.

(b) Excalibur filed Summons No 5752 of 2009 in Suit 538/01 to seek an order for a hearing of preliminary issues, *ie*, whether the Interim Award was binding on the parties in Suit 538/01, *ie*, Excalibur, Win and Leck, and whether judgment ought to be entered for Excalibur against Win and Leck.

(c) The application was granted by Steven Chong JC on 30 December 2009.

(d) The preliminary hearing was fixed before Kan J. On 17 March 2010, Kan J applied the Interim Award to Suit 538/01 and entered judgment in favour of Excalibur against Win and Leck without a trial.

26 According to Win, Kan J had also ordered on 11 March 2011 that Suit 13/06 be transferred to the Subordinate Court as he felt that the damage claimed by Win against William would be less than $250,000. Suit 13/06 became DC Suit No 829 of 2011 when it was transferred accordingly. That suit was heard by district judge Thian Yee Sze on 3 April and 11 May 2011.

27 Win alleged that in the course of cross-examination in DC Suit No 829 of 2011, William said:

(a) That the affidavit he had executed for Suit 538/01 was false. The award of the Sub-Contract was conditional on the purchase of the Unit and Excalibur had inflated the purchase price of the Unit by $89,000.

(b) That he had not given any instruction for that affidavit to be drafted. Ms Chin had drafted it, showed it to him and he had signed it.

28 Win's complaint against Ms Chin was two-fold. First, Win alleged that Ms Chin had assisted her client and witnesses to give false evidence, to mislead the court, which she knew was false in the light of the overwhelming documentary evidence referred to above, including, but not limited to, the Set-off letter. Secondly, it alleged that after William's defence and affidavits were filed in Suit 13/06, Ms Chin must have been aware that the earlier affidavit executed by William in Suit 538/01 (and the affidavits of the others too) were false. Yet, she deliberately requested a bifurcated hearing in 2008 in the Arbitration in order to avoid disclosure of the contradictory evidence of William to the arbitrator. She then secured a favourable ruling from the arbitrator on the issue of bifurcation and on the Bifurcated Issues themselves. She then used the Interim Award to obtain Kan J's judgment against Win in Suit 538/01 without disclosing the contradictory evidence of William to Kan J or to any other judge along the way. Fortunately for Win, Kan J's judgment was set aside by the Court of Appeal on 28 July 2011.

29 As mentioned above, Win made a complaint to the Law Society. This was by way of its letter dated 28 December 2010 which was said to be its fresh complaint against Ms Chin. An IC was appointed by the Law Society. Ms Chin gave her explanation dated 16 May 2011 (which was before the decision of the Court of Appeal on 28 July 2011 setting aside Kan J's judgment). There were other letters from Win to the IC. Eventually, the IC recommended that the complaint be dismissed. The Council of the Law Society agreed.

30 I would mention that the letter of complaint may contain some other details, for example, a reference to affidavits sworn by one Tan Boon Leong, a senior manager of Colliers Jardine in Suit 538/01 and Suit 13/06. However, affidavit of Sim filed in support of the present application focussed

on William's documents as set out above. In any event, the reference to Tan Boon Leong's affidavits in the letter of complaint was along the same lines as the reference to William's affidavits in the two suits.

31 Ms Chin's explanation treated the complaint in respect of William's affidavit in Suit 538/01 as referring to William's affidavit of evidence-in-chief ("AEIC") filed on 21 November 2001 (not 6 November 2001). The copy exhibited in Sim's affidavit for the present application shows the date of execution of the affidavit complained of as 6 November 2001.

32 I should also mention that contrary to Win's allegation, William's affidavit for Suit 538/01 did not deny all links between the SPA and the Sub-Contract. In that affidavit, William referred to two meetings, one on 2 October 1998 and another on 7 October 1998. At the 2 October 1998 meeting, agreement was reached on the price for the Sub-Contract but not for the Unit because Michael Leow did not want a lower price to affect the prices for other units. At the 7 October 1998 meeting, Leck again requested for the price of the Unit to be reduced by $98,000 but Michael Leow was not agreeable. He (Michael Leow) counter-proposed that Tavica could increase the price for the Sub-Contract by $98,000 and Leck agreed. This was the only link between the two contracts and there was no discussion about the SPA being conditional upon the signing of the Sub-Contract.

33 Para 2 of Ms Chin's explanation set out her principal arguments as follows:

> (1) There was no perjury in the first place. The version of events set out in the 2 affidavits [of William and Tan Boon Leong] filed in 2001 conflicted with the version of events alleged by [Win] but that cannot be a basis for alleging that the 2 affidavits contained perjury.
>
> (2) Even assuming there are differences in the affidavits filed in 2001 as compared to the affidavits filed in 2007, it cannot be assumed that the later affidavits (which I did not draft) contain the truth and that the earlier affidavits (which I drafted) contain perjury.
>
> (3) In any event, [Win] was entirely at liberty to refer to the alleged differences in the affidavits filed in 2001 and 2007 to persuade the Arbitrator to make findings of fact in its favour, but [Win] chose not to.
>
> (4) The Arbitrator considered all the evidence presented by the parties and made findings of fact in the Interim Award dated 19 May 2009 including the finding (against [Win]) that the award of the [Sub-Contract] was not conditional upon [Win] buying a particular property. Given this finding of fact, it is misconceived for [Win] to allege perjury.

34 Ms Chin elaborated as follows:

> (a) Five affidavits of AEICs were filed in November 2001 for Excalibur in Suit 538/01. The deponents were Lawrence and Michael Leow, William, Tan Boon Leong and one Dennis Yeo who was the managing director of Colliers Jardine. The facts conveyed to her by all five were consistent with each other. The facts were also consistent with the documents available. The AEICs of Lawrence, Michael and William confirmed that the award of the Sub-Contract was not conditional upon the purchase of the Unit.
>
> (b) She did not accept that William's AEIC of 24 January 2007 in Suit 13/06 was as clearly contradictory of his AEIC in Suit 538/01 as alleged by Win. Even if it was, she questioned why William's stance in Suit 13/06 and not in Suit 538/01 should be true.

(c) She had prepared William's AEIC for Suit 538/01 before she had sight of his defence or affidavits in Suit 13/06. She saw those documents later and not when William had sent copies of his correspondence with the court, in respect of Suit 13/06, to her. Those copies did not make any reference to the substance of his defence or his affidavits. The first time she perused his defence and AEIC of 24 January 2007 (for Suit 13/06) was after she had requested, on 28 February 2008, for a copy from the court. The first time she saw his affidavit affirmed on 19 June 2006 for Suit 13/06 was when she received a copy on 22 February 2011, about three years later, from Eldan Law, another firm of solicitors.

(d) Insofar as she had received a copy of William's defence and his AEIC of 24 January 2007 after 28 February 2008, she included copies thereof in Tavica's Bundle of Documents Volume III filed in the Arbitration. Ironically, Win's counsel did not include them in his bundle.

(e) There were various hearing dates fixed for the Arbitration since 9 October 2007. Some had to be vacated because Win was changing its solicitors again and again. It was only in January 2009 that Win sought to subpoena William. However, even then, on 3 February 2009, Win informed the arbitrator that it was withdrawing its intention to subpoena William. William was also not a witness for Tavica in the Arbitration.

(f) In any event, it was for Win to draw attention to the alleged discrepancies between William's affidavits for Suit 538/01 and for Suit 13/06 (and his defence) if it thought it was appropriate to do so. Yet it never did so at any time before:

(i) the arbitrator;

(ii) Quentin Loh JC – when he refused leave to appeal against the Interim Award;

(iii) Steven Chong JC – when he allowed Tavica to proceed with a hearing on preliminary issues; and

(iv) Kan J – when he granted judgment against Win in Suit 538/01.

35 In *Bachoo Mohan Singh v PP* [2010] 4 SLR 137 ("*B M Singh*"), V K Rajah JA decided, at [137(e)] that:

(e) ... A solicitor is not obliged to verify his client's instructions with other sources unless there is compelling evidence to indicate that it is dubious. The fact that the opposing parties (or parties allied to them) dispute the varacity of his client's instructions is not a reason for a solicitor to disbelieve or refuse to act on those instructions, and a solicitor should not be faulted if there are no reasonable means of objectively assessing the veracity of those instructions.

36 In the present case, the IC noted in para 13 of their report that while Win was relying on the Set-off letter dated 9 March 1999 to establish that the award of the Sub-Contract was conditional upon Win entering into the SPA, the Set-off letter was dated after the date of the award of the Sub-Contract. They noted that this was a point which the arbitrator appeared to have considered too as reflected in para 68-70 of the Interim Award which was Exhibit F of Ms Chin's explanation.

37 Actually, what the arbitrator noted in those paras was that the Set-off letter was written five months after 2 October 1998. It will be recalled that the significance of the date of 2 October 1998 was that it was a date of an important meeting attended by Leck, William and Michael Leow although the versions of what transpired there differed. The arbitrator also said that the Set-off letter was

written after a very long period of trying to finalise the terms of the letter of award of the Sub-Contract. According to para 19 of the Interim Award, the letter of award was dated 6 January 1999 but was finally signed on 19 March 1999, which is after the Set-off letter dated 9 March 1999. It was not made known to me who signed or counter-signed on 19 March 1999 and, for present purposes, I assumed it was Win since the letter of award would presumably have been issued by Tavica to Win.

38 Be that as it may, the point was that William was saying in his AEIC for Suit 538/01 that while there was some connection between the purchase price of the Unit and the price in the Sub-Contract, one was not conditional upon the other.

39 The issue then was whether the documentary evidence clearly established that the award of the Sub-Contract was conditional upon the purchase of the Unit, or vice versa, such that Ms Chin must have realised that the Leow brothers were lying. I was of the view that while the documentary evidence did seem to support such a conclusion, it was not so clear that Ms Chin must have realised that the Leow brothers must be lying.

40 How then was she able to verify what they were telling her? William, who was Win's manager, was supporting what the Leow brothers were saying. Surely, she was entitled to assume at that time that he was telling the truth.

41 In addition, two representatives from Colliers Jardine did not contradict William or the Leow brothers at the time when the affidavits were drafted by Ms Chin in or about November 2001.

42 With the information from all five deponents, why should Ms Chin assume that William's evidence was untrue? What else could she have done to verify? Win did not elaborate on the last point. It simply insisted that it was in the right and, more importantly, it insisted that Ms Chin must have known so at the time.

43 Like the IC, I did not agree with Win. As Andrew Phang JA said in *B M Singh* at [169], a solicitor is not the judge.

44 What then of the documents filed by William in Suit 13/06 which came to Ms Chin's knowledge subsequently? I agreed with Ms Chin that even if they contradicted William's AEIC in Suit 538/01, that did not mean that the later documents were true and the first one was a lie. While Win was entitled to its views, Ms Chin was also entitled to her views.

45 It is also significant that it was Ms Chin, and not Win's solicitor, who included in a bundle for the Arbitration those of William's documents in Suit 13/06 which she had received. Yet Win was still accusing her of deliberately hiding the truth.

46 I come now to Win's point that Ms Chin was deliberately trying to avoid drawing the arbitrator's attention to William's contradictory documents by seeking a bifurcation of issues before the arbitrator in October 2008. This was before Win mentioned in January 2009 its intention to subpoena William and before Win informed the arbitrator on 3 February 2009 that it was dropping that idea.

47 It will be recalled that the Bifurcated Issues focussed on a certain cut-off date, *ie*, the date of 2 October 1998. This date was before:

(a) the letter of award of the Sub-Contract dated 6 January 1999;

(b) the Set-off letter dated 9 March 1999; and

(c) the date of 19 March 1999 when the letter of award was countersigned.

48 However, Win was suggesting that by attempting to bifurcate the arbitration, Ms Chin was deliberately avoiding reference to William's contradiction of events. Win's suggestion might make sense if William's contradiction was in respect of events after 2 October 1998 since that was the cut-off date in the intended issues for bifurcation.

49 However, William's alleged contradiction was already in respect of what had transpired on 2 October 1998. Para 6 of William's defence in Suit 13/06 had asserted that in the meeting of 2 October 1998, it was agreed that Excalibur would award the Sub-Contract to Win if Win purchased the Unit. A similar allegation was made by William in para 13(b) of William's AEIC of 24 January 2007 for Suit 13/06. Therefore, Win's suggestion did not make sense. Even with the Bifurcated Issues, William's alleged contradiction could still come into play.

50 Hence, after the arbitrator had decided to have a hearing on the Bifurcated Issues, either side was entitled, but not obliged, to call William as a witness and to try and use his documents in Suit 538/01 and Suit 13/06 to challenge the evidence of the other side on the Bifurcated Issues. Neither side called him as a witness.

51 In my view, it was absurd for Win to argue that Ms Chin was obliged to refer to William's contradictory documents especially when Win's own solicitors did not do so.

52 Once Tavica had obtained a favourable decision from the arbitrator on the Bifurcated Issues by way of the Interim Award, Ms Chin was entitled to try and use it to obtain a judgment in Suit 538/01 following Kan J's earlier ruling that the parties in Suit 538/01 would be bound by the arbitrator's decision. In doing so, she was entitled to rely on the Interim Award alone and not rehash the arguments before the arbitrator. After all, that was the very purpose of relying on the Interim Award. Whether Ms Chin would succeed before Kan J was another matter. In my view, it was again absurd for Win to say that she was obliged to bring William's contradictory documents to the attention of any of the judges in the subsequent proceedings which led to Kan J's decision to grant judgment to Excalibur in Suit 538/01. Furthermore, Win's own solicitors also did not do what it says Ms Chin was obliged to do. The fact that Win did succeed in setting aside Kan J's judgment was neither here nor there as far as Win's complaint went.

53 In the circumstances, I was of the view that Win did not understand the role of opposing counsel/solicitor or that others were not obliged to agree with its views however compelling the reasons for its views might seem. It was venting its frustration at the wrong person and its complaint against Ms Chin was misconceived. Accordingly, I dismissed its present application with costs.

[note: 1] See para 27 of Ms Chin's explanation dated 16 May 2011.

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