Projection Pte Ltd v The Tai Ping Insurance Co Ltd
[2001] SGCA 28

Case Number : CA 110/2000

Decision Date : 19 April 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Tan Liam Beng and Yap Pett Chin (Drew & Napier) for the insureds; Low Tiang Hock and Jack Lee Tsen-Ta (Chor Pee & Partners) for the insurers

Parties : Projection Pte Ltd — The Tai Ping Insurance Co Ltd

Contract – Formation – Settlement agreement – Whether agreement entered into – Application of objective test – Continuing negotiations – Consideration of parties' correspondence to determine whether agreement to same terms existed

Contract – Formation – Agreement made in compromise of insurance claim – Whether consideration provided for compromise agreement – Validity of compromise agreement not to be confused with success of claim under insurance policy

(delivering the judgment of the court): This is an appeal from the decision of the High Court dismissing the claim brought by the appellants, Projection Pte Ltd (`PPL`), against the respondents, The Tai Ping Insurance Co Ltd (`Tai Ping`), for the sum of $553,560.98 based on a compromise agreement said to be made between the parties on 31 March 1999. The court in a reserved judgment held that no such agreement was made between them. PPL now appeal against that decision.

The parties

PPL were a construction company and were employed by the Singapore Sports Council (`the Sports Council`) as the main contractors for a proposed sports and recreation centre to be constructed at Jurong East Street 31, Singapore (`the Project`). For the Project, PPL took out a Contractors` All Risks Policy (`the Policy`) with Tai Ping, which was valid from 13 June 1996 to 10 December 1999. PPL, the Sports Council and PPL`s sub-contractors were named as the assured in the Policy. In addition, Tai Ping furnished to the Sports Council on behalf of PPL a performance bond for an amount equivalent to 10% of the contract sum.

The facts

On or about 8 July 1997, while PPL were carrying out the construction work, the retaining wall of the Project collapsed, causing damage to a canal belonging to a third party. PPL gave the requisite notice to Tai Ping and claimed under the Policy the loss occasioned by the damage. No claim, however, was made by the Sports Council. There were two sections in the Policy: Section I pertained to liability for material damage, while Section II pertained to third party liability. On or about 11 July 1997, Cunningham International Pte Ltd (`Cunningham`), a firm of loss adjusters, were appointed by Tai Ping to investigate the damage to the wall and canal.

Thereafter, there appeared to be no significant development in connection with this claim for more than a year since it arose. It is unclear when Cunningham completed their investigation, but only on or about 1 October 1998 did they come up with a quantification of the claim. On that day, they wrote a letter to PPL`s consultants, Francis Teo & Associates, in which they assessed PPL`s claim in the sum of $679,065.95 and gave a breakdown of this figure. They qualified their assessment by stating

expressly that it was `subject to the approval of the insurers, policy terms, conditions and exclusions`. A copy of this letter was sent to PPL. The figure was subsequently revised in Cunningham`s `Interim Report No 2` to Tai Ping dated 7 October 1998. They adjusted the claim to $679,066.09.

Notwithstanding the reports of Cunningham, nothing appeared to have been done by Tai Ping in relation to the claim of PPL. Several requests for payment were made by PPL, but no payment was received by them from Tai Ping. In particular, on 26 October 1998, PPL wrote to their brokers, OCW Insurance (Brokers) Pte Ltd (`OCW`) requesting the latter to assist in expediting the payment of the claim by Tai Ping. From time to time, PPL`s director, Mr Ong Poh Pieow (`Mr Ong`) telephoned one Mr Douglas Ong (`Douglas`) of OCW to enquire about the progress of the claim. No reply appeared to have been received from Tai Ping. On 11 November 1998, PPL themselves wrote to Tai Ping asking for payment of the assessed amount or the reasons for the non-payment. Arising from this letter, Douglas eventually informed Mr Ong that Tai Ping were processing the claim. PPL promptly wrote to Tai Ping on 21 November 1998, recording what Douglas had said and stating that they expected to receive the payment within the next few days. Unfortunately, no such payment came.

On or about 2 December 1998, Cunningham in their letter to Tai Ping further adjusted the claim to $523,912.68, `subject to liability being engaged under the policy`. The letter was substantially reproduced in Cunningham`s final report to Tai Ping dated 8 December 1998, in which they assessed the Section I loss (with 15% deductible) at $322,374.58 and the Section II loss at $296,483. In respect of the Section II loss, they took into consideration the report prepared in December 1998 by Harris & Sutherland (Asia) (`H & S`), the professional engineers engaged to investigate the cause of the damage to the canal and the retaining wall, and suggested that `the insured could bear 20% to 30% of the loss` and that `this would be subject to direct negotiation`. The quantification thus stood at $523,912.68 or $553,560.98 depending on whether PPL bore 30% or 20% of the Section II loss. Very soon thereafter, on 9 December 1998, Tai Ping wrote to the brokers, OCW, stating that they would pay PPL $523,912,68 on the claim and that before payment they would need a letter from the Sports Council confirming that they have no objection to the payment to be made to PPL. However, unknown to PPL, the Sports Council had, as early as 19 May 1998, requested Tai Ping to expedite payment of the claim to PPL `in order for the contractors to rectify the damages works as soon as possible to avoid further damages to the surrounding works and the canal lining`.

In response to Tai Ping`s proposal for payment of $523,912.68, PPL wrote to Tai Ping on 18 December 1998, enquiring the reasons for paying a sum which was less than the assessed amount notified to Francis Teo & Associates and requesting for a breakdown of the assessment. Mr Ong also called Douglas several times to press for an early settlement of PPL`s claim. Douglas did not appear to have taken very effective actions or steps in pursuing the claim for PPL. Whatever Douglas might or might not have done, there was clearly no response from Tai Ping to PPL`s letter.

The representatives of the parties then met on 9 March 1999 over lunch for a discussion. PPL were represented by Mr Ong and two other directors, while Tai Ping were represented by their assistant general manager, Mr Richard Li Zheng Ming (`Mr Li`). Douglas of OCW was also present at the meeting. OCW were the agents for PPL. At this meeting, PPL requested Tai Ping to increase the settlement sum of $523,912.68. There was some dispute between the parties as to what precisely transpired at this meeting. But there was no dispute that the representatives of PPL requested Mr Li to increase the amount for a settlement. No agreement was reached at that meeting. Thereafter, sometime at the end of March 1999, Douglas again requested Mr Li to increase the settlement offer and suggested that Tai Ping should adjust the proportion of the loss to be borne by PPL for the Section II claim.

On 31 March 1999, Tai Ping wrote to OCW referring to the previous correspondence and discussion and stating that they agreed to adjust the proportion of the Section II loss from 30% to 20% and that the final sum payable was $535,560.98. We shall revert to this letter in detail in a moment. In response, PPL signed and returned the discharge voucher to Tai Ping under cover of their letter of 8 May 1999, saying that they have no objection to signing the voucher in respect of the payment and that the Sports Council need not sign the discharge voucher on the ground that they were not the claimants but were only the nominee for the receipt of the moneys. In addition, PPL inserted the following words to the voucher: `This full and final settlement shall be limited to the aforesaid incident only.`

Despite repeated reminders and requests, PPL did not receive any payment or response from Tai Ping thereafter. In July 1999, Mr Li informed Mr Ong that Tai Ping had been legally advised to disclaim liability. He offered PPL $300,000 as a goodwill settlement which was rejected. On 25 August 1999, PPL`s solicitors wrote to Tai Ping demanding payment of $553,560.98. In response, Tai Ping wrote to PPL on 31 August 1999 rejecting the claim. Shortly thereafter, PPL commenced legal proceedings against Tai Ping, and on 27 September 1999, Tai Ping`s solicitors wrote to PPL`s solicitors withdrawing any offer of settlement that their clients had made.

PPL`s claim

PPL claimed that a compromise agreement was made between the parties sometime in March 1999. In support, they relied on what transpired at the meeting on 9 March 1999 and on Tai Ping`s letter of 31 March 1999. They claimed that Tai Ping had breached the agreement by failing to pay PPL or the Sports Council the sum of $553,560.98 in full and final settlement of the claim. They averred that the parties met on 9 March 1999 to discuss the settlement sum and agreed on the sum of $553,560.98, or in the alternative that an agreement was concluded on 31 March 1999 with the receipt of Tai Ping`s letter on that date. PPL took the position that the parties had always been trying to settle the claim and were negotiating on the quantum of the loss on which the parties finally reached an agreement on 31 March 1999.

Tai Ping`s defence

In their defence, Tai Ping denied the claim of PPL. They averred that the damage occasioned was due to a design error and under the terms of the Policy they were not liable to indemnify PPL, and in this regard, they relied on the opinion of H & S. With regard to the settlement, Tai Ping averred that, owing to the pressure exerted on them by PPL, they despatched the discharge voucher merely to placate PPL and in anticipation of a possible settlement, pending legal advice and the final reports from Cunningham and H & S. In that respect, there was an assumption common to both parties that any settlement was premised on the ground that Tai Ping were liable to indemnify PPL under the terms of the policy. This assumption turned out to be untrue, and there was therefore a fundamental mistake which rendered the alleged agreement void for want of consideration. Alternatively, Tai Ping averred that there was no agreement made between them and PPL, and that if their letter of 31 March 1999 constituted an offer, that offer was not accepted in accordance with its terms, which required the discharge voucher to be signed by both PPL and the Sports Council.

The decision below

The trial judge found that no compromise agreement was reached at the meeting on 9 March 1999.

Turning to Tai Ping`s letter of 31 March 1999 to PPL, she construed it as an offer, which was not accepted by PPL in that they returned the discharge form without obtaining the signature of the Sports Council and they amended the wording of the form. Thus, there was also no compromise agreement reached between the parties on 31 March 1999. The judge further held that PPL had not pleaded, nor had they shown, that consideration had been furnished for the compromise agreement. She accordingly dismissed PPL`s claim with costs.

The appeal

Before us, PPL do not dispute the judge`s finding that no compromise agreement was reached between the parties at the meeting on 9 March 1999. Mr Tan Liam Beng, counsel for PPL, submits that the parties had been in negotiation on the amount of the claim, and by their letter of 31 March 1999 Tai Ping finally agreed to the quantum on which the parties had been negotiating, and there was then concluded the compromise agreement; that the discharge voucher and contents thereof were not conditions precedent to the compromise agreement taking effect; and that PPL had furnished consideration for the compromise agreement.

The central issue before us is whether there was a compromise agreement reached between the parties on 31 March 1999. It is settled law that in determining whether the parties have reached agreement, the court applies the objective test. In **Aircharter World v Kontena Nasional** [1999] 3 SLR 1 at [para]30, Karthigesu JA, delivering the judgment of the Court of Appeal, said:

> *Under this test, once the parties have to all outward appearances agreed in the same terms on the same subject-matter, then neither can, generally, rely on some unexpressed qualification or reservation to show that he had not in fact agreed to the terms to which he had appeared to agree. Such subjective reservations of one party, therefore, do not prevent the formation of a contract.*

Similar observation was made by Yong Pung How CJ in **Tribune Investment Trust Inc v Soosan Trading Co** [2000] 3 SLR 405 at [para] 40:

> *... Indeed the task of inferring an assent and of extracting the precise moment, if at all there was one, at which a meeting of the minds between the parties may be said to have been reached is one of obvious difficulty, particularly in a case where there has been protracted negotiations and a considerable exchange of written correspondence between the parties. Nevertheless,* ***the function of the court is to try as far as practical experience allows, to ensure that the reasonable expectations of honest men are not disappointed. To this end, it is also trite law that the test of agreement or of inferring consensus ad idem is objective. Thus, the language used by one party, whatever his real intention may be, is to be construed in the sense in which it would reasonably be understood by the other****. [Emphasis is added.]*

In the present case, the parties were involved in continuing negotiations, either directly or through the broker, Douglas, over a period of time. In such cases, the traditional analysis of offer and acceptance is not really helpful in determining the true position. In this regard, we agree with the observation expressed by Lord Denning MR in **Port Sudan Cotton Co v Govindaswamy Chettiar & Sons** [1977] 2 Lloyd`s Rep 5 at 10:

> *... I do not much like the analysis in the text-books of inquiring whether there was an offer and acceptance, or a counter-offer, and so forth. I prefer to examine the whole of the documents in the case and decide from them whether the parties did reach an agreement upon all material terms in such circumstances that the proper inference is that they agreed to be bound by those terms from that time onwards.*

His Lordship repeated, in substance, his observation in **Butler Machine Tool Co v Ex-Cell-O Corporation (England)** [1979] 1 All ER 965 at 968, where he said:

> *I have much sympathy with the judge`s approach to this case. In many of these cases our traditional analysis of offer, counter-offer, rejection, acceptance and so forth is out-of-date. This was observed by Lord Wilberforce in **New Zealand Shipping Co Ltd v AM Satterthwaite** [1974] 1 All ER 1015 at 1019-1020, [1975] AC 154 at 167. The better way is to look at all the documents passing between the parties and glean from them, or from the conduct of the parties, whether they have reached agreement on all material points, even though there may be differences between the forms and conditions printed on the back of them.*

A similar view was also expressed in ***Chitty on Contracts*** Vol 1 (27th Ed, 1994) at 2-017:

> *Continuing negotiations. When parties carry on lengthy negotiations, it may be hard to say exactly when an offer has been made and accepted. As negotiations progress, each party may make concessions or new demands and the parties may in the end disagree as to whether they had ever agreed at all.* ***The court must then look at the whole correspondence and decide whether, on its true construction, the parties had agreed to the same terms. If so, there is a contract even though both parties, or one of them, had reservations not expressed in the correspondence.*** *[Emphasis is added.]*

Compromise agreement

Bearing these principles in mind, we now turn to consider the relevant facts relating to the negotiations between the parties. In this connection, the past correspondence passing between the parties, what transpired at the meeting they had on 9 March 1999, and finally Tai Ping`s letter of 31 March 1999, were of critical importance. We take as a convenient starting point the letter dated 1 October 1998 from Cunningham to PPL`s consultants, Francis Teo & Associates, in which the former assessed the claim in the sum of $679,065.95, which was subsequently revised by them to $679,066.09. This was followed by requests made through OCW to settle this claim, but no response was forthcoming from Tai Ping. In their final report to Tai Ping dated 8 December 1998, Cunningham assessed the Sections I and II losses in the sums of $322,374.58 and $296,483 respectively, and suggested that the insured `could bear 20% to 30% of the loss` and that `this would be subject to direct negotiation`. The final quantification stood at $523,912.68 or $553,560.98, depending whether PPL bore 30% or 20% of the Section II loss. Following that, Tai Ping on 9 December 1998 wrote to OCW stating that they would pay PPL $523,912.68. Their letter, in so far as material, stated:

> *1 We will make payment to the insured, Projection Pte Ltd. However,*

considering the `loss payee` clauses in the Schedule, before we release our Draft, we need a letter from Singapore Sports Council to confirm that they have no objection to this payment arrangement.

2 The breakdown of amount payable is as follows:

(i)	Loss under Section I		:	S$	379,264.21
	Deductible		:	15% of loss	
	Amount payable under Section I		:	S$	322,374.58
(ii)	Loss under Section II		:	S$	296,483.00
	Proportion borne by insured		:	30% of loss	
	Deductible		:	S$	4,000.00
	Foreseeable damage including in tender		:	S$	2,000.00
	Amount payable under Section II		:	S$	201,538.10
		Total	:	S$	523,912.68

Please convey the same to Projection Pte Ltd and let us have their confirmation of the payment so that we are able to effect our payment.

In response, PPL wrote to Tai Ping on 18 December 1998 enquiring the reasons for paying less than the amount notified to Francis Teo & Associates, and requested for a breakdown. Thereafter, Mr Ong called Douglas many times asking for an early settlement of PPL`s claim. Apparently, there was no response from Tai Ping. Finally the parties met on 9 March 1999. At that meeting, Mr Ong requested for an increase in the amount offered by Tai Ping. No agreement was reached at the meeting. Thereafter, sometime near the end of March 1999, Douglas again requested Mr Li to increase the amount. On 31 March 1999, Tai Ping wrote to OCW as follows:

We refer to the previous correspondence and discussion in the above connection.

We are pleased to advise that we agree to adjust the proportion borned [sic] by Insured under Section II, from 30% to 20% of the loss. After adjustment, the final figure payable is S$553,560.98.

We enclose herewith a Discharge for your onward transmission for Insured`s signature.

In our view, this letter has to be construed against the relevant factual matrix. First, as early as 9 December 1998, Tai Ping had conveyed to OCW, their unequivocal offer to pay PPL $523,912.68 on the claim. They requested for the Sports Council`s confirmation that they had no objection to the `payment arrangement` and also PPL`s `confirmation of their payment`. This was followed by PPL`s letter of 18 December 1998 expressing their surprise at the reduction of the proposed payment and seeking an explanation. The next significant development was the meeting of 9 March 1999. Obviously, it was called with a view to negotiating a final settlement of the claim, and negotiations did take place at the meeting, and in the negotiations PPL were seeking an increase in the sum that Tai Ping had offered to pay. There was evidence both from Mr Ong and Mr Li that at that meeting, PPL requested Tai Ping to increase the settlement sum. It was common ground between the two witnesses that the higher sum of $553,560.98 for settlement was discussed at the meeting. Mr Ong testified that Mr Li said that $553,560.98 was the maximum sum which he could offer. Mr Li on his part also testified that PPL asked him to increase the offer from $523,912.68 to $553,560.98 which he rejected at the time. It was in evidence that PPL requested that the settlement sum be increased to $553,560.98, but that Tai Ping were unwilling to agree at that time. The trial judge found that no agreement to pay the increased sum was reached on 9 March 1999. Thereafter, at the end of March 1999, according to Mr Li, Douglas again broached the request for an increased settlement sum and suggested that Tai Ping reduce the proportion of loss to be borne by PPL under Section II of the Policy. Finally, came the crucial document. That was Tai Ping`s letter of 31 March 1999 in which they agreed to the increased sum of $553,560.98. It is significant that in that letter they first referred to `the previous correspondence and discussion` and then said:

> *We are pleased to advise that **we agree** to adjust the proportion borned [sic] by Insured under Section II, from 30% to 20% of the loss. After adjustment, the final figure payable is S$553,560.98. [Emphasis is added.]*

Viewed against that background, it is abundantly clear to us that by the letter of 31 March 1999, Tai Ping ***agreed*** to increase the payment to $553,560.98 sought by PPL in settlement of their claim. In our judgment, with the receipt of that letter the parties had arrived at a clear compromise on the amount to be paid in settlement of PPL`s claim.

Discharge voucher

We next turn to consider the import and effect of the discharge voucher enclosed in Tai Ping`s letter of 31 March 1999. That letter referred to the discharge voucher in the following terms:

> *We enclose herewith a Discharge for your onward transmission for Insured`s signature.*

Neither the letter nor the discharge voucher contained any language which suggested that the discharge voucher was intended as a condition of, or a condition precedent to, the agreement to pay the increased amount of $533,560.98. The voucher was no more than an acknowledgment of the receipt of the sum in full settlement of the claim, and, as is the common practice of insurance companies, was prepared in advance of the payment that had yet to be received. It is a procedure normally adopted by insurance companies as a follow-up to a settlement which they have agreed. It

may well be a requirement imposed by Tai Ping that PPL and the Sports Council should sign the discharge voucher before the payment is made. But whatever may be their requirement, the execution of the voucher by the parties as requested was certainly not a term or condition of the compromise agreement. Even if it was such a term or condition, it would have effect only on the implementation of the agreement, namely the payment of the sum thereunder; it could not have any effect on the validity or existence of the agreement.

One of the objections taken by Tai Ping to the discharge voucher signed by PPL was the insertion of the words: `This full and final settlement shall be limited to the aforesaid incident only` made by PPL. It appears that there was a second incident which occurred at the site on 1 May 1999, leading to the lodging of a further claim under the Policy. The preceding correspondence and negotiations, however, only pertained to the incident of 8 July 1997. It seemed to us that the insertion of the additional sentence was merely a prudent measure which served to clarify that the settlement was limited to the first incident and would not prejudice or waive PPL`s rights in relation to other claims under the Policy. At any rate, we do not see how these words inserted by PPL in the discharge voucher could be construed as materially changing the substance or the effect of Tai Ping`s agreement to pay the sum as stated in the letter.

The Sports Council

We need to say a word on the Sports Council`s role in the settlement. Under the policy PPL, the Sports Council and PPL`s sub-contractor were named as the parties insured. It is implicit there that these parties were insured according to their respective rights and interests in the Project. In respect of the claim in question, neither the Sports Council nor the sub-contractor of PPL had any interest in it, and neither of the parties had submitted any claim either. In particular, the Sports Council have not given any notice of a claim, and is not, and has never been, a claimant of any part of the sum claimed by PPL in respect of the incident. In the circumstances, Tai Ping`s professed concern that the Sports Council may make a claim for the same incident in the future has no basis whatsoever. The communications between Tai Ping, Cunningham, PPL and OCW up to 31 March 1999 did not involve the Sports Council at all. If Tai Ping`s real concern was that, in view of the loss payee clause, they had to seek confirmation from the Sports Council for the payment to be made direct to PPL instead of the Sports Council, that confirmation was already in hand long ago. The Sports Council had as early as 19 May 1998 requested Tai Ping to expedite payment of the claim to PPL; by necessary implication they had directed payment to be made to PPL. If the excuse of Tai Ping then is that the direction was given long ago and might be out of date, and that a fresh confirmation should now be obtained, there is nothing to prevent them from obtaining it. That again relates to implementation of the settlement and has no effect whatsoever on the validity or existence of the settlement. The reference by Tai Ping to the Sports Council in defence of PPL`s claim was indeed a pure red herring.

Consideration for the compromise agreement

We next turn to the question of consideration. Mr Low Tiang Hock, counsel for Tai Ping, contends that there was no consideration provided by PPL for the compromise agreement in light of H & S`s opinion that the incident was caused by a faulty design of the retaining wall and foundations, and therefore the damage was not covered by the Policy. This contention has no merit and we have no hesitation in rejecting it. First, whatever may be the opinion of H & S as to the cause of the damage, that opinion has not been tested and accepted in court; nor has it been accepted by PPL. In this case, the cause of the collapse was a question of fact which needed to be investigated, and the question of liability under the Policy would also depend on the construction of the various terms of

the Policy. Both the cause of the collapse of the wall and the question of liability under the Policy remain untested, and they were not in issue.

The case of **Magee v Pennine Insurance Co** [1969] 2 QB 507 relied upon by Mr Low is of no assistance here. In that case, a compromise agreement entered into for settling a claim was set aside on the ground that in entering into the agreement both parties were under a common fundamental mistake that the plaintiff had a valid claim under the insurance policy when he had not. In this case, there was no such `common fundamental mistake`.

The arguments put forward on behalf of Tai Ping confuses the success of the claim under the Policy with the validity of the compromise agreement. In this regard, we find salutary the decision of the Privy Council on appeal from Sri Lanka in **Jayawickreme v Amarasuriya (since deceased)** [1918] AC 869. There, the appellants instituted an action against the deceased respondent to recover a sum of money as balance due to the first appellant under an agreement made in compromise of a claim based on an alleged trust, in respect of which legal proceedings had been threatened. In allowing recovery of the money claimed, Lord Atkinson said at p 873:

> *It is plain from these passages that the decision of the District Judge was based upon the view that the compromise could not be supported, because the alleged trust which the female plaintiff threatened to enforce by action was not a valid trust enforceable in law, nor a* ***justa causa debendi. He thus permitted himself to be led astray by the form of the pleading and the issue from determining whether the alleged compromise which it was sought by the suit before him to enforce was valid into that of determining whether the threatened suit alleged to have been compromised could have succeeded if prosecuted to its end - a wholly different and irrelevant question****. The legal validity or invalidity of the claim the female plaintiff threatened to enforce by action is entirely beside the point if she, however mistakenly bona fide, believed in its validity. [Emphasis is added.]*

Secondly, at the time when the compromise agreement was reached, PPL had a claim against Tai Ping under the Policy and it had not been established in court that it was not a valid claim. From PPL`s perspective, from the time the claim was lodged up to the time of the compromise agreement, there was nothing on the evidence, which suggested that the claim was hopeless, frivolous or vexatious or was doomed to fail. The claim for the loss that was occasioned was potentially covered under the terms of the Policy. The agreement concluded was that Tai Ping agreed to pay the sum of $553,560.98 in full settlement of the claim. We do not see how it can ever be contended on behalf of Tai Ping that PPL had not provided any consideration for this compromise.

In the result, we allow the appeal and set aside the judgment below. There will be judgment for PPL against Tai Ping in the sum of $553,560.98. We now turn to the question of interest. The compromise agreement was made on 31 March 1999. Assuming that it was reasonable for Tai Ping to await the receipt of the discharge voucher duly signed by PPL before they made the payment, that document was signed and returned to them on 8 May 1999, and they should have made the payment by 15 May 1999. They did not. We therefore order that they pay interest on the sum of $553,560.98 at 6% per annum from 16 May 1999 to the date hereof. We direct that the judgment sum and interest thereon, and also the statutory interest accruing on this judgment be paid to the Sports Council pursuant to the `loss payee` clause as provided in the Policy, unless prior to such payment, PPL furnish to Tai Ping or their solicitors a written direction from the Sports Council to the effect that the payment may be made to PPL.

The costs should follow the event, and we award to PPL the costs here and below. The deposit in court, with interest, if any, is to refunded to PPL or their solicitors.

Outcome:

Appeal allowed.