Sintalow Hardware Pte Ltd v Ricwil (Singapore) Pte Ltd
[2000] SGHC 108

Case Number	: Suit 2128/1997
Decision Date	: 13 June 2000
Tribunal/Court	: High Court
Coram	: Judith Prakash J
Counsel Name(s)	: Kenneth Tan, SC with Joseph Tan (Kenneth Tan Partnership) for the plaintiffs; Johnny Cheo (Cheo Yeoh & Associates) with Genevieve Sim (Khattar Wong & Partners) for the defendants
Parties	: Sintalow Hardware Pte Ltd — Ricwil (Singapore) Pte Ltd

JUDGMENT:

Cur Adv Vult

1. Sintalow Hardware Pte Ltd ('Sintalow') is a major stockist of pipes in Singapore. It supplies pipes for building construction projects. Its directors and shareholders are Mr Johnny Chew Kong Huat and his wife, Madam Aw Mui Kee. In July 1990, Mr Chew entered into a joint venture agreement with a Malaysian company, Ricwil (Malaysia) Sdn Bhd, to establish a Singapore company to deal in insulated pipes. This joint venture resulted in Mr Chew becoming a 50% shareholder of Ricwil (Singapore) Pte Ltd ('Ricwil') and its managing director. In August 1993, Madam Aw also became a director of Ricwil.

2. For some years Sintalow, Ricwil and two other companies owned by Madam Aw and Mr Chew, shared common premises and had a common administrative staff including an accounts executive who handled their accounts. Mr Chew and his joint venture parties fell out in early 1996 and he resigned as managing director of Ricwil on 15 April 1996. Madam Aw resigned her position some three months later. In mid 1996, Ricwil moved to its own premises.

3. The present action is the second one to result from the severing of relations between Sintalow and Ricwil. It involves claims by both parties. In the main action, Sintalow is the plaintiff. Its initial claim was for $400,194.88 in respect of goods sold and delivered and services provided to Ricwil and a further sum of $119,718 as interest. Ricwil, as the defendant in the main action, disputed the plaintiff's claim and put in its own counterclaim for $185,400.65 for goods sold and delivered to Sintalow and also claimed repayment from Sintalow of various sums which had been paid to it while Madam Aw and Mr Chew ran Ricwil. Ricwil joined Madam Aw and Mr Chew as additional defendants to the counterclaim, claiming that they had been in breach of their fiduciary duties to Ricwil.

4. The trial of the claim and counterclaim was fixed from 1 to 10 March 2000. The trial was stood down on the first day for the parties to agree on some of the items of claim. This was a reasonably successful exercise and by the time the trial itself started, many items had been disposed of. A few more items were disposed of in the course of the trial. Unfortunately, there were a number of items on which the parties could not agree. I will deal with these in turn, commencing with the claims made by Sintalow before moving on to those presented by Ricwil in its counterclaim.

SINTALOW'S CLAIMS

(A) Goods sold and delivered

5. Sintalow claimed $329,243.95 for goods sold and delivered to Ricwil at Ricwil's request between 17 February 1995 and 8 August 1996 as evidenced by 146 invoices sent by Sintalow to Ricwil. During the course of the trial, Ricwil conceded items amounting to $322,256.55 while Sintalow abandoned claims worth $1,130.69.

6. Of the sum of $5,856.71, remaining in dispute, $2,483.21 is represented by Sintalow's invoice no. 3840 dated 17 February 1995. Ricwil's objection related only to the last of the three items in that invoice which was a sum of $2,500 charged for 'welding two elbow ends short pipe (pipe end bevelling by Nam Aik) (for American School project)'. Ricwil's position is that this item was not in the original delivery order at the time it was signed by Mr Choong Siew Fai, Ricwil's Technical/Contract Manager at the material time, but was later added to the delivery order by Mr Chew. In the premises, Ricwil says that it did not agree to this price or receive the benefit of the items.

7. Mr Chew's evidence was that the welding and bevelling were done by Nam Aik Engineering Works at the cost of $2,500 and that Sintalow had claimed reimbursement of Nam Aik's charge only without adding any additional fee. The item 'pipe/cut cost/bevelling' was stated in the relevant delivery order, DO 53210, when Mr Choong signed it. Only the details of the work done by Nam Aik and the cost of $2,500 were inserted by Mr Chew after Mr Choong's signature. Mr Chew's evidence that the welding etc related to the pipes sold to Ricwil as stated in the earlier portion of the delivery order is not disputed by Ricwil. There is no merit in Ricwil's assertion that it did not receive benefit of the welding and Ricwil must pay the said sum of $2,483.31.

8. The balance of Sintalow's claim which is not admitted by Ricwil is $3,373.50. Exactly why this sum has not been admitted is not clear because Ricwil's defence did not identify those invoices which Sintalow had issued which related to the said amount. Nor did the pleaded defence or Ricwil's opening statement raise any specific objections to this balance. Even the closing submissions did not make any specific point about the balance. In these circumstances, since Sintalow's invoices have been proved, Ricwil must pay the balance to Sintalow.

9. Accordingly, in relation to Sintalow's claim for goods sold and delivered to Ricwil, Sintalow is entitled to judgment for $322,256.55 plus $2,483.31 plus $3,373.50 which totals $328,113.36.

(B) Sintalow's claim for transport services

10. The claim is for $17,865.35 for transport services provided to Ricwil between February 1995 and July 1996 as evidenced by 266 invoices sent by Sintalow to Ricwil. In the course of the trial this claim was conceded by Ricwil and Ricwil must therefore pay it.

(C) Service charge for occupation of Sintalow's premises

11. Sintalow claims that it is entitled to charge Ricwil $9,525.75 per month (inclusive of GST) for Ricwil's occupation of Sintalow's premises at No. 8 Fan Yoong Road between December 1995 and May 1996. The total amount claimed is $57,154.50.

12. At the outset, Ricwil denied any liability to Sintalow under this head of claim and also counterclaimed the reimbursement of all money which it had previously paid Sintalow for occupation of the latter's premises. When the trial started, however, Ricwil conceded it was liable to pay Sintalow for use of Sintalow's premises but claimed it was liable only to pay a reasonable amount to be assessed. Sintalow submitted, however, that Ricwil at all times knew and approved of the amount which it charged Ricwil to use its premises and in any case, those charges were more than reasonable.

13. The evidence showed that from the time that Ricwil commenced operation in late 1990, it used Sintalow's premises. At that time, Sintalow had premises at No. 3 Wan Shih Road and 777 Geylang Road. Initially Sintalow did not charge Ricwil any occupation fee. It was only when both companies moved to 8 Fan Yoong Road that Sintalow commenced to charge such a fee. From July 1992 to March 1994, Sintalow charged Ricwil $0.30 per square foot for uncovered areas and $1.30 per square foot for covered areas which the latter occupied. There was an additional $300 per month charge for electricity and water. The total charge was $6,100 per month. From March 1994, when Ricwil occupied a larger area, the total charge increased to $9,248.30 per month although rates remained the same. At this time, Sintalow stopped charging a separate fee for water and electricity.

14. In the absence of any writing evidencing Ricwil's agreement to pay Sintalow for the use of its space, Mr Chew tried to rely on certain conversations which he had with Mr Choong in December 1992 and subsequently in about February 1994. Mr Choong denied that he had reached any agreement on behalf of Ricwil with Mr Chew on these matters. He pointed out that at the material time, Mr Chew was also the managing director of Ricwil and had been Mr Choong's superior whereas Mr Choong was only the Technical/Contract Manager of Ricwil and had no authority to conclude contracts on behalf of Ricwil. Mr Choong's evidence was that in December 1992, Mr Chew had asked him to measure the area occupied by Ricwil and had subsequently informed him of the rates that Sintalow would be charging Ricwil. There was no discussion between them on these rates.

15. No evidence was produced by Sintalow to establish that Mr Choong had authority from Ricwil to agree on the rates it would pay for occupying Sintalow's premises. I accept that any conversations between Mr Choong and Mr Chew on this matter were a simple matter of a superior giving instructions to his subordinate and were not intended to be contractual negotiations. I agree with Ricwil's submission that Sintalow cannot found its claim for these charges on those discussions. There is, however, other evidence from which it can be inferred that Ricwil had agreed to the rates charged by Sintalow both in 1992 and in 1994.

16. First, the instructions which Mr Chew gave Mr Choong in December 1992 were documented by an internal memo prepared by Mr Choong. This stated the uncovered and covered areas occupied by Ricwil and asked Mr Chew to give a unit rate so that a monthly rate could be established. The memo also stated that Sintalow was to backdate the charges to July 1992. Mr Choong confirmed that subsequently he had written a note on that memo addressed to Ricwil's accounts executive, Ms Soh, asking her to bill Ricwil $5,800 per month in rental backdated to July 1992. Secondly, Mr Choong prepared a report of Ricwil's sales and expenses from January to July 1993 which stated that Ricwil had incurred a rental expense of $42,700 over seven months. This was specifically addressed to Stanley Wong who was another director of Ricwil. The rental stated in Mr Choong's report worked out to $6,100 per month. This included the sum of $300 which, according to Madam Aw, Stanley Wong had agreed with her, Ricwil would pay for water and electricity consumed in the course of its business.

17. Thirdly, Ricwil's audited accounts for the year ended 31 December 1993 recorded $100,252 as administrative charges paid to Sintalow. For the year ended 31 December 1994, Ricwil's audited accounts recorded $115,607 as administrative service charges paid to Sintalow. These two figures would have included Sintalow's service charge for Ricwil's occupation of its premises. From July 1992 to March 1994 this figure was $6,100 per month working out to $73,200 per year. There was more than enough information in the accounts to inform all directors that Sintalow was levying significant charges on Ricwil. That these figures were not objected to indicates the other directors were most probably aware how they were derived. In fact both sets of accounts were approved by Ricwil's board.

18. There was also evidence from Mr Chew that a finance meeting for Ricwil was held on 29 January 1993. At that meeting, he said he informed the other directors of Ricwil namely Jeffrey Low (the moving spirit behind Ricwil Malaysia), Tan Chin Seng and Stanley Wong of Sintalow's service charge for Ricwil occupying Sintalow's premises. At the meeting, Mr Tan questioned Mr Chew whether Sintalow would be charging Ricwil rental and it was in response to that question that Mr Chew gave them the information about the rate. Stanley Wong denied being at the meeting but neither Jeffrey Low nor Tan Chin Seng was called to refute Mr Chew's evidence. The non-production of Mr Tan was particularly significant since he was joint signatory for Ricwil's bank account and as such signed all cheques issued to pay Sintalow's service charges. On the balance of probabilities, I am satisfied that Ricwil was aware of, and had agreed to, the charges imposed by Sintalow for the use of its premises in 1992, 1993 and early 1994.

19. In March 1994, there was a change in the charge in that Ricwil occupied an increased area. The rates levied remained the same, however. There is no real dispute by Ricwil that it did occupy a bigger area from March 1994 onwards. Mr Choong denied having come to any agreement with Mr Chew on the rates applicable. His denial rings true in view of his subordinate position in the company. There is, however, other evidence of Ricwil's agreement to the charges. Ricwil's service charge for the period from March 1994 to June 1996 was $9,248.40 per month which works out to $110,980 per year and $46,242 per year from January to May 1996. This charge was recorded in Ricwil's audited accounts for the years ending 31 December 1995 and 1996 and was approved by Ricwil's board. The finalised audited accounts for these years were also signed by Stanley Wong and Tan Chin Seng. Tan Chin Seng was also the joint signatory for the cheque payments to Sintalow in respect of the monthly charge of

$9,525.75 up to December 1995 when Ricwil ceased to pay it.

20. Further, in early 1996 Ricwil planned to leave Sintalow's premises by May 1996. Subsequently, Ricwil encountered problems in obtaining the issue of a poison permit for its new premises and this caused it to ask Sintalow for an extension of its stay in Fan Yoong Road. On 8 May 1996, Jeffrey Low wrote to Mr Chew asking him to allow Ricwil to remain at Sintalow's premises for a few more months. Mr Low concluded his letter by stating that 'Rental shall be based on a new rate'. Mr Chew's evidence was that he spoke with Jeffrey Low after receiving this letter and found out from the latter that by 'new rate' Jeffrey Low was willing to pay the prevailing market rate for Ricwil's occupation. Ricwil did not call Jeffrey Low as a witness to rebut Mr Chew's evidence.

21. I am satisfied that Ricwil had agreed to pay Sintalow for occupation of its premises at the rates which Sintalow charged from 1992 up to May 1996. It should be noted that from the very beginning, Ricwil was aware that it would have to pay rental for premises that it occupied. Such payment was expressly contemplated in the joint venture agreement which led to Ricwil's formation. Further, Mr Choong in doing his costing for Ricwil's products was careful to impute a rental charge as part of that cost at all times even when Sintalow had not yet started imposing a charge.

22. In any event, Ricwil has now accepted that it benefited from use of Sintalow's premises and that it should pay reasonable rate for the same. Mr Chew's evidence was that the rates of $1.30 per square foot for covered space and $0.30 for open space were below the market rates charged in Jurong at all material times. Ricwil did not adduce any evidence to rebut that. It appears to me that the rates were reasonable bearing in mind that they were charged in the first half of the 1990s and those years were years when the property market was doing well.

23. In the circumstances, I hold that Sintalow is entitled to recover the sum of $57,154.50 under this head of claim.

(D) Sintalow' claim for an administrative fee

24. Sintalow claims $5,150 for administrative support services provided to Ricwil from October 1995 to February 1996 at $1,030 per month. These services consisted of the provision of stationery and clerical support including the making of photocopies and the sending and receipt of facsimile transmissions. Madam Aw's evidence was that this sum represented the cost of hiring one full time office assistant for Ricwil.

25. Ricwil's initial stance was that it had no liability for this claim. At the beginning of the trial, it changed its position and conceded that, having benefited from the provision of such services, it had to pay for them. It continued to dispute the rate charged, however, and said that only a reasonable rate of was payable. No evidence was adduced as to what that might be, however.

26. Sintalow relies on Madam Aw's evidence to the effect that some time in July 1991, Stanley Wong as a director of Ricwil, agreed with her that Ricwil would pay an administrative fee of $850 a month to Sintalow. She said that Stanley Wong agreed to increase this fee to $1,000 per month in July 1992. As a result of GST, the actual fee charged became $1,030 per month. In cross-examination, Madam Aw also testified that Ricwil was not the only company that was charged a fee for administrative services. Two related companies also paid such a fee, pegged at $1,000 per month each. Documentary evidence was adduced to support this testimony.

27. Stanley Wong denied making any agreement with Madam Aw. He sought to give the impression that he was not at all concerned with and never discussed the cost of Sintalow's administrative support to Ricwil. This was despite the fact that, from the onset, it had been understood that the company would need and would pay for administration although the initial intention was that Ricwil Malaysia would supply the support. Further, in the report that Mr Choong prepared on Ricwil's monthly sales and expenses from January to July 1993, he indicated that he was aware of the need to cost administrative support by stating that the purchase figures did not include administrative costs. I should state here that I did not find Mr Wong to be a very

satisfactory witness in general. He was frequently evasive and tried to avoid facing up to the obvious implications of documents that he was shown.

28. I think that Ricwil was aware that Sintalow was charging it an administrative fee and was content to pay whatever was charged until the parties' relationship deteriorated. I prefer the evidence of Madam Aw to that of Mr Wong in this respect. Further, even if no rate was ever agreed, Ricwil has now conceded that it had a liability to pay a reasonable sum for the administration services given to it. In this regard, it is significant that Sintalow had charged two of its related companies the same fee of $1,000 per month for similar services provided to them. Madam Aw's testimony in this respect was supported by documents.

29. I find that Sintalow has proved this claim for $5,150.

(E) Sintalow's claim for interest

30. Sintalow's statement of claim included a claim for $119,718 as interest due to it for non-payment of its invoices. In the course of the trial, Sintalow indicated that it was no longer pursuing a claim for contractual interest but asked the court to exercise the court's discretionary power to award interest under s 12(1) of the Civil Law Act (Cap 43) in its favour. As all the circumstances of a particular case have to be taken into account when a court exercises its discretion, I will consider the issue of interest after dealing with Ricwil's counterclaim.

RICWIL'S COUNTERCLAIMS AGAINST SINTALOW

(A) Goods and services

31. Ricwil claimed a sum of $185,400.65 for goods and services supplied to Sintalow. By the time the trial proper started, Sintalow had admitted owing Ricwil $129,725.50 in respect of this head of claim. Of the remaining $55,675.15, the sum of $50,513.82 was represented by 16 debit notes which Ricwil had rendered Sintalow for labour supplied to Sintalow. On 6 March 2000, Sintalow conceded owing Ricwil a further $4,683.93 under three of these debit notes. It continued to reject the claim for the remaining $45,829.89.

32. This was an issue of documentation. The usual procedure followed between the two companies when Ricwil supplied manpower to Sintalow was that Mr Choong would draw up the invoices based on the time each of its workers spent doing Sintalow's work. In addition to the debit note, Mr Choong would supply Sintalow with two separate supporting documents, a worker's record book showing the time spent by the worker concerned and a summary of the worker's time spent on Sintalow work with the applicable rates. Mr Choong agreed during cross-examination that these documents were needed to substantiate any debit note Ricwil issued for the supply of manpower.

33. Sintalow repudiated Ricwil's claim in respect of 13 debit notes because it could not locate the supporting documents. Both Madam Aw and Mr Chew, under cross-examination, asserted that they had asked Mr Choong to forward these documents but that he had not done so. Mr Choong denied this allegation. He maintained that at the material times, all the supporting documents were forwarded to Madam Aw who was then in overall charge of the accounts of both companies. The supporting documents were checked and verified by Madam Aw before she instructed the accounts executive to prepare the relevant debit notes. Further, Madam Aw had then initialled the debit notes and these were posted to the respective accounts of Sintalow and Ricwil. Mr Choong said that Madam Aw would only have initialled the debit notes if she were satisfied that they were correct.

34. Mr Choong went on to explain that it was only when Madam Aw resigned as a director of Ricwil in 1996 and the accounting records of Ricwil were handed over to it that he discovered that some of the documents supporting the debit notes were

missing. He was not able to obtain further copies of these documents thereafter as they had been kept by the workers and these workers had since returned to their home country.

35. Madam Aw admitted in cross-examination that she had signed Ricwil's debit notes for the disputed $45,829.89. She asserted, however, that she had not seen the supporting documents as these were not available at that time and that she had asked the Ricwil accounts clerk whether the figures were correct before signing the notes. Madam Aw thereafter asked Mr Choong for the supporting documents but he failed to supply them.

36. In my judgment, Ricwil has proved its claim. Madam Aw was in charge of the accounts of both companies at the material time. The Ricwil accounts clerk was also the accounts clerk for Sintalow. Someone, maybe that accounts clerk, more probably Madam Aw herself, must have been satisfied that the figures were correct and it was on that basis that Madam Aw signed the debit notes and had them entered in the relevant account books. It is also noteworthy that Sintalow never issued a debit note of its own to Ricwil to reverse the charges when the supporting documents were not forthcoming. I therefore find that Ricwil is entitled to recover the remaining $45,829.89 in respect of the labour supplied.

37. There is a further sum of $5,161.23 which Sintalow disputes. This arises from Ricwil's invoice no. 2116 for $273.88 and its invoice 2042 for $4,887.35. Sintalow put Ricwil to strict proof of the price of goods on both invoices and of delivery of the goods under invoice 2042. No price lists were produced by Ricwil nor was any specific evidence adduced as to delivery of the goods under invoice 2042. This amount has not been proved.

(B) Audit adjustment

38. After deterioration of its relationship with Mr Chew, Ricwil discovered that Madam Aw had, on 1 January 1992, on behalf of Sintalow issued Ricwil with a debit note no. 001AA/01/92 for the sum of $80,429.95 purportedly as an audit adjustment. Ricwil paid this debit note on 15 March 1994 and now claims repayment of the amount on the basis that it was never owed to Sintalow.

39. Madam Aw explained that this debit note arose out of an audit of Ricwil's accounts for the year ended 31 December 1992 by Messrs Chan Leng Leng & Co. The audit was carried out in March/April 1993 by an auditor named Ms Elaine Tay. Ms Tay informed Madam Aw that there was a discrepancy in Ricwil's opening balance for 1992 in that Ricwil's accounts showed smaller amount due to Sintalow than Sintalow's own opening disclosed. Ms Tay suggested that Sintalow raise a debit note to Ricwil in the amount of the difference ie $80,429.95 as an audit adjustment so that the two opening balances would match. For this reason the debit note when issued was backdated to 1 January 1992 and stated that it was in respect of the '1991 closing balance omitted from account amounting to $80,429.95' and also bore the endorsement 'This debit note is issued subject for auditing'.

40. Ricwil submitted that the evidence adduced by Sintalow was inherently incredible because:

> (1) both Mr Chew and Madam Aw had confirmed that after the alleged discovery of discrepancy in 1993, they did not question either the auditors or their accounts executive with regard to the discrepancy;
>
> (2) Mr Chew confirmed that he signed the Confirmation of Audit Adjustment for year ended 1991 and the sum of $80,429.95 does not appear there;
>
> (3) neither Mr Chew nor his wife reviewed or ordered a review of the accounts of the two companies to ascertain the reasons for the discrepancies;
>
> (4) they did not inform Ricwil or the other directors of Ricwil of the discrepancy.

41. The question really is whether Madam Aw was telling the truth about why the debit note was issued or whether it had been

issued as part of a fraudulent scheme by Sintalow to divert funds from Ricwil whilst it was under the control of Mr Chew. On the face of it, issuing a debit note which states that it is issued 'for auditing' seems a rather clumsy method of siphoning off funds. Such a debit note practically screams to be investigated. It would be much more effective to take money by issuing fraudulent invoices and delivery orders especially since there was a large volume of trade between Sintalow and Ricwil which would make the fraudulent invoices more difficult to detect.

42. Sintalow called Mr Lim Yong Seng as an expert witness on accounting and auditing. He examined the ledgers of Sintalow and Ricwil and confirmed that there was an indeed a discrepancy between the opening balances of the two companies in 1992 amounting to $80,429.95. He further verified that Sintalow had supporting documents for this amount and these supporting documents were produced in court except for a few items which Sintalow explained it had not been able to locate.

43. Mr Lim was of the opinion that the Sintalow accounts, and therefore the Sintalow opening balance, were more accurate than the Ricwil accounts and the Ricwil opening balance. His reasons were that Ricwil's opening balance for 1992 was missing and that Ricwil accounts were batch entered on a yearly basis whilst Sintalow accounts were done on a monthly basis and therefore subject to more checks and reconciliation.

44. One difficulty that I had at first with Madam Aw's explanation was that Ms Tay was employed to audit Ricwil's accounts, not Sintalow's accounts and therefore it seemed to me odd that she should have known about the discrepancy between the two sets of accounts. I accept, however, the submission made by Sintalow that it is not improbable that Ms Tay had access to Sintalow's books during her audit of Ricwil's accounts since in March/April 1993, both Ricwil and Sintalow shared the same premises and the same accounts executive. Mr Chew admitted in cross-examination that if Ricwil's auditors had asked for Sintalow's books he would have released them to the auditors.

45. Ms Tay did Ricwil's audit for both the year ending 31 December 1991 and that ending 31 December 1992. I accept Sintalow's submission that it is consistent with Madam Aw's audit that Ms Tay discovered in March/April 1993 during the audit for the year ending 31 December 1992 that she had in fact been wrong in her figures for the amounts owing from Ricwil to Sintalow for the previous audit for the year ending 31 December 1991. The suggestion by Ms Tay that Sintalow raise a debit note backdated to 1 January 1992 resolved this discrepancy without her having to review the accounts for Ricwil for the year ending 31 December 1991.

46. As Sintalow was able to prove that there were underlying transactions justifying the entries in its books on amounts due from Ricwil, there is evidence that Sintalow's accounts were properly kept. This in turn makes it probable that the opening balance shown in Sintalow's books with regards to Ricwil was correct. For Ricwil to succeed in clawing back the $80,429.95 that it eventually paid Sintalow it would need to show that there were no such debts at the material time. This Ricwil did not do.

47. Having observed Madam Aw in the witness box, I do not consider her capable of deliberately planning to defraud Ricwil by the issue of the audit adjustment. She seemed to be straightforward and the kind of person who would rely on professional advice from an auditor. In any case, she must have known that Ricwil and Sintalow would be subject to periodical audits and that any auditing document that was out of the ordinary would be picked up and investigated by the auditors. I cannot see her trying to defraud Ricwil in this fashion. Accordingly, I hold that Ricwil has not proved this claim.

(C) Alleged overpayment to Airmaid

48. Ricwil claims repayment of a sum of $78,705.70 which it paid Sintalow to reimburse Sintalow for payments which the latter had made to a sub-contractor, Airmaid Engineering, ('Airmaid') on Ricwil's behalf. Sintalow has admitted that $24,780 had been wrongly charged to Ricwil and that it is liable to repay the same. It disputes liability for the remaining $53,925.20.

49. This claim arose out of a sub-contract for the complete pipe-work and related equipment installation at the Northpoint project which was awarded to Ricwil by Guthrie Engineering (S) Pte Ltd. In February 1992, Ricwil appointed Airmaid to supply labour

and tools to install pipes at this project. The original contract with Airmaid was for the sum of $200,000. The amount payable subsequently increased to $216,074.30. Ricwil paid Airmaid $183,500 for this work. Sintalow paid it a sum of $101,280 purportedly on Ricwil's behalf and Jiwa Industries Pte Ltd ('Jiwa'), a company related to Sintalow, paid Airmaid a further $10,000. Sintalow and Jiwa then claimed reimbursement from Ricwil. In total Airmaid was paid a total of $294,780 ie $78,105.70 more than it was entitled to.

50. The first three progress claims made by Airmaid were dealt with by Stanley Wong and Mr Choong, both of whom were on the site and had knowledge of the progress of the work. They did not approve the claims in full but only authorised part payment. Subsequently, Airmaid's proprietor, Mr Sunny Chia, dealt directly with Mr Chew on payment. He and Mr Chew were old friends and he approached Mr Chew for all subsequent payments. Mr Chew asserted that the progress claims that he received from Airmaid were given to Mr Choong and only when the latter had assessed the amounts due on these claims would Mr Chew instruct that payment be made to Airmaid. Therefore, although Mr Chew admitted that he dealt with Mr Chia on the payments, he asserted these payments had been approved by Mr Choong.

51. Mr Choong denied dealing with any of the progress claims apart from the first three. There is no documentary evidence that he ever saw any of these subsequent progress claims. Although they were addressed to Mr Wong at Ricwil's old address at 777 Geylang Road, Mr Wong also denied that he had seen them. This was because the documents were not sent by post to Ricwil but handed directly to Mr Chew by Mr Chia. There is no doubt that Mr Chew was the one who authorised payment to Airmaid in respect of the fourth and subsequent payments. He did not deny doing so. He also justified making speedy payments by reference to the contract which stated that Airmaid's invoices had to be paid within 30 days. It is also interesting that payments were made so speedily that many of the cheques for them when handed over to Airmaid bore only one signature, that of Mr Chew. It was only after the cheques were banked in that the bank sent them on to the second director, Mr CS Tan, for his endorsement.

52. It appears to me, on the balance of the evidence, that Mr Chew was not as careful as he should have been when approving payment to Airmaid. No doubt it was important to Ricwil to complete this project on time and when the project was completed ahead of time, Ricwil benefited. The benefit of receiving full co-operation from its sub-contractor did not, however, in itself justify overpaying Airmaid by approving the latter's claims without adequate examination.

53. Sintalow's position was that even if there had been an overpayment, this should have been recovered directly from Airmaid and not from Sintalow. It pointed out that as early as 30 March 1993, after Airmaid's accounts had been finalised, Mr Wong wrote to Airmaid claiming that there had been an overpayment of $18,925.70. Yet apparently, Ricwil did nothing to recover this sum from Airmaid. Further, by March 1997, it was clear that Sintalow was disputing liability for any alleged overpayment and it was as a result of this dispute that there was a special review of Ricwil's accounts undertaken by the accounting firm, Messrs Chio Lim & Associates, to ascertain the amount of overpayment. This review was completed on 16 July 1997 and the accountant's report stated that the amount of overpayment was $78,705.70. Yet again nothing was done to recover this money from Airmaid. The claim became time barred in 1999. The submission was, therefore, that any loss sustained by reason of this overpayment was Ricwil's own fault.

54. I do not agree. In this case, Sintalow had made payments purportedly on behalf of Ricwil which it had then proceeded to recover from Ricwil. In order to justify its recovery from Ricwil, it had to be able to show that those payments were due from Ricwil to Airmaid and that it had been requested by Ricwil or otherwise authorised by Ricwil to make those payments on Ricwil's behalf. There is no allegation by Sintalow that Ricwil authorised it or requested it to make payment of amounts that were not due except in respect of two small payments of $2,000 and $2,500 which were paid to Airmaid on 10 December 1992 and 21 January 1993 at Mr Choong's request, although at the time Ricwil was aware of a possible overpayment to Airmaid. Other than those two payments, there is no evidence of approval or request from Ricwil to Sintalow. Sintalow was not, therefore, justified in debiting Ricwil with all the amounts that it paid Airmaid regardless of whether the same were due and payable by Ricwil to Airmaid. Sintalow's recklessness in this regard is shown by it billing Ricwil for the $24,780 that Sintalow itself owed Airmaid. In my judgment, Ricwil is entitled to recover all of the overpaid amounts except the sum of $4,500 mentioned above as being paid specifically at its request despite its knowledge that some overpayment had been made.

55. Accordingly, I allow Ricwil's counterclaim in the sum of $74,205.70.

(D) Pipe fittings for Northpoint project

56. This claim involves a sum of $2,139.60 which Ricwil paid Sintalow in settlement of an invoice dated 21 May 1992 covering pipe fittings of the 'Benken' brand which were delivered by Sintalow via three delivery orders dated 12 May 1992. Ricwil wants repayment of this sum on the basis that the pipefittings concerned were wrongly delivered and that Ricwil did not have the benefit of the same.

57. The three delivery orders involved bore a hand-written acknowledgement of receipt by Mr Choong on behalf of Ricwil. They also bore a further acknowledgement of receipt by a company known as 8M M&E Services. Ricwil's position is that Mr Choong acknowledged receipt of these fittings at the factory and then directed that they be delivered to a sub-contractor at the Northpoint project. Instead, they were delivered to 8M M&E Services, a company which was neither Ricwil's customer nor its sub-contractor at Northpoint.

58. In his evidence in chief, Mr Chew said that 8M M&E Services were Ricwil's customers. In cross-examination, he alleged that 8M M&E Services may have been assisting Ricwil and Airmaid in the Northpoint project and in any event, delivery of the pipefittings to 8M M&E Services by Sintalow must have been on the instructions of Mr Choong. Another witness, one Aw Teng Poo, who worked as a sales executive in Sintalow, gave evidence on the procedure Sintalow followed when delivering goods to Ricwil. He stated that Sintalow would deliver the goods to Ricwil's customers first. It was only after such delivery was completed that the Sintalow delivery orders were put in Mr Choong's tray so that he could acknowledge receipt of the goods on Ricwil's behalf. It seems to me that that procedure was a logical and proper one, adopted so as to allow Ricwil to know when goods bought from Sintalow had been delivered to its own customers. If the opposite procedure had been adopted, then the system would have been open to abuse in that Ricwil would have had no control over the proper physical delivery of the goods once it had acknowledged delivery on paper.

59. Ricwil led no evidence to explain Mr Choong's acknowledgement of receipt on the delivery orders. It has not, in my view, proved that it did not receive the benefit of these pipefittings. This claim has not been established.

(E) Falcon Holdings Pte Ltd ('Falcon')

60. Ricwil's claim is for reimbursement of the sum of $41,532.21 which it paid Sintalow for galvanised steel coils. Ricwil's contention is that it did not use, or benefit in any way from, these coils and the same were probably dealt with by Sintalow for its own benefit. These coils had been ordered by Sintalow in January and February 1993 from Falcon. Sintalow paid Falcon and thereafter billed Ricwil and debited its account for the price of the coils.

61. Ricwil's position is that in January 1993, it had no reason to request Sintalow to order these coils on its behalf as it had adequate stock of galvanised coils from Ricwil Malaysia. In addition, it had also placed an order for substantial quantities of galvanised coils with suppliers in Korea. Further, the machine which it needed to process the coils, the spiro machine, had only arrived in its factory in December 1992 and was not fully operational in January 1993 as certain necessary parts, the forming jigs, had not yet been received. If Ricwil had needed these coils it could have ordered them directly from Falcon. Instead, Sintalow had arranged for the coils to be delivered by Falcon to Sintalow and though Sintalow had purportedly delivered the same to Ricwil thereafter, it had not issued Ricwil with any delivery order, contrary to its usual practice.

62. Certain facts are not disputed. Ricwil used galvanised coils for its core business of producing pre-insulated pipes. The galvanised coils had to be slit to size and wrapped round pipes for pre-insulation. This wrapping or jacketing process was done by the spiro machine. Further, this was not the only occasion in 1993 on which Sintalow purchased coils for Ricwil. The

purchase of the galvanised coils from the Korean suppliers was also effected by Sintalow on behalf of Ricwil.

63. Ricwil contended that Sintalow used the galvanised coils in its own business. Mr Chew's evidence, however, was that in 1993, Sintalow had no use for galvanised coils as it carried on the business of a bare pipe stockist. It had no spiro machine and therefore no way to use the coils to pre-insulate pipes. There was no commercial reason, therefore, for it to purchase pipes. Mr Chew's evidence in this respect was supported by that given by one Mr Low Swee Siang. When he came to court, Mr Low was a sales executive employed by Sintalow. He had, however, worked with Ricwil from August 1992 up to October 1993. He was able to testify as to the business of both companies in January 1993 at the time this sale was made. He said that at the material time, and even at the time of his testimony, Sintalow had no use at all for galvanised steel coils.

64. Mr Low stated that between August 1992 and May 1993, he had done the work of an assistant technical executive with Ricwil. In this capacity he was required to oversee the entire production process for producing pre-insulated pipes. He described how this process worked and stated that galvanised steel coils were an essential material for the process. Some time in late 1992, Ricwil bought a spiro machine and in consequence, started to purchase galvanised coils. Mr Low testified that he had acknowledged receipt of one consignment of these coils from Falcon. He said that he had received those goods from Falcon on behalf of Ricwil. After accepting delivery of the goods, he stored them next to the spiro machine and thereafter used them to produce jacketing for the pre-insulated pipes. Mr Low impressed me as a straightforward and honest witness. It should be noted, however, that there were four deliveries of galvanised coils by Falcon and only one of these was received by Mr Low.

65. The main plank of Ricwil's claim in this regard was that the spiro machine was not fully operational in January 1993. This was maintained by Mr Choong who said that although the machine could run it could not do the jacketing because the forming jigs had not arrived. His oral evidence was, however, at odds with contemporaneous statements made by Ricwil in 1993. Its 1993 Business Report prepared by Mr Wong stated that '[the spiro machine] arrived in Singapore in November 1992 and was installed, tested and commissioned by our own staff. The spiro machine commenced full operation by end December 1992'. Mr Wong confirmed during cross-examination that he himself knew that the spiro machine was fully operational and that Ricwil was using it by the end of December 1992.

66. As for Ricwil's claim that in January 1993 it had substantial quantities of coils from Malaysia and Korea, it should be noted that the first shipment of the Korean coils took place only in 29 January 1993. This shipment not have arrived in Singapore until mid February 1993 at the earliest. Further these Korean coils needed to be sent to a third party for slitting before they could be used by Ricwil. Thirdly, Ricwil did not produce any evidence as to the amount of coils which it had received from Malaysia and which were in its premises in January 1993.

67. On balance, Ricwil has not proved its claim. There really was no reason for Sintalow to purchase galvanised coils for its own use when Ricwil at the material time was the entity with the spiro machine and which dealt in pre-insulated pipes.

(F) Pipes from Hup Seng Huat Pte Ltd ('HSH')

68. This is another claim for reimbursement of monies paid to Sintalow for goods which Ricwil says it did not get the benefit of. In 1995, Sintalow had purchased seamless pipes from HSH purportedly for Ricwil to supply to its customers, Dai-Dan and Kailay, for use in The American School and Changi Terminal 2 projects. Usually Ricwil would have purchased its entire supply of seamless pipes from Sintalow but, in this case, Sintalow's stocks were insufficient and it placed orders with HSH on behalf of Ricwil to make up the shortfall.

69. After the relationship between Ricwil and Mr Chew broke down in early 1996, Mr Choong reviewed Ricwil's accounts and records. When he compared the number of pipes delivered by Ricwil to Kailay and Dai-Dan with the number of pipes which Ricwil had paid Sintalow for, he thought he found a discrepancy. In his opinion, Sintalow had billed Ricwil for more pipes than had been delivered to Ricwil's customers. Acting on this analysis, Ricwil initially claimed reimbursement of $17,006 which it had overpaid Sintalow. In its closing submissions, however, after further reconciliation was carried out by Mr Choong, Ricwil

reduced its claim to $8,756.07.

70. Sintalow's defence was that apart from Dai-Dan and Kailay, Ricwil had also sold seamless pipes to CDC Construction & Development Pte Ltd ('CDC') for the Changi Terminal 2 project and had not taken these sales into account in its analysis of the documents. This defence was raised late in the day when Sintalow re-amended its defence to the counterclaim in February 2000.

71. In court, Mr Choong was able to explain that there was still a discrepancy between the number of pipes supplied to Dai-Dan and Kailay during the period January 1995 to July 1995 and the number of pipes which Ricwil had been billed for. This discrepancy was not affected by the deliveries made to CDC which were supported by a separate set of invoices issued by Sintalow. Mr Choong supplied a set of documents and showed that Ricwil had been billed separately for all pipes sold to CDC and that these pipes did not account for the over-billing which Ricwil was complaining about as the pipes which Ricwil supplied to CDC were supplied from October 1995 onwards.

72. Further, Mr Choong stated that all seamless pipes which Ricwil purchased it purchased for the purpose of onward supply to its customers and it did not keep stocks of these pipes in its premises. Accordingly, no purchases would have been made simply for the sake of keeping stock and any pipes that Ricwil had been billed for but which it had not in turn supplied to its customers were not true purchases by Ricwil. It should be noted that when Ricwil made such purchases from Sintalow, Sintalow took on the delivery of the pipes to Ricwil's customers and billed Ricwil for the transportation charges thereby incurred. It was therefore possible for Ricwil to correlate its purchases and deliveries.

73. I find Ricwil's evidence on this aspect convincing. Sintalow could have produced further delivery orders/delivery orders for transport to show how its invoices to Ricwil co-related with deliveries to Ricwil's customers. It did not. It was not able to support $8,756.07 of its purported purchases from HSH for Ricwil in this manner. Accordingly, I allow Ricwil's claim for $8,756.07.

(G) Repayment of service administration charges

74. This is a claim for repayment of the service and administrative charges which had been paid by Ricwil to Sintalow before the breakdown of the relationship between the parties. I have, however, found that those service and administrative charges had been agreed by Ricwil and that even if they had not been agreed to, they were reasonable charges. Accordingly, there can be no claim for reimbursement of any part of the same.

CONCLUSION ON SINTALOW'S CLAIMS AND RICWIL'S COUNTERCLAIMS

75. The amounts which Ricwil must pay Sintalow (both those conceded by Ricwil in negotiations and those found by me to be due) are:

(i) per para 5 above, $322,256.55;

(ii) per para 7 above, $2,483.31;

(iii) per para 8 above, $3,373.50;

(iv) per para 10 above, $17,865.35;

(v) per para 23 above, $57,154.50;

(vi) per para 29 above, $5,150.

The total amount due from Ricwil to Sintalow is therefore $408,283.21.

76. The amounts which Sintalow must pay Ricwil (both those conceded by Sintalow in negotiations and those found by me to be due) are:

(i) per para 31 above, $129,725.50;

(ii) per para 31, above, $4,683.93;

(iii) per para 36 above, $45,829.89;

(iv) per para 55 above, $74,205.70;

(v) per para 73 above, $8,756.07.

The total amount due from Sintalow to Ricwil is therefore $263,201.09.

77. When the two amounts are off set against each other, there remains a balance of $145,082.12 due to Sintalow from Ricwil. I award this sum to Sintalow. As for interest, I think it fair to award Sintalow interest from 1 July 1998 at 6% per annum. This is because the accounts between Ricwil and Sintalow ceased to run around mid 1996 when Ricwil moved out of the Fan Yoong Road premises. Given that the parties had a long relationship with many transactions between them and that the state of the inter-company accounts and that of Ricwil's internal accounts were not satisfactory, a certain amount of time would have been required for the parties to work out exactly what each of them owed the other. If they had done this during the two years following Ricwil's removal, they would have sorted out the accounts by the end of June 1998 and would have realised that there was an amount owing to Sintalow. It should have then been paid promptly. Accordingly, in my judgment, Sintalow has been kept out of its money for an unnecessary protracted period and is entitled to some interest though not from the date of the writ.

RICWIL'S CLAIMS AGAINST MR CHEW AND MADAM AW

78. Ricwil's claims against Mr Chew and Madam Aw are founded on the duties which they, as directors, owed Ricwil to:

(a) act honestly and use diligence in the exercise of their duties;

(b) ensure they were not in a situation of conflict of interest.

Whilst there is no doubt that directors in general owe such duties to their companies, whether the companies concerned can sue those directors for breach of duty depends not only on the breach having occurred but also on the companies having sustained loss by reason of such breach. A breach of duty which does not result in financial loss may justify the removal of the director from his post. It does not justify an action for damages against him.

79. In its pleading, Ricwil specifies various instances in which it is alleged that the actions of Mr Chew and his wife, in breach of their duties as directors, caused loss to the company. Those instances overlapped with claims which Ricwil has made against Sintalow. Insofar as Ricwil has successfully asserted such claims against Sintalow, it cannot contend that the actions of Mr Chew and/or Madam Aw caused it loss because those claims would have to be paid by Sintalow either directly or by way of set off against the amounts which Ricwil itself has been found to owe Sintalow. Insofar as Ricwil has been unsuccessful in asserting those claims, the consequence is that payments have been properly made to Sintalow pursuant to a legal obligation on the part of Ricwil and therefore Ricwil has nothing to complain about in relation to the conduct of its directors with regard to those claims.

80. The best way of dealing with the claims that Ricwil has made against its former directors would be to consider each in turn and first establish whether the actions complained of have resulted in loss to the company and if they have, whether those actions can be classified as having been in breach of duty. In this respect, it should be remembered that Madam Aw was not a director of Ricwil for very long. Any liability that she has is not coextensive with any liability that might be established on the part of Mr Chew. Madam Aw's liability has to be considered separately in the context of the time period during which she served as a director.

81. Paragraph 15 of the amended counterclaim by Ricwil contains an averment that Mr Chew and/or Madam Aw on behalf of Sintalow caused Ricwil to make payment to Sintalow by way of set off of the running account between Sintalow and Ricwil for various items which Ricwil was not actually obliged to pay for. There are 12 sub-paragraphs to paragraph 15 each detailing a different debit. Some of these were settled in negotiations. I will deal only with those that remained part of Ricwil's counterclaim against Sintalow during the trial.

82. Paragraph 15.9 of the counterclaim deals with the debit note no. 001AA/01/92 from Sintalow to Ricwil for the sum of $80,429.95 being the audit adjustment to regularise the discrepancy between the opening accounts of Sintalow and those of Ricwil for 1992. I have considered that debit note above and have found that it was properly issued. Accordingly, Ricwil cannot complain of any loss by reason of its issue.

83. Paragraph 15.10 of the counterclaim deals with the payments made to Airmaid. I have found that Airmaid was overpaid to the extent of $74,205.70. This was a result of Mr Chew's carelessness in not checking that payments were actually due before authorising payment and also as a result of Sintalow wrongly debiting Ricwil's account for amounts which Sintalow itself had owed Airmaid. I have already found that Sintalow must repay the full amount to Ricwil. The same has been set off against Ricwil's indebtedness to Sintalow. So Mr Chew's actions have not resulted in any loss to Ricwil.

84. Paragraph 15.11 of the counterclaim deals with the pipes delivered to 8M M&E Services while paragraph 15.12 deals with the payments made for the pipes purchased from Falcon. In both these cases, I have found that Sintalow billed Ricwil correctly. There is no cause of action against Mr Chew who was a director at the material time.

85. Paragraph 16 of the counterclaim avers that Madam Aw caused Ricwil to make payment to HSH and Sintalow for pipes which Ricwil never obtained the benefit of. Ricwil subsequently abandoned half of this claim and in respect of the remaining $8,756.09 which it pursued, I have found in its favour. This amount has been paid by Sintalow by way of the set off in para 77 and therefore Ricwil has suffered no loss.

86. Paragraphs 23 and 24 of the counterclaim aver that Mr Chew and/or Madam Aw, have in breach of their duties to Ricwil and without disclosing the full facts to Ricwil, caused Ricwil to pay Sintalow administrative and service charges which had been unilaterally imposed on Ricwil by Sintalow. Given Ricwil's concession during the course of the trial that it was liable to pay a reasonable amount to Sintalow for both the administrative and service charges, and given that I have found the amounts actually charged to be reasonable, Ricwil has not suffered any loss from the alleged breaches of duty.

87. In the result, I hold that Ricwil has not established that it has suffered any loss from any of the breaches of duty which it has alleged that Mr Chew and Madam Aw committed. Its claim against them must be dismissed.

CONCLUSION

88. There will be judgment for Sintalow in the sum of $145,082.12 and interest according to para 77. Ricwil's claim against Madam Aw and Mr Chew is dismissed. I will hear the parties on costs as the various claims and counterclaims were intertwined and whilst overall Sintalow has succeeded, it has failed on some issues and therefore perhaps some adjustment should be made in relation to costs.

Judith Prakash

Judge

Copyright © Government of Singapore.