Bing Integrated Construction Pte Ltd *v* Eco Special Waste Management Pte Ltd (Chua Tiong Guan and another, third parties) and another suit
[2010] SGHC 183

Case Number	: Suit No 605 of 2006X and Suit No 606 of 2006B (Consolidated pursuant to an Order of Court dated 5 September 2007)
Decision Date	: 30 June 2010
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: Pavan Kumar Ratty (P K Ratty & Partners) for the plaintiff; Peter Gabriel, Kelvin David Tan Sia Khoon, Shannon Ong Pan Yew, Calista Peter (Gabriel Law Corporation) for the defendant; Bala Chandran s/o A Kandiah and Tan Teng Muan (Mallal & Namazie) for the 1st third party; Loo Khee Sheng (KS Loo & Co) for the 2nd third party.
Parties	: Bing Integrated Construction Pte Ltd — Eco Special Waste Management Pte Ltd (Chua Tiong Guan and another, third parties)

BUILDING AND CONSTRUCTION LAW

30 June 2010

Chan Seng Onn J:

Introduction

1 The plaintiff was at all material times the main contractor engaged by the defendants to carry out building construction work at two plots of land. It brought two suits, *viz* Suit No 605 of 2006 ("Suit 605") and Suit No 606 of 2006 ("Suit 606"), against ECO Special Waste Management Pte Ltd ("ECO SWM") and ECO Resource Recovery Centre Pte Ltd ("ECO RRC") respectively, to recover payment for work done, services rendered and materials supplied for two projects which the plaintiff had undertaken at the defendants' request ("the ECO SWM project" and "the ECO RRC project"). Suit 605 and Suit 606 were consolidated on the application of the defendants in Summons 1660 of 2007. The consolidated action was tried before me on the issue of liability only, pursuant to a consent order entered by the parties on 15 November 2007, in Summons 5045 of 2007.

2 At the close of the plaintiff's case, both ECO SWM and ECO RRC submitted that there was no case to answer and therefore did not call any evidence of their own. Both defendants also withdrew their counterclaims against the plaintiff and their claims against the 2nd third party, with the prohibition that the defendants would not subsequently commence any fresh proceedings against the plaintiff and the 2nd third party on the same matters. Consequently, I only needed to deal with the plaintiff's claim against ECO SWM and ECO RRC.

3 On 29 April 2010, I held that:

(a) ECO SWM and ECO RRC were each liable to pay the plaintiff an outstanding sum for the value of all the plaintiff's work done, services rendered and materials supplied, inclusive of variation works, to both defendants, pursuant to written contracts dated 3 November 1997 and 19 November 1997 respectively ("the Contracts").

(b) The Architect's Penultimate Certificates dated 3 August 2006 do not reflect the full value of work done, services rendered and materials supplied, inclusive of variation works, under the Contracts as at the date on which the certificates were issued.

(c) The outstanding sum payable by ECO SWM was to be determined by the Registrar hearing the assessment in accordance with the terms of the written agreement between the parties and the Architect's Letter of Award, both dated 3 November 1997, as exhibited at pages 34 to 111 of the affidavit of evidence-in-chief of Chua Chin Giap filed on 1 December 2009. Accordingly, if re-measurement was required, the rates applied should be that stated in the December 1997 Issue No. 30 copy of the fixed schedule of rates published by the Public Works Department, as per cl 2.3 of the Letter of Award from AC Partnership to the plaintiff dated 3 November 1997.

(d) The outstanding sum payable by ECO RRC was to be determined by the Registrar hearing the assessment in accordance with the terms of the contract and the Architect's Letter of Award, both dated 19 November 1997, as exhibited at pages 351 to 426 of the affidavit of evidence-in-chief of Chua Chin Giap filed on 1 December 2009. Accordingly, if re-measurement was required, the rates applied should be that stated in the September 1997 Issue No. 29 copy of the fixed schedule of rates published by the Public Works Department, as per cl 2.3 of the Letter of Award from AC Partnership to the plaintiff dated 19 November 1997.

(e) ECO SWM and ECO RRC could not rely on the lack of Final Architect's Certificates to deny payment to the plaintiff since both the Architect and the Quantity Surveyor were appointed by the defendants.

(f) Any amount already paid by the defendants to the plaintiff would be deducted from the total amount determined by the Registrar to be payable under each contract for all the work done, services rendered and materials supplied, inclusive of variation works, by the plaintiff.

4 The defendants have since appealed and I now set out the grounds of my decision.

Discussion and analysis

5 The plaintiff's claim was for the specific sums of S$721,442.88 (from ECO SWM) and S$1,543,449.51 (ECO RRC), or alternatively for a quantum meruit. Given that the trial before me was only on the issue of liability, I found that there was no need for the plaintiff to prove, at this stage, that the specific sums were outstanding on the contract. It was sufficient for the plaintiff to prove that there are (unspecified) sums of money still owing from the defendants to the plaintiff for work done, services rendered and materials supplied by the plaintiff to the defendants.

6 The plaintiff's claim was based on work done, services rendered, and materials supplied to the defendants pursuant to the Contracts. I accepted the evidence of Chua Chin Giap ("PW1"), a director of the plaintiff who testified on its behalf, that the Contracts were valid and binding on the defendants.

The prescribed mode of payment

The prescribed mode of payment

7 The Contracts contained a Letter of Award each. The Letters of Award specified a contract sum for each project (which was subject to measurement of actual work done). The contract sum for the ECO SWM project was S$11,132,417.45. The contract sum for the ECO RRC project was S$14,696,227.15. Clause 1.4 of both Letters of Award provided that the Final Contract Sum payable to the plaintiff by the defendants would be measured by a Quantity Surveyor, Mr Chng Chwee Leng ("Mr Chng") of CCL Chartered Surveyors ("CCL"), upon completion of work and valued according to agreed rates. Both Contracts adopted the Singapore Institute of Architects Articles and Conditions of Building Contract (Measurement Contract) Reprint 1997 Edition ("the SIA Articles and Conditions"), the terms of which required the work done by the plaintiff to be valued on a re-measurement basis.

8 The manner of payment is set out in various terms in the Contracts, the Letters of Award, and the SIA Articles and Conditions. Clause 6.1 of the Letters of Award provided that payment to the plaintiff shall be made within 30 days from the date of receipt of its application and that the works shall be valued up to the end of each month. Condition 31 of the SIA Articles and Conditions provided for interim payments to the plaintiff upon the issuance of Interim Certificates by the Architect appointed under the Contracts, Madam Tan Meow Hwa of AC Partnership ("the Architect"), who would be assisted by the Quantity Surveyor, Mr Chng, in all matters of valuation or re-measurement under the terms of the Contracts.

9 Condition 31(9) provided that the plaintiff shall submit a final claim (supported by documentation) to the Architect and copied to the Quantity Surveyor. Condition 31(10) provided that within 3 months of receipt of such final claim, the Architect shall issue a Final Certificate. However, condition 31(11) made clear that no certificate of the Architect shall be final and binding in any dispute between the plaintiff and the defendants, whether before an arbitrator or in the courts. Further, condition 37(3) read with condition 37(4) provided that the court, when making its final award in a dispute, *will not be bound by the Architect's certificate or refusal to issue a certificate*, but may, instead, *substitute its own decision on the basis of the evidence before and facts found by it*.

Evidence relating to payment

10 It was undisputed that the Architect issued the following certificates in respect of the ECO SWM project:

Certificate No.	**Date**	**Value of Plaintiff's Work**
1	10 March 1998	$5,119,856.62
2	3 August 1998	$6,527,269.54
3	9 November 1998	$7,782,417.45
4	24 July 2006	$7,782,417.45
Penultimate	3 August 2006	$7,782,417.45

and the following certificates in the ECO RRC projects:

Certificate No.	Date	Value of Plaintiff's Work
1	10 March 1998	$2,262,111.11
2	3 December 1998	$2,737,403.46
3	26 March 1999	$2,987,796.02
4	29 April 1999	$3,777,931.03
5	17 June 1999	$4,851,985.78
6	23 July 1999	$6,131,389.29
7	19 August 1999	$7,639,242.98
8	16 September 1999	$8,107,209.24
Penultimate	3 August 2006	$8,107,209.24

11 The Architect did not issue the Final Certificate in respect of either the ECO SWM project or the ECO RRC projects. This was despite the fact that the plaintiff had rendered a Final Account (Remeasurement) dated 20 April 1999 for work done in respect of the ECO SWM project to the Architect, CCL and ECO SWM. [note: 1] This stated that the final contract sum was S$7,918,183.20. The plaintiff had also rendered a Final Claim, dated 24 May 2006, for its work done for the ECO RRC project, to the Architect, CCL and ECO RRC. [note: 2] This valued the total amount of work done at S$9,952,474.83. After deducting the P.C. and Provisional Sums of S$1,111,707.65, the value of work done by the plaintiff for the ECO RRC project was (according to its Final Claim) S$8,840,767.18. The figures of S$7,918,183.20 for the ECO SWM project and S$8,840,767.18 for the ECO RRC project corresponded with the total contract sum stated in Statements of Final Account rendered by CCL dated 9 March 1999 (and confirmed and signed by PW1 on behalf of the plaintiff on 31 March 1999) [note: 3] and 27 November 2001 [note: 4] respectively.

12 Separately, PW1 claimed that, throughout the duration of the plaintiff's performance of the contracts, he was never required to produce a certificate from the Architect before the plaintiff was entitled to interim payment. According to him, whilst the plaintiff had made progress claims to the Architect and certificates were issued by the Architect throughout the performance of both contracts, the defendants' payments under both contracts never corresponded with any of the Architect's certificates. PW1 explained that this was why, when the projects were completed, the plaintiff did not chase the Architect for any final payment certificates. However, as acknowledged by the defendants, the plaintiff had, a couple of months prior to the commencement of these proceedings, sought to obtain the Final Certificates from the Architect but the Architect only issued Penultimate Certificates in response to the plaintiff's requests. I accepted PW1's evidence to be true. It appeared, from the plaintiff's testimony that the projects were undertaken with a high degree of informality such that the defendants made interim payments not on the basis of certificates issued by the Architect but as a result of private negotiations and agreement directly between the defendants and the plaintiff. The defendants did not call any evidence to rebut this.

Findings

13 It was not disputed that the ECO SWM project and the ECO RRC project have both been

completed. However, the defendants disputed the plaintiff's claim that the value of its work exceeded the amount stated in the Penultimate Certificates.

14 In its submissions, the plaintiff said that its claim was proved by two Quantity Surveyor reports prepared by CCL ("CCL report(s)"), one in respect of each project. The CCL report in respect of the ECO SWM project was dated 9 March 1999. The CCL report in respect of the ECO RRC project was dated 27 November 2001. The plaintiff had requested, at the trial, that Mr Chng attended Court as a witness and Mr Chng had confirmed the existence of the CCL reports. However, it emerged from Mr Chng's evidence that the measurements of work done under the contracts, as reflected in the CCL reports, were carried out by one Jimson Chew, who was not called to testify. Moreover, the CCL report dated 27 November 2001 was signed by one Florence Chew, who was also not called to give evidence. Since the makers of the CCL reports was not called to give evidence, the CCL reports could not be admitted into evidence as proof of their *contents*. Nevertheless, I found that the value of the plaintiff's work exceeded the amount stated in the Penultimate Certificates for the reason below.

15 The *existence* of the CCL reports dated 9 March 1999 and 27 November 2001 indicated that the valuation of the work done by the plaintiff was ongoing even after the value of the Architect's Certificates stopped increasing, *i.e*. since the issuance of the Architect's Certificates dated 9 November 1998 for the ECO SWM project, and 16 September 1999 for the ECO RRC project. This, coupled with the fact that no Final Certificate had been issued by the Architect for each project gave rise to the necessary inference, and supported the plaintiff's testimony, that the Architect's Penultimate Certificates did not accurately reflect the full value of work done under both contracts.

16 The defendants submitted that the issuance of a Final Certificate by the Architect was a condition precedent for payment under the contract. I held that the defendants were not entitled to rely on the lack of a Final Certificate by the Architect to deny payment to the plaintiff since the Architect and the Quantity Surveyor (*ie*, CCL) were both appointed by the defendants under the contracts and the defendants had failed to ensure that the value of work done by the plaintiff was properly measured and/or certified despite the plaintiff's submissions of detailed claims to the Architect, CCL and the defendants (see [11] above). Additionally, according to the evidence of PW1, which I accepted, the dealings between the defendants and the plaintiffs were highly informal and payments were never made on the basis of the Architect's Certificates.

Conclusion

17 In my judgment, therefore, the plaintiff had established *prima facie* evidence to support its claim that the value of the work done by it was more than what was stated in the Penultimate Certificates and paid to it by the defendants. I ordered that the costs of the action were to be reserved to the Registrar hearing the assessment of the amounts owed by both defendants to the plaintiff.

[note: 1] AEIC of Chua Chin Giap at 225.

[note: 2] AEIC of Chua Chin Giap at 482.

[note: 3] AEIC of Chua Chin Giap at 114.

[note: 4] AEIC of Chua Chin Giap at 428.