

Hsiang Ding Enterprise Co Ltd v Singasia Investments Pte Ltd (formerly known as Shinkeikin Aluminium (Pte) Limited)
[2000] SGHC 214

Case Number : Suit 1446/1999, RA 600101/2000
Decision Date : 25 October 2000
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Loo Choon Chiaw and Pua Lee Siang [Loo & Partners] for the plaintiffs/appellants; Ho Chien Mien and Chua Boon Tien [Allen & Gledhill] for the defendants/respondents
Parties : Hsiang Ding Enterprise Co Ltd — Singasia Investments Pte Ltd (formerly known as Shinkeikin Aluminium (Pte) Limited)

JUDGMENT:

Grounds of Decision

1. The plaintiffs are a company incorporated in Taiwan and carry on the business of granite suppliers there. The defendants are a Singapore company who were the sub-contractors to the Sub-Contractor, Hung Wei Aluminium Co ("Hung Wei") in a building project in Taiwan known as the "Taoyuan Loongtian Building Project". The main contractor was Sun Sea Construction Ltd.
2. The defendants' role was to design, supply and install the curtain walls for the project. To that end, they contracted with the plaintiffs for the supply of processed granite. The granite must be cut and ground to certain specifications.
3. The plaintiffs and defendants had agreed that in the event of a dispute the governing law shall be the law of Singapore. There was, however, no choice of jurisdiction clause in the contract.
4. The plaintiffs commenced the present suit against the defendants to recover NT\$11,278,671.50 being the unpaid balance due. The plaintiffs averred that they had delivered all the granite contracted for under the three separate contract documents but the defendants have wrongfully retained the aforesaid sum.
5. The defendants applied to stay the action on the ground that Taiwan is the proper forum for the dispute to be tried. They succeeded before the learned assistant registrar and the plaintiffs appealed before me.
6. The defendants' case was that there is an available forum which is the appropriate forum for the trial, and that forum is Taiwan. Mr Ho, counsel for the defendants, submitted that the project was in Taiwan; the plaintiffs were in Taiwan; the goods were delivered in Taiwan and payment were to be made in Taiwan. He submitted that there were only two factors connected with Singapore and they were the fact that the defendants are a Singapore registered company, and the parties had agreed that the law of Singapore should be the governing law. Mr Ho contended that while the plaintiffs' claim is a simple one, the defendants' case is not. He submitted that there was a novation of the contract whereby Hung Wei the sub-contractor became the party who is liable to pay for the granite. Furthermore, the defendants are locked in a legal dispute in the Taiwan court over the project. In that litigation Hung Wei had alleged that the defendants were in breach of contract and responsible for a number of delays. The claim by Hung Wei far exceeds the claim by the plaintiffs against the defendants. Mr Ho further submitted that the defendants will be holding the plaintiffs responsible for the claims of delay by Hung Wei, and will thus claim a set-off of all moneys that is eventually adjudged to pay Hung Wei against the claims by the plaintiffs. Mr Ho also submitted that although the relevant witnesses are from the defendants, they are all Chinese speaking and perfectly happy to testify in Taiwan.
7. I agree that the plaintiffs' case is indeed a simple and straightforward one. It is a case in which either Taiwan or Singapore can equally be a natural forum for the trial. In these circumstances, the fact that the defendants are here and the choice of law being

that of Singapore, the balance tips in favour of the defendants' claim that Singapore is the more appropriate forum.

8. Mr Ho's argument that the Hung Wei action in Taiwan was an important factor because of the need to avoid multiple proceedings, as well as the close connection with the Hung Wei action in Taiwan, loses much of its allure when it is apparent that the Hung Wei proceedings have been going on in Taiwan for some time and no attempt had been made by the defendants to join the plaintiffs as a party in that action. In those circumstances, without having instituted any claim, it is difficult to see how the defendants can attach liability on the plaintiffs for delay in the delivery of the granite. It is important to note that Mr Ho conceded that the plaintiffs are not liable for the entire delay claims by Hung Wei. Thus, without joining the plaintiffs in the Hung Wei action, it is impossible to apportion any liability to the plaintiffs.

9. Mr Ho submitted that the reason why the defendants had not made the plaintiffs a party to the Taiwan action was that they (the defendants) did not wish to weaken their case in Taiwan by an admission that the granite were not of adequate quality - even though the fault for that lay with the plaintiffs. I am of the view that this is not a viable explanation. If the defendants are content to conduct their litigation with Hung Wei without joining the plaintiffs in Taiwan they cannot use Hung Wei as a connecting factor to stay this action here. Accordingly, I see no sufficient grounds to relinquish jurisdiction in this case.

10. The appeal was therefore allowed.

Choo Han Teck

Judicial Commissioner

Copyright © Government of Singapore.