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Singapore High Court holds contract avoided due to common mistake about fundamental and essential point

Norwest Holdings Pte Ltd (in Liquidation) v Newport Mining Ltd
[2010] SGHC 144

In *Norwest Holdings Pte Ltd (in Liquidation) v Newport Mining Ltd* [2010] SGHC 144, the Singapore High Court found that a common mistake as to a fundamental and essential point of the contract arose between both parties, thus voiding the contract.

Background

The case concerned the sale by the liquidator of the plaintiff company, Norwest Holdings Pte Ltd (in liquidation) ("**Norwest**"), of the entire share capital of its wholly-owned subsidiary, Norwest Chemicals Ltd, to the defendant, Newport Mining Limited ("**Newport**").

Norwest Chemicals Ltd is the sole shareholder of Sichuan Mianzhu Norwest Phosphate Chemical Company Limited (the "**Chinese Business**"), which operated a vertically-integrated business consisting of mining rights to two phosphate rock mines, as well as production facilities for sodium and potassium phosphate and phosphoric acid. The mines and production facilities were located in the Sichuan province of the People's Republic of China.

In accordance with the sales process set out in Norwest's Information Memorandum, Newport submitted its Expression of Interest on 4 April 2008 and a Firm Letter of Offer dated 9 May 2008 (the "**9 May Letter**"), proposing to purchase the Norwest Chemicals Ltd shares for S\$10.25 million, subject to the terms and conditions in the Sale and Purchase Agreement to be negotiated.

On 12 May 2008, three days after the 9 May Letter was sent, the Sichuan earthquake, measuring 7.9 on the Richter scale, struck and caused severe damage to the mines and production facilities. The entrances to four out of five mine shafts were sealed by rubble, and the road to the mines became inaccessible. All four furnaces at the phosphate production facilities were damaged, two beyond repair. The less severely damaged parts of the production facilities eventually resumed operations several months later, relying on external sources of phosphate rocks, but with significantly lower production levels. The Chinese Business was no longer a vertically-integrated operation.

Roughly two hours after the Sichuan earthquake, at 4.20pm Singapore time on 12 May 2008, the secretary to Norwest's liquidator sent an email attaching the liquidator's letter addressed to Newport purporting to accept the offer made in the 9 May Letter. The liquidator claimed to have not known of the earthquake at the time his acceptance letter was sent to Newport.

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Newport requested information as to the actual extent of damage to the mines and production facilities and its impact on the Chinese Business, but no information was provided by the liquidator. After its own assessment of the damage, Newport informed Norwest, on 3 June 2008, that it would not be going ahead with the purchase of the Norwest Chemical Ltd shares as the underlying basis of the agreement had been severely undermined by the Sichuan earthquake.

Norwest then purported to mitigate its loss arising from the alleged breach of contract by selling the shares to its parent company, Hwa Hong Edible Oil Industries, for S\$4.5 million. Norwest's action was brought to recover the sum of S\$5.6475 million as damages arising from Newport's failure to complete the purchase of the entire share capital of Norwest Chemicals Ltd. Newport denied that there was a valid and binding contract of sale between itself and Norwest and counterclaimed for the return of the S\$102,500 deposit it had placed with Norwest.

Issues before the court

Two main issues were dealt with by the High Court in deciding the case:

- (a) Whether there was a valid and binding contract of sale between Norwest Holdings Pte Ltd and Newport Mining Ltd.
- (b) Whether a common mistake as to the condition of the mines and production facilities arose between the parties.

Was there a valid and binding contract of sale between Norwest and Newport?

The High Court found that there was a valid and binding contract of sale between the parties as substantial agreement on the most essential matters of the transaction, namely the price, the subject matter of the sale, and the allocation of risk, had been agreed upon. Substantial, and not complete, agreement was sufficient for a contract to be concluded. The High Court also found that there was an intention to create legal relations based on the substantial agreement and a holistic view of the structure of the bidding process.

As to whether Newport's offer had lapsed through the failure of an implied condition that the Chinese Business was to remain in substantially the same state and condition it was at the time of offer, the High Court decided that it would be more appropriate instead to decide the case using the doctrine of common mistake.

Did a common mistake, capable of voiding the contract, arise between the parties?

The High Court found that both parties had contracted with a mistaken common assumption as to the state and condition of the Chinese Business, which was the fundamental subject-matter and essence of the transaction. A

common mistake about a fundamental and essential point of the contract, and which lay at the root of the contract, therefore arose between the parties, resulting in the contract being void *ab initio*.

Further, the court held that Newport was also justified in not completing the purchase of the Norwest Chemicals Ltd shares because Norwest was not able to deliver the Chinese Business in the state and condition it was actually in at the time of the offer.

Conclusion

Accordingly, the High Court dismissed Norwest's claim and granted judgement on Newport's counterclaim.

Allen & Gledhill LLP represented Newport in its successful defence and counterclaim.

If you would like to discuss the impact of this case on your business, please contact:

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