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

[2023] SGHC 298

Originating Application No 867 of 2023

Between

H P Construction &
Engineering Pte Ltd

… *Claimant*

And

Mega Team Engineering
Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Building and Construction Law — Dispute resolution — Adjudication — Building and Construction Industry Security of Payment Act 2004 — Setting aside — Interpretation of s 13(3)(*a*)]
[Statutory Interpretation — Interpretation Act — Applicability to s 13(3)(*a*) of the Building and Construction Industry Security of Payment Act 2004]
[Statutory Interpretation — Statutes — Building and Construction Industry Security of Payment Act 2004]

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H P Construction & Engineering Pte Ltd
v
Mega Team Engineering Pte Ltd

[2023] SGHC 298

General Division of the High Court — Originating Application No 867 of 2023
Philip Jeyaretnam J
9 October 2023

23 October 2023

Philip Jeyaretnam J:

1 The Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) ("SOPA") provides a regime for the determination and enforcement of interim payments for construction work that operates in accordance with strict timelines and time periods. This matter concerned one such period, namely the period within which an adjudication application must be made under s 13(3)(*a*) of SOPA. The question was whether the seven-day period to file an adjudication application after the entitlement to do so arises includes or excludes that day.

2 The claimant, H P Construction & Engineering Pte Ltd, applied to set aside an adjudication determination made under SOPA in favour of the defendant, Mega Team Engineering Pte Ltd. I dismissed the claimant's

application and give my reasons below to provide guidance to future parties utilising the adjudication regime set out in SOPA.

3 The claimant had engaged the defendant to supply labour under a sub-contract in relation to a building and construction project.[1] Pursuant to this sub-contract, the defendant submitted a payment claim to the claimant on 30 May 2023, which the claimant was required to respond to by 20 June 2023. The claimant failed to do so and consequently, the seven-day dispute settlement period commenced: see s 12(2)(*b*) read with ss 11(1) and 12(6) of SOPA. The dispute settlement period ended on 27 June 2023, by which time the claimant had still not provided a payment response to the defendant's payment claim.[2] Subsequently, on 6 July 2023, the defendant made an adjudication application under s 13 of SOPA.[3] The adjudicator issued his determination on 21 August 2023.[4]

4 On 28 August 2023, the claimant filed the present application for the determination to be set aside on two grounds:

> (a) *per* s 27(6)(*d*) of SOPA, as the adjudication application was made after the end of the prescribed period for making it under s 13(3)(*a*) of SOPA; and/or

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1 Soh Yan Teng's Affidavit dated 28 August 2023 ("Soh Yan Teng's Affidavit") at para 6.

2 Soh Yan Teng's Affidavit at para 9.

3 Soh Yan Teng's Affidavit at pp 105–111.

4 Soh Yan Teng's Affidavit at pp 113–166.

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(b) *per* s 27(6)(*e*) of SOPA, as the adjudicator failed to recognise patent errors in the adjudication application, in contravention of his duties as set out in ss 17(2) and (4) of SOPA.

5 In relation to the first ground, s 12(2) of SOPA provides that the right to make an adjudication application arises "if, by the end of the dispute settlement period, the dispute is not settled or the respondent does not provide the payment response, as the case may be". Parties agreed that the dispute settlement period ended on 27 June 2023.[5] Thus, the defendant became entitled to make the adjudication application on 28 June 2023. The issue before me concerned the requirement that an adjudication application "must be made within 7 days after the entitlement of the claimant to make an adjudication application first arises under section 12": see s 13(3)(*a*) of SOPA.

6 The claimant submitted that as the defendant's right to make an adjudication application arose on 28 June 2023, the seven-day period under s 13(3)(*a*) of SOPA commenced on 28 June 2023 at 0000hrs. By way of an aside, 29 June 2023 was a public holiday, and consequently (as parties agreed) this day was excluded from the calculation of the seven-day period. The defendant was, in the claimant's submission, therefore required to make the adjudication application by 5 July 2023 at 2359hrs. As the defendant only made the application on 6 July 2023, the claimant submitted that it was made out of time and hence the determination should be set aside pursuant to s 27(6)(*d*) of SOPA, *ie*, the adjudication application was not made in accordance with SOPA. Pursuant to s 16(2) of SOPA, an adjudicator must reject an adjudication application that is not made within the time period prescribed by s 13(3)(a).

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5 Minute Sheet for the hearing on 9 October 2023 at p 1.

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7 The claimant's interpretation of s 13(3)(*a*) of SOPA differed from that of the adjudicator, who held that the claimant's entitlement to make the adjudication application "first arose on 28 June 2023, and the 7-day period to lodge the [a]djudication [a]pplication was to commence on 29 June 2023 … and would therefore end on 6 July 2023".[6]

8 The claimant highlighted that:

(a) a guide on application timelines under SOPA published by the Building and Construction Authority depicts the seven-day period as including the day on which entitlement arose in an infographic;[7] and

(b) a checklist issued by the Singapore Mediation Centre as part of the form used to make an adjudication application states that the adjudication application should be made within seven days of the expiry of the dispute settlement period,[8] which would therefore include the day on which entitlement arose.[9]

9 The defendant submitted that the seven-day period commences the day after entitlement arises, and does not include the day on which it does so. The defendant noted that the adjudicator's interpretation is consistent with the decision in *YTL Construction (S) Pte Ltd v Balanced Engineering & Construction Pte Ltd* [2014] SGHC 142 ("*YTL*"). Further, the defendant relied on s 50(*a*) of the Interpretation Act 1965 (2020 Rev Ed) (the "IA").[10]

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6 Soh Yan Teng's Affidavit at p 139, at para 91.

7 Soh Yan Teng's Affidavit at p 171.

8 Soh Yan Teng's Affidavit at p 191.

9 Claimant's Written Submissions dated 2 October 2023 ("Claimant's Written Submissions") at paras 40–41.

10 Defendant's Written Submissions dated 2 October 2023 at paras 3.2.1–3.2.5.

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10 In *YTL*, Tan Siong Thye J stated at [36] that the dispute settlement period there ended on 7 October 2013 and the entitlement to make the adjudication application arose on 8 October 2013, with the seven-day period commencing the day after and therefore ending on 15 October 2013. There is no indication that the point was argued before him however, and a difference of a day would not have mattered in that case.

11 Turning to s 50(*a*) of the IA, this states that "unless the contrary intention appears — a period of days from the happening of an event or the doing of any act or thing is deemed to be exclusive of the day on which the event happens or the act or thing is done". The day on which the entitlement arose should therefore, unless a contrary intention appears, be excluded from the seven-day period.

12 The claimant submitted that s 50(*a*) of the IA ought not to apply to the interpretation of s 13(3)(*a*) of SOPA because, first, there is no need to apply s 50(*a*) of the IA to ensure that a claimant under the SOPA regime enjoys the full seven-day period.[11] Second, applying s 50(*a*) of the IA would result in an "absurd outcome" because parties making an adjudication application would be conferred a period of eight days as opposed to seven days as provided for by s 13(3)(*a*) of SOPA.[12] Both of these arguments simply begged the question of how the provision should be interpreted. There is nothing absurd about the proper interpretation permitting the adjudication applicant a period of eight days after the expiry of the dispute settlement period, which equates to seven days after the day on which entitlement arose.

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11 Claimant's Written Submissions at paras 24–27.

12 Claimant's Written Submissions at para 28.

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13 At one point, the claimant suggested that the position described in *YTL* would mean that the adjudication applicant cannot make the application on the day the entitlement arises, and such an interruption would be absurd. I agree that such an interruption would be absurd but there is no basis for contending that there is any such interruption. The question is only how to compute the continuous period for making an adjudication application.

14 I disagreed with the claimant's submissions. In my view, the ordinary meaning of s 13(3)(*a*) of SOPA may be approached in two steps. The first step is to answer the question, "when does the entitlement arise?". As a matter of ordinary language and common sense, would the entitlement be said to arise on the *day* following the end of the dispute settlement period, or upon the *second or minute* following the end of the dispute settlement period? SOPA makes no mention of seconds, minutes, or times of day, only of *days*. The SOPA regime operates in days. This context of the time periods adopted within SOPA itself leads the ordinary reader to the conclusion that the entitlement arises on the day and not at any particular time on that day. To have a day to do something after that would mean a complete day. The second step is then to consider what is meant by the phrase the adjudication application "must be made within 7 days *after* the entitlement of the claimant to make an adjudication application first arises under section 12" [emphasis added]. Thus, as a matter of ordinary language, the seven-day period *after* the entitlement arises will commence on the day after.

15 The English common law on the computation of time from a certain date has been summarised by Chan Seng Onn J in the case of *Suresh s/o Suppiah v Jiang Guoliang* [2016] 4 SLR 645 ("*Suresh*"), where he was considering the computation of limitation periods. Counsel for the claimant referred to this case and sought to draw support from the exposition in dicta of a possible exception

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to the general rule. The general rule at common law was that the day of the event was excluded from the computation of the period within which a person must act upon that event. The possible exception was said to be where a cause of action technically accrues between two dates: see *Suresh* at [53]. For my part, I would not conceive of an untimed moment existing between two dates, or between any two time periods. Any moment of time, for the purpose of human reckoning, must be within one day or another, and not between them. Conventionally, midnight may belong to the preceding date, but the first split second after midnight belongs to the next day.

16 The common law rule (using the word rule in its broad sense) springs from a conventional assumption that people make, when given a number of days to complete a task, an assumption that arose in the age before everyone had their own means of keeping accurate time. That common law rule found expression in s 50(*a*) of the IA. This section supports the work of legislative draftsmen by facilitating the economical use of language when describing time periods. While I would not go so far as to say that the contrary intention needs to be express, it must certainly be clear. I do not discern any contrary intention in SOPA that justifies not applying s 50(*a*) of the IA to the interpretation of s 13(3)(*a*) of SOPA. Counsel for the claimant also failed to point me toward any material that substantiated his claim that applying s 50(*a*) was contrary to parliamentary intention relating to SOPA.

17 It follows that the BCA's infographic and the SMC's checklist referred to above at [8] do not accurately reflect the correct position that the day on which the entitlement to make an adjudication application arises is excluded from the seven-day period provided by s 13(3)(*a*) of SOPA. I also observe that they make different errors. One fails to exclude the day on which entitlement arises in computing the seven-day period, while the other starts the seven-day

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period after expiry of the dispute settlement period instead of the statutory provision for seven days after entitlement arises.

18 Turning to the second ground of alleged failure to recognise patent errors, the claimant submitted that the adjudicator failed to satisfy himself on a positive basis that the defendant had a *prima facie* case for the value of its claim.[13] In my view, this was not a case where the errors as alleged could be said to be obvious, manifest, or otherwise easily recognisable. One alleged patent error concerned the claim for payment in relation to drilling of starter bars. The claimant contended that the terms of the sub-contract obliged the defendant to install the starter bars prior to concrete casting, and to bear the cost of drilling post-casting unless this was "through no fault of the [defendant]'s own".[14] While the adjudicator did not deal expressly with this point, there was relevant material before him that he was entitled to take into account, including the fact of previous certification of this type of work in allowing the claim. The second alleged patent error concerned alleged inconsistencies in the documents. For this point, the adjudicator considered at length the sufficiency of the evidence provided by the defendant to prove its claim.[15] In reality, both points went to the merits of the determination which the adjudicator undertook in accordance with his duties under s 17 of SOPA. They did not begin to rise to the level of obvious or manifest errors. Neither were they otherwise easily recognisable errors.

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13 Claimant's Written Submissions at paras 46–47.

14 Soh Yan Teng's Affidavit at p 221.

15 Soh Yan Teng's Affidavit at p 144, at paras 108–109, and p 146, at para 115.

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19 For these reasons, I dismissed the claimant's application to set aside the determination and ordered costs of $13,000 all-in to the defendant.

20 Finally, pursuant to s 27(5) of SOPA read with O 36 r 3(2) of the Rules of Court 2021, the claimant furnished security of the sum payable under the determination, excluding the costs incurred by the adjudication. Given my decision, I made the consequential order for the security furnished to be released. If necessary, the defendant may apply pursuant to s 27 of SOPA to enforce the determination as a judgment or an order of court. During the hearing, the claimant's solicitors informed me of the claimant's intention to appeal against my decision and made an oral application for a stay of the enforcement of the determination. As there was no material in support of such a stay, I made no order on the oral application and told counsel that if an application for stay is filed with supporting material, it will be heard on its merits.

Philip Jeyaretnam
Judge of the High Court

John Lim Kwang Meng, Ng Kai Ling and Lee Yu Xin Audrey
(LIMN Law Corporation) for the claimant;
Joseph Tay Weiwen, Swah Yeqin, Shirin and Claire Tan Su Yin
(Shook Lin & Bok LLP) for the defendant.

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