

PT Panosonic Gobel Indonesia v Stratech Systems Ltd
[2010] SGHC 141

Case Number : Suit No 34 of 2007 (Registrar's Appeal No 20 of 2010)
Decision Date : 06 May 2010
Tribunal/Court : High Court
Coram : Philip Pillai JC
Counsel Name(s) : Yong Boon On, Shum Wai Keong and Liu Zeming (Wong & Leow LLC) for the plaintiff; Devinder Rai (Acies Law Corporation) for the defendant.
Parties : PT Panosonic Gobel Indonesia — Stratech Systems Ltd

Contract

6 May 2010

Philip Pillai JC:

1 This was an appeal brought by the defendant from the assistant registrar's ("AR") decision on 11 January 2010 in which the AR awarded the plaintiff, PT Panasonic Gobel Indonesia, the sum of S\$1,830,000 as damages.

2 The principal ground of appeal was that the plaintiff had failed to prove the loss and damage it has suffered given the nature of the claim and the evidence it adduced. The defendant, Stratech Systems Limited, submitted that in the circumstances, the plaintiff should only have been awarded nominal damages.

3 In support of this, the defendant, Stratech Systems Limited, first submitted that the plaintiff's claim for a refund of the entire payments made by them to the defendant was in fact a claim for restitution. The defendant submitted that a claim for restitution could only be made if the plaintiff could show that there was a total failure of consideration.

4 The principal action between the parties from which the AR's damages assessment followed was Suit No 34 of 2007, *PT Panasonic Goebel Indonesia v Stratech Systems Ltd* [2009] 1SLR(R) 470, where Judith Prakash J found at [87] that the plaintiff's claim was one for damages to be assessed and "not a claim for refund of payments made on the basis of a total failure of consideration." The learned Judith Prakash J had found at [86] that the plaintiff was entitled "to claim whatever damages it can prove it has sustained by [the defendant's] breach up to the amount of S\$1,830,000 being the total costs of services to be provided by [the defendant] (for all four modules) under the Services Agreement, plus interest".

5 Three measures of damages are set out by Andrew Phang in *Cheshire, Fifoot and Furmston's Law of Contract - Second Singapore and Malaysian Edition* (Butterworths Asia, 1998) ("*Cheshire, Fifoot and Furmston - Second Singapore and Malaysian Edition*") at pp 988 – 989:

The question of what exactly it is that the plaintiff has lost is often a subtle one and for this purpose it is useful to use the terminology popularised by a famous American article and distinguish between *expectation* loss and *reliance* loss. Expectation loss is the loss of that which the plaintiff would have received if the contract had been properly performed.

...

There is a *third* category of damages commonly referred to as *restitution* loss.

[emphasis in original]

6 In principle, it seemed that the plaintiff had a free choice whether to quantify his loss on an expectation or a reliance basis. The plaintiff was claiming reliance loss in that the payment of the contract sum was wasted. *CCC Films (London) Ltd v Impact Quadrant Films Ltd* [1985] QB 16 is authority for the proposition that a claim can be made for such loss. In that case, the plaintiffs were awarded the contractual price they had paid to the defendants for a licence to exploit three movies. It was found that the defendants had breached subsidiary contracts to deliver the tapes of those movies, and thus a foreseeable result of the breach was that the expenditure incurred by the plaintiffs in acquiring the licence would be wasted. In the present case, the plaintiff was similarly not claiming for restitution, but was claiming for reliance loss in the form of the wasted expenditure it sustained when it paid the contract sum.

7 The AR observed that: [\[note: 1\]](#)

[n]o doubt claiming the contractual price as a reliance loss and a claim of the same for total failure of consideration may seem superficially similar. But there are material differences such that making the former claim is not to be considered a backdoor means of getting around not having properly pleaded the latter. The former claim is premised on the argument that in reliance on the defendant's promise, the plaintiff has made an expenditure (i.e. the payment of the contract price) which has been *wasted*, but the latter claim is founded on an entirely separate argument that the defendant has been *unjustly enriched* because of his total non-performance of the contract.

...

It follows...that it is open to a plaintiff to choose between making one or the other claim.

[emphasis in original]

I agreed with the above observations and noted that they were in accord with the decision of Judith Prakash J and the law summarised above.

8 Secondly, the defendant submitted that the plaintiff has derived a benefit from the services it gave and accordingly a claim for total refund of the payments could not be allowed. However, the burden was on the defendant to establish benefit. The AR found that the defendant had not: [\[note: 2\]](#)

shown ... that, assuming that the CSM and F&D modules were indeed properly installed and fully useable, if [the plaintiff] wanted a fresh commission of a working ERP system, it could reuse those modules as part of the new system. There was also no evidence that [the plaintiff] had continued to use the CSM and F&D modules after the failed go-live attempt in 2003.

As the defendant had not established the benefit of the service, this submission lacked merit.

9 Finally, the defendant submitted that the plaintiff's real claim for loss and damage should have been for the costs for rectification of the system. The short answer to this submission was that the

plaintiff was entitled to choose as to how it quantified its loss and it had elected to do so on a reliance basis.

10 As such, the appeal was dismissed. Costs of the appeal of S\$12,000 exclusive of disbursements were awarded to the plaintiff to be paid by the defendant. The Accountant-General was directed to pay the sum of S\$2,190,003.55 (paid in on behalf of the defendant) in satisfaction of the judgment sum, costs and interests claimed by the plaintiff, together with any interest earned (if any) to Wong & Leow LLC, Singapore.

[\[note: 1\]](#) Notes of Evidence, 11 January 2010, at page 4

[\[note: 2\]](#) Notes of Evidence, 11 January 2010, at page 7

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