Teo Chin Lam v Lead Management Engineering & Construction Pte Ltd [2009] SGHC 23

Case Number : DC Suit 3286/2007, RAS 77/2008

Decision Date : 20 January 2009

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Andrew Hanam (Andrew & Co) for the plaintiff; Kenny Khoo (Ascentsia Law Corporation) for the defendant

Parties : Teo Chin Lam — Lead Management Engineering & Construction Pte Ltd

Res Judicata

Civil Procedure

20 January 2009.

Lai Siu Chiu J:

1 This case was an appeal from the District Courts on the issue of whether the doctrine of *res judicata* applied to proceedings between the same parties arising out of the same subject matter resolved in an earlier suit.

2 Teo Chin Lam ("the plaintiff") is the sole-proprietor of Singecon Engineering & Construction which business is the welding, fabrication and installation of piping works. Lead Management Engineering & Construction Pte Ltd ("the defendant") is a construction company which at the material time had been awarded a contract at Jurong's Manufacturing Building and Warehouse Zone II ("the MSD project").

3 The plaintiff was the defendant's subcontractor for seven projects between June 2006 and February 2007. One of these projects was to supply the defendant with labour (primarily fitters and welders) for the fabrication and installation of piping works for the MSD project.

4 Between 19 January 2006 and 22 September 2006, the defendant issued seven purchase orders to the plaintiff totalling $709,950.12 for the MSD project. The first purchase order was a lump sum of $400,000 for the subcontract while the remaining six purchase orders were for modifications, additional, commissioning and miscellaneous works for the MSD project.

5 The defendant claimed it had paid the plaintiff $640,050 in respect of all the works done (this was not disputed by the plaintiff). The defendant further alleged that the plaintiff then submitted a final claim in the sum of $66,885.35 for the balance due under the seven purchase orders. The plaintiff's invoice no. 07/001/LM dated 20 January 2007 for $66,885.35 contained the description *Final Claim for MSD Project No. MSDS5491* ("the Final Claim").

6 The plaintiff commenced Suit No. 370 of 2007 ("the first action") against the defendant on 15 June 2007 claiming the sum of $394,447.12 for the seven projects of which the sum of $68,678.12 was for work done for the MSD project. In the statement of claim, in relation to the MSD project, the plaintiff's invoices were variously dated between 18 June 2006 and 3 December 2006.

7 The defendant entered an appearance to the writ on 19 June 2007. On 20 June 2007, the

defendant's solicitors offered on a "without prejudice" basis to pay the plaintiff $350,000 in full and final settlement of his claim; the offer was not accepted. On 25 June 2007, the defendant through its solicitors forwarded to the plaintiff's solicitors a cheque for $396,447.12 in full payment of the sum claimed plus costs of $2,000. As the cheque should have been but was not issued in the plaintiff's favour and it did not include statutory interest or the plaintiff's solicitors' disbursements, the defendant's solicitors forwarded a fresh cheque as replacement in the sum of $397,664.42 to the latter on 2 July 2007 with a request that the writ be discontinued. A notice of discontinuance for the first action was then filed on 4 July 2007.

8 On 15 October 2007, the plaintiff commenced DC Suit No. 3286 of 2007 ("the second action") against the defendant. In the (amended) statement of claim, he claimed $188,151.00 in respect of five invoices ("the invoices") issued between 3 July 2006 and 4 October 2006 for providing labour for the MSD project, pursuant to an oral contract he had allegedly made with the defendant's assistant general manager Yeo Peng Kiat Avery ("Yeo") in June 2006.

9 The defendant in its defence disputed the claim on the basis that it had paid the plaintiff his claim for the MSD project in the first action in full and final settlement. It was contended that the invoices were not contracted for nor were they supported by the actual work done and/or they were double claims. In the further alternative, the defendant contended that the plaintiff was estopped from claiming under the invoices as the pleadings in the first action constituted a representation by the plaintiff that all his claims and rights relating to the MSD project were limited to the sum of $68,678.12 which the defendant had paid in full. The defendant then counterclaimed against the plaintiff a setoff of $177,967.00 as a further alternative.

10 In his reply and defence to the counterclaim, the plaintiff asserted that the invoices related to additional works that Yeo (who denied) had requested and for which the defendant was to (but failed) to issue purchase orders. The plaintiff alleged that it was expressly agreed between him and Yeo that the plaintiff would charge for all modification works based on the agreed hourly rates for workers and based on the number of hours worked as reflected in the workers' timecards. The plaintiff denied the defendant was entitled to a setoff as claimed.

11 The plaintiff deposed in his affidavit of evidence-in-chief ("the AEIC") that he did not want to include the invoices in the first action in the absence of purchase orders from the defendant. He had not been paid by the defendant for more than a year, he was in desperate need of funds and he did not want the first action to be delayed with a defence by the defendant that there were no purchase orders to support the invoices.

12 In the AEIC of the defendant's executive director Ng Cheng Chuan ("Ng") it was explained that the defendant delayed payment of the "Final Claim" to the plaintiff for the MSD project over concerns that the plaintiff was overcharging for the other projects which were the subject of the claim in the first action. Heng Swee Keng Roy ("Heng") the defendant's project manager filed an affidavit denying the plaintiff's allegation in [10]. In an earlier affidavit filed to oppose the plaintiff's application for Order 14 judgment, Yeo had similarly denied he had made any oral agreement with the plaintiff. Yeo had also denied that the claim in the second action was due to the defendant's failure to issue purchase orders, pointing out the plaintiff required the defendant to issue blanket purchase orders before he would commence work in order to avoid the very defence the plaintiff was alleging could have been raised by the defendant. Blanket purchase orders in the sums of $100,000 and $50,000 were indeed issued by the defendant to the plaintiff.

The proceedings below

13 The second action proceeded to trial after the plaintiff decided not to pursue his application for summary judgment. (His counsel was of the view that the defendant's show cause affidavits raised triable issues). On the first day of trial (11 June 2008), the defendant's counsel withdrew his client's counterclaim and as a preliminary issue, applied to strike out the second action on the basis of *res judicata*. As counsel for the plaintiff had no prior notice of the striking-out application, it was adjourned to another date.

14 On 4 July 2008, the striking-out application was heard and dismissed by the district judge. The defendant appealed to a judge in chambers in RAS No. 77 of 2008 ("the Appeal"). I heard and allowed the Appeal with costs and struck out the plaintiff's claim. The plaintiff being dissatisfied with my decision has (with leave of court granted in Originating Summons No. 1253 of 2008) filed a notice of appeal (in Civil Appeal No. 170 of 2008).

The decision

15 As was stated by the district judge in her grounds of decision ("GD") at [2008] SGDC 227, the issue is whether the doctrine of *res judicata* in the extended sense propounded by Wigram VC in *Henderson v Henderson* [1843-1860] All ER 378, applied so as to bar the plaintiff from making his claim under the invoices. In allowing the Appeal, I had disagreed with the district judge who held that it did not.

16 I will not repeat all the other facts extracted from the AEICs which were set out in the GD of the court below. Neither is there a need to refer *in extenso* to all the cases cited by the court below as I am in full agreement with the applicability of those cases.

17 What is noteworthy is that the court below (at para 20 of the GD) appeared to be greatly influenced by the plaintiff's allegation that the defendant had failed to pay him $394,447.12 for more than a year. That would mean that the court ignored the defendant's explanation given in Ng's AEIC (see [12]) as to why the defendant withheld payment on the Final Claim. In this regard, the court below had referred to the following extract from p 31 of Lord Bingham's judgment in *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 where he said:

> ... while I would accept that lack of funds would not ordinarily excuse a failure to raise in earlier proceedings an issue which could and should have been raised then, I would not regard it as necessarily irrelevant, particularly if it appears that the lack of funds has been caused by the party against whom it is sought to claim.

On the plaintiff's own case however, this allegation was untrue. The particulars of the plaintiff's invoices attached to the statement of claim showed he received periodic payments from the defendant up to invoices dated 18 November 2006, which was seven months before the first action was filed on 15 June 2007. By way of example, I refer to the plaintiff's invoice no. 06/111/LM dated 3 November 2006 for the MSD project. It was paid and so too were four other invoices for projects S5569 and 5543 for sums totalling $65,602.25 (invoices nos. 06/108/LM, 06/112/LM, 06/113/LM and 06/116/LM). It bears remembering that the plaintiff had received before 15 June 2007 payments totalling $640,050 from the defendant for the MSD project.

18 Far more significant was the lack of reference by the district judge to the plaintiff's invoice no. 07/001/LM dated 20 January 2007 (for the Final Claim) except in passing (at para 19 of the GD). Clearly, she must have overlooked its significance. Her comment there that 'it was not disputed that the defendant were aware of the claimed invoices" is neither here nor there. It was precisely for that reason that the defendant thought the plaintiff's claim on the invoices had been withdrawn or

subsumed when he presented his Final Claim. It bears noting that in the first action (see [6]), the plaintiff's claim for the MSD project was on invoices dated 18 June 2006 and ending on 3 December 2006. That being the case, it was reasonable of the defendant's three representatives particularly Ng (see [12]) to think (as invoice no. 07/001/LM was dated 20 January 2007), that the Final Claim was the last invoice the plaintiff was issuing for the MSD project, bearing in mind that the plaintiff's services to the defendant ended in February 2007. Consequently, the defendant assumed (not unreasonably) that their payment of the Final Claim was in full satisfaction of the plaintiff's work for the MSD project, until he commenced the second action.

19 The court below had placed too much weight on the plaintiff's excuse for not including the invoices in the first action *viz* that he did not want to face a defence of no purchase orders from the defendant. If that was indeed the plaintiff's thinking, it was incorrect. Even if the invoices in the second action had been included in the first action, the defendant may not necessarily have raised such a defence, successfully or at all. Further, the court could still have awarded summary judgment to the plaintiff on that part of his claim for which he could rely on purchase orders (on the ground of no triable issue) and allowed the (disputed) invoices not supported by purchase orders to go to trial. Such a practice is not uncommon.

20 However, it was also equally possible that had the plaintiff included the invoices in the first action, that the defendant may well not have voluntarily paid the plaintiff the sum of $68,678.12. The plaintiff's omission of the invoices from the first action and his commencement of the second action irreversibly prejudiced the defendant. His conduct in issuing the Final Claim and omitting the invoices from the first action led the defendant to believe he had no more claims for the MSD project. It would be an abuse of process at the very least even if *res judicata* does not apply, to allow the plaintiff to relitigate any claim pertaining to the MSD project.

21 In his AEIC (at para 37) the plaintiff deposed that he did not agree with Heng's reduction of the sums in his 23 quotations from $301,164 to $211,956.10 although he acknowledged the reduced sum. What he did not say was he had notified the defendant of his disagreement without which the defendant would have believed he accepted the reduced sum by his acknowledgement. In para 39 of his AEIC, the plaintiff deposed:

> ...we met again on Monday 18 December 2006.. Roy gave me a summary of his new prepared adjusted figures for the 23 quotations. This time slashing the sums to $144,206.70. I told Roy that I did not agree to this adjustments [sic] and that I expected to be paid on my invoices submitted based on the originally agreed labour rates. Roy wanted me to accept the computation at $144,206.70 which would mean that I would get nothing as I had already been paid $150,000.00.

while in para 40 he said:

> The Defendant issued two more Purchase Orders for $40,000 and $9,000 but these were for commissioning works. On 20 January 2007, I sent the Defendant an invoice for $66,885.35 which was the balance unpaid under the Defendant's purchase orders. I set out all the purchase orders that the Defendant had issued including the original lump sum contract of $400,000, the reduced lump sum contracts of $87,046 and $23,904.12, the $100,000 and the $50,000 Pos for modification and the $40,000 and $9,000 for commissioning works. From these totals, I deducted the payments received from the Defendant amounting to $640,050.00. The sum of $66,885.35 represents the balance under the combined purchase orders not paid out and does not represent the outstanding amount due to me under my unpaid invoices. The Defendant did not pay this amount of $66,885.35 to me in any event.

22 The plaintiff's statement in his para 40 was incorrect. He had been paid $68,678.12 which was more than the Final Claim sum; the payment was based on the total unpaid invoices set out in his statement of claim in the first action for the MSD project; the excess sum paid amounted to $1,792.77 ($68,678.12- $66,885.35). Counsel for the defendant had informed this court that the difference between the two figures was due to a discount of $3.014.77 plus $96. Unfortunately, the figures still did not tally. I note the defendant's submission that the defendant could not ascertain the total value of invoices issued by the plaintiff for the MSD project but that the plaintiff presented claims of not less than $896,783.12 in value.

The law

23 I turn next to the main authorities cited by the parties in particular *Henderson v Henderson* (*supra* [15]) and *Johnson v Gore Wood & Co (a firm)* (*supra* [17]). The plaintiff had argued that *Henderson v Henderson* did not apply as there was no adjudication by the court on the merits in the first action. I do not disagree that in *Henderson v Henderson*, Wigram VC referred to the prerequisite of adjudication by a court of competent jurisdiction for the doctrine to apply. At p 381 he said:

> …where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.

24 The plaintiff's argument however is a misreading of the line of authorities referred to by the court below and completely ignored the fact that in paying the plaintiff's claim in the first action <u>in full</u> (after service of the writ), the defendant had admitted the same. It was as good as consenting to judgment (but without the attendant additional costs involved) and no adjudication by the court was therefore required. In any event, the trend over the years for the doctrine to apply has been to move away from the need for adjudication by courts, as can be seen from the cases below.

25 In *Greenhalgh v Mallard* [1947] 2 ALL ER 255, Somervell LJ said (at p 257H).

> ...*res judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

26 The Court below had quoted the following extract (at pp 32-33) from Lord Bingham's judgment in *Johnson v Gore Wood & Co* where he addressed the issue of whether *res judicata* applied in the case (he held it did not):

> ..An important purpose of the rule is to protect a defendant against the harassment necessarily involved in repeated actions concerning the same subject matter. A second action is not the less harassing because the defendant has been driven or thought it prudent to settle the first; often, indeed, that outcome would make a second action the more harassing.

27 The court below had also cited *Goh Nellie v Goh Lian Teck* [2007] 1 SLR 453 and quoted the following extract from Sundaresh Menon JC's decision (at [41]):

> In my judgment, the relevant principle is that where the issue has in fact been directly covered by the earlier decision, it will be caught either by cause of action estoppel or issue estoppel. As one moves further away from what was directly covered by the earlier decision, then the relevant doctrine becomes the defence of abuse of process rather than issue estoppel. Thus, where the issue ought to have been raised and was not, it might nonetheless amount to an abuse of process subsequently to litigate that same issue; see *Henderson v Henderson* [1843-60] ALL ER Rep 378 ("*Henderson*") which was followed in *Hendrawan Setiadi*.

28 Earlier, the same view was expressed by our Court of Appeal in *Lee Hiok Tng (personal capacity) v Lee Hiok Tng (representative capacity)* [2001] 3 SLR 41 where Chao Hick Tin JA, at [25] after citing Wigram V-C's dictum in *Henderson v Henderson* (see *supra* [23]) said:

> It is clear that the true basis for the extended sense of the doctrine of res judicata is to be found in the concept of abuse of process of the court. It is not in the public interest that in relation to a single matter there could be multiplicity of proceedings.

Conclusion

29 In the light of all the authorities cited above, it would be an abuse of process under the extended doctrine of *res judicata*, to allow the plaintiff to maintain the second action.

30 It would be unfair to the defendant as directed by the court below, for the question of issue estoppel relating to the invoices to proceed to trial. The plaintiff should not in effect be given a second bite of the cherry, when his previous conduct in presenting the Final Claim led the defendant to believe the balance of his entire claim for the MSD project was encapsulated in that last invoice and prompted the defendant to pay him $68,678.12 in the first action. The plaintiff's explanation relating to his deliberate omission of the invoices from the first action was unsatisfactory and upon closer examination, when verified against his claim documents in both actions, was unlikely to be true.

31 Consequently, I allowed the Appeal with costs, reversed the decision of the court below and struck out the second action with costs to the defendant.