ComfortDelGro Engineering Pte Ltd v City Ken Pte Ltd
[2008] SGHC 19

Case Number : SUM 5628/2007, BOC 215/2007

Decision Date : 04 February 2008

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Indranee Rajah SC (instructed) and Sammuel Lee (Yu & Co) for the applicant; Deborah Barker SC and Audra Balasingam (KhattarWong) for the respondent

Parties : ComfortDelGro Engineering Pte Ltd — City Ken Pte Ltd

Civil Procedure

4 February 2008 Judgment reserved.

Choo Han Teck J:

1 The plaintiff and defendant are companies carrying on the business of repairing automobiles. The present action arose from a dispute involving a contract between them made on 29 August 1997 and varied, according to the plaintiff's claim, on 30 April 2003. The agreement envisaged that the plaintiff would set up a workshop in CityCab's premise. CityCab is a company operating a fleet of taxis. According to the plaintiff's statement of claim filed on 8 February 2006, the arrangement under the contract was that the plaintiff would repair damaged taxis and then bill the defendant who would pay 80% of the bill. It appears that the plaintiff was acting as a subcontractor to the defendant. It also provided that the defendant could recover excess payments ("over payment returns") arising from the defendant having recovered from the other party involved in the vehicle collision, an amount less than what it paid the plaintiff for repair.

2 The plaintiff alleged that the defendant did not inform it of its (defendant's) efforts in its claims against the other parties involved in collisions with its client's taxis. The plaintiff alleged that it had rendered invoices amounting to $12,267,972.01 to the defendant, but was paid only $2,520,121.22 and thus claimed that a sum of $9,747,850.79 was outstanding. The statement of claim also alleged that the defendant wrongfully and without justification attempted to set-off the outstanding sum with sums alleged to be over payment returns. In this regard, the plaintiff referred to a letter from the defendant dated 7 March 2005 where the defendant sought to set-off a sum of $248,421.66 against the sum of $248,492.46, leaving a balance of $70.80 due from the plaintiff to the defendant.

3 The plaintiff alleged that the defendant had not justified or explained how the set-off was calculated and that all the information required was in the defendant's possession. In the statement of claim, the plaintiff thus claimed for an account of all sums due from the defendant to the plaintiff and for payment of such sums.

4 The defendant averred in its defence that it was an "implied term" of the contract that the settlement reached by the defendant with the other parties would be the full and final settlement of all claims between the plaintiff and the defendant. The defendant further pleaded the time bar defence. It also averred that it had paid a total of $9,994,447.87 to the plaintiff and a sum of $338,375.61 "which sum is being used by the defendant to set off against the plaintiff's recovery losses, that is, over-payment of profit sharing for the difference between the claimed amount and the settlement received". The defendant claimed that there was yet another sum amounting to

$72,926.39 which should be set-off against the plaintiff's claims, but no details were given of this sum. The defendant claimed that there was a duplicitous payment amounting to $420,476.14 and another sum of $196,978.84 being an "understatement". It claimed that there were two sums amounting to $6,156.02 and $2,431.36 respectively that had not been billed to the plaintiff.

5 The plaintiff applied to amend the statement of claim and an order granting leave to amend was made on 11 September 2007. The statement of claim was thus amended on 12 September 2007. The amended statement of claim now avers that it was an implied term that the defendant would consult the plaintiff and get its approval for any settlement with the other parties. It then pleaded that the defendant began issuing debit notes in 1999 in respect of such settlements, and had sought the plaintiff's approval for such settlements until January 2002. The plaintiff alleged that some of the debit notes did not contain the information required under their contract, and merely stated "unsuccessful claim".

6 In the amended statement of claim, a longer narration of events was stated, and some items that were probably time-barred were withdrawn. Briefly, the amended statement of claim stated that the plaintiff terminated the contract with the defendant in December 2003 and asked the defendant to settle all outstanding payments due. However, the defendant continued to send its vehicles to the plaintiff for repair. The plaintiff also alleged that by the conduct complained of in its claim for non-payment, the defendant had acted negligently.

7 The plaintiff was ordered to pay costs to the defendant in respect of the application to amend. Costs were subsequently taxed. The defendant claimed $78,883.50 for section one costs. The Assistant Registrar allowed costs of $1,500 for the application, $1,000 for consequential costs, and $6,000 for costs thrown away. The defendant sought this present review of the costs so ordered. Miss Rajah, counsel for the defendant, submitted that the amendment resulted in an entirely new case and the work that the defendant had done until then were wasted and the compensation in costs must reflect that waste. Miss Rajah submitted that a sum of $25,000 should be the minimum that should have been ordered.

8 The question in dispute before me was whether the amount allowed was adequate, but it is important to bear in mind that "costs thrown away" is not necessarily the natural order for costs in the event of an application for an amendment of the pleadings. Some amendments may be so inconsequential that the court might be entitled to make no order as to costs in the circumstances or order that costs to be costs in the cause. Where an amendment requires a response, the court is similarly entitled to make either of those orders, although "costs in the cause" would be a more appropriate order because the opposing party was led to do extra work. If, however, the court thinks that the amendment was reasonable and the application reasonably made, it is entitled to order that costs be costs in the cause. That would still be an appropriate order even though the party amending had introduced a new and substantial cause of action or defence.

9 When would an order for costs thrown away be appropriate in the case where a party had applied successfully for leave to amend his pleadings? The simple principle that guides the court is a principle in a single word, "reasonableness". It is obvious from the record that much work had been done by both parties from the date the writ was filed, namely, 8 February 2006, and the appearance by the defendant on 20 February 2006 to 11 September 2007 when leave to amend was granted to the plaintiff. The plaintiff's claim remained fundamentally the same, namely, that it was for an account of monies due to it pursuant the contract between the parties and subsequent variations to that contract. A more detailed narration of facts was set out in the amended claim that required the defendant to demur. The matters set out in the amended statement of claim could have been made much earlier. If, as in the present case, the party applying for leave to amend did so after the matter

had proceeded for some time and much work had been done by both parties based on the original claim, the court was entitled to order that costs thrown away be paid by the plaintiff for and consequential upon the amendment. It appeared that the Assistant Registrar thought that it was unreasonable in the circumstances of this case, where the parties had plodded along what appeared to be a settled course for almost two years, to have to make adjustments of a substantial nature. I think that he was entitled to order that costs for the amendment be costs thrown away to the defendant.

10 Were the amounts he ordered reasonable? The principal sum in issue was the sum of $6,000 which Miss Rajah submitted was far too low. I will agree that the amount of work done from the service of the original statement of claim to the time leave to amend was given the costs would have been far greater than $6,000. However, the compensation for costs here was not to compensate the defendant for all that work unless the entire work or such portions of it were wasted, that is to say that they were rendered unnecessary by reason of the amendment. It did not seem to me that the work done or such portions of it had been rendered wasted. Although the trial may take on a different perspective, and more work might have to be done, that which had already been done were part of the disputed story. Hence, should the defendant succeed at trial, it would have been entitled to costs that would have to take into account all its work from the service of the statement of claim to the end of proceedings.

11 In the circumstances, the award of $6,000 (in addition to the consequential costs of amending the defence) for costs thrown away by reason of the amendment was a generous award. This application is therefore dismissed. I will hear parties on the question of costs at a later date if parties are unable to agree costs.