

Cheng Poh Building Construction Pte Ltd v First City Builders Pte Ltd
[2002] SGHC 272

Case Number : Suit 438/2002/J, RA 175/2002
Decision Date : 19 November 2002
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Intekhab Khan [J Koh & Co] for the plaintiffs; Tang Gee Ni [Chia & Tang] for the defendants
Parties : Cheng Poh Building Construction Pte Ltd — First City Builders Pte Ltd

Judgment

GROUND OF DECISION

1 This is a limited appeal. The plaintiff is appealing against such part of my decision made on 15 August 2002 as decided that there be a stay on the judgment sum of \$580,782 and that the costs of the Registrar's Appeal No. 175 of 2002 be in the cause. On 17 July 2002 the Senior Assistant Registrar ordered that final judgment in favour of the plaintiffs be entered against the defendants in the sum of \$580,782 with costs fixed at \$4,000. But he granted unconditional leave to the defendants to defend the balance of the claims, in the amount of \$566,958.62.

2 In ordering a stay of execution of the judgment sum of \$580,782 I exercised the discretion conferred on me by Order 14 Rule 3(2) of the Rules of Court, 1997 Ed. ("the Rules") which provides that in summary judgment proceedings "the Court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment... until after the trial of any counterclaim made or raised by the defendant in the action".

3 In *Sheppards & Co v Wilkinson & Jarvis* (1889) 6 T.L.R. 13 the Master of the Rolls said:-

"There might be either a defence to the Claim which was plausible, or there might be a counterclaim pure and simple. To shut out such a counterclaim if there was any substance in it would be an autocratic and violent use of Order XIV. The Court has no power to try such a counterclaim on such an application, but if they thought it so far plausible that it was not unreasonably possible for it to succeed if brought to trial, it ought not to be excluded."

4 Lindley L.J. in the same case was reported to have said "The counterclaim was by no means frivolous, and the defendants ought not to be shut out from trying it".

5 The discretion was exercised against the following background. In March 2001 Comfort Resources Pte Ltd ("the Employers") engaged the defendants as main contractors for the erection of a part single and part three storey building at No. 51 Shipyard Road, Singapore ("the Shipyard Road project"). By an agreement dated 13 September 2001 ("the Agreement") the defendants engaged the plaintiffs as their sub-contractors to complete the Shipyard project for the lump sum of \$1,895,250.00.

6 When defendants were paid against architects' certificates for the work done and materials supplied, defendants would in turn pay the plaintiffs less 5% for retention monies and 5% for the defendants' profit and attendance. In this action, the plaintiffs claimed against defendants the sum of \$1,147,740.62. The claim was readily admitted by the defendants but the defendants asserted that they had set-offs and counterclaims against the plaintiffs which would extinguish and exceed the claims of the plaintiffs. In respect of the Shipyard Road project, it was common ground that the plaintiffs had, in turn, sub-contracted certain works of the Shipyard Road project back to the defendants. The defendants specialized in steel modular formwork and the plaintiffs engaged them to carry out those works and some aspects of the Shipyard Road project. The fact that the defendants had carried out work and supplied materials were not controverted; only the quantum payable and whether there were defective works were questions and allegations raised by the plaintiffs. For the purposes of this limited appeal, it should be noted that it is no longer a live issue that the defendants had raised an arguable case for an equitable set-off and the

amount to be set-off against the plaintiffs claims is \$566,958.62.

7 It is also common ground that the plaintiffs had engaged the defendants to carry building works and supply materials in two other projects known as The Tuas Avenue Project and the Limau project. The defendants had also carried out Day Works, most of which were done at the two projects, plus Day Works carried out elsewhere at the request of the plaintiffs. The defendants asserted that their claims for these other work done and materials supplied, which had nothing to do with the Shipyard Road Project totaled \$758,162.39. These were claims made bona fide and they are plausible. As the claims stood, these set-offs would if successful overtop the balance of the claims of the plaintiffs which stood at \$566,958.62 for which conditional leave to defend was given.

8 I should at once note that the plaintiffs, whilst admitting that the defendants had done work and supplied materials for their account in the two projects and other Day Works, strenuously disputed that these were liquidated claims. In any case, they asserted counterclaims against the defendants for serious defects, particularly in the Limau project, for which the defendants were liable. For those two reasons, the plaintiffs disputed that the defendants had any enforceable legal set-offs to assert against the claims of the plaintiffs.

9 I now set out the reasons which persuaded me to order the stay of execution and to hold over the question of the cost of the appeal before me to be decided by the trial judge. First, it was evident that both parties had been carrying out work for and supplying materials to each other. On top of that, they had in effect been maintaining a very loose and informal running account, setting off or deducting each other's claims. The accounting for the Shipyard Road project was relatively straightforward in that payments were only due against architects' certificates. There was no such certification for the other works in the Tuas Avenue project and the Limau Project. The plaintiffs had not taken legal action until the filing of this action because the defendants had been carrying out work for and supplying materials to them. In the result, there developed the situation that the plaintiffs had a credit claim of \$566,982.62 in respect the Shipyard Road project but there is a credible cross claim of \$758,162.39. In the event that the plaintiff failed in their claims for the balance and if the defendants succeeds in their claims for the other three separate transactions, then the defendants would have a judgment which would more than cancel out the judgment sum. Not to have ordered a stay would have severely disrupted the previous management of their respective claims against the other which they had put in place and operated for months before the commencement of this action.

10 Secondly, in addition to maintaining the de factor status quo between the parties so far as settling their respective accounts were concerned, I did not think that the plaintiffs would suffer any significant prejudice if a stay was ordered. The prosecution of their claims could be expeditiously done and their case could come on very quickly. It was not likely that the defendants could delay matters in the light of the present efficient case management in our court system.

11 Thirdly, the enforcement of the judgment could cause severe disruptions to the business of the defendants. The plaintiffs had allowed their claims to accumulate to the huge sum of \$1,147,740.62. The defendants asserted that the reason why no action was taken by the plaintiffs was because the defendants had carried out for them and supplied to them materials in the other two projects, in addition to the Day Works which were ordered by the plaintiffs from time to time.

12 Having considered these reasons and the overall impression of the respective claims, I made the orders I did.

Sgd:

Lai Kew Chai

Judge

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