SMIT Land & Marine Engineering (Far East) Pte Ltd v Nacap Drilling Sdn Bhd [2001] SGHC 268

Case Number : Suit 216/2001, RA 146/2001

Decision Date : 13 September 2001

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Thio Ying Ying and Lim Siew Khim [Kelvin Chia Partnership] for the plaintiffs; Mark Lim [Work & Leow LLC] for the defendants

Parties : SMIT Land & Marine Engineering (Far East) Pte Ltd — Nacap Drilling Sdn Bhd

Judgment:

GROUNDS OF DECISION

1. This was an appeal against the decision of the assistant registrar dismissing the defendants' application for a stay of proceedings in favour of proceedings being brought in the United Kingdom on the basis of an alleged choice of law and jurisdiction clause in the contract. The historical background is important. The subject matter is known as a "Directional Drilling Rig No. 4". It was owned by a UK company called Smit Land & Marine Engineering Ltd ("Smit UK"). They entered into a contract of hire with the defendants. The hire was for two months beginning 30 July 1999 and terminating on 30 September 1999. According to the defendants they were given an option by Smit UK to renew the hire. The defendants in fact enquired about a renewal sometime in mid-August and were told that the rig was being sold to a company in Singapore called Smit International (Singapore) Pte Ltd. Smit International (S) Pte Ltd hired the rig to the plaintiffs shortly after 1 October 1999. When the hire contract between Smit UK and the defendants expired on 30 September 1999 the defendants retained physical possession of the rig pending negotiations for a fresh contract.

2. The negotiations were conducted between the defendants and the plaintiffs' respective representatives. The plaintiffs' representative Michael Fitzsimmons sent an electronic mail to Matthew Sewell of the defendant company on 20 October 1999. In this mail Sewell expressly stated that he "will prepare a new contract for the period from 1st October to end November with the option to continue the hire to the end of December." He also stated in the same paragraph that this "second agreement will use SMIT Land & Marine Engineering (Far East) Pte Ltd as the contracting party". On 3 November 1999 Sewell sent a formal "Proposal For Hire" to the defendants, the last paragraph of which stated that the defendants "are deemed to have accepted the Terms and Conditions on collection of the [rig] from our KL Yard". It was not disputed that the rig had been collected and were being utilised by the defendants. Clause 5 of the proposal stated that the contract for hire will be between the plaintiffs and the defendants and "will be subject to SLME Standard Conditions for the supply of [the rig] (by hire) July 1999 - copy enclosed". It was not disputed that the Standard Conditions of SLME referred to the original standard conditions of Smit UK. Those terms and conditions provide that in the event of any dispute UK law shall apply and the parties shall submit themselves to the jurisdiction of the UK courts. However, the copy of the Standard Conditions that was attached to the 3 November Proposal for Hire was the Standard Conditions and Terms of the plaintiffs and those conditions provide that in the event of any dispute the laws of Singapore shall apply and the parties submit to the jurisdiction of the Singapore courts.

3. Mr. Lim submitted on behalf of the defendants that the defendants were under the impression that the Smit UK Standard Conditions were the applicable terms. He submitted that the defendants did not pay attention to the copy of the conditions that was enclosed with the 3 November 1999 proposal.

Mr. Lim submitted that in any event, the proposal of 3 November was never formally accepted by the defendants.

4. There is an obvious inherent contradiction in the wording of cl 5. One part was clearly inserted by mistake. The question is, which? Mr. Lim submitted that the reference in the 3 November Proposal to the "SLME conditions July 1999" was a misrepresentation by the plaintiffs to the defendants. I do not think that it is quite as serious as that because the actual text of the plaintiffs' Standard Conditions were in fact attached and if read the discrepancy would have been discovered. However, I am of the view that the circumstances of this case do not merit a finding that the proposal of 3 November had been accepted by the defendants. This is not to say that there was no binding contract between the plaintiffs and them. There clearly was; but how the terms of that contract are to be inferred - whether from the oral discussions, electronic communication, or the letters - is a matter to be determined at trial. It is also my view that there is nothing before me to warrant a finding that the Smit UK Standard Conditions apply, especially in view of my finding that the defendants had not accepted the 3 November Proposal so that there is no evidence of any reference to the Smit UK Standard Conditions in cl 5. In fact, the rig no longer belongs to Smit UK and their only involvement appears to be the provision of one of their men for servicing or operating the rig. The application of the defendants in so far as it was for a stay of proceedings in favour of the UK courts must therefore fail. They are entitled, of course, to apply for a stay on the ground of forum non conveniens if they believe that there are grounds to do so; that is to say, that there is another, more appropriate forum (but not the UK forum on the basis of cl 5). This appeal, as it was presented, must fail and is accordingly dismissed.

- Sgd -

Choo Han Teck
Judicial Commissioner

Singapore,13 September 2001.