Biomedia Pharma Pte Ltd (formerly known as Malaysia Chemist Pte Ltd) *v* TAC Distribution Pte Ltd (trading as Trane Singapore) (Amcrotech Pte Ltd, third party) [2010] SGHC 330

Case Number : Suit No 143 of 2009

Decision Date : 08 November 2010

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Mansurhusain Akbar Hussein and Remesha Pillai (Jacob Mansur & Pillai) for the plaintiff; Niru Pillai (Global Law Alliance LLC) for the defendant; Michael Chia Peng Chuang (Pereira & Tan LLC) for the third party.

Parties : Biomedia Pharma Pte Ltd (formerly known as Malaysia Chemist Pte Ltd) — TAC Distribution Pte Ltd (trading as Trane Singapore) (Amcrotech Pte Ltd, third party)

Contract

8 November 2010 Judgment reserved.

Choo Han Teck J:

1 The plaintiff carried on the business of manufacturing biomedical and pharmaceutical products and was known as Malaysian Chemist Pte Ltd. They leased a factory at 194 Pandan Loop ("the Premises"). To carry on their business there they required a licence to be issued by the Health Sciences Authority ("HSA") pursuant to the Medicines Act. The Act required such factories as that intended by the plaintiff, which have both a dry and wet laboratory space, to satisfy regulatory guidelines and standards that are published in the regulations as well as a code called "Good Manufacturing Practice" ("GMP"). The plaintiff intended to have both a dry laboratory and a wet laboratory ("dry lab" and "wet lab") in the factory. The GMP requirements were different. A dry lab must prevent the collection and dissemination of dust and the humidity level must also be set according to GMP specifications. A wet lab requires constant temperature control as required under GMP standards. The plaintiff consulted and eventually contracted with the defendant, who carried on business under their trade name "Trane", to design and install a "Heating Ventilating Air-conditioning" system (known by the acronym "HVAC") in the Premises. The defendant was also to supply the hardware units and commission the system after it has been installed. The contract between them was initially made after the acceptance of the defendant's quotation pursuant to the plaintiff's first letter of award. The original contract sum was $163,000. There were further negotiations leading to a second letter of award (a copy of which is found in AB 92-95) issued pursuant to a revised quotation from the defendant changing the contract sum from $163,000 to $180,000. The contract stipulated that the work was expected to commence on 21 August 2006 and in which event, to be completed within two months, that is, by 21 October 2006. It was not disputed that work commenced on 21 August 2006. The system was not completed by 21 October 2006 or even at all. The plaintiff failed to obtain the HSA licence because the HVAC system failed the HSA audit.

2 After contracting with the plaintiff, the defendant sub-contracted with the third party, Amcrotech Pte Ltd (sometime in August 2006) to carry out the work. The defendant blamed the failure of the HVAC system on the third party, who in turn, said that the work was sub-contracted to Skymac Engineering Services LLP ("Skymac"). Skymac was not joined as a party but their officers

testified on behalf of the third party. The third party's defence against the defendant's claim was that they had installed the system correctly and the system failed because of the defendant's under-design and the inappropriate hardware units that were supplied by the defendant. Their case was that Skymac had advised the defendant to supply a more powerful system with more units, but the advice was rejected by the defendant. The defendant's defence against the plaintiff was based on the assertion that they were not obliged to comply with the GMP standards and, secondly, that they had completed the installation by December 2006 but was given an extension of time up to 6 June 2008 to rectify defects. This was denied by the plaintiff.

3 The third party's defence averred that it was the defendant who wanted to engage Skymac to carry out the contract work but because Skymac did not have the requisite registration with the trade authority that the third party had, the defendant thus entered into a formal contract with the latter appointing them as the sub-contractor with the knowledge that the work would be done by Skymac. Skymac submitted a quotation on 16 August 2006 to the third party who submitted its quotation to the defendant on 17 August 2006. The third party's quotation was for $150,150. Two additional works were carried out at the defendant's requests for $7,560 and $1,680 respectively. The work was carried out by Skymac under the defendant's supervision. The third party's defence was that they had completed the sub-contract as required.

4 I am of the view that the plaintiff had made clear to the defendant that the HVAC system must comply with the GMP standards and be approved by HSA. I accept the plaintiff's evidence that the HSA approved the plaintiff's application to use the premises as a wet lab but withheld approval for the use of the premises as a dry lab. On the evidence, it seemed to me that the HVAC system the defendant contracted to install failed to satisfy the requirements of the GMP standards and consequently, the HSA did not give its approval to use the premises as a dry lab. Although the defendant denied that they had any contractual obligation to provide the HVAC, I am of the view that the documents and oral evidence of the plaintiff indicated otherwise. The defendant adduced no rebuttal evidence to show that they were present at the meetings arranged by the plaintiff with the HSA to establish what the system required. The plaintiff was the lay customers. The defendant was supposed to be the air-conditioning experts. In truth, the evidence revealed that the defendant had a lack of expertise in the design of the system. They appeared, in my view, to have committed themselves to the system before any serious study as to the requirements. Hence, when one Buddy Tan of Skymac, the unlicensed sub-contractor of the sub-contractor, advised a more powerful and thus more expensive set of equipment, the defendant rejected his recommendation and supplied what it thought was adequate. It clearly was not. The person in charge of the project for the plaintiff at the material time was a man named KK Cheng but he was not called to testify. He was also a crucial witness because he negotiated the contracts between the plaintiff and the defendant and between the defendant and the third party. Buddy Tan testified that he gave design specifications to KK Cheng for equipment that would generate airflow at 44,528.5 Cmh or more. He had also included a dust collection system. The system supplied by the defendant failed to work effectively. The contract between the defendant and the third party placed no obligation on the part of the third party with regard to design, testing or commissioning of the system on the part of the third party.

5 The only witness to testify for the defendant was Adrian Tan, an earnest but helpless witness. He became involved in the project after KK Cheng had left the plaintiff. It is probably closer to the mark to say that Adrian Tan took over a mess rather than a project; a mess that was created by KK Cheng as agent and employee of the defendant. In court, Adrian was unable to answer many of the crucial questions, but he could not be blamed for that. He did not even know who to contact to rectify acute problems with the system and had to contact the plaintiff to get Skymac and Buddy Tan's telephone numbers. The man who was responsible had left; and left him with no recourse even against the third party. The contract obligations of testing and commissioning that KK Cheng agreed

to perform for the plaintiff was not incorporated into the defendant's contract with the third party. It seemed to me that the defendant had hoped to gain from the sale of their equipment and thus the project as a whole was not given an adequate budget. The equipment supplied by the defendant as ordered by KK Cheng produced only 27,000 Cmh of airflow. KK Cheng was more a crucial witness to the defendant than Geraldine Ng was to the plaintiff. So although Geraldine Ng, who was the plaintiff's general manager at the time, did not testify in court, the documentary evidence, especially the exchange of email at the material time, supported the plaintiff's and third party's cases and were detrimental to the defendant's defence. The evidence from test report by Ooi Suei Biau of Cleanzones (Singapore) Pte Ltd supported the plaintiff's case and was of no assistance to the defendant, contrary to the claims made by Mr Niru Pillai on behalf of the defendant. Hence, on the whole, there was virtually no evidence in support of the defence.

6 The defendant counterclaimed for $73,100 being the amount outstanding after taking into account the contract sum of $180,000 and variation works less the amount paid by plaintiff.

7 I am thus of the view that the defendant was in breach of its contract with the plaintiff and there will therefore be judgment for the plaintiff with damages to be assessed. The defendant's counterclaim is dismissed. The defendant's claim against the third party is also dismissed. Costs to follow the event and taxed if not agreed.