

Merriwa Pty Ltd v Romar Positioning Equipment Pte Ltd
[2004] SGHC 78

Case Number : Suit 315/2003
Decision Date : 19 April 2004
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : B Mohan Singh (K K Yap and Partners) for plaintiffs; Victor Leong Mai Meng (Chan Kam Foo and Associates) for defendant
Parties : Merriwa Pty Ltd — Romar Positioning Equipment Pte Ltd
Contract – Breach – Whether plaintiff's claim for breach of contract was settled by deed of settlement and release.

19 April 2004

Kan Ting Chiu J:

1 This action arises out of a joint venture between the two parties in this action to provide horizontal directional drilling technology and services in India.

2 The defendant, Romar Positioning Equipment Pte Ltd, is a Singapore company which has contacts with a company in India, Reliance Engineering & Associates Private Ltd ("Reliance"), which was looking for providers of specialised drilling technology and services. The plaintiff, Merriwa Pty Ltd, is an Australian company with the relevant know-how.

3 The plaintiff and the defendant agreed that the defendant alone would contract with Reliance, but the contracted works and services were to be done by the plaintiff and the defendant. The plaintiff and the defendant entered into two agreements on 1 December 2000, a Service Agreement and a Partnership Project Agreement.

4 The plaintiff's action against the defendant is that the latter failed to discharge its obligation under cl 2.3 of the Service Agreement which provided that:

(a) In consideration for [the plaintiff] as equal (gain or loss) partner in the partnership in providing the contractor's representatives, [the defendant] agrees to pay [the plaintiff] an amount equal to all payments received by [the defendant] reduced by the reasonable expenses incurred by [the defendant], then divided by two (2). (ie. A 50/50 partnership)

(b) Within 3 business days after [the defendant] receives payment under paragraph 2.3 of the special conditions for on-site services of the contractor's representatives [the defendant] will provide to [the plaintiff];

(i) the details of all monies received and all reasonable expenses incurred by it under the Head Contract; and

(ii) a cheque in payment of half of the net amount in accordance with clause 2.3(a) hereof.

and the plaintiff sought accounts from the defendant.

The defence

5 Just one defence was raised, that parties have entered into a Deed of Settlement and Release ("the deed") on 8 February 2002 which constituted a satisfaction and discharge of the plaintiff's claim.

6 The defence pleaded was that:

9 On or about 8th February 2002, after Jonathan Lim [managing director of the defendant] had returned from Perth, the Plaintiffs and the Defendants entered into a Deed of Settlement and Release for a sum of US\$325,000.00 in settlement of all claims, demands, suits proceedings, rights and causes of action whether present or accruing at any time in the future in respect of or howsoever connected with the Service Agreement dated 1st December, 2000.

10 In pursuant [*sic*] of the Deed of Settlement and Release, the Defendants made payments of US\$250,000.00 on 8th February 2002 and US\$50,000.00 on 31st May 2002.

11 On 31st July 2002, the Defendants purchased a bank draft for US\$25,000.00 being the final payment to the Defendants under the Deed of Settlement and Release. However, the Plaintiffs had refused to accept payment and attempted to repudiate the said Deed.

12 In the premises, by reason of the Deed of Settlement and Release, there has been satisfaction and discharge of the Plaintiffs' alleged cause/s of actions.

The deed

7 Clauses 1, 2 and 7 of the deed provided that:

1 [The defendant] agrees that it shall pay or cause to be paid to [the plaintiff] (or such person or company as may be nominated by James Johnson [managing director of the plaintiff] for and on behalf of [the plaintiff] the sum of USD Three Hundred and Twenty Five Thousand (US\$325,000.00) which sum shall be paid to the nominee in the follow manner

- (a) the sum of USD\$250,000.00 upon the signing of this agreement
- (b) the sum of USD\$50,000.00 on or before 31 May 2002
- (c) the sum of USD\$25,000.00 on or before 31 July 2002

2 In consideration of each of the parties entering into this Deed and *upon the final payment referred to in clause 1* above each party will release and discharge each other party from and against all claims, demands, suits, proceedings, rights and causes of action whether present or accruing at any time in the future in respect of or how so ever connected with the Agreement.

7 The parties acknowledge that *this agreement is not effective until all funds referred to in clause 1 and 2 above have been received* into [the plaintiff's] solicitors bank account and confirmation of that receipt has been provided by [the plaintiff's] solicitors.

[emphasis added]

8 The deed was entered into at a meeting between Jonathan Lim Keng Hock, the defendant's managing director, and James Robert Johnson, the plaintiff's managing director.

9 The plaintiff pleaded in para 21 of its statement of claim that by a letter through its solicitors dated 29 July 2002, it gave notice to the defendant that it no longer considered itself bound by the deed.

10 The defendant's position is that it received the letter of 29 July on 2 August 2002^[1].

The evidence

11 It was not disputed that the defendant had made the first two payments under cl 1 of the deed.

12 The payment of the third payment presented greater difficulties for the Defence.

13 The wording of para 11 of the defence gave a hint of the difficulties. The assertion that the defendant had purchased a bank draft for US\$25,000 on 31 July 2002 is curious because the defendant's obligation was not to obtain the bank draft, but to pay the plaintiff. Perhaps it is intended to imply that payment was tendered, but no payment was tendered.

14 The contemporaneous documents revealed more about the third payment. On 28 June 2002 the defendant's solicitors wrote to the plaintiff's solicitors that the last payment was conditional upon the defendant receiving a copy of the deed executed by the plaintiff.^[2] The defendant or its solicitors probably gave further thought to the correctness of this assertion, as it was not raised in the pleaded defence.

15 On 1 August 2002 (one day after the date for the last payment and one day before the receipt of the letter dated 29 July), they wrote again to the plaintiff's solicitors to inform them that a banker's draft for US\$25,000 had been issued, and would be released to them in exchange for the executed deed.^[3] There was no evidence that the draft was tendered to the plaintiff or its solicitors at any time.

16 In the light of this evidence paras 11 and 12 of the defence were not made out as there was no payment or tender or rejection on 31 July 2002.

17 It was not pleaded or submitted on behalf of the defendant that cll 2 and 7 of the deed should not bear their literal and unambiguous meaning. From my reading, I have no reason to hold that they should not.

18 It is not clear from the arguments whether the defendant takes the position that the letter of 29 July relieved it from making the last payment on 31 July. To sustain the defence, the following questions must be addressed:

- (a) Did the letter received on 2 August have any bearing on the defendant's failure to pay on 31 July?
- (b) If it had a bearing, did the defendant accept that the deed was no longer binding?
- (c) If the defendant accepted that the deed was no longer binding, can it rely on the deed as a defence?

(d) If the defendant did not accept that the deed was no longer binding, can it ignore the express requirements of cl 2 and 7 and rely on the deed as a defence?

19 On the evidence before me, the answers are all “no”. The defence appears to be that the deed continues to be effective despite the non-compliance with cl 1(c) and the specific provision of cl 7, without resolving the contradiction or justifying the stance.

20 In the circumstances, the defence relying on the deed failed on the facts and in law, and judgment was entered in favour of the plaintiff with costs.

[\[1\]](#) Para 13 of Defence and affidavit of evidence-in-chief of Jonathan Lim Keng Hock, para 40

[\[2\]](#) AB375

[\[3\]](#) AB383

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