IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 32

Suit No 218 of 2015

Between

BDC

… *Plaintiff*

And

(1) BDD
(2) BDE

… *Defendants*

GROUNDS OF DECISION

[Building and construction law] — [Architects, engineers and surveyors] — [Duties and liabilities]
[Building and construction law] — [Building and construction contracts] — [Measurement contracts]

Version No 1: 27 Oct 2020 (22:40 hrs)

TABLE OF CONTENTS

FACTS....2

THE PARTIES....2

BACKGROUND TO THE DISPUTE....2

ISSUES TO BE DETERMINED....3

THE PARTIES' CASES....4

THE PLAINTIFF'S CASE....4

THE FIRST DEFENDANT'S CASE....5

MY DECISION....7

CONCLUSION....12

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BDC
v
BDD and another

[2018] SGHC 32

High Court — Suit No 218 of 2015
Lee Seiu Kin J
16, 18 August 2017, 1 December 2017

14 February 2018

Lee Seiu Kin J:

1 The present suit was filed by the plaintiff against the first defendant for breach of contract and negligence in the preparation of a measurement survey which turned out to be factually inaccurate in one particular dimension. A key issue that formed the crux of the trial was the scope and nature of the contract entered into between the parties which would determine whether the accuracy of that dimension would constitute part of the contract. After hearing the evidence of both parties, I found that there was no breach of contract or negligence and dismissed the plaintiff's suit. The plaintiff has filed an appeal against this decision, and I now give my reasons.

Facts

The parties

2 The plaintiff is a company that, at the material time, owned a 2-storey conservation shophouse located at Seah Street ("the Shophouse").

3 The first defendant is a company providing survey services and was engaged by the plaintiff to carry out measurement surveys of the Shophouse in preparation for intended renovation works.

4 The plaintiff had engaged the second defendant as architects for the renovation works. The plaintiff subsequently joined the second defendant to this suit. As the contract of engagement between the plaintiff and the second defendant contained an arbitration clause, the proceedings were stayed in favour of arbitration on the issue of liability of the second defendant, with the issue of quantum, should it arise, to be dealt with in this suit in a joint trial with the first defendant (see decision in *BDC v BDD and another* [2016] SGHC 202).

Background to the dispute

5 The plaintiff intended to carry out addition and alteration works on the Shophouse and engaged the services of the first defendant to produce measurement surveys of the existing Shophouse. The first defendant prepared drawings of the existing Shophouse, and the second defendant subsequently used these drawings to design a six-storey extension block to be constructed

Version No 1: 27 Oct 2020 (22:40 hrs)

behind the part of the Shophouse that had to be conserved in accordance with URA rules.

6 When contractors later attempted to execute the second defendant's design, it transpired that the dimensions of the Shophouse were inaccurately depicted. The second defendant had, in reliance on the first defendant's measurement surveys, used the figure of 5972mm as the distance between a gridline and the roof ridge, when in reality the distance was 6688mm.

7 The first defendant redid the measurement surveys after being notified of this error, and the second defendant then produced rectified designs based on the new measurement. As it was necessary to submit the new designs to URA for approval, this caused some delay to the contractor's work. The plaintiff brought this present suit to claim for the additional costs incurred as well as losses suffered as a result of the delay.

Issues to be determined

8 The question for determination at this trial was limited to the issue of the first defendant's liability to the plaintiff in relation to the inaccurate measurement drawings.

9 Due to the nature of the respective cases advanced by the parties, the key issue for determination became one concerning the nature and scope of the contract entered into, specifically whether the contract was one for internal

Version No 1: 27 Oct 2020 (22:40 hrs)

renovation and alteration or whether it was intended to be a broader contract which contemplated external works as well.

The parties' cases

The plaintiff's case

10 The plaintiff claimed that the first defendant acted in breach of the contract and also failed to exercise all reasonable care and skill as surveyors in the preparation of the measurement drawings, by failing to ensure that the drawings would not contain inaccuracies or errors.

11 The plaintiff claimed that the nature of the contract and the scope of the first defendant's agreed role were not restricted to the production of measurement surveys for the sole purpose of internal renovation, and that the first defendant was aware of the possibility of external renovation works to be effected on the Shophouse. In such circumstances, the position of the roof ridge was of particular importance as it would affect the total area within which the extension works could be effected in compliance with conservation rules. The exact dimensions of the measurement drawings would hence have a direct impact on the addition and alteration works to be carried out.

12 In support of its claim that the contract was not contemplated to be limited to internal renovation works, the plaintiff argued that the first defendant had previously provided quotations for the plaintiff for a different project at the nearby 6 Purvis Street, which project similarly involved the building of a six-

Version No 1: 27 Oct 2020 (22:40 hrs)

storey block extension behind a conservation shophouse. The plaintiff also claimed that Pang Hongwei ("Pang"), who was the survey manager of the first defendant in charge of the present project, was aware that the plaintiff was in the business of redeveloping conservation shophouses. Further, the plaintiff referred to a series of email correspondence between Pang and the plaintiff's director George Lin ("Lin") wherein Pang made reference to numbering conventions of units within the Shophouse and specifically to examples involving third and fourth storey units, which allegedly indicated Pang's awareness or knowledge that the plaintiff's intended renovations to the Shophouse were not limited to internal renovation works.

13 The plaintiff argued in the alternative that even if the contract had been limited to the production of measurement surveys for internal renovation of the Shophouse, the inaccuracies in the measurement surveys would nonetheless have been in breach of the first defendant's contractual obligations and duty of care, since the same errors would have affected such internal works.

The first defendant's case

14 The first defendant's case was that parties had entered into a contract for the first defendant to produce measurement surveys intended for the sole purpose of facilitating internal renovation works. For such purposes, the position of the roof ridge was not material and that was the reason that the first defendant did not measure it accurately. The first defendant also did not depict the position of the roof ridge in the measurement survey with a dimension as

Version No 1: 27 Oct 2020 (22:40 hrs)

this was adequate for such intended purposes. To obtain the dimension for its design, what the second defendant did was to use a scale rule to measure that dimension from the measurement survey. The design was then carried out based on that scaled measurement. The first defendant did not dispute that such scaled measurement was indeed what was indicated in the measurement survey. However, the first defendant argued that it had not been contracted to provide survey measurements that would give the distance position of the roof ridge to the degree of accuracy required by the plaintiff. As such, there was no breach of the first defendant's contractual obligations or duty of care.

15 The first defendant argued that the limited scope of the contract was evidenced by the relatively low quotation of $2,800. The first defendant further argued, relying on the evidence of Pang, that Lin had expressly communicated on the plaintiff's behalf that the survey was for the purpose of internal renovation. In addition, Pang had approached Lin to open the ceiling so that the roof ridge could be surveyed but Lin had told him that he could not arrange to do so because the upper storey was occupied by a tenant. The first defendant argued that this showed that the plaintiff's intention at that point of time was only to renovate the interior of the Shophouse. Further, since Lin did not arrange for access to the roof, he must have known that Pang did not carry out a survey of the roof ridge, and could not have given accurate drawings of its position.

16 The first defendant further argued that even though Pang might have previously given a quotation for the project at 6 Purvis Street, this had no

Version No 1: 27 Oct 2020 (22:40 hrs)

bearing on the plaintiff's intention as to the project at the Shophouse. The references in the emails to numbering conventions of various units were also purely hypothetical, and did not indicate that Pang was aware of the plaintiff's alleged intention to build a six-storey extension. The first defendant disputed that the inaccuracies in the measurement survey would have adversely affected internal renovations, and asserted that they would have at most affected aesthetics or required re-cutting of wood panels, but would not have affected statutory compliance or material enjoyment of the Shophouse.

My decision

17 It was undisputed that at the time of contract formation several emails were exchanged between the plaintiff and the first defendant. Specifically, the plaintiff sent a total of three emails on 29 and 30 June 2011 to the first defendant requesting for a quotation to conduct a measurement and topographical survey on the Shophouse, and the first defendant replied with a quotation on 14 July 2011, which was then signed and returned by the plaintiff. As the contents of these emails were not of particular assistance to either party's case, the nature of the contract turned instead on the evidence of the witnesses called.

18 According to the affidavit of evidence-in-chief ("AEIC") of Pang, he had spoken to Lin on the phone after visiting the site of the Shophouse on 5 July 2011. During this phone conversation, Pang asked Lin why the plaintiff required a survey of the Shophouse when it was likely to be under conservation and hence it would not be possible to touch the façade. Lin then told Pang that

Version No 1: 27 Oct 2020 (22:40 hrs)

the survey was for the purpose of carrying out internal renovation and alteration works, *ie*, columns and partitions. When asked what the plaintiff intended to do with the Shophouse, Lin replied that it might be converted into a pub. Pang stated that Lin did not mention anything about using the Shophouse as a hotel or constructing any extensions at the back of the Shophouse, and said that he would have otherwise asked for more specific details if Lin had communicated that intention. Pang also stated that it was on this understanding that he quoted only a total of $2,800 for the topographical and measurement survey.

19 In his AEIC, Lin stated that the plaintiff intended to carry out additions and alterations to the Shophouse which included the construction of a six-storey block behind the Shophouse, and therefore engaged the first defendant to carry out the necessary surveys. Lin stated further that he had personally asked the first defendant for quotations for the project at 6 Purvis Street, which similarly involved the construction of a six-storey block undertaken by an associated company of the plaintiff, and that the first defendant was asked to quote for a survey as the owner of 6 Purvis Street wished to apply for the sub-division of that Shophouse into strata titles.

20 There was no mention in Lin's AEIC of the phone conversation referred to above by Pang. The first defendant's counsel pointed out during cross-examination of Lin that the assertions of what transpired during the phone conversation were specifically pleaded in the Defence, and whilst it was stated in the plaintiff's reply that a telephone conversation did take place, there was no

Version No 1: 27 Oct 2020 (22:40 hrs)

mention of this telephone conversation in Lin's AEIC. Lin testified during cross-examination that despite this omission in his AEIC, he would not have told Pang that the purpose of the survey was for internal renovation, and gave the following elaboration:

> As in, for me, when I had a conversation with Mr Pang, that was to engage him and talk about doing the survey for the---the---the proposed project. And I knew that it was going to be a development similar to what we have done previously, and that was the primary intention. So I would not have mentioned to him that I wanted to do a renovation of internal---for internal purposes.

21 When pressed during cross-examination as to why this case was not advanced in his AEIC, Lin explained that in his AEIC he was merely stating things that were "clearly initiated by [him] and done by [him]", and which were from his "point of view". In re-examination, Lin stated that he could not recall what transpired during the phone conversation but it probably concerned the "making [of] arrangements to meet onsite to do the survey itself", and that he could not have said that the plaintiff intended to convert the Shophouse into a pub as the plaintiff did not have the necessary management expertise, even though the plaintiff had converted previous shophouses into restaurants and other businesses.

22 The issue of the nature of the contract turned ultimately on the veracity of Pang versus that of Lin. I was satisfied on the balance of probabilities that Pang's version of events was the truthful one. His evidence of the phone conversation that took place was detailed in his AEIC, and was also consistent

Version No 1: 27 Oct 2020 (22:40 hrs)

with his responses during cross-examination by the plaintiff's counsel. On the other hand, Lin appeared to have little recollection of the conversation, and had failed to advance in his AEIC the position that he took on cross-examination, namely that he could not have told Pang what was alleged since the plaintiff had been contemplating redevelopment of the Shophouse and not merely internal renovation. This omission in Lin's AEIC was particularly glaring since the phone conversation was specifically pleaded in the Defence, and was central to the issue for determination. I also noted that the plaintiff provided no corroborating evidence that it had already formed the intention to redevelop the Shophouse by constructing an extension block at the time the quotation was obtained, whereas Pang's evidence was somewhat corroborated by the low quotation price of $2,800. By way of contrast, the first defendant's quotation for the Purvis Street project was for $19,000, although I recognised that the two surveys were different in nature, in that the Purvis Street survey was a post-construction survey for purposes of a contemplated strata sub-division application rather than a topographical and measurement survey.

23 I was further persuaded by the evidence that Pang did not manage to gain access to the roof for measurement purposes, as Lin had informed him that he was unable to arrange for access since the second storey was occupied. The fact that Pang did not bother to measure the roof ridge location using a more accurate method, together with the lack of any dimensions indicated on the measurement drawings, suggested to me that he was indeed under the

Version No 1: 27 Oct 2020 (22:40 hrs)

impression that the measurement survey was solely for internal renovation purposes.

24 The plaintiff sought to rely on the fact that Pang had previously given quotations for the project at 6 Purvis Street, and that that particular project similarly involved a conservation shophouse behind which a six-storey block was to be built, as well as the fact that Pang was aware that the plaintiff was in the business of redeveloping conservation shophouses. I did not think that these suffice to show that the first defendant must have realised that the plaintiff had similar intentions as to the present project at the Shophouse in the light of specific evidence from the first defendant that the nature of the survey was discussed.

25 I therefore held on the totality of the evidence that the contract between the plaintiff and the first defendant was for internal renovation of the Shophouse.

26 The plaintiff had argued in the alternative that even if the first defendant had been engaged to conduct measurement surveys for the purposes of internal renovation, the drawings produced and the inaccuracies contained therein would nonetheless have rendered the first defendant liable under the contract, as the erroneous position of the roof ridge would have affected even internal renovations. I was not persuaded that this was indeed the case. Whereas Pang agreed on cross-examination that the position of the roof ridge would have

Version No 1: 27 Oct 2020 (22:40 hrs)

certain implications on internal renovations, such as if there had been plans to install wood panels on the walls from the floor to the ceiling, it did not flow from this that the internal renovations would have been adversely or materially affected. It is certainly conceivable that contractors will often have to make adjustments to their renovation works as they obtain more information on the ground, and it cannot be that all errors made during the surveying process no matter how insignificant would render the surveyor liable for such subsequent adjustments. In any case, the plaintiff has not sought to show that any such error would be a breach of the first defendant's contractual obligations and duty of care.

27 Although the parties adduced evidence from experts to give evidence on whether the first defendant ought to have more accurately indicated the location of the roof ridge on the survey drawing, I was of the view that this issue is not relevant given my finding that the contract between the parties did not oblige the first defendant to do this to within the degree of accuracy required by the plaintiff.

Conclusion

28 As such, given that the contract was for internal renovation and alterations, the roof ridge was an immaterial detail and its location on the measurement survey was within the range of accuracy that a measurement survey for such purposes required. This finding of fact also disposed of the claim in negligence as there was no duty of care on the first defendant to provide

Version No 1: 27 Oct 2020 (22:40 hrs)

what he was not contractually obliged to provide. Therefore I dismissed the action against the first defendant.

29 The first defendant brought to my attention that there was an offer to settle served by the first defendant on 23 February 2017 for the sum of $190,000. I therefore ordered for the plaintiff to pay costs to the first defendant on a standard basis from the date of the writ until 23 February 2017 and on an indemnity basis from 23 February 2017 to the date of the judgment.

Lee Seiu Kin
Judge

Lim Yee Ming and Lim Yu Jia (Kelvin Chia Partnership) for the plaintiff;
Tai Chean Ming and Lim Lian Kee (Chong Chia & Lim LLC) for the first defendant.

Version No 1: 27 Oct 2020 (22:40 hrs)