IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 63

Civil Appeal No 19 of 2019

Between

Jurong Primewide Pte Ltd

… *Appellant*

And

Crescendas Bionics Pte Ltd

… *Respondent*

Civil Appeal No 20 of 2019

Between

Crescendas Bionics Pte Ltd

… *Appellant*

And

Jurong Primewide Pte Ltd

… *Respondent*

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In the matter of Suit 477 of 2015

Between

Crescendas Bionics Pte Ltd

… *Plaintiff*

And

Jurong Primewide Pte Ltd

… *Defendant*

And

Jurong Primewide Pte Ltd

… *Plaintiff in Counterclaim*

And

Crescendas Bionics Pte Ltd

… *Defendant in Counterclaim*

JUDGMENT

[Civil Procedure] — [Pleadings]

[Building and Construction Law] — [Delay in completion] — [Reasonable time]

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Jurong Primewide Pte Ltd
v
Crescendas Bionics Pte Ltd and another appeal

[2019] SGCA 63

Court of Appeal — Civil Appeals Nos 19 and 20 of 2019
Judith Prakash JA, Woo Bih Li J and Quentin Loh J
16 September 2019

11 November 2019 Judgment reserved.

Quentin Loh J (delivering the judgment of the court):

Introduction

1 These cross-appeals are against the decision of the High Court judge ("the Judge") in *Crescendas Bionics Pte Ltd v Jurong Primewide Pte Ltd* [2019] SGHC 4 ("the Judgment").

2 Crescendas Bionics Pte Ltd ("Crescendas") is a property developer, while Jurong Primewide Pte Ltd ("Jurong Primewide") is a contractor. The parties signed a four-page Letter of Intent ("LOI") on 30 June 2008, whereby Crescendas engaged Jurong Primewide to build the Biopolis 3 Project. Due to subsequent disputes, no further documents were executed between the parties. On 22 December 2010, the Building and Construction Authority ("BCA") directed that an application be made for Temporary Occupation Permit ("TOP") and on 12 January 2011, the Biopolis 3 Project was certified complete. The

parties were agreed that regardless of whichever date was taken as the date for "substantial completion" under the LOI, this would exceed the stipulated time period of 18 months for Jurong Primewide to complete the Project.

3 The parties brought suit against each other. Crescendas claimed, among other things, that the $12.3m provided for the preliminaries under the LOI ("the Preliminaries Sum") was a tentative figure to be negotiated within four weeks of the signing of the LOI. Conversely, Jurong Primewide claimed that the Preliminaries Sum was fixed.

4 Crescendas also claimed that Jurong Primewide was responsible for the entirety of the delay in the completion of the Project and liable for liquidated damages pursuant to the LOI. Conversely, Jurong Primewide asserted that it was not responsible for any of the delays because Crescendas had committed acts of prevention. Jurong Primewide further submitted that due to Crescendas' acts of prevention, and the absence of an extension of time clause in the LOI, the relevant time for completion had been set "at large": see *Fongsoon Engineering (S) Pte Ltd v Kensteel Engineering Pte Ltd* [2011] SGHC 82 ("*Fongsoon*") at [24]–[25]. Jurong Primewide was thus liable to complete the Project within a "reasonable time" and only liable for general damages for the periods it exceeded the "reasonable time" by.

5 The Judge found largely in favour of Jurong Primewide. He held that the Preliminaries Sum was fixed. However, he also held that the parties must have contemplated that if there were double payments by Crescendas to Jurong Primewide and the trade contractors for the same preliminaries, Jurong Primewide was not entitled to such payments and any double payments must be refunded to Crescendas ("the Refund Ruling"): see the Judgment at [163].

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6 In the premises, the Judge found that Jurong Primewide was responsible for 133 days of delay, while Crescendas was responsible for 173 days of delay. Given that Crescendas had engaged in acts of prevention, and the absence of an extension of time clause within the LOI, the time for completion had been set "at large".

7 In this regard, the Judge declined Crescendas' submission to simply add together the initial estimate of 18 months with the time Crescendas was found to have contributed to the delay (which he found to be 173 days). He considered that the parties had not included the 25 days for capping beams work in the August 2008 Master Programme. Since the Project would *actually* need 25 days in addition to the initially forecasted 18 months, this had to be taken into consideration in deciding what "reasonable time" was: see the Judgment at [368].

8 Applying the principles in *Fongsoon* at [25] and the English High Court's decision in *Astea (UK) Ltd v Time Group* [2003] All ER (D) 212 at [144], the Judge considered that "what constitutes reasonable time for the Project's completion is a holistic approach that includes taking into account the *actual* conduct of the parties that caused the delay…whether the parties' initial agreed time frame to complete the Project was reasonable, the experts' opinions…on the timelines in light of the *actual* scope of work involved in the Project, and the *actual* delay caused by the plaintiff" [*emphases in original*]: see the Judgment at [356]–[360]. Accordingly, the Judge held that the "reasonable time" for Project completion was 18 months, plus the 173 days of delay caused by Crescendas, *plus an additional 25 days for the capping beams work*.

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Jurong Primewide's appeal

9 We first deal with Civil Appeal 19 of 2019 ("CA 19"), which is Jurong Primewide's appeal. The sole ground of appeal in CA 19 relates to the learned Judge's 'Refund Ruling', *ie*, if there was any double payment for the same preliminaries work made by Crescendas to Jurong Primewide under the LOI (as part of the $12.3 million) and under the various trade contractors' preliminaries, then those sums, if any, should be refunded. During oral submissions before us, counsel for Crescendas accepted, correctly in our view, that the alternative basis of a refund of double payment of preliminaries to Jurong Primewide had not been specifically pleaded. Nor did Crescendas, after all this time, ascertain and plead what was the value of the alleged overlapping preliminaries works provided. It is important, especially in building and construction cases, for such averments to be specifically pleaded and with sufficient particulars so that the other party knows what case it has to meet. This would have enabled these alleged double payments to have been properly canvassed during the trial given that it was an issue of liability.

10 We therefore allow the appeal in CA 19 and reverse the learned Judge's ruling in this regard. For the avoidance of doubt, we agree with the learned Judge's construction of the "Preliminaries" figure in the LOI being a fixed sum and as one not subject to further negotiation.

Crescendas' appeal

11 We now turn to Crescendas' appeal in Civil Appeal 20 of 2019 against substantial portions of the Judge's decision.

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12 In our view, the Judge had carefully considered each and every issue and delivered a detailed judgment with cogent reasons. We see no basis to disturb most of his findings, which were clearly with the weight of evidence and with which we in fact agree. There was no misapplication of the law to the facts of this case.

13 We need only rectify an agreed calculation error and allow the appeal in part on the sole issue of the reasonable time for Project completion allocated to Jurong Primewide as a result of the capping beams work.

Calculation error

14 First, it is common ground that there was an arithmetical error in computation of the days of delay for which Jurong Primewide was responsible. The Judge below calculated 133 days when it should have been 136 days. Counsel are in agreement that this should be rectified.

15 We agree and hold that Jurong Primewide was responsible for 136 days of delay (notwithstanding the issue of the time taken for the capping beams work).

Capping beams work

16 Secondly, we have, with respect, come to a different view from the learned Judge only on the issue in relation to the time taken for the capping beams work.

17 It is undisputed that the parties had initially estimated 18 months would be sufficient for Project completion. At the hearing before us on 16 September 2019, counsel for Jurong Primewide accepted that at the time it entered into the

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contract, Jurong Primewide would have been aware of the need for the capping beams work when it agreed to an 18-month completion period. We think this concession was rightly made.

18 When Jurong Primewide sent its Master Programme to Crescendas on 8 July 2008, (shortly after the LOI was signed), there was no itemised activity and time provided for the capping beams work. However, Crescendas commented by email dated 14 July 2008 to say that the duration of certain structural works seemed optimistic given the need for the construction of the capping beams. Jurong Primewide's response on 11 August 2008 was that adequate time had been provided for the pile caps. Like the July 2008 Master Programme submission, the August 2008 Master Programme did not include an itemised activity and time for the capping beams work. This was only remedied in April 2009 when Jurong Primewide added in itemised activities and times for the capping beams work into the revised Master Programme.

19 Whilst Jurong Primewide may have been mistaken in its assessment of the time taken for the capping beams work, this was an error that lay at their doorstep and was not a fault or act of prevention that could be attributed to Crescendas, especially since Crescendas had specifically mentioned the capping beams in its comments dated 14 July 2008. Jurong Primewide should therefore not be given the benefit of an additional 25 days for the capping beams work in computing a reasonable time within which the Project should be completed.

20 This would mean that Jurong Primewide would have exceeded the reasonable time for completion by 161 days (136 + 25). Jurong Primewide is liable for general damages for this period and for any additional preliminaries paid for those 161 days, which must be refunded to Crescendas.

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Conclusion

21 As for the costs of the proceedings below, as ordered by the learned Judge, the parties are to agree costs and if not agreed, costs are to be assessed by him at such stage or in such manner as he might order.

22 As for the costs of the appeals, the parties are to agree costs (with the usual consequential orders), and if not agreed, the parties are to exchange and file written submissions not exceeding eight pages each within seven days from the date hereof.

Judith Prakash	Woo Bih Li	Quentin Loh
Judge of Appeal	Judge	Judge

Philip Antony Jeyaretnam SC, Koh Kia Jeng, Lau Wen Jin, and Tay Yoong Xin Avril (Dentons Rodyk & Davidson LLP) for the appellant in Civil Appeal No 19 of 2019 and the respondent in Civil Appeal No 20 of 2019; and Karam Singh Parmar, Kang Weisheng Geraint Edward, Leong Lijie, Chan Karfai Michael, and Yeow Yuet Cheong (Tan Kok Quan Partnership) for the respondent in Civil Appeal No 19 of 2019 and the appellant in Civil Appeal No 20 of 2019.

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