Coterie International (S) Pte Ltd v MAE Engineering Ltd
[2005] SGHC 18

Case Number : Suit 1112/2003

Decision Date : 01 February 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Anna Oei (Oei and Charles) for plaintiff; Eric Chew Yee Teck and Janet Chong Yean Yoong (Archilex Law Corporation) for defendant

Parties : Coterie International (S) Pte Ltd — MAE Engineering Ltd

Contract – Breach – Plaintiff claiming for various bonuses under contract – Whether entitled to 13th-month bonus – Whether entitled to incentive bonus – Whether incentive scheme rescinded by plaintiff's letter

Contract – Breach – Defendant counterclaiming for damages for plaintiff's breach of termination clause -Whether plaintiff entitled to treat contract as at an end – Whether plaintiff in breach of termination clause

Contract – Mistake – Recovery of money paid under mistake – Whether defendant entitled to recover payout to plaintiff on the ground of its mistaken belief that targets met

1 February 2005

Choo Han Teck J:

1 This was a claim by the plaintiff for various sums of money by reason of the defendant's breach of contract. The plaintiff is a company providing consultancy services in mechanical and electrical works for building contractors. The defendant is a company providing mechanical and electrical services and was, in effect, a client of the plaintiff. The contract in question was signed between the plaintiff and defendant on 1 March 1997, initially to last six months. The following were the salient terms:

(a) The plaintiff would send its majority shareholder and director, David Eydmann, on secondment to the defendant as a "general manager" to oversee the latter's project at "the Esplanade".

(b) During the first six months from 1 March 1997, either party could terminate the agreement with 15 days' notice or payment of half a month's fee-in-lieu.

(c) After six months, either party could terminate by giving no less than one month's notice or one month's fee-in-lieu.

(d) The agreement would be for one year but could be extended for a further year "upon terms and conditions acceptable to both parties".

2 The agreement was extended for two years with effect from 1 September 1997 by a letter dated 9 September 1997 from the defendant to the plaintiff. That letter also changed the termination clause from one month's to three months' notice or three months' fee-in-lieu. The plaintiff was also entitled to a bonus of $13,200 if it completed 12 continuous months of service. The defendant's letter of 9 September 1997 with the new terms also provided that the plaintiff would be paid an incentive bonus when the defendant achieved a minimum profitability of $2m (after tax). Since the defendant's

appeal against my judgment is in respect of this item only, I shall set out the exact terms in full for convenience:

> c) Incentive bonus ONLY when MAE [the defendant] achieves a minimum total profitability of S$2m (after tax) as agreed with our investor ACMA. MAE by itself (excluding contributions from L.O.I.) is looking at S$1.5m (after tax). In the light of this, the following milestone will apply to you [the plaintiff] (again here I must stress no pro-rata basis or distribution if you leave or your services is [*sic*] terminated before the Audited accounts are completed):
>
> (i) 1st Milestone
>
> 3% when MAE achieves the first S$1.5m (after tax) profit basing on the Audited accounts (excluding profits derived from L.O.I.).
>
> (ii) 2nd Milestone
>
> 5% on the balance of the years profit up to a maximum of S$100K (a combination of first and second milestone[s]).
>
> This incentive will commence from F/Y 1998 and the milestone will be subjected to annual review after taking into account expected annual growth.

3 The plaintiff stopped work on 21 October 2003 without giving the three months' notice in writing or payment of three months' fee-in-lieu. The defendant thus claimed damages for breach of the termination clause and asked that damages be assessed. In the contract then in force, the right of termination was given to both parties provided three months' notice was given. In the original contract, the termination clause provided for three months' notice or payment of three months' fee-in-lieu.

4 The parties had agreed at trial that the only issues to be tried concerned the plaintiff's claim for the 13th month bonus and $81,050 based on the defendant's profit of $2,221,000, after tax, for the year 2001; and as to the defendant's counterclaim, they concerned the sum of $55,000 being three months' fee-in-lieu of notice and a $50,000 payout made by the defendant on the ground of the defendant's mistaken belief that the targets for the year 2000 had been met.

5 Save for the clause set out above, the contract terms seem clear and were largely undisputed. So far as the plaintiff's claim was concerned, Mr Eydmann testified that he stopped going to work in October 2003 because the defendant had not paid the plaintiff all the money due under their contract, and in particular, the incentive bonus for 2001. It was clear that the plaintiff terminated the contract without completing 12 continuous months for that year (2003) and, therefore, its claim for the 13th month bonus of $13,200 must fail. Mr Eydmann testified that he thought that he was entitled to stop work because the plaintiff had not been paid. I do not think that the defendant's failure to make payment in this case amounted to a repudiation of contract. This was an ongoing contract in which payments had been made from time to time as agreed. Thus, the defendant's failure to make some payments subsequently, unaccompanied by any intention no longer to perform or honour its obligations, did not entitle the plaintiff to treat the contract as at an end. On the terms of the contract in question, the plaintiff was bound to give notice of termination, or at least, which was not an issue before me, give a notice of breach and declare that unless the breach was rectified, he would treat the contract as at an end. I found that the plaintiff was thus in breach in failing to give the requisite three months' notice. However, since there was no evidence of damage suffered by the defendant, I ordered nominal damages of $500 against the plaintiff.

6 The plaintiff's claim for its incentive bonus in the sum of $81,050 was in respect of the year 2001 in which the defendant's own accounting records showed a profit of more than $2m. The dispute lay in Mr Chew's argument on behalf of the defendant that the relevant contractual documents, namely the letters of 3 and 9 September 1999, had rescinded the previous contract embodied in the agreement of 1 March 1997 and were extended by the defendant's letter of 9 September 1997 which provided for the payment of such bonuses. In the plaintiff's letter of 3 September 1999, it offered to extend the previous agreement "on an ongoing basis with three months [*sic*] notice of termination by either party. All other terms and conditions remain as contained in [the defendant's] letter of 9 September 1997". The defendant replied by a letter dated 9 September 1999, accepting the offer of extension in the following terms:

> We accept the contents of your letter dated 3 September 1999 with the exception of the Incentive Scheme which will be adjusted according to prevailing scheme and targets set for the company on a yearly basis.

On the basis of this short letter, Mr Chew argued that the words "with the exception of the Incentive Scheme which shall be adjusted …" meant that the Incentive Scheme was rescinded. The parties had rescinded the Incentive Scheme set out in cl (c) of the previous letter of extension, namely the one dated 9 September 1997. I am of the opinion that that was an erroneous reading of the passage just quoted. The parties clearly intended that the Incentive Scheme be amended to be flexible since the entire contract was going to be extended on an "ongoing" basis. The scheme thus remained, but the figures and percentage might be adjusted according to the "prevailing scheme and targets set for the company on a yearly basis". There was no dispute that for the year in question, no new target had been set and the prevailing target, in my view, must have remained as set out in cl (c). It was not the defendant's (nor the plaintiff's) case that the company had established fresh targets that were not met, or were either improper or unreasonable.

7 In any event, Miss Anna Oei, counsel for the plaintiff, asked Mr Yeo Weng Chew, the President and Executive Director of the defendant, in cross-examination, whether it was clear from the letter of 9 September 1997 that "it is the milestones that are to be reviewed and not the existence of the incentive scheme", and Mr Yeo conceded that it was. She then put it to him that it was therefore a question of "how much", and not "if", to which Mr Yeo replied, "I agree". The next witness for the defence, Mr Lee Kam Seng, who was in charge of the defendant's corporate affairs, prevaricated for a while but could not deny the figures in the company's audited accounts. From those accounts Miss Oei eventually had him confirm that an incentive bonus had in fact been paid for the year 2001. From the testimony given in court, I find Mr Eydmann, for the plaintiff, to be a more reliable witness than Mr Yeo and Mr Lee. On the evidence as presented, I am of the view that the defendant had, on a balance of probabilities, achieved its target of $2m profit after tax for the year 2001 and the plaintiff was therefore entitled to the sum of $81,050 which figure was agreed by counsel to be correct in the event that liability is found against the defendant.

8 In respect of the defendant's claim for the refund of $50,000 based on the alleged mistaken belief that the company met its financial target in the year 2000, I find that there was no mistake as the company's financial records show that the payment was correctly calculated and approved. I do not accept, without more, the defendant's bald statement that the profits were written off as losses in subsequent years.

9 In the event, I dismissed the plaintiff's claim for the bonus of $13,200 for 2003, but allowed its claim for $81,050 as incentive payment for 2001. I dismissed the defendant's counterclaim for the $50,000 but awarded nominal damages of $500 for the plaintiff's failure to give notice of termination

of employment. Costs were awarded to the plaintiff at 80% of taxed costs.