IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 279

District Court Appeal No 13 of 2023

Between

Pure Group (Singapore) Pte Ltd

… *Appellant*

And

Siong Ann Engineering Pte Ltd

… *Respondent*

JUDGMENT

[Contract — Breach]

Pure Group (Singapore) Pte Ltd
v
Siong Ann Engineering Pte Ltd

[2023] SGHC 279

General Division of the High Court — District Court Appeal No 13 of 2023
Choo Han Teck J
27 September 2023

4 October 2023 Judgment reserved.

Choo Han Teck J:

1 This case in *Siong Ann Engineering Pte Ltd v Pure Group (Singapore) Pte Ltd* [2022] SGHC 73 ("*Siong Ann Engineering*") was remitted to the district court for the determination of two issues of fact. The appellant, Pure Group (Singapore) Pte Ltd was a company in charge of a project converting a theatre into a restaurant and nightclub ("the Project") in Marina Bay Sands ("MBS"). Mr Jonathan Peter Coney ("Mr Coney") was the project manager and former general manager of the appellant. Mr Coney was assisted by Mr Tan Boon Chin ("Mr Tan"), a senior project manager in the appellant's office in Malaysia, seconded to Singapore to assist with the project. The respondent Siong Ann Engineering Pte Ltd was one of the sub-contractors for the project. Mr Wong Chian Kok ("Mr Wong") is the business and development manager of the respondent.

2 The dispute concerns the design, supply, and installation of a temporary ramp ("Ramp Works"). After discussions between the appellant and respondent, the respondent prepared the construction materials for the Ramp Works and delivered them to the work site. Then, Mr Coney abruptly told Mr Wong to stop work. A dispute arose as to how the respondent was to be paid for work done up to the delivery of the materials. No agreement could be reached, and the respondent filed Adjudication Application No. SOP/AA435 of 2018 for payment. The adjudicator determined that the appellant has to pay the respondent $123,897.77 for work done. The money was paid.

3 Dissatisfied with that decision, the appellant sued in the district court to recover the payment to the respondent — that was the previous district court action and subsequent appeal before me. The main issue between parties then was whether there was a valid contract between them. In *Siong Ann Engineering*, I examined the contemporaneous WhatsApp messages between Mr Coney and Mr Wong, and other communications exchanged between the appellant and respondent, and I find that there was an agreement between the parties in which the appellant instructed the respondent to proceed with the Ramp Works. Having found that an agreement was concluded between the parties, the case was remitted back to the district judge ("DJ") to determine whether the first two milestones of the contract had been fulfilled so as to justify payment of the $123,897.77 as ordered by the adjudicator. At the same time, the trial judge was to determine whether the respondent had breached the contract, and if so, what damages were payable to the appellant. The DJ found for the respondent and the appellant filed the present appeal before me.

4 The relevant terms and conditions of the agreement are set out as follows:

> Terms and Conditions
>
> 1. Amount quoted is subjected to 7% or prevailing GST.
>
> 2. Payment Terms: 30% downpayment upon order confirmation, 50% upon materials delivered to site, 20% upon installation completed.
>
> 3. Quotation Validity: 30 days from date hereof.

The first milestone refers to the "30% downpayment upon order confirmation", and the second refers to the "50% upon materials delivered to site". The third is the "20% upon installation completed".

5 The appellant says that the first milestone was not fulfilled because it had not confirmed the order, evidenced by the fact that it had not issued a purchase order ("PO") to the respondent. According to the appellant, "order confirmation" is not equivalent to contract formation and is something which can "only come about after formation". The appellant's counsel submitted that there was no order confirmation because two weeks after the appellant had accepted the quotation (on 8 February 2018) from the respondent, Mr Wong asked Mr Coney (on 19 February 2018) if it was "possible to receive [the appellant's] PO". In response, the respondent says that the first milestone of "order confirmation" was met upon the appellant's acceptance of the 5 February quotation, and that there was nothing further to confirm about the order. There was thus no need for the appellant to issue a PO to confirm the order. Furthermore, the appellant had actually agreed to issue a PO even though it did not eventually do so.

6 I disagree with the appellant that the issuance of a PO was necessary for an "order confirmation". I agree with the trial judge that the respondent had passed the first milestone. The terms and conditions of the agreement do not require a PO to be issued as proof of "order confirmation". It is only sensible that "order confirmation" can take any reasonable form, as long as both parties understand that the order has been confirmed. In this regard, the messages sent from Mr Coney to Mr Wong showed that there was an "order confirmation". Mr Coney had clearly conveyed to Mr Wong that he was to proceed with the Ramp Works (on 9 February 2018) after receiving the respondent's quotation (on 5 February 2018), and Mr Tan notified Mr Wong of the appellant's acceptance (on 8 February 2018). In any event, after Mr Wong informed Mr Coney on 19 February 2018 that some steelworks for the Ramp Works were ready, and had asked Mr Coney for the PO, Mr Coney readily said that the PO could be issued. This emphasises the fact that there was already an order confirmation, and the PO was a mere formality.

7 As for the second milestone, the appellant says that the respondent was required to procure the approval of Arup Singapore Pte Ltd ("Arup"), the structural engineer for the Project, before the fabrication and installation of the Ramp Works. The appellant says that it had not waived this requirement, and there is no dispute that the respondent did not procure Arup's approval. Therefore, since Arup's approval was not obtained prior to the fabrication of materials for the Ramp Works, the second milestone cannot be said to have been completed by the respondent, notwithstanding the delivery of materials to the worksite.

8 In contrast, the respondent says that there is no requirement in the agreement that requires Arup's approval to be obtained before the respondent is

paid for the second milestone. According to the respondent, it could proceed with the fabrication works while seeking Arup's approval. Moreover, the respondent says that there is also no evidence that the materials delivered to the worksite were not suitable for the Ramp Works. The respondent acknowledges that although Arup's approval remained an important part of the Ramp Works, the failure to obtain Arup's approval only went towards affecting the fulfilment of milestone three, the remaining "20% upon installation [being] completed". This was a payment which the respondent had not claimed from the appellant.

9 The lack of Arup's approval is not a condition for the respondent's completion of the second milestone. Nothing in the agreement between parties suggests that Arup's approval is a requirement in order for the second milestone to be fulfilled. Although counsel for the appellant, Mr Chia, has pointed out two aspects of the quotation which he argues shows the requirement under the agreement for the respondent to procure Arup's approval before fabrication and installation of the Ramp Works, I do not agree with him on a reading of those particular parts of the quotation. Mr Chia refers to descriptions that read: "submission of design shopdrawing with PE endorsement for approval" and "we shall be responsible for the stability and structural integrity of the temporary steel ramp and shall provide support as necessary to avoid over-loading…". A plain reading of these items being provided for under the agreement between parties does not evince a requirement that Arup's approval is essential for the completion of the second milestone.

10 Reading the communications between parties show that the parties were not concerned with getting Arup's approval before the fabrication of materials (outside of the agreement). The urgency of the short time frame in which the works were needed to be completed had clearly made this, at best, a secondary

concern. Mr Chia submitted that the emails sent by Mr Tan to Mr Wong (on 17 January 2018 and 2 February 2018) were evidence that Arup's approval was required before the fabrication of materials. However, those emails must be read in context with the subsequent emails that signalled a change in the appellant's position. For instance, while Arup's approval was still being sought, and while discussions were ongoing about that issue, on 6 February 2018, Mr Wong had emailed Mr Tan stating that the respondent would "immediately fabricate the structural steelworks and deliver to site for installation". Despite this being different from the respondent's earlier instructions about Arup's approval being required, no protest was forthcoming from Mr Tan. On 8 February 2018, Mr Tan had emailed Mr Wong, instructing him to ensure that "the steel materials [are] ready for your fabrications- installed by 23 Feb 2018". Mr Wong had acknowledged this and replied that the respondent would "start to prepare the steelworks materials first ready for site installation". Likewise, Mr Coney messaged Mr Tan on 9 February 2018 and told him to proceed with the Ramp Works. This was despite approval not having been obtained from Arup yet.

11 Taking into account the entirety of the communications between the appellant and the respondent, it is clear to me that by 8 February 2018, it was a common understanding between parties that the respondent would proceed with the fabrication of materials for the Ramp Works first, even though Arup's approval had not yet been obtained. Presumably, this was because of the nature and urgency of the short timelines involved.

12 Turning to the next issue of whether the respondent had breached the contract, and if any damages were payable to the appellant if such a breach had occurred. The appellant says that the respondent had failed to achieve the milestones under the agreement and had, therefore, "failed to earn the contract

price stipulated therein". According to the appellant, the materials delivered by the respondent "could not be used" and were in fact not used, since Arup's approval was not obtained. Alternatively, the appellant claims that the respondent breached the agreement by "failing to deliver materials which could be used for the construction of the [Ramp Works] and/or in not completing the installation of the [Ramp Works]".

13 The respondent denies the allegation of its breach, and says that it was the appellant, in its email dated 22 February 2018, who stopped the Ramp Works. The respondent also points to its repeated requests (six attempts in March and April 2018) to resume the Ramp Works in various subsequent emails, and WhatsApp messages to Mr Coney — all of which were ignored by the appellant. Counsel for the respondent, Mr Tan Jin Yong, submitted that having ignored the respondent's repeated requests to resume the Ramp Works, the appellant cannot now blame the respondent for not completing the Ramp Works.

14 I agree with Mr Tan. From the emails and the WhatsApp messages to Mr Coney, it is clear that the respondent had made every effort to resume the Ramp Works. This was the best the respondent could do, given that the appellant had stated clearly to the respondent in its 22 February 2018 email to "please do not do any further work on this until we discuss these works". In this connection, I am unable to accept that Mr Coney only asked the respondent to suspend the physical works (i.e. the installation of the ramp) on-site, and that he did not direct the respondent to stop efforts at trying to obtain Arup's approval. This position is untenable based on the email evidence. Hence, had the respondent been allowed to continue and Arup's approval eventually obtained after the

second milestone, there would not have been any case for the appellant to reject the work, and claim for damages for a breach of the agreement.

15 As it turned out, the appellant decided to work with a lower-cost sub-contractor to complete the Ramp Works. Mr Chia informed the court that this costs about two-thirds the price of the respondent's quotation. That is the appellant's choice, but it has no bearing on work that has already been done (and costs incurred) by the respondent pursuant to the agreement with the appellant. The appellant's engagement of a lower-cost sub-contractor cannot be made to the detriment of the respondent.

16 The appeal is dismissed in whole, and the DJ's decision is affirmed. I will hear parties on costs at a later date if they are unable to agree on costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Chia Swee Chye Kelvin (Lumen Law Corporation) for the appellant;
Tan Jin Yong (Lee & Lee) for the respondent.