

Surge Electrical Engineering Pte Ltd v Powertec Engineers Pte Ltd
[2002] SGHC 280

Case Number : Suit 782/2002/E
Decision Date : 25 November 2002
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Goh Wing Sun (W S Goh & Co) for the plaintiffs; Chan Hian Young (Allen & Gledhill) for the defendants
Parties : Surge Electrical Engineering Pte Ltd — Powertec Engineers Pte Ltd

Judgment

GROUND OF DECISION

The background

1. The defendants applied by Summons in Chambers No. 3363 of 2002 (the application) for Further and Better Particulars to be furnished by the plaintiffs on certain paragraphs of the statement of claim. They succeeded partly in the court below. The defendants appealed against the decision of the learned Assistant Registrar in Registrars' Appeal No. 239 of 2002 (the Appeal) refusing to order certain other Particulars to be furnished by the plaintiffs.
2. The Appeal came up for hearing before me and I allowed it in part. As the defendants have now appealed against my decision (in Civil Appeal No. 117 of 2002), I set out herewith my reasons.

The claim

3. The plaintiffs' claim against the defendants was for the balance sum of \$1.468m due for supply and installation of an electrical system for a construction project at Tuas View, called the Wyeth Nutritional Facility (the project) by the defendants. The defendants subcontracted the work for supply and installation of the electrical system to the plaintiffs (from the owners/developers of the project Jacob-Lend Lease Pte Ltd), at a sum of \$2.77m.
4. After the writ of summons had been served on them, the defendants' solicitors wrote to the plaintiffs' solicitors for Further and Better Particulars of the statement of claim. When their request was rejected, the defendants' solicitors made the application.
5. The court below had refused to order the plaintiffs to furnish the following Particulars of the statement of claim:-

Under para 2

By a purchase order dated 6 April 2000 the defendants awarded to the plaintiffs the electrical installation of the aforesaid project. The contract price is \$2,777,910 (inclusive of the 3% GST). The plaintiffs have also undertaken additional/variation work in respect of the aforesaid project as instructed by the defendants and or M/s Jacob-Lend Lease their agents and or servants. The aggregate sum of the contract price, the additional/variation work and increased preliminaries and wages amounted to S\$5,113,133.53 (inclusive of the 3% GST).

Please state:

(e) Whether the instructions for each additional/variation work was oral or written.

(i) If oral state the name of the person by whom each instruction was given, the date on which each instruction was given, and the name of the person to whom each instruction was given.

(ii) If written, please identify the document in which each instruction was given.

Under para 4

The plaintiffs have made progress claims for the value of the services rendered and the labour and materials supplied and the plaintiffs have received partial payment in the aggregate sum of \$3,644,981.78 (inclusive of the 3% GST).

Particulars	
Contract price (inclusive of the 3% GST)	\$2,777,910.00
Add: Additional/variation work (inclusive of the 3% GST)	\$1,756,123.53
Add: Increased Preliminaries and Wages (inclusive of the 3% GST)	\$ 579,100.00
Total:	\$5,113,133.53
Less: Payments	\$3,644,981.78
Balance due and owing to the plaintiffs	\$1,468,151.75

Please state:-

(a) In relation to the progress claims:-

(v) Whether each progress claim was written or oral. If written, identify the document in which the progress claim was made. If oral, state the name of the person who made the progress claim and the name of the person to whom the progress claim was made.

(ix) The original tax invoice in relation to each progress claim, as required by Clause 10.5.2 of the sub-subcontract.

6. At the hearing before me, I ordered the plaintiffs to render the Further and Better Particulars requested of:

(i) para 2 of the statement of claim, item (e);

(ii) to furnish a breakdown of \$1,756,123.53 for the additions/variations claimed under para 4 of the statement of claim and;

(iii) to furnish a breakdown for the figure of \$579,100/- in para 4 for Increased Preliminaries and Wages.

The defendants have appealed against my refusal to order the Particulars they had requested in items (v) and (ix), under para 4 of the statement of claim.

The arguments

7. Counsel for the defendants submitted that it was no answer to the defendants' request for the plaintiffs to say that the Particulars requested were within the defendants' knowledge. He said that the defendants are entitled to know the case the plaintiffs are making against them and that the latter should be pinned down to a definite story; I did not disagree with this submission. Indeed, I had rejected the argument of counsel for the plaintiffs that the Particulars requested and ordered amounted to evidence which the defendants are not entitled to know, before the trial. The contention of counsel for the plaintiffs was untenable as without the specific facts I ordered to be furnished, the defendants could not file a proper defence.

8. In relation to the Particulars requested in item (v) on para 4 of the statement of claim, counsel for the defendants referred to cl 10.5.1 of the contract between the parties; it stated:-

On the day of the month specified in the Appendix [the plaintiffs] may submit to [the defendants] a progress claim. A progress claim must show:-

- (1) the Subcontract value of the Works (excluding variations but allowing for variation omissions) completed to the date stated in the claim, valued in accordance with Clause 10.3. Subject to Clause 10.6, the value of the Works may include the value of off-site or unfixed materials;
- (2) the value of work completed on variations to the date stated in the claim, valued in accordance with Clause 10.4;
- (3) the total amount determined under paragraphs (1) and (2) above less the amount previously paid to the Subcontractor in respect of the items referred to in those paragraphs; and
- (4) other amounts to which [the plaintiffs] are entitled under the Subcontract.

Consequently (counsel argued), the defendants are entitled to know whether the purported progress claims were oral or in writing and, to an identification of the relevant person or document making the claim, in order to determine whether the requirements of cl 10.5.1 have been complied with.

9. As for item (ix), counsel referred to cl 10.5.2 of the contract which states:-

After [the defendants] have checked and agreed the progress claim amount, the [plaintiffs] must submit the original tax invoice relating to the claim.

He submitted that the plaintiffs must particularise the tax invoices in relation to each progress claim before they are entitled to be paid.

The decision

10. I refused the defendants' request for Particulars under item (v) for para 4 of the statement of claim because I was not convinced the request was bona fide. The information requested was

certainly not necessary to enable the defendants to properly formulate and file, their defence. The request seemed frivolous and a ploy on the defendants' part to buy more time. It bears remembering that the plaintiffs' claim related to unpaid progress claims for a construction project. Without disregarding the principles for granting Further and Better Particulars relied on by counsel for the defendants, I cannot imagine how the plaintiffs could, in the construction industry, have made progress claims, other than in written form and at periodic intervals, bearing in mind cl 10.5.1 of the contract. I noted that this was not a case where no payment at all was made by the defendants. The plaintiffs were claiming the balance plus additions and variations (for which I ordered Particulars to be rendered). The plaintiffs had stated in para 4 of their pleadings, that payment in the aggregate sum of \$3,644,981.78, was made by the defendants. If the defendants disputed or denied the aforesaid figure, they could either plead their own figure or, put the plaintiffs to strict proof of that amount.

11. Consequently, the defendants' request as to whether each progress claim was oral was frivolous, particularly in the light of the fact that Particulars of items (i) to (iv), (vi) to (viii) and (x) of para 4 of the statement of claim, had already been granted by the court below. In any event, the Particulars requested in item (v) were a repetition of the other items, they read as follows:-

Please state:

(a) In relation to the progress claims:-

- (i) The number of progress claims made by the plaintiffs.
- (ii) The date on which each progress claim was made by the plaintiffs.
- (iii) To whom each progress claim was made by the plaintiffs.
- (iv) The value of each progress claim.
- (vi) The payment made in relation to each progress claim.
- (vii) The value of the original works completed in each progress claim.
- (viii) The value of work completed for additional/variation work in each progress claim.
- (x) The value of increased preliminaries and wages in each progress claim.

12. I had also rejected the plaintiffs' request under item (ix), based on the defendants' own reliance on cl 10.5.2 (para 9 *supra*) of the contract. It stood to reason that if the plaintiffs were claiming on unpaid progress claims (on which more details would be forthcoming from the plaintiffs), that the defendants had not agreed to pay the same. Consequently, why was there a need to ask for Particulars of tax invoices? This request may well be unnecessary, depending on the plaintiffs' answers to the other Particulars ordered. It would be useful at this juncture to refer to a passage from the authoritative textbook *Odgers on High Court Pleading and Practice* (23 ed at p 192); it states:-

...Particulars will be ordered whenever the master is satisfied that without them the applicant cannot tell *what* is going to be proved against him at the trial. But *how* his opponent will prove it is a matter of evidence of which particulars will not be ordered.

Applying the above guideline, the Particulars requested in items (v) and (ix) clearly related to *how* the plaintiffs were going to prove their progress claims, not *what* they were claiming. Consequently, the defendants were not entitled to the same, it amounted to a fishing expedition for evidence.

13. I had emphasised to counsel for the defendants that my refusal to grant item (ix) presently did not preclude the defendants from making a fresh request at some future date. It depended very much on the information to be gleaned from the Particulars the plaintiffs were ordered to furnish (on which they have not appealed). Instead of waiting to see what other facts the defendants would need in order to file a proper defence or amended defence as the case may be, after the plaintiffs had first complied with my direction and that made by the court below, the defendants chose to appeal again my decision in refusing to grant items (v) and (ix).

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