

Veria Engineering & Development Pte Ltd v Lam Hong Leong Aluminium Pte Ltd
[2002] SGHC 277

Case Number : DCA 34/2002/D
Decision Date : 22 November 2002
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Chia Ti Lik [Chia Ngee Thuang & Co] for the appellants; David Ong [David Ong & Co] for the respondents
Parties : Veria Engineering & Development Pte Ltd — Lam Hong Leong Aluminium Pte Ltd

Judgment

GROUND OF DECISION

1. The appellants were employed by the respondents as the main contractor in the building and alteration of some workshops and a factory at 29 Jurong Port Road. A dispute arose over the certification of work by the architect. Consequently, the appellants commenced a suit in the District Court claiming a sum of \$138,000 from the respondents as money wrongly deducted by the latter. The respondents filed a defence and counter-claim. Judgment was given in favour of the appellants for the sum of \$138,000 and some other smaller amounts at the end of the trial. This appeal only concerned the respondents' counter-claim.

2. The trial judge awarded a sum of \$56,858.06 to the respondents in respect of their counter-claim. The amount originally pleaded was \$63,914.06 but counsel conceded that part of this sum could not be maintained and claimed the lesser sum instead. The facts relating to the counter-claim are as follows.

3. The respondents say that they had issued a credit note (CN03/0298) in favour of the appellant amounting to \$72,271.94 believing that various invoices were erroneously drawn up and issued to the appellants. However, they subsequently realised that there was no error and therefore the credit note itself was erroneously issued. To right matters, a debit note, DN 5805A was issued for the purpose of cancelling out the said credit note. The amount awarded by the trial judge to the respondents in respect of the counter-claim was the figure taken from DN 8505A. The appellants appealed against that order on the ground that DN 8505A was not issued in good faith in that by 26 August 1998 all relevant monetary matters relating to CN03/0298 had been resolved and compromised. Consequently, there was no basis for the respondents to issue DN 5805A to recover a debt that had been settled and resolved.

4. Mr. Ong, counsel for the respondents, submitted that the dispute really hinged on the meeting between Mr. Lim of the appellant company and Miss See of the respondent company on 26 August 1998. Counsel submitted that at this meeting the parties had agreed to settle their account subject to the verification of CN03/0298 by the respondents. This assertion was strenuously challenged by Mr. Chia for the appellants. Mr. Chia sought to persuade me that it was illogical for the parties to settle the account leaving out claims relating to DN 8505A. Furthermore, counsel submitted that subsequent to the meeting of 26 August, the respondents conducted themselves as if DN 8505A did not exist. He said that the respondents continued to make other payments owing by the respondents to the appellants without asking for a set-off against the money due to them by reason of DN 8505A.

5. It is obvious that the dispute between the parties was over the question of what was agreed

at the meeting of 26 August 1998 between Mr. Lim and Miss See. It is purely a question of fact. Mr. Chia's submission may have a point in that the version he attributed to his clients may sound sensible, but I cannot say that the respondents version was therefore incredible. In the circumstances, it must be left to the trier of fact to sieve the grain from the chaff. In this case, the trial judge had considered the two opposing versions and adjudged in favour of the respondents. In doing so, the judge had concluded that Mr. Lim was - to put it mildly - an unreliable witness. Nothing by way of what Mr. Chia had drawn my attention to in this appeal is sufficient to overcome the impression and finding of the trial judge as to which of the two witnesses is to be believed. Mr. Chia argued that the trial judge ought not to have allowed Miss See to give oral evidence beyond her evidence in the affidavit of evidence-in-chief because as a representative of the respondents she had the benefit of sitting in court. As a result, Mr. Chia contended, the trial judge failed to make allowance for the opportunity that Miss See had in tailoring her evidence to suit the respondents' case. Mr. Chia also submitted that Miss See was evasive under cross-examination, but the judge found Mr. Lim to be the evasive one; so, not having observed either, I must defer to the judgment of one who did.

6. For the reasons above the appeal was dismissed.

Sgd:

Choo Han Teck

Judicial Commissioner