

Sin Lian Heng Construction Pte Ltd v Singapore Telecommunications Ltd and another suit
[2010] SGHC 215

Case Number : Suit No 525 of 2006 (Registrar's Appeal No 314 of 2008) and Suit No 532 of 2006
Decision Date : 02 August 2010
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : S Magintharan and James Liew Boon Kwee (S Magin & Co) for the plaintiff; Dawn Tan Ly-Ru, Tang Hui Jing and Julian Soong (Rajah & Tann LLP) for the defendant.
Parties : Sin Lian Heng Construction Pte Ltd — Singapore Telecommunications Ltd

Contract

2 August 2010

Lee Seiu Kin J:

Introduction

1 The matters in these consolidated suits arose from a contract ("the Contract") between Sin Lian Heng Construction Pte Ltd ("SLH") and Singapore Telecommunications Ltd ("Singtel") for works involving laying and recovery of cables in Singtel's cable ducting network in Singapore.

2 On 16 August 2006 SLH commenced suit no 525 of 2006 ("Suit 525") against Singtel for payment of unpaid balance for work done under the Contract. The final sum claimed was \$2,130,926.08. On 18 August 2006 Singtel commenced suit no 532 of 2006 ("Suit 532") against SLH for breach of contract, conversion and detention of cables belonging to Singtel and damages.

3 In Suit 532, on its application for summary judgment, Singtel obtained the following final orders:

(a) SLH do, within 3 days, deliver up to Singtel the copper cables under the cable recovery works described in the defence and counterclaim or pay Singtel the value of the copper cables assessed but enforcement of any such judgment is stayed until the determination of SLH's claim against Singtel in Suit 525.

(b) SLH do, within 3 days, deliver up to Singtel the copper cables under the cable draw-in works mentioned in the defence and counterclaim or pay Singtel the value of the copper cables to be assessed but enforcement of any such judgment is stayed until the determination of SLH's claim against Singtel in Suit 525.

(c) Costs to be reserved to the trial judge hearing SLH's claim in Suit 525.

4 Subsequently, in Suit 525, SLH's claims were settled and the parties agreed that Singtel was liable in the sum of \$2,015,386.57, with payment stayed pending assessment of damages in Suit 532. This assessment was carried out by the assistant registrar ("the AR") in notice of assessment no 77 of 2007. The AR rendered his decision on 31 July 2008, assessing damages to Singtel at \$5,211,711.92. SLH was therefore ordered to pay Singtel the difference in the two sums, amounting

to \$3,196,325.35. SLH filed registrar's appeal no 314 of 2008 to appeal against the AR's decision. After a series of hearings on the appeal, on 24 August 2009, I allowed SLH's appeal in part and reduced the quantum of damages to \$1,891,891.90. After deducting the sum of \$172,680 that Singtel obtained on account of its call on a performance bond procured by SLH, the net sum due from SLH to Singtel under the counterclaim would be \$1,719,211.90. Both parties have since filed notices of appeal against this decision and I now give my grounds of decision.

5 The Contract was carried out in the following manner. Singtel would issue a service order ("SO"), accompanied by a plan setting out various manholes and the distances between them. Based on this SO and the plan, SLH would send a team to the location to recover the cables. According to SLH, one of two Singtel supervisors, Yasin or Mustafa, was present during such recovery works. He would observe the recovery of the cables, verify the lengths recovered, and record this in a form known as the daily pulling summary report ("DPSR"). Singtel's position was that neither of them was present. The recovered cable would eventually be delivered by SLH to the Singtel store, for which receipts were given to SLH.

The AR's decision

6 There were two parts to the counterclaim: (a) cables that SLH had recovered but failed to return to Singtel ("the Recovery Claim"); and (b) cables that SLH had taken from Singtel for laying, the excess of which were not returned to Singtel ("the Laying Claim").

7 Before the AR, the following evidence was adduced in support of Singtel's claim:

(a) Evidence of checks on the relevant areas of work where SLH had been supposed to retrieve the cables, showing that the relevant cables slated for recovery by SLH were no longer on site.

(b) Evidence of the length of cables which had been there was given by way of drawing plans from Singtel's records, which showed the lengths of the various cables and also locations of the various manholes.

(c) Various cable reports submitted by SLH to show that works had been undertaken at various manholes indicated in the reports.

(d) Evidence of a series of meetings between representatives of Singtel and SLH during which Singtel expressed its concern with the shortfall in the cables returned for certain projects undertaken by SLH. In the minutes, it was recorded that SLH had promised to look into the matter and return the outstanding cables.

(e) Two letters signed by one Lee Ngiap Phang and one Swamykkan Selvaraj, in which they confirmed on SLH's behalf on the status of the cable recovery works for the various projects.

(f) Evidence of certain projects where the follow-through method was adopted. This was where a member of Singtel's staff, one Daud, would go to the various manholes with SLH's recovery team, and cut the joints of the cables before the relevant cable was pulled out by SLH. In respect of the projects where this method was used, Daud gave oral evidence of the various projects where he had been sent, and confirmed that he had indeed cut the cables at the various stretches. Daud was unable to remember the exact dates on which these were done.

(g) Various SOs which were issued to SLH, showing the cable type and manholes where SLH

was supposed to do the cable recovery works. These, however, did not cover all of the works.

(h) Evidence from Singtel's witness, Lee Yew Tiong, who provided in his affidavit a table showing a summary of the various project locations, cable lengths to be recovered, whether cable reports were submitted and the shortfall. The information in the table was drawn from the various plans and records kept by Singtel.

8 Before the AR, SLH's submissions were as follows:

(a) SLH had returned all the cables that it had recovered. In respect of the works where no cables were returned, SLH's position was that it did not carry out any recovery works.

(b) Many of the so-called "missing" cables were either missing from the manholes when SLH went to recover them, or had been stolen by others before SLH ever got to the manholes.

(c) SLH disputed the measurement of the cable lengths submitted by Singtel, alleging that there were measuring errors by Singtel.

9 The AR accepted Singtel's submission that it had proven its losses and accepted the figures given by Singtel.

My decision

10 The following were where, in my view, Singtel's evidence was unsatisfactory.

11 The first thing to bear in mind is that Singtel has the burden of proving its losses. Proof must be by way of admissible evidence. In relation to the Recovery Claim, the issue was the quantity of cable recovered by SLH from the various cable ducts in Singtel's network and the quantity of cable returned by SLH to Singtel. Singtel's case was that SLH had returned a much smaller quantity of cable than it had recovered. SLH, on the other hand, contended that it had returned to Singtel all the cable it had recovered. Now the records of the returned cables were comparatively well-kept. However in relation to what was recovered, Singtel relied on as-built drawings to compute the lengths of cables that it claimed SLH had recovered. This evidence is not sufficient for a number of reasons. Assuming that the drawings are accurate at the time they were created (this point will be dealt with at [\[14\]](#) below), Singtel must also prove that they remained accurate at the time SLH carried out the cable recovery works. A period of time had elapsed since those drawings were produced – that was the reason the cables had become superfluous and were retrieved for sale as scrap. Furthermore, cables could have been removed by others, whether legally or illegally, before SLH came into the picture. Therefore Singtel had to rebut the evidence of SLH's witnesses who said certain cables were missing when they went to the ducts to recover them.

12 Indeed, not only did SLH allege that certain cables were missing when they went to the site, SLH's director, Neo Boon Keng ("Neo") gave evidence that one of two Singtel's supervisors, Yasin or Mustafa, were with SLH's workers at every cable recovery and they would have witnessed this as well. It was pointed out that one of them would sign on the DPSRs. However Singtel did not resort to the simple expedient of calling Yasin and Mustafa to deny this, even though they were both still employed by Singtel. Instead, Singtel relied on the assertion by Lee Yew Tiong ("Lee"), Singtel's director (access network management) that neither of them was present at the sites during recovery and therefore it could not have been possible for Yasin or Mustafa to supervise SLH or have any control over the works conducted by SLH. As Lee himself was not present at the sites during recovery, it is not known how he was able to give such evidence, except on the basis that Yasin and

Mustafa had told him so. But if that were the case, then it should be for Yasin and Mustafa to subject themselves to cross-examination to get to the truth of the matter. A party that fails to produce evidence that is within its power to produce would attract the presumption that such evidence is unfavourable to that party: s 116 of Evidence Act (Cap 97, 1997 Rev Ed) illustration (g). I found sufficient basis on the evidence to make the presumption that if Yasin or Mustafa had been called to give evidence, such evidence would support SLH's position. I should add that there was evidence of contemporaneous emails from SLH to Singtel that it had discovered cables missing from the ducts.

13 In contrast SLH was prepared to call the relevant witnesses to rebut the evidence against it. This related to the letters signed by Lee Ngiap Phang and Swamykkan Selvaraj, in which they confirmed on SLH's behalf on the status of the cable recovery works for the various projects. Lee Ngiap Phang gave evidence that he had signed the letter under duress from Singtel's Tan Tian Kok ("Tan") and that the information in the letter had come from Tan. Singtel did not call Tan to rebut this, although it would be fair to say that by that time Tan had left Singtel under unhappy circumstances. Nevertheless, Lee Ngiap Phang had given evidence under pain of perjury and had been subjected to cross-examination, whereas Tan, who could have been subpoenaed by Singtel but was not, did not give evidence. As for Swamykkan Selvaraj, Neo gave evidence that he was a construction worker who had since returned to India, and was certainly not someone authorised to sign such confirmation letters on behalf of SLH. In contrast, Singtel did not call its foreman, Stephen Chua Kim Chuan, to give evidence of the circumstances upon which this letter was obtained. I accepted SLH's submission that the letter was spurious on the face of it.

14 Secondly, proof must be by way of admissible evidence. As mentioned at [\[11\]](#) above, Singtel relied on the fact that as-built drawings had stated that a certain quantity of cable was on the ground. Such documents have to be proved by calling their makers to give evidence that such cables were actually in the ground when those drawings were made. However they were not called to give evidence and therefore the evidence was not admissible.

15 For these reasons, I rejected the evidence from Singtel in relation to the quantity of cables that SLH had recovered, and accepted SLH's evidence that the quantity of cables recovered was proved by the DPSRs, which were signed by one of Singtel's supervisors, Yasin or Mustafa. However there were recovery works in certain areas for which DPSRs were not submitted. These related to the following items in Exhibit LYT-41 ("LYT-41") of Lee's affidavit filed 17 October 2007: (a) p 76, item 17; (b) p 77, item 19; (c) p 78, item 26; (d) p 79, item 33; (e) p 80, items 6 and 7; (f) p 81, item 5. As it was for SLH to submit the DPSRs, the best evidence available – and indeed the only evidence – in relation to these recovery works would be found in Singtel's as-built drawings.

16 The above pertained to the main parts of the dispute. The other parts of the dispute related to a series of works on the following junction cables: T-Junction; S-Junction; and YC-Junction.

17 The T-Junction cables were listed in LYT-41 as items 1 to 6 at page 85. SLH admitted to working on items 1, 4 and 6 but claimed it did not work on items 2, 3, and 5. However there was an email exchange between SLH and Singtel dated 28 February 2006 (of Lee's affidavit filed 20 November 2006, pp 2344-5) which supported Singtel's contention that SLH worked on all six items. I therefore held SLH liable and also that the recovered cable would be based on the best evidence available, which would be Singtel's as-built drawings.

18 The S-Junction cables were listed in LYT-41 as items 1 to 3 at page 85. There was no SO issued in relation to items 1 and 3. Singtel's case was based on oral agreements between the parties. However Singtel did not call to give evidence the persons on its side who made the oral agreement. For item 1, it was one Loy Wee Wan who I should mention was still in Singtel's employ during the

assessment. For item 3 it was Yasin. On the part of SLH, Neo gave evidence to deny that there was any oral agreement for these two items. As for item 2, there was a SO issued. I therefore held SLH liable for item 2, with the amount recovered to be based on Singtel's as-built drawings.

19 Singtel's case in respect of the YC-Junction cables was based on the alleged admissions of Lee Ngiap Phang in the letter he signed described in [\[13\]](#) above. I had found that Singtel had failed to rebut the allegation made by Lee Ngiap Phang before the court that this letter was signed under duress. Therefore any claim based on it must fail.

20 There was the issue of the price of scrap copper wire. Any shortage in the cable returned by SLH would constitute a loss to Singtel in terms of the money it would have failed to receive from buyers of the scrap wire. Singtel had conducted a tender for sale of scrap copper wire in June 2006. Had SLH delivered the shortfall in the first half of 2006, as it was obliged to do, Singtel would have sold the copper wire at the June 2006 tender prices. I therefore found that the appropriate price for the shortfall to be the price in the June 2006 tender, which was \$8.39/kg.

21 Based on the above findings, the parties came up with the following quantum in respect of the value of the shortfall in the recovered cables:

1	Other Main Cable Recovery	\$ 230,267.37
2	Other Junction Cable Recovery	\$2,514,439.94
3	Pulling Cables	\$ 38,080.93
	Total	\$2,782,788.24

22 It was common ground that SLH had returned "excess cables". There were cable return receipts that could not be traced to any SO. It must be borne in mind that recovery from site and delivery to the warehouse were two different events and often separated by substantive periods of time. The records were probably badly kept and most of these untraced cables were probably the result of the recovery works in the SOs, hence the large shortfall. In any event, it was not disputed that SLH did deliver such cables. In respect of the quantum, there was a minor dispute of some \$7,000 between Singtel and SLH which I resolved in favour of SLH. The total value of the excess cables returned was (apart from a sum of about \$7,000) agreed at \$890,896.34. Deducting this from the total in [\[21\]](#) above, SLH is liable to Singtel for the shortfall in returning cable that it recovered valued at \$1,891,891.90. I accordingly allowed SLH's appeal against the AR's finding below and reduced the damages to Singtel to this amount.

23 As Singtel had made a call on the performance bond procured by SLH and obtained \$172,680 as a result, which amount must be deducted from the amount that I found SLH to be liable to Singtel, I gave judgment in favour of Singtel in the sum of \$1,719,211.90, with interest from the date of writ to date of judgment at 5.33% per annum. I also ordered the costs of assessment below to be paid by SLH to Singtel and costs of the appeal to be paid by Singtel to SLH, both to be taxed unless agreed.

24 As for payment, I have noted in [\[4\]](#) above that SLH's claims against Singtel in Suit 525 were settled for the sum of \$2,015,386.57, with payment stayed pending assessment of damages in Suit 532. This would obviously have to be taken into account in determining the net payment between the parties.