United Eng Contractors Pte Ltd v L & M Concrete Specialists Pte Ltd [2000] SGHC 74

Case Number : Suit 1523/1998

Decision Date : 28 April 2000

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Tan Siak Hee/Ramalingam Kasi [S H Tan & Associates] for the plaintiffs; Desmond Ong/Intekhab Khan [J Koh & Co] for the defendants

Parties : United Eng Contractors Pte Ltd — L & M Concrete Specialists Pte Ltd

JUDGMENT:

GROUNDS OF JUDGMENT

1 In this action, the plaintiffs who were employed by the defendants as sub-contractors to carry out rectification works and supply the materials as required in respect of Hilltop Apartments, Singapore claimed the sum of $385,008.32 being the balance due for work done and materials supplied. In response, the defendants denied owing any sum to the plaintiffs and counter-claimed the sum of $400,637.53 against the plaintiffs. This was the balance of what the defendants in their amended Defence and Counterclaim loosely described as "back charges" (as to which I will revert later).

2 At the conclusion of the trial I decided that the plaintiffs had proved their claims of $340,008.32 but not the claim for "Preliminaries" of $45,000.00. Of the so-called "back charges", the plaintiffs admitted that $52,037.20 were due and payable to the defendants for the work done and materials supplied by the plaintiffs which the plaintiffs had done and supplied for them and these were identified as those items which were the subject-matters of 5 invoices. The invoice numbers were identified as CS/059/0197, CS/009/0197, CS/005/0157, CS/030/0397 and CS/015/0397. Accordingly, on the third day of the trial, I entered "judgment for the defendants for $52,037.20 in extinguishment of the [claims under] the 5 invoices **as parties have agreed"** (words within square brackets and emphasis added). As this admitted amount was a liquidated sum, it was a compensating debt and the defendants were allowed by me to set-off this debt from his debt of $340,008.32 which I found due and payable by them to the plaintiffs. They were mutual debts which I had determined and they mutually cancelled each other out in respect of each party' respective causes of action: see *Hua Khian Ceramics Tiles Supplies Pte Ltd v Torie Construction Pte Ltd* [1992] 1 SLR 884. Accordingly, judgement was entered for the plaintiffs in the reduced sum of $287,971.12. As the plaintiffs had failed in their claims for Preliminaries, which should not have taken the time it did and for other reasons which I will deal with later, I awarded to them 80% of the costs. However, the defendants were ordered to pay to the plaintiffs interest at 6% on the sum of $287,971.12 from the date of writ up to payment.

3 Instead of dismissing the defendants' counterclaims which they defectively described in their Defence and Counterclaim as "back-charges", I only struck them out for the reasons which will be set out later. In announcing my decisions, I took pains to state to the parties that the defendants were at liberty to institute fresh proceedings to claim for labour and materials allegedly supplied by them to complete the rectification works as set out in the affidavit in chief filed on behalf of the defendants.

4 On 17 February 2000 the plaintiffs filed a Notice of Appeal against the orders I made. I now set out the history and nature of the pleadings, the facts which emerged and the reasons which led to the orders made.

The claim

5 The plaintiffs filed the writ on 2 September 1998 and they claimed against the defendants the sum of $385,008.32 for work done and materials supplied under the sub-contract. The final contract sum was stated to be $757,605.22 inclusive of GST. The previous payments of $372,596.22 was deducted. The claim was the balance. The defendants filed their Defence and Counterclaim on 7 September 1999. Para 2 of the Defence and Counterclaim averred, quite defectively, that "the true accounts between the plaintiffs and the defendants" were as follows:

Value of work done	$637,113.45
Non-provision of Performance Bond	($2,500.00)
Retention Fund	($15,865.34)
Contra Charges	($657,641.08)
Previous payments made	($361,744.56)
Sum owing to the defendants	($400,637.53)

The Counterclaim

6 On the first day of the hearing, counsel for the defendants applied to amend the Defence and Counterclaim. The original para 2 was renumbered para 3 and it read as followings:

"The Defendants aver that the true accounts between the Plaintiffs and the Defendants are as follows:

Original value of work done	$550,663.32
Add	
Certified variations	$97,771.39
Total Value of Work done	$648,434.71
Add GST 3%	$19,453.04
Sub Total	$667,887.75
Less	
	($348,238.57)
Back charges	
Less GST 3%	($10,447.16)
Sub Total	
	($358,685.73)
	($372,596.90)
Previous payments made	
Sum owing to the defendants	($63,394.88)

7 The defendants explained that the amendments which reduced their claims came about as a result of their settlement with their employers and owners of the apartments. The defendants' claim for liquidated damages which was not pleaded in their Defence & Counterclaim, but which was claimed in

the affidavit of Tan Chye Seng filed on their behalf was withdrawn. As the application was not opposed, I granted the application to amend.

8 As expected, plaintiffs' counsel applied to strike out various paragraphs of the affidavit evidence in chief of both Tan Chye Seng and S R Sivakumar which were filed on behalf of the defendants. They were all set out in the plaintiffs' submissions on this preliminary issue. I need not repeat them. They all relate to what has been defectively and ambiguously described as "Back Charges" in the sum of $348,238.57 plus GST. It was a much reduced figure compared to the original claim of "Contra Charges" of $657,641.08. The constituent items, as elaborated in the two affidavits in question, were in substance claims for special damages. The amounts were quantified. But the causes of action and the material particulars were not pleaded at all. There was no averment that there was a breach of the material terms of the sub-contract. The alleged defective works, both in terms of nature and extent, were not identified. According to counsel for the defendants, the defendants had to compensate owners of the apartments in Hilltop Apartments and part of the "Back charges" was made up of the compensation which the defendants alleged by way of affidavit evidence they had to pay to the owners of the apartments. All these different claims were unhelpfully compressed under the master item described as "Back Charges".

9 It is a settled rule of procedure under O18 r. 7 of the Rules of Court that "every pleading must contain, and contain only, a statement in summary form of the material facts on which the party pleading relies for his claim…": see *Banner Investments Pte Ltd v Hoe Seng Metal Fabrication & Engineers (S) Pte Ltd* [1997] 1 SLR 461. Plainly, the verbal shorthand "Back charges" did not disclose any cause of action and ran foul of the rule. It is also settled rule of procedure that I could not hear any evidence led in any affidavit evidence in chief and proceed to make material findings on matters not pleaded: see *United Malayan Banking Corp Bhd v Masagoes* [1994] 1 SLR 766. The plaintiffs' application to strike out the paragraphs in the two affidavits was allowed with cost.

10 After striking out the paragraphs because the causes of action were not pleaded or because they were special damages and were not pleaded, I had two courses open to me: either to dismiss the counterclaim or to strike it out with liberty to the defendants to institute fresh proceedings. I decided on the latter course, having regard to all the circumstances. In the preceding interlocutory proceedings between them, the defendants had deposed to the nature of their counterclaims. The defendants had attempted to answer them in those proceedings. On the first day of the trial, plaintiffs' counsel in fact told me that he was "prepared to meet the defendants' counterclaims for materials and labour allegedly supplied". But he indicated that he was not in a position to meet any other claims such as for special damages or for the price of materials supplied as a result of the alleged breaches of the sub-contract by the plaintiffs. He did not have the causes of action and the particulars. He did not apply for an order to dismiss the counterclaims which were described vaguely as "Back Charges" and did not take up the point about striking out the relevant paragraphs in question on the ground that they had not been pleaded. Instead parties wanted to negotiate and settle their disputes over this project as well as those involving another project at the Sinsov Building.

11 The plaintiffs took the further step of negotiating and agreeing with the defendants that they would accept liability and quantum over the five invoices mentioned above but they disputed the rest.

12 It is true that all issues between the parties to a piece of litigation should be disposed off and in principle it is wrong to truncate a trial and have parts of what are actually one transaction, broadly speaking, tried by more than one action. Hence the res judicata rule that a judgment after a trial settles the issues and all other issues which would to have been raised, tried and adjudicated upon. I was prepared to depart from this general rule because of the conduct of the plaintiffs who had, in a sense, led the defendants on with the not unreasonable expectation that they would defend the

counterclaim, having in substance known what they were, although they were not pleaded. I was not willing to allow a further amendment by the defendants to elaborate on and plead the "Back Charges" according to the usual rules of pleadings because (1) the documents and the affidavits were not organised; and (2) there were no particulars of the special damages. An adjournment would have been one way to get the case ready for continued trial. But in my judgment, it was far neater for the defendants to institute fresh proceedings on the counterclaim and it was only responsible on my part to deal with the claims.

13 I now turn to my rejection of the plaintiffs' claim of $45,000 under Bill 1 for "Preliminaries and General." In the plaintiffs' offer of 30 May 1996 which appeared in the FINAL SUMMARY, they added by words in handwriting the following: "(For Supervision Costs only)" for which they put down the figure of $82,500.00. The defendants' award contained the FINAL SUMMARY which had the item "PRELIMINARY AND GENERAL" and the amount put against it was $45,000.00.

14 I concluded that the plaintiffs' earlier and limited meaning ascribed to this item, which in this business usually covers a contractor's site office, site staff, own tools and machinery and transport of workers, was never at any time accepted by the defendants. Their award, which was accepted by the plaintiffs who proceeded with the works on the basis of the award, must therefore in this respect carry the usual meaning.

15 It was also contended on behalf of the plaintiffs that the defendants did not object to the plaintiffs' definition of what constituted "preliminaries and general". That was in one sense true as a matter of fact. But that was beside the point. The defendants did not accept the definition by repeating them. As the words were omitted, that expression must be taken as referring to the ordinary preliminary and general items in any building contract.

16 In fact, in an earlier affidavit affirmed by Eng Meng Chor on 27 October 1998 he deposed under para 14.4(4) that the preliminaries of $45,000.00 were for "transporting of workers, own tools and machinery, site office and site staff". The claim of the plaintiffs was based on the provision of two site supervisors (one of whom included Mr Eng himself) who kept an eye on the work of the plaintiffs' sub-contractors. No evidence was led by the plaintiffs regarding transport of workers, provision of own tools and machinery, site office (of which there was none provided in fact) and site staff. The plaintiffs' claim therefore was not proved.

17 As there is no appeal against my decision allowing the claims of the plaintiffs, I need only say that it was refreshing to hear the defendants' witnesses honestly admitting the claims of the plaintiffs.

Lai Kew Chai

Judge