Guobena Sdn Bhd v New Civilbuild Pte Ltd
[2002] SGCA 39

Case Number : CA 600140/2001

Decision Date : 21 August 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Tan Chee Meng and Tan Lee Cheng (Harry Elias Partnership) for the appellants; James Yu and Yu-Ting Hi Keng (Yu & Co) for the respondents

Parties : Guobena Sdn Bhd — New Civilbuild Pte Ltd

Damages – Assessment – Breach of contract – Principle of damages under contract law – Measure of damages claimable by aggrieved party – Whether to ignore original contract sum in determination of damages -Restitutio in integrum

Assistant Registrar gave judgment in favour of the appellants in the sum of $ 72,150.61. The respondents appealed against this judgment to the High Court. According to the respondents, the correct position was that a sum of $1,748,624.65 was due to them. The trial judge allowed the appeal and held that the appellants should pay the respondents the sum of $ 1,748,624.65. The appellants then commenced the present appeal seeking to restore the order of the Assistant Registrar. The appellants' main contention was that in determining what was owing between the parties, no account should be taken of the full contract sum since the respondents had not completed their works under the sub-contract.

Held

, dismissing the appeal,

(1) A basic principle in contract law, based on the concept of *restituo in integram*, is that an aggrieved party is entitled to claim as damages the losses or additional expenses which he has to incur to get what he has contracted to obtain from the party and not to give him any gain beyond such loss. To determine the loss which the appellants had suffered on account of the stoppage of work by the respondents, it was only that portion exceeding the contract sum which the appellants had incurred (if any) to complete the works that the appellants would be entitled to claim as damages. In the circumstances of the present case, taking into account the amounts already paid to the respondents for works done, the expenses incurred by the appellants to complete the works and the amount obtained under the performance bond, there was a net sum of $1,748,624.65 due from the appellants to the respondents.

Cases referred to

Victoria Laundry (Winsor) Ltd v Newman Industries Ltd

[1949] 2 KB 528 **(refd to)**

Judgment

GROUNDS OF DECISION

1 The action (Suit No. 46/1998) was instituted by the respondent, New Civilbuild Pte Ltd (NCB),

a sub-contractor of a condominium project known as Tanglin Regency, to claim, inter alia, monies due under the sub-contract. The defendant-appellant was Guobena Sendirian Bhd (Guobena), who was the main contractor of the project. The sub-contract was for structural and architectural works and its value was $16,413,047.88. This sum was increased to $16,800.732.03 for agreed variations.

2 There was a second defendant to the action, Tai Ping Insurance Co Ltd (Tai Ping), who had, at the request of NCB, issued a performance bond for the sum of $1,642,045 in favour of Guobena as required under the sub-contract.

3 The claim of NCB in the action was for the payment of outstanding progress payments and the return of retention monies. In turn, Guobena counter-claimed for, inter alia, damages for delay and non-compliance with the sub-contract, which consisted of $5,702,309.41, being expenses incurred to complete the project, and $3 million as liquidated damages for late completion.

4 As a result of the dispute between NCB and Guobena, the latter made a demand on the performance bond issued by Tai Ping. By interlocutory proceedings, NCB sought unsuccessfully to restrain Guobena from calling on the performance bond.

5 At the conclusion of the action, the trial judge on 29 February 2000 ruled that

(i) NCB was entitled to progress claims No. 23 and 26 and 50% of the retention monies, which in total amounted to $1,813,981.95;

(ii) Guobena's counterclaim for expenses incurred to complete the sub-contract works was allowed and the amount thereof was to be assessed by the Registrar.

However, Guobena's counter-claim for liquidated damages was disallowed by the trial judge who also ordered mutual set-offs from what was due to NCB from Guobena and vice-versa. In the interim, Guobena was to retain the $1,642,045 which Tai Ping had paid out under the performance bond (PB).

6 The assessment of Guobena's counterclaim was carried out by the Assistant Registrar, who determined that the expenses to be borne by NCB were $3,528,177.56. We should mention that this assessment was accepted by both parties as neither had appealed against it. Accordingly, the Assistant Registrar gave judgment in favour of Guobena in the sum of $72,150.61, arrived at as follows:-

Counterclaim allowed	$ 3,528,177.56
Less: money from PB	$(1,642,045.00)
Balance	$ 1,886,132.56
Less: judgment sum in favour of NCB	$(1,813,981.95)
Final balance due to Guobena	$ 72,150.61

7 It was against this decision of the Assistant Registrar that NCB appealed to the High Court. NCB submitted that the correct position was that, in fact, a sum of $1,748,624.65 was due from Guobena to NCB. At the hearing of that appeal, the trial judge allowed the appeal and held that Guobena should pay the sum of $1,748,624.65 to NCB. The present appeal was Guobena's further appeal to us, seeking to restore the order of the Assistant Registrar. We dismissed the appeal and

now give our reasons.

Appellant's contention

8 The main argument raised by Guobena was that, in determining what was due to NCB, after the mutual set-offs, no account should be taken of the contract sum of $16,413,047.88 or the full contract sum of $16,800.732.03, inclusive of the agreed variation.

Our decision

9 The following essential facts must be borne in mind. The sub-contract value was originally $16,413,047.88 but it was increased by agreed variations of $387,684.15, making it a total of $16,800,732.03. Up to the time NCB commenced the action, NCB had received payment of $13,165,974.82. The judgment of 29 February 2000 awarding the sum of $1,813,981.95 to NCB was subject to set-off against any sum found due to Guobena in the assessment of Guobena's counter-claim for expenses incurred to complete the works. The Assistant Registrar assessed the counter-claim at $3,528,177.56. So, all in all, Guobena incurred $18,508,134.33 in completing the works. But according to the contract, Guobena would only have to pay $16,800,732.03. The difference of $1,707,402.30 was, therefore, the sum which Guobena was entitled to claim as damages from NCB, who had terminated the works. Setting off this sum of $1,707,402.30 against the sum of $1,813,981.95 which the court adjudged being due from Guobena to NCB, there was a balance of $106,579.65 due to NCB. Moreover, it would be recalled that Guobena had called on the PB and had received the sum of $1,642,045. This should also be returned to NCB. Adding these two sums would give a grand total of $1,748,624.65, which was what Guobena should pay to NCB.

10 For a better comprehension of the arithmetic involved, the figures are re-stated below in the form of a table:-

Contract sum	$16,413,047.88
Agreed variation	$ 387,684.15
New Contract sum	$16,800.732.03 (sum A)

Payment received by NCB	$13,165,974.82
Judgment sum due to NCB	$ 1,813,981.95
Expenses incurred by Guobena to complete the work	$ 3,528,177.56
Total sum incurred to have the entire works done	$18,508,134.33 (sum B)

Damages due to Guobena (sum B less sum A)	$ 1,707,402.30 (sum C)
Balance due from Guobena to NCB after setting-off sum C against judgment sum of $1,813,981.95	$ 106,579.65 (sum D)
Return of PB sum	$ 1,642,045.65 (sum E)
Total due to NCB (sum D plus sum E)	$ 1,748,624.65

11 In our respectful opinion, the cause of all the confusion would appear to stem from the argument of Guobena, that in determining how the final accounts between the parties were to be computed, the contract sum should be ignored. A basic principle of contract law is that an aggrieved party is entitled to claim as damages the losses or additional expenses which he has to incur to get what he has contracted to obtain from the party in breach. To make that determination, the price at which the innocent party would have to pay under the contract must be reckoned.

12 The point can, perhaps, be more readily appreciated by a simple illustration. Say A employs B to do a piece of work for $100/-. After three-quarters of the way and having been paid $75, B abandons work and A has to engage others to complete it. A incurs $35/- to have the job done. On Guobena's argument, it will mean that A can claim the $35/- from B. This is obviously wrong. A, in total, incurs $110/- ($75 plus $35). That is $10/- more than the contract sum. A can only claim $10/- as damages and nothing more. If A were to be entitled to claim $35 as damages from B, A would have benefitted because A would then have got the job done for only $75/-.

13 The principle of damages in contract is to compensate the aggrieved party for the loss he suffers, based on the concept of *restitutio in integram*, and not to give him any gain beyond such loss. Here, we would quote Asquith LJ in *Victoria Laundry (Winsdor) Ltd v Newman Industries Ltd* [1949] 2 KB 528 at 539:-

> "In cases of breach of contract, the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach."

Often times, disputes on damages centre on two main areas: the question of remoteness and the question of the measure of damages. The second question arises where the losses which are suffered by the aggrieved party are not amenable to precise determination. In the present case, none of these two questions arose.

14 Before we conclude, we should mention that in the trial judge's written grounds of decision which she rendered later, she seemed to have second thoughts about the correctness of her decision, caused no doubt in part by the manner in which the various figures were presented to her. We would, for the reasons given above, affirm that her decision was correct.

Sgd:

YONG PUNG HOW CHAO HICK TIN TAN LEE MENG

CHIEF JUSTICE JUDGE OF APPEAL JUDGE