Stratech Systems Ltd v Guthrie Engineering (S) Pte Ltd
[2004] SGHC 146

Case Number : Suit 546/2003

Decision Date : 12 July 2004

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : N Sreenivasan and Collin Choo (Straits Law Practice LLC) for plaintiff; Goh Phai Cheng SC, Christopher Goh and Gho Sze Kee (Ang and Partners) for defendant

Parties : Stratech Systems Ltd — Guthrie Engineering (S) Pte Ltd

Contract – Implied contracts – Quantum meruit – No written contract for maintenance work – Plaintiff did maintenance work at request of defendant – Whether plaintiff entitled to claim on quantum meruit basis.

Damages – Assessment – Defendant contracted with plaintiff for provision of design, supply and related works – Plaintiff stopped contractual works on account of non-payment by defendant – Plaintiff brought claim against defendant – Whether plaintiff entitled to claim for payment from defendant – Whether defendant entitled to defence of set-off for some items in the plaintiff's claim – Whether defendant entitled to counterclaim – Whether defendant entitled to deductions from plaintiff's claim.

12 July 2004 *Judgment reserved.*

Choo Han Teck J:

1 The plaintiff is a public company whose business was described as that of providing "information technology consultancy and information technology professional services". The defendant is a company described as "special trade contractors". These descriptions, as we shall see, do not explain very well what they actually do in the context of their claim and counterclaim against each other. The details of the contracts and work are technical, and I shall only refer to such portions as are relevant to the issues at trial. Unless specifically indicated otherwise, the recital of facts in this judgment constitutes my findings of fact. Some facts were not in dispute, some could not seriously be disputed, and some were a little more problematic, but if a finding were required of those facts, they would, of course, be established on a balance of probabilities.

2 The background to this suit is best understood from events which occurred in late 1997. At that time, the Land Transport Authority of Singapore ("LTA") was desirous of co-ordinating the electronic collection of tolls from foreign registered cars. At that time, collection of tolls was done manually at three points of entry, namely, the Causeway, the Second Link at Tuas, and the Changi Ferry Terminal. The plaintiff and defendant collaborated to obtain the award of tender from the LTA to design and set up this electronic system for the collection of tolls. Their collaboration was encapsulated in a contract between them called the Exclusive Teaming Agreement, dated 24 November 1997.

3 On 12 March 1999, the LTA awarded the contract to the defendant. The contract sum was $9,192,472. Under the contract, the defendant was to design, build, and install a complex Vehicular Entry Permit/Toll System known as VEPS. The system was intended to enable the tracking of foreign registered vehicles entering Singapore and to facilitate the collection of tolls from these vehicles. The LTA also signed a post-warranty maintenance agreement with the defendant. On 1 April 1999, the

defendant entered into an agreement with the plaintiff. This is referred to as the "sub-contract". The sub-contract for design, supply and other related work amounted to $5,872,674.78.

4 The plaintiff's claim in this suit was for:

(a) $25,640 being the money due under a variation order for the supply and installation of four 36 GB hard disks in the VEPS server system;

(b) a sum of $245,582.92 for the purchase of additional equipment and engaging workers to install the equipment;

(c) $520,081.23 for maintenance work carried out by the plaintiff for the LTA in respect of the VEPS system.

5 The defendant denied that these monies were due, and in turn, counterclaimed on the ground that it was entitled to deduct various items from the plaintiff's overall claim. The five items claimed as deductions by the defendant were:

(a) an omission variation order for $182,400;

(b) liquidated damages of $110,950;

(c) outstanding works at $43,022.12 excluding some unquantified items;

(d) training costs of $60,123; and

(e) unquantified training costs.

6 I now revert to the plaintiff's claim for $25,640. After the VEPS system was commissioned, LTA decided to use the VEPS system as a basis for collecting payments under the Electronic Road Pricing ("ERP") scheme from foreign registered vehicles. Therefore, the VEPS had to be configured to link with the ERP system. The claim for $25,640 was in respect of this ERP-VEPS enhancement work. The plaintiff and defendant were the natural and obvious parties to carry out this linkage development. The plaintiff supplied four additional hard disks so that extra data generated from the enhanced system could be accommodated. The work and supply involved were not disputed. The defence was based on the right of set-off in that the costs to the defendant by reason of the alleged breach of contract by the plaintiff exceeded the sum of $25,640. On the balance, I am unable to find that there was any outstanding work under the subcontract or, as I shall refer to shortly, any maintenance contract such as to entitle the defendant to succeed in its defence of set-off.

7 The dispute concerning the goods and services (including the engagement of manpower, provided for in the plaintiff's $245,582.92 claim) was mainly on the issue of whether these were provided as part of the plaintiff's existing contractual duty or as additional requirements, and whether the plaintiff was in breach of contract by stopping work. The plaintiff's case was that they were variation claims because they were provided at the LTA's request, after the original work had been commissioned. Mr Goh, counsel for the defendant, submitted that they were part of the contracted work for which, under the terms of the sub-contract read with the main contract, the plaintiff was obliged to perform. As such, the plaintiff would have been paid as and when the LTA had paid the defendant. Counsel further submitted that the LTA is still withholding a sum of $459,623.60 from the defendant because of the plaintiff's failure to finish some of the sub-contract work. The plaintiff alleged that it stopped work on the project on 25 March 2003 and stopped on-going maintenance

work from 28 March 2003 because it had not been paid. The defendant averred that these stoppages constituted a breach of contract on the part of the plaintiff. On the balance, I am of the view, even in the absence of evidence from the LTA at trial, that the goods and services constituting the $245,582.92 claim were not part of the main contract but were additional items that the plaintiff was entitled to claim as variations.

8 I shall now refer to Mr Goh's submission regarding the items that the defendant said ought to be deducted from the plaintiff's claim. I shall deal with the issue of the deduction of the $110,950 in liquidated damages first. This was the money the LTA had deducted from the defendant on account of delay in the commissioning of the VEPS system. So far as the LTA was concerned, its contract was with the defendant only. Therefore, it was not obliged to determine whose delay it was. The issue was strictly between the plaintiff and the defendant. Mr Sreenivasan, counsel for the plaintiff, submitted that as at 1 April 2000, the plaintiff had completed its work under the subcontract because the LTA had conducted and passed the User Acceptance Test ("UAT") on 25 February 2000. He argued that the plaintiff was, therefore, entitled to the sums of $25,640 and $245,582.92. The evidence showed that the commissioning date was delayed till 9 May 2000. What caused the delay was less clear. The plaintiff claimed that it had completed its job, and passing the UAT was proof of that. Furthermore, in a letter to the LTA dated 8 May 2000, the defendant blamed a third party referred to as "NETS" for the delay. In contrast, on 20 October 2000, Foong Siew Peng, the senior project executive of the defendant company, wrote a letter as well as a telefax to the plaintiff stating that the LTA had given a list of "outstanding works" to the plaintiff and asked it to verify and substantiate the work done. There appeared to be no response to this straightforward request.

9 Counsel for the defendant emphasised time and again that the sub-contract must be read with the main contract and that the terms of the main contract shall apply as between the plaintiff and defendant in the same way it applied between the LTA and the defendant. In so far as liquidated damages were concerned, the fact that the defendant was liable to pay the LTA did not, by that fact alone, mean that, correspondingly, the plaintiff had to pay the defendant. A liquidated damages clause is not an indemnity clause. The relevant passage from the subcontract stipulated as follows:

> Appendix I do not describe your Scope of Works completely. You are to comply in full with all the terms and conditions of contract as stated in the contract documents for the above mentioned LTA Contract No. 4304 signed between Guthrie Engineering (S) Pte. Ltd. and Land Transport Authority (hereto referred to as LTA). A copy of this contract had been made available to you and you are deemed to have read and fully understood its contents. All contractual obligations as stated in this contract where applicable to Guthrie shall be applicable to you with Guthrie assuming the rights of the LTA.

However, in my view, the liquidated damages clause at para 38 of the main contract also applied between the plaintiff and defendant, even though applying the same rate might not be fair considering that the plaintiff was only the subcontractor and the plaintiff itself had its own portion of work to do for the LTA in the same project. A detailed formula for the apportionment of such liquidated damages was probably one of those details that was overlooked. It was, naturally, incumbent upon the defendant to first prove that the plaintiff caused the delay before it could claim liquidated damages from the plaintiff. I had taken into account the fact that no one from the LTA was called to support the defendant's case that the delay was caused by the plaintiff. On the balance, I am satisfied that the defendant had proved that the plaintiff had caused the delay. I accept that the defendant might have contributed to some part of the delay, but there is inadequate evidence for me to apportion any specific amount to it save that it was the plaintiff that largely caused the delay that resulted in the LTA holding back the commissioning of the system. On the whole, I am satisfied that the defendant's claim as to the liquidated damages of $110,950 was justified. The letters exchanged

between the parties at the material time indicated that the defendant had made its claim clear to the plaintiff at the material times, but there had been no satisfactory response from the latter.

10 I am, however, unable to accept the defendant's claim to deduct $182,400 as Omission Variation Orders on the ground that I am not satisfied with the manner in which this claim was "proved". There were copies of instructions stating the specified omissions, but neither the LTA nor the defendant's own engineer who signed them, testified. These documents were adduced in the middle of the trial without a satisfactory explanation. Hence, I would prefer to accept the plaintiff's case that it did not know about such instructions. Although copies of documents purported to be variation orders issued by the LTA were adduced in evidence by the defendant, these documents were not sufficiently clear. These documents might have been useful if explained by the LTA. However, since there was no oral evidence from the LTA, I am unable, in this instance (unlike as regards the liquidated damages issue where other evidence was available), to accept that these documents have any reasonable connection with or correspond to the engineering instructions produced by the defendant.

11 The defendant averred that it was a term of the contract that the plaintiff had to organise training sessions to be conducted by third party vendors. I accept that the VEPS system was a new system and it was important for the LTA's users to be properly trained to use it. However, the sub-contract between the plaintiff and defendant provided for training costs of only $20,000. Mr Sreenivasan submitted that this was because it was then envisaged that the plaintiff would provide the training themselves. I am not convinced that the evidence supported the defendant's claim that the training was to be at a higher level and carried out in the manner asserted by it. The plaintiff had written to the defendant and suggested that any additional costs be borne by them equally. This appeared to accommodate the late request by the LTA for a quick completion of the work. Mr Sreenivasan argued that the defendant's contractual obligations to the LTA must be distinguished from that of the plaintiff to the defendant. The Exclusive Teaming Agreement, the main contract, and the sub-contract, whether individually or collectively, did not create an assignment or a novation such that the plaintiff stood in the place of the defendant *vis-à-vis* the LTA, nor did they provide an indemnity by the plaintiff to cover the defendant for every compensation due from the defendant to the LTA. Counsel suggested that the defendant's attempt to pass all its responsibilities to the plaintiff was not justifiable in the context of the contractual obligations evidenced by the history of the three contracts between them. Thus, he argued that any offer by the defendant to provide a higher quality training facility should not be passed on to the plaintiff if it went beyond what they had agreed to in their contract. In my view, the Exclusive Teaming Agreement provided the terms upon which the plaintiff would assist the defendant in procuring the award of tender from the LTA. Once that had been achieved, the parties entered into a more specific contractual arrangement as encapsulated in the terms of the sub-contract augmented, where applicable, by the terms of the main contract. The sub-contract was a support contract whereby the plaintiff would, in the terms stated therein, support the defendant in the areas where the defendant was obliged to perform for the LTA (*ie* all that were specified in the appendices to the sub-contract). It would be wrong to enforce additional terms, reached between the LTA and the defendant after the main contract, against the plaintiff. Nothing in any of the contractual documents permitted such a generous interpretation. Thus, the "tender specifications" referred to by Mr Goh cannot be relied upon. The contract structure in this case alluded to those terms, but they were neither so sufficiently firm nor precise that their incorporation into the sub-contract could be clearly appreciated. I am of the view that the circumstances do not justify any implied incorporation of those references. Consequently, I find that the plaintiff's obligation was to provide training worth $20,000. Whether the LTA obtained value was a different matter and, on the evidence, I am unable to find that the plaintiff had not discharged its obligations under this head.

12 Next, the defendant reiterated its claim that when the plaintiff stopped work on 25 March 2003 there was work outstanding, which must be deducted from the plaintiff's claim. The problem here was that apart from the plaintiff's concession that $43,022.12 worth of work was outstanding, I am unable to find the precise nature, extent or cost of the work that the defendant alleged was left uncompleted by the plaintiff. The burden of proving such uncompleted work lay with the defendant. Consequently, I find that the defendant was only entitled to deduct $43,022.12. I should address a minor point concerning the position taken by counsel for the defendant that the trial had been ordered to be a split trial in that the question of damages, should that arise, would be assessed separately. More accurately, it was counsel's impression that the registrar below had so ordered. However, the notes of evidence do not support that impression. More importantly, every litigant must be prepared for a full trial in any event. A second opportunity to prepare for any part of the trial, whether it is thought to be more appropriate in the circumstances, or simply because counsel is not fully prepared, would not be given. The opposing party is entitled to have all the issues resolved fully and finally, come the day of trial. I am merely expressing a general principle, not that I think that counsel had not prepared his case fully here. The court, of course, has the discretion, in appropriate cases, to make an order that the assessment of damages, or any specific inquiry arising out of the trial on liability, be heard separately. For instance, the court may, at a pre-trial stage, sometimes direct that the assessment of damages be separately tried, but if no so such direction is made, the trial is deemed to be a full trial and counsel has to prepare for it as if the trial would be heard fully. Counsel takes the risk that the trial judge may not order a split trial should he make that application (which he is, of course, entitled to make) before the court.

13 I now turn to the third main issue, namely, the plaintiff's claim for maintenance work, which it said was done after the post-warranty period. The defendant pleaded a variety of possible bases for a post-warranty maintenance contract between the plaintiff and the defendant. The importance of proving a contract was that it would form the basis of a breach by the plaintiff. The terms of the Exclusive Teaming Agreement do not support such a claim. On the contrary, cl 5(f) made it clear that the maintenance contract that might come into being, would be one that the parties might agree to at a later stage. The defendant then sought to show that the parties had, in fact, concluded a contract. Unfortunately, the evidence indicated that there was no express contract because the basic offer and acceptance requirements were absent. It is of no consequence why the plaintiff did not assent to the defendant's offers, or why the defendant did not pursue the matter. It appears to me that although there was no clear agreement on a maintenance contract, the parties allowed the matter to ride through the 12-month defects liability period through lack of attention to this small but important aspect. The plaintiff's case was that, contrary to the defendant's assertion, there was no maintenance contract. It alleged that the works were done "at the defendant's requests". The plaintiff denied any specific, written contract providing for maintenance of the VEPS. Nonetheless, the plaintiff had maintained the system at the request of the defendant. Hence, although rejecting a formal contract, the plaintiff relied on an implied contract by conduct. But the statement of claim does not support this. The relevant passage reads as follows:

> B CLAIM FOR MAINTENANCE SERVICES
>
> 6. From the month of May 2001, the Plaintiffs carried out various maintenance services at the Defendants' requests, full particulars of within the Defendants' knowledge and also made known to them via the Plaintiffs' Financial Statement dated 24th March 2003 and short particulars of which are as follows:-
>
> Particulars
>
> 1. Amount Payable S$1,346,627.92

2. Less: Amount Received (S$826,546.69)

TOTAL DUE AND PAYABLE **S$520,081.23**

14 The fact that the defendant might have been aware that maintenance work had been done by the plaintiff does not explain the basis of the plaintiff's claim for those works done. On the evidence, I am prepared to accept the plaintiff's proof as to the details of the maintenance work done, but I do not accept that the plaintiff was entitled to claim for it all. The 12-month defects liability period commenced on 9 May 2000. The plaintiff would be entitled to be paid for maintenance work done by it from 9 May 2001 onwards only. Since there was no specific written contract for the maintenance work, the only basis for the plaintiff's entitlement would be implied from conduct or on a *quantum meruit* basis. In the usual course, damages based on *quantum meruit* have to be assessed. In this case, there seemed to be no challenge from the defendant as to the itemised account of work done. I, therefore, think that it would not be necessary for an inquiry into that account. In the circumstances, and on the facts as I found above, I am of the view that the plaintiff was entitled to stop work on account of it not being paid. Consequently, the defendant was not entitled to a set-off against work outstanding. The plaintiff would thus be allowed its claim for maintenance work from 9 August 2001.

15 The principal witnesses were David Chew and Sam David for the plaintiff, and Ong Kin Bee and Foong Siew Peng for the defendant. Although David Chew and Ong Kin Bee were the senior officers of the respective parties, I was more impressed by the evidence of Sam David and Foong Siew Peng. They appeared to be forthright and knew their jobs well. The evidence of Chew and Ong, though more so Ong than Chew, required closer scrutiny because they were both more partisan in their manner and approach; probably because they felt more strongly about the case than their respective managers, Sam David and Foong Siew Peng. On the balance, I find the narratives and accounts of David Chew and Sam David to be more plausible. The evidence of all four witnesses indicated that the parties had a mutually dependent relationship at the incipient stage as well as during the development of the project. The plaintiff, who had the larger technical expertise, subsequently increased its bargaining power against the defendant (in respect of their working relationship); but the defendant controlled the income from the LTA. Neither party, however, paid sufficient attention to the legal formalities of contract. That resulted in vague or incomplete agreements such that many issues arose that required an objective appraisal as to what it was that the parties had intended.

16 For the reasons above, the plaintiff's claim is allowed, subject to the deductions allowed. The defendant's counterclaim is dismissed. I shall hear the parties on costs at a later date.

Plaintiff's claim allowed.