IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 73

District Court Appeal No 47 of 2021

Between

Siong Ann Engineering Pte Ltd

… *Appellant*

And

Pure Group (Singapore) Pte Ltd

… *Respondent*

JUDGMENT

[Contract – Formation - Offer and Acceptance]

Version No 1: 05 Apr 2022 (08:26 hrs)

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Siong Ann Engineering Pte Ltd
v
Pure Group (Singapore) Pte Ltd

[2022] SGHC 73

General Division of the High Court — District Court Appeal No 47 of 2021
Choo Han Teck J
24 February 2022

4 April 2022 Judgment reserved

Choo Han Teck J:

1 The respondent company is in charge of managing a project in Marina Bay Sands ("MBS") to covert a theatre into a restaurant and nightclub ("the Project"). The respondent's general manager, Jonathan Peter Coney ("Mr Coney"), led the respondent's team in managing the Project. Mr Coney was assisted by one Thomas Tan Boon Chin ("Mr Tan"), a senior project manager in the respondent's Malaysian office who was seconded to Singapore to assist with the Project.

2 The appellant, a company specialising in theatre engineering, bulk-handling systems and steel structural works, is one of the sub-contractors for the Project. Wong Chian Kok ("Mr Wong") is the business and development manager of the appellant. The respondent and the appellant entered into a number of sub-contracts for various types of works for the Project.

3 The dispute in this action relates only to the design, supply and installation of a temporary ramp to transport materials from the theatre entrance to the stage area ("Ramp Works"). Briefly, the appellant was under the impression that the respondent has accepted its quotation for the Ramp Works and therefore proceeded to fabricate the steel material needed to construct the ramp and delivered them to the worksite. However, the respondent claimed that no agreement for the Ramp Works had been reached, and therefore, rejected the materials and told the appellant not to proceed any further with the Ramp Works.

4 On 16 January, the appellant was asked by the respondent to submit a quote for the Ramp Works. Mr Tan informed Mr Wong that the ramp was needed urgently. On the same day, the appellant, via email, sent the respondent a quotation for the sum of $100,000 ("the 16 January Quotation").

5 Between 17 January and 1 February 2018, the parties discussed matters concerning the technical designs and specifications of the ramp, and revised requirements were made. The appellant submitted a revised quotation for the sum of $130,180.00 ("the 1 February Quotation").

6 On 3 February 2018, Mr Tan informed the appellant that the respondent "would like to have the temporary steel ramp completed by 16 February 2018". Mr Tan also requested for further details of the Ramp Works to be provided by 5 February 2018. Accordingly, the details were provided on 5 February 2018.

7 On 5 February, at 3.57pm, the respondent's Senior Project Director, Chris Potts ("Mr Potts") asked for further details such as the description of the works, quantity, unit and unit rates. The further details were provided in the quotation dated 5 February 2018 ("the 5 February Quotation"). The scope of

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work, price and other terms and conditions in the 5 February Quotation essentially mirrors the 1 February Quotation.

8 On 7 February 2018, at about 3.30pm, Mr Wong messaged Mr Coney via WhatsApp to ask when the appellant could commence the Ramp works. Mr Coney told Mr Wong to discuss the matter with Mr Tan but Mr Wong replied that Mr Tan's power is limited and that he will need Mr Coney's approval to get the works started. Mr Coney then said "I'll be going through the costs internally with [Mr Tan], you will have instructions tonight".

9 On 8 February, at 9.20am, Mr Tan sent an email to Mr Wong, stating "...Pls have the steel materials ready for your fabrication-installed by 23 Feb 2018, thanks." ("8 February Email"). Wong immediately acknowledged receipt of the 8 February Email, stating that "Ok noted Thomas, we will start to prepare the steelworks materials first ready for site installation".

10 On 9 February 2018, Mr Wong exchanged WhatsApp messages with Mr Coney ("9 February WhatsApp"). I set them out in full given their importance:

> Mr Wong: Hi [Mr Coney], today we have our engineering meeting to start the removal of the fire safety curtain in the theatre, &removal of the stage lift. We have begun fabricating the steelworks materials for the steel ramp & will get them assembled & installed after the fire curtain & stage lift are out …
>
> Mr Coney: Hi [Mr Wong] don't proceed with works that are not approved. Especially lobby hoarding I need to understand materials used.
>
> I'll call you after my meeting.
>
> The ramp to proceed however want to discuss the cost. Do not proceed with the hoarding or any other works only the items I have sent instructions for.

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> Mr Wong: Ok noted [Mr Coney], we were told to proceed for hoarding at stage rear only. The lobby hoarding we not yet started.
>
> For ramp we started, thanks [Mr Coney].
>
> Mr Coney: Yes the one at stage area is ok.

11 On 19 February 2018, there was further WhatsApp correspondence between Mr Wong and Mr Coney, as set out below ("19 February WhatsApp"):

> Mr Wong: Hi [Mr Coney], we have ready some of the steelworks for the ramp in our factory, possible to receive your PO, thanks Sir.
>
> Mr Coney: Sure it can be done tomorrow. Will you be around mbs?"

12 However, on 22 February 2021, Mr Coney emailed Mr Wong, stating "[p]lease do not do any further work on this until we discuss these works". Mr Coney's request for Mr Wong to stop further work was made after the respondent's structural engineer, Arup Singapore Pte Ltd ("Arup"), expressed concerns about calculations of the load capacity of the steel ramp.

13 The parties tried to resolve the matter but could not. The appellant then filed Adjudication Application No SOP/AA 435 of 2018 ("AA") and sought payment for the Ramp Works. The adjudicator determined that a total sum of $123,897.77 was payable to the appellant for the Ramp Works and the respondent paid the adjudicated sum to the appellant ("the Paid Sum"). Thereafter, the respondent commenced Suit No 35 of 2020 in the District Court against the appellant to recover the Paid Sum from the appellant.

14 The District Judge ("DJ") found that there was no agreement and that the Paid Sum must be returned to the respondent on the basis that the appellant was unjustly enriched. The DJ reasoned, *inter alia*, that:

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(a) Mr Tan did not have actual, implied or apparent authority to approve the Ramp Works on the respondent's behalf;

(b) there was no unqualified expression of agreement to the Ramp Work in the respondent's email correspondence with the appellant;

(c) the parties did not agree on the price of the Ramp Works, which is an essential term in the contract, without which there could be no agreement; and

(d) the respondent did not issue purchase orders or site instructions for the Ramp Works, which is inconsistent with the respondent's past practices when it approved the works of the appellant.

15 The appellant appealed against the DJ's decision. On appeal, the appellant says that the DJ has erred in finding that there was no agreement for the Ramp Works. The appellant says that the respondent has accepted the 5 February Quotation in the 8 February Email, with the agreed price being $130,180.00. The appellant further says that this acceptance is supported by the preceding and subsequent exchange of emails and WhatsApp messages between the parties. The appellant is not pursuing its claims on the basis of unjust enrichment and *quantum meruit* for this appeal. I am of the view that there was an agreement between the parties and that the respondent did instruct the appellant to proceed with the Ramp Works. My reasons are as follows.

16 First, the respondent, in the 8 February Email, expressly instructed the appellant to have the steel materials ready for fabrication and to have the ramp installed by 23 February 2018. The respondent says that the phrase "have the steel materials ready for fabrication" does not mean the same thing as "fabricate now". However, the same email instructed the plaintiff to install the metal ramps

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by 23 February 2018, which I find to be clear instruction for the appellant to commence work to meet the tight deadline.

17 The respondent further argues that the sender of the 8 February Email is Mr Tan and that Mr Tan has no actual, implied or ostensible authority to enter into the contract for the Ramp Works on behalf of the respondent. However, I am of the view that it is immaterial whether Mr Tan has the authority to enter into contracts on behalf of the respondent. The instructions for the appellant to commence the Ramp Works came from the respondent, including Mr Coney.

18 This is clear when one considers the 8 February Email in the context of the facts. On 7 February, Mr Wong chased Mr Coney for instructions to commence the Ramp Works. Mr Coney wrote to him in the 7 February WhatsApp to discuss the matter with Mr Tan. Mr Coney also said that that he will be going through the costs internally with Mr Tan and that the appellant will receive instructions that night. This suggests that Mr Coney would be considering the price overnight with Mr Tan and will shortly thereafter issue instructions to the appellant regarding the Ramp Works. Seen in this context, the 8 February Email sent by Mr Tan the next morning was a follow-up on Mr Coney's instructions of the previous day. A reasonable reader would come to the conclusion that Mr Coney had discussed the price overnight with Mr Tan and had no objections to the appellant commencing the Ramp Works.

19 Second, the respondent's acceptance of the Ramp Works is supported by the parties' subsequent exchange of emails and WhatsApp messages. In the 9 February WhatsApp, Mr Wong expressly told Mr Coney that the appellant has begun fabricating the steelworks materials for the steel ramp and will get the materials assembled and installed in due time. Mr Coney did not ask the appellant to stop the fabrication work. Instead, Mr Coney said, "the ramp to

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proceed however want to discuss the cost". Following that, Mr Wong replied "[f]or ramp we started", explicitly telling Mr Coney that the Ramp Works have already commenced. Mr Coney, once again, did not object or ask Mr Wong to stop the Ramp Works. The absence of any objections on the part of Mr Coney, despite being explicitly informed on two occasions that the appellant had commenced the Ramp Works, suggests that the parties have come to an agreement for the Ramp Works.

20 The respondent says that Mr Coney's instructions to proceed with the Ramp Works in the 9 February WhatsApp was qualified by the phrase "however want to discuss the cost". The respondent says that this meant that there was no agreement on the price, and hence, there was no agreement for the Ramp Works. I disagree. As seen from the subsequent correspondence between the parties, even when Mr Coney was informed on numerous occasions that the appellant had commenced Ramp Works, he did not raise any objections as to the costs of the Ramp Works. Although silence ordinarily is no consent, in the context of the facts, Mr Coney no longer had his reservations about the price once the Ramp Work has started with the actual knowledge and consent of the respondent without protest.

21 This was further buttressed by the 19 February WhatsApp in which Mr Wong updated Mr Coney on the progress of the Ramp Works and provided photographs of the steel materials that had been fabricated. In the same conversation, Mr Wong asked for Mr Coney to issue a purchase order, to which Mr Coney replied "[s]ure it can be done tomorrow". Again, Mr Coney did not express surprise, nor did he object to the Ramp Works on the ground that there was no agreement as to the price. Instead, Mr Coney readily agreed to issue the purchase order the next day without raising any reservations about the price of the Ramp Works.

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22 For the aforementioned reasons, I am of the view that there is a concluded agreement between the parties in relation to the Ramp Works and that the respondent has agreed to the appellant's 5 February Quotation. I therefore allow the appellant's appeal and order the respondent to pay the appellant the price for the Ramp Works in the 5 February Quotation, which amounts to $130,180.00.

23 I will hear parties on costs at a later date if they are unable to agree on costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Tan Tee Jim SC and Tan Jin Yong (Lee & Lee) for the appellant;
Kelvin Chia Swee Chye (Lumen Law Corporation) for the respondent.

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