

Gladioli Investments Pte Ltd v Montien International Limited and Another
[2003] SGHC 148

Case Number : Suit 1522/2002, RA 111/2003
Decision Date : 11 July 2003
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Andrew Ang (Rajah & Tann) for the plaintiff; Steven Lee (Hilborne & Co) for both defendants
Parties : Gladioli Investments Pte Ltd — Montien International Limited; Endang Utari Mokodompit

Contract – Contractual terms – Ambiguity in the provisions of sale and purchase agreement – Two conflicting clauses providing for different rates of interests payable in event of default – Whether extraneous documents may be adduced to shed light on intention of parties.

1 This matter was commenced as a writ action by the vendor of 69,576,000 ordinary shares of \$1 each in the capital of a company called Bugis City Holdings Pte Ltd, for the total price of \$185,042,810. The sale and purchase of these shares were made pursuant to a comprehensively drafted Sale and Purchase Agreement ('the Agreement'). The action was brought against the purchaser, as the first defendant. The second defendant, an Indonesian citizen was sued as a guarantor to the first defendant.

2 The main terms of the Agreement were as follows. Under cl 3(B)(1) the first defendant had to pay the sum of \$132,042,810 on the date of completion. Clause 3(B)(2) provided that the sum of \$38,000,000 was to be paid in six instalments and to that end, a schedule was agreed. It will be useful to set out the schedule:

<u>Instalment</u>	<u>Sum (\$\$)</u>	<u>Date</u>
(i)	7,500,000	6 months after Completion Date
(ii)	7,500,000	12 months after Completion Date
(iii)	7,000,000	18 months after Completion Date
(iv)	6,340,000	24 months after Completion Date
(v)	4,830,000	30 months after Completion Date
(vi)	4,830,000	36 months after Completion Date

In addition, the parties had agreed to a sum of \$15,000,000 described as the 'Deferred Consideration' and that was to be paid together with the payment of the sixth instalment, together with interest at 1.5% per annum.

3 The purchaser defaulted and the vendor sued in this action. Judgment was obtained on the outstanding principal debt in an application under O 14(2) of the Rules of Court. The purchaser did not challenge the principal debt amounting to \$53,000,000 but disputes the vendor's claim in respect of the interests accrued. The deputy registrar gave judgment for the principal sum and ordered interests to be calculated at the rate of 3% per annum pursuant to cl 3(B)(2) which was worded in these terms:

In addition, the purchaser shall pay to the vendor interest on each of the sums referred to in the foregoing provisions of this paragraph (2) which is outstanding, at the rate of three per cent per annum for the period beginning on the completion date and ending on the date of receipt by the vendor of such sum (both before and after judgment), such interest to be calculated on the basis of a year of 365 days and the actual number of days elapsed and shall be payable by reference to successive interest periods of six months' duration so that such interest shall be paid together with any such sum to be paid in accordance with this paragraph (2).

4 The vendors appealed. Mr Andrew Ang appearing on their behalf submitted that the interest payments should be calculated at the rate of 15 per cent per annum pursuant to cl 3(C). That clause is worded as follows:

In the event that the purchaser fails or neglects to pay any of the instalments (or the interest on any such instalment) referred to in paragraph (2) of sub-clause (B) above or the Deferred Consideration (or the interest on the Deferred Consideration), the vendor may, but shall not be obliged, extend the time for payment and the purchaser shall pay to the vendor default interest on the outstanding amount then due to the vendor, at a rate of 15 per cent per annum for the period beginning on its due date and ending on the date of its receipt by the vendor (both before and after judgment). The default interest shall be calculated on the basis of a year of 365 days and the actual number of days elapsed.

5 Counsel accepts that cl 3(B)(2) and cl 3(C) are contradictory to each other. When the purchaser defaults he has to pay interest but either he pays 3% or 15%. It cannot be both, yet in the two provisions in question, the clause stipulated that the rate applies 'both before and after judgment'. At this point, it is also pertinent to note the default clause in cl 6(B). It provides as follow:

If at any time and for any reason (and whether within or beyond the control of any party to this agreement) any event of default has occurred then at any time thereafter, whether or not any event of default is continuing, the vendor may (but without prejudice to any rights which it may have under the BCH Charge and the personal guarantee) by notice to the purchaser declare such part of the purchase consideration still outstanding, all unpaid accrued interest and any other sum then payable under this agreement to be immediately due and payable, whereupon they shall become so due and payable.

6 In the general scheme it would appear that once an event of default is called, all outstanding sums including interest becomes due and payable. Thus, if one were to ignore cl 3(C) for the moment, in the event of default the purchaser has to pay all outstanding principal amount as well as interest at 3% as stipulated in cl 3(B)(2). What then is the import of cl 3(C)?

7 Mr Ang suggested that the intention of the parties was to confer a discretion on the vendor in the event of a default by the purchaser to extend time for payment instead of exercising its right to call in the entire outstanding debt inclusive of interest but in that event, cl 3(C) enables it to charge interest at 15% per annum. That is a plausible suggestion but it is not entirely clear from the text because both cl 3(B)(2) and cl 3(C) demand interest, one at 3% and one at 15%, before and after judgment. Both envisaged a situation of default. In my view, the phrase 'both before and after judgment' ought to be deleted from one or both clauses, but ideally from cl 3(B)(2). If it is deleted from both clauses, a separate and clearer provision must be incorporated to deal with interest payable after an event of default. Furthermore, in exercising its rights under cl 3(C) the vendor ought to notify the purchaser that it is exercising its rights under cl 3(C) and not the default or any other clause. However, these are substantive matters that must be expressly incorporated into the agreement and cannot be implied or re-written by the court. By a separate summons-in-chambers Mr

Ang sought to admit a memorandum of understanding signed between the vendor and purchaser for the purposes of understanding the terms in cl 3(B)(2) and 3 (C). The Agreement appears to be a complete and conclusive agreement and was drawn up by solicitors. No extraneous document, be it a memorandum of understanding or a draft contract, should therefore be used for interpreting the manifest text of the Agreement because the parties must, unless expressly agreed otherwise, have intended that the written contract that they had signed to be the authoritative version. This is a principle endorsed in the law of evidence. Neither favour nor reassurance may be received from sources outside the text. Thus, in the circumstances, where the provision relating to the rate of interest payable (after judgment had been obtained) is ambiguous, the deputy registrar correctly ruled in favour of the judgment debtor. The ambiguity arose from the draftsmanship of the text prepared by the vendor's previous solicitors. Furthermore, as cl 3(C) in itself is applicable only where the vendor had exercised its discretion to extend time for payment instead of its other rights, for example, under cl 6, and no notice or evidence that it had done so was proved, cl 3(C) is inapplicable in the instant case. Accordingly, the appeal was dismissed.

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