

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 213

Suit No 788 of 2018

Between

Winstech Engineering Pte Ltd

... Plaintiff

And

Shanghai Chong Kee Furniture
& Construction Pte Ltd

... Defendant

JUDGMENT

[Building and Construction Law] — [Sub-contracts] — [Claims by sub-contractor]

[Contract] — [Breach]

[Contract] — [Privity of contract]

[Contract] — [Contractual terms] — [Implied terms]

TABLE OF CONTENTS

INTRODUCTION.....	1
WRITTEN AGREEMENT	2
ORAL AGREEMENT	3
REMAINING CLAIMS.....	6
CONCLUSION.....	8

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Winstech Engineering Pte Ltd
v
Shanghai Chong Kee Furniture & Construction Pte Ltd

[2019] SGHC 213

High Court — Suit No 788 of 2018
Lee Siu Kin J
19, 20, 22, 23, 27 August 2019

12 September 2019

Judgment reserved.

Lee Siu Kin J:

Introduction

1 The plaintiff in this dispute is Winstech Engineering Pte Ltd. The defendant is Shanghai Chong Kee Furniture Construction Pte Ltd. Sometime in 2015, the defendant was engaged as the main contractor of a hotel project at 23 Middle Road (“the Project”).¹ The defendant engaged JDK Construction Pte Ltd (“JDK”) as its main sub-contractor for the Project. In March 2016, JDK sub-contracted the installation of mechanical & electrical engineering (“M&E”) works for the Project to the plaintiff. This was done by way of a letter of award dated 23 March 2016.²

¹ Statement of Claim (Amendment No 1), para 4; Defendant’s Closing Submissions, paras 4-6.

² Plaintiff’s Bundle of Documents Volume 1 (“1 PB”) 1-18.

2 The plaintiff now claims against the defendant in contract. Paragraph five of its amended statement of claim (“SOC”) clearly pleads that the letter of award is a written contract (“the Contract”). It is the plaintiff’s case that the defendant breached the Contract by failing to provide the full extent of a line of credit (“LOC”) specified in cl 1(2) therein.³

3 Separately, paragraphs six and seven of the SOC describe a discussion involving a Ms Pauline Lau (“Pauline”), the defendant’s procurement and contracts director, and presumably (it is not expressly stated) representatives of the plaintiff, about an agreement that the defendant would provide a LOC of up to \$600,000 to the plaintiff. The implication here (again it is not expressly stated) is that there was also an oral agreement entered into during that discussion for the defendant to provide the LOC.

4 I shall examine the plaintiff’s claims in turn.

Written agreement

5 The Contract is a document entitled “Letter of Award” and dated 23 March 2016. It emanates from JDK and is addressed to the plaintiff. It awards a sub-contract to the plaintiff for the supply and installation of “Airconditioning & Mechanical Ventilation, Electrical, Fire Protection and Plumbing, Sanitary and Gas works” for the sum of \$2.35m. The document was signed by a representative of JDK and, under the “Accepted By” section, by Mr Wan Leong Sin (“Wan”), a director of the plaintiff.⁴

³ Statement of Claim (Amendment No 1), para 8.

⁴ 1 PB 3.

6 The Contract is clearly made between the plaintiff and JDK. The only mention of the defendant is a provision in cl 1 of the Contract which sets out the scope of works. Item two states as follows:⁵

Supply of Airconditioning & Mechanical Ventilation, Electrical, Fire Protection and Plumbing, Sanitary and Gas works (Line of Credit to be issued by Shanghai Chong Kee Furniture & Construction Pte Ltd)” for the sum of \$600,000.

7 The plaintiff relies on this statement to somehow render the defendant contractually bound to provide the LOC. In my view, it does not do so. The Contract binds only the parties to it. This term, at most, binds JDK to procure the LOC from the defendant. The defendant cannot be bound under the Contract to the plaintiff to provide this LOC as it is not a party to the Contract.

Oral agreement

8 Paragraphs six and seven of the SOC, on the face of it, do not expressly plead that there was an oral contract between the parties. Indeed, the plaintiff’s evidence is as enigmatic as its SOC.

9 During the trial, Wan set out the background behind the plaintiff’s involvement in the Project. He initially had a discussion with Pauline concerning the plaintiff taking the M&E sub-contract for the Project directly from the defendant. However, Pauline told him that the defendant had sub-contracted the entire contract to JDK. It would be necessary for the plaintiff to sub-contract from JDK.⁶ Wan said that Pauline had agreed, on behalf of the defendant, to provide a “line of credit” to the plaintiff of up to \$600,000. Based

⁵ 1 PB 1.

⁶ Wan’s Affidavit of Evidence-in-Chief (“AEIC”), para 16.

on this assurance, which was bolstered by the plaintiff's existing business relationship with the defendant, the plaintiff entered into a sub-contract for the M&E works from JDK. Wan explained that the purpose of the LOC was to provide financing to the plaintiff to procure equipment for the M&E sub-contract.

10 Initially, things went according to plan. In the course of the works, the plaintiff obtained an advance payment of \$100,000 from JDK, as well as direct payment by the defendant to one equipment supplier in the sum of \$107,094.⁷ However after this, the plaintiff was not able to obtain any further financial assistance. Wan said that he had to secure the necessary financing, including taking out loans, to procure the rest of the equipment. Works continued and by early April 2018, the entire sub-contract was about 95% completed. In addition, the plaintiff had completed variation orders ("VO") for which the plaintiff submitted invoices totalling about \$437,000.⁸ Wan agreed that all \$600,000 worth of equipment had been delivered and installed and this sum had been incorporated in the 16 progress claims submitted by the plaintiff up to April 2018. On 24 April 2018, the defendant terminated the sub-contract with JDK, purportedly on account of delay to the works, including M&E works. JDK and its sub-contractors, including the plaintiff, were locked out of the site.

11 Although Wan claimed that Pauline had told him that the defendant would provide the LOC, the details are hazy and he did not set out exactly what Pauline had told him. It is also unclear who else was present at the meeting and when it occurred. What is more important is that in replies filed by the plaintiff

⁷ 1 PB 128-129.

⁸ Wan's AEIC, p 25.

to further and better particulars (“F&BP”) requested by the defendant, the plaintiff, in answer to the question “whether the Alleged Agreement was made in writing, orally and or by conduct...”, replied that the agreement was made in *writing*.⁹ And to the question “if the Alleged Agreement was orally made or agreed upon who were the persons involved in and the date(s) of the relevant conversation”, the plaintiff replied that this was “not applicable”.¹⁰ Subsequent to the filing of this response to the F&BP, the plaintiff amended its SOC. However, not only did the plaintiff fail to amend the F&BP, Wan actually reaffirmed it by incorporating those replies in his affidavit of evidence-in-chief. He also confirmed during cross-examination that the plaintiff took the position that there was no oral contract between the parties.

12 It is also telling that the plaintiff’s requests for financing were made to JDK, rather than the defendant.¹¹ These requests related not just to the LOC but also to requests for payment for the VO works.¹² It is clear that the plaintiff considered these outstanding sums to be payable by JDK. This puts paid to the plaintiff’s case that the defendant had a binding contractual obligation to the plaintiff to provide the plaintiff with up to \$600,000 LOC.

13 I should add that the plaintiff’s position in relation to the LOC is rather confused. Wan agreed that the LOC was provided in the Contract for the purpose of enabling him to procure the \$600,000 worth of equipment that the plaintiff was to install under the Contract. Financing was provided to the

⁹ Wan’s AEIC, p 10.

¹⁰ *Ibid.*

¹¹ 1 PB 49-50, 59-60; Defendant’s Closing Submissions, paras 48-49.

¹² See for *eg*, 1 PB 119.

plaintiff on two instances amounting to a total of \$207,094. But it stopped after that. To the plaintiff's credit, it was able to procure other sources of financing to secure the delivery of the remainder of the equipment to the site, and to complete 95% of the works under the Contract. Yet, the plaintiff is not claiming for damages for the failure to provide the balance of the LOC which, under the circumstances, would be the financing costs it incurred to procure the remainder of the equipment. Its claim appears to be cash, in the sum of the balance of the LOC, *ie*, \$392,906.¹³ Such a claim is wholly misconceived. Even if the defendant were the party obliged to provide the plaintiff with the LOC, the plaintiff's claim should be for the damages sustained from the failure to provide the LOC.

Remaining claims

14 The SOC also claims for outstanding progress payments of about \$465,000 as well as VO claims of about \$437,000.¹⁴ There is no basis for these claims as they arise from the Contract which is between the plaintiff and JDK. Certainly in relation to the outstanding progress payments of \$465,000, the plaintiff has not pleaded as to how this was incurred. Paragraphs one to nine of the SOC plead to the \$600,000 LOC and the \$437,000 in VO claims. Paragraph 10 of the SOC then states that:

As a result of the above the Plaintiffs suffered losses and damages ... as follows:

- i. outstanding progress payments at S\$465,767.25;
- ii. Variation Orders payments at S\$437,440.21
- iii. outstanding Line of Credit at S\$392,906/-

¹³ Statement of Claim (Amendment No 1), para 10(iii).

¹⁴ Statement of Claim (Amendment No 1), paras 10(i) and (ii); Wan's AEIC, para 12.

iv. other costs:

15 It is clear from this that the plaintiff has not stated its case in relation to the \$465,000 in outstanding progress payments. As for the VOs, the plaintiff has not produced any VO in evidence. *Prima facie*, these would have been issued by the architect to defendant, who, pursuant to its sub-contract with JDK, would have passed it on to JDK who in turn would have passed it on to the plaintiff pursuant to the Contract. The plaintiff has not produced any evidence to prove its claim for the VOs. In any event, the plaintiff's involvement in the Project is as the sub-contractor of JDK and therefore, *prima facie*, the plaintiff's execution of the VOs would be carried out pursuant to the Contract. It is therefore JDK that is liable to the plaintiff in respect of the VOs (and for that matter, in respect of the outstanding progress payments as well). The plaintiff has not produced any evidence to displace this position. In fact, as I have alluded to above, it appears that the plaintiff was cognisant of this fact.

16 Finally, the plaintiff's witnesses placed much reliance on instructions given to them by Mr Jonathan Liow ("Liow") and Mr Darryl Lim ("Lim").¹⁵ There is no dispute that Liow and Lim were employees of JDK. The plaintiff's witnesses said that as Liow and Lim had attended site meetings as representatives of the defendant, and in fact had email addresses with the defendant's domain names in addition to the domain name of JDK, the plaintiff had considered that their instructions emanated from the defendant. I accept the defendant's evidence that it is normal in the situation where party A has sub-contracted the entire building works to party B, party B would represent party A in all dealings with the employer and his consultants. It would therefore be

¹⁵ Wan's AEIC, pp 12-14.

normal for JDK's personnel to attend site meetings and attend to the consultants as the defendant's representatives. However as between JDK and the plaintiff, the Contract clearly sets out their contractual relationship. I do not believe the assertions of the plaintiff's witnesses that they were misled into thinking that instructions from Liow and Lim were instructions from the defendant and not from JDK.

Conclusion

17 The plaintiff's claims are therefore dismissed. Unless there is any reason, such as the existence of an offer to settle, to make a different order, I order costs to be paid by the plaintiff to the defendant fixed at \$100,000, inclusive of disbursements.

Lee Seiu Kin
Judge

K V Sudeep Kumar (S K Kumar Law Practice LLP) for the plaintiff;
Chia Swee Chye Kelvin and Bernard Tan (Lumen Law Corporation)
for the defendant.
