

See Kian Teck v SG-Bogen Pte Ltd
[2015] SGHC 185

Case Number : Suit No 1032 of 2013
Decision Date : 20 July 2015
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Daniel Koh and Genevieve Wong (Eldan Law LLP) for the plaintiff; Yeo Kan Kiang Roy (Sterling Law Corporation) for the defendant.
Parties : See Kian Teck — SG-Bogen Pte Ltd

Contract – Contractual Terms

20 July 2015

Judgment reserved.

Chan Seng Onn J:

1 The plaintiff, Mr See Kian Teck (“Mr See”), claims cumulatively (i) a 50 per cent share of the profits arising from the construction project entitled the “Re-roofing Works to Existing Clubhouse At Sime Road for the Singapore Island Country Club” (“the Project”) and certain works performed in relation to the Skylights at the golfing office of the Singapore Island Country Club (“SICC”) (“Skylights works”); and (ii) the costs he incurred in relation to the Project less the amount of \$680,000 already paid to him by the defendant, SG-Bogen Pte Ltd. He mounts his claim based on an oral joint venture agreement (“Oral JVA”) between himself and the defendant.

2 Looking at the pleaded cases and submissions of both parties and the evidence of Mr Pui Cheng Giap who was instrumental in connecting the parties, I find that the terms of the Oral JVA broadly track those contained in the unsigned draft joint venture agreement that was prepared for the parties. As such, I am of the view that the terms of the Oral JVA contemplate that the parties share the profits of the Project equally after recovering the expenses they have incurred respectively in relation to the same. I note that the defendant has sought to assert, relying on a letter allegedly sent by it on 4 May 2007 (“4 May 2007 letter”), certain additional terms in the Oral JVA regarding (i) the plaintiff’s role as Project Director during the defects liability period and (ii) the plaintiff’s personal obligation to provide the site team or management at his own cost. The plaintiff denies having received the 4 May 2007 letter. After considering, *inter alia*, the evidence of Mr Lee Choon Sing (“Mr Lee”), Mr See and Mr Pui, I find that the 4 May 2007 letter was not sent and these alleged terms did not form part of the Oral JVA. My findings here have implications on the defendant’s counterclaim, which I will deal with below.

3 Turning to the plaintiff’s claim for the breach of the Oral JVA, I note that the final contract sum of the Project that has been paid to the defendant stands at \$1,738,071.54. In order to satisfy the legal burden in relation to his claim, the plaintiff has produced invoices and vouchers in relation to the various payments he has made to subcontractors. I also note that a number of subcontractors and the Project Engineer of the Project have given evidence at the trial for the plaintiff on having received payments from the plaintiff. It is also uncontroversial that the relevant works had been done by the subcontractors in relation to the Project. Therefore, with the exception of the works done in relation to the Timber Ceiling (“Timber Ceiling works”), which has been a point of dispute in this action, the plaintiff has established a *prima facie* case that the payments as set out in the invoices,

vouchers and affidavit evidence of the subcontractors had been made by him to the subcontractors. In any case, I note that the defendant did not dispute the authenticity of the invoices and vouchers adduced by the plaintiff within the window provided to it under O 27 rr 4(1)-(2) of the Rules of Court (Cap 322, R5, Rev Ed 2014).

4 I now turn to the payment invoice in relation to the Timber Ceiling works. At the trial, the defendant called Mr Ong Guan Kiat ("Mr Ong"), the sole proprietor of Do Renovation Contractor, as its witness to testify that Do Renovation Contractor, the subcontractor who purportedly issued the invoice in relation to the Timber Ceiling works, did not perform the said works. To that end, Mr Ong gave evidence that the plaintiff had asked him to provide his letterhead for the preparation of an invoice for the Timber Ceiling works and produced in Court an audio recording of a conversation between himself and the plaintiff that suggested that Mr Ong had not performed the Timber Ceiling works and the plaintiff was coercing Mr Ong to give favourable evidence in Court. Notwithstanding the fact that the aforementioned audio recording was only a portion of the entire conversation between the plaintiff and Mr Ong, I am of the view that the defendant has adduced sufficient evidence to satisfy me that the Timber Ceiling works were not performed by Do Renovation Contractor.

5 Be that as it may, it is clear from the evidence of Mr Thng Kim Hock, a former senior maintenance executive of the SICC that the Timber Ceiling works (and all the works in relation to the Project) have been fully completed. [\[note: 1\]](#) Therefore, while the plaintiff will not be able to claim the amount set out in the invoice by Do Renovation Contractor in the absence of proof as to its authenticity, he would still be able to claim the value of the Timber Ceiling works. In this regard, I note that one "Choon Sian Wei" had apparently received \$190,000 for the Timber Ceiling works. A bill record showing the record of this payment was adduced as an exhibit in Court during the trial. [\[note: 2\]](#) Having regard to the value of the Timber, I am of the view that \$190,000 would fairly represent the value of the payments made by the plaintiff in relation to the Timber Ceiling works. I therefore allow the plaintiff to recover this amount as expenses incurred in relation to the Timber Ceiling works (see *Annex A: plaintiff's expenses* for the computation of the plaintiff's expenses).

6 Having analysed the expenses of the defendant, I find that the defendant had established through affidavit evidence, invoices and vouchers that it had incurred \$483,369.34 as expenses in relation to the Project (see *Annex B: defendant's expenses* for the computation of the defendant's expenses). The plaintiff accepted that most of these expenses were incurred in relation to the Project. I have disallowed a claim by the defendant for certain worker expenses that were not proved to be linked to the Project. I have also disallowed the expenses arising from the provision of a vehicle for Mr Chua Yuen Shen ("Mr Chua") and a 10 year warranty, as the defendant has not been able to substantiate with evidence what exactly these expenses entailed. I note that the plaintiff has suggested that the defendant's claim for purchase of Timber from Huang Huat Timber Trading Pte Ltd ("Huang Huat") should not be allowed as the defendant has not been able correlate the invoices from Huang Huat with its claim. The invoices from Huang Huat for both plywood and Timber purchased by the defendant in relation to the Project cumulatively amount to \$104,365.62 (see computation in *Annex C: Huang Huat invoices*). I allow the defendant to claim the whole amount as it is clear on the face of the invoices that the Timber and plywood were delivered to the site of the Project during the period when the Project was in progress. I highlight, for completeness, that there is no double-counting of the defendant's expenses for plywood in relation to the "Temporary Hoarding and Lighting".

7 As regards the Skylight works for the golfing office of the SICC, I find that these works are also covered by the profit sharing arrangement under the Oral JVA. Given that the Skylight works were done in SICC on the instruction of one Ms Vivian Heng of RSP Architects, who were the architects

and civil and structural engineers of the Project, with the same team of workers onsite for the Project, [\[note: 3\]](#) on a balance, the Skylight works were part of the Project. In any case, I note that the letter from the defendant's solicitors dated 11 March 2013 did not exclude the Skylight works as part of the Project. [\[note: 4\]](#)

8 I now turn to the defendant's counterclaim. I have already found that the two terms alleged by the defendant regarding (i) the plaintiff's role as Project Director during the defects liability period; and (ii) the plaintiff's personal obligation to provide the site team or management at his own cost are not part of the Oral JVA. This would substantially defeat the defendant's counterclaim. The plaintiff therefore has no personal obligation to pay the "Salary of Project manager +1" counterclaimed by the defendant. The plaintiff is also not personally liable for the "failure [to] perform during defect period" as he was not obliged to so perform under the Oral JVA. I have nevertheless allowed the defendant to recover part of the salary paid to Mr Chua during the Defect Liability Period as expenses incurred in relation to the Project. The defendant is also unsuccessful on the last limb of his counterclaim relating to the "loss of administration fee". Apart from the fact that the defendant did not lead any cogent evidence in relation to this part of its counterclaim (*ie* "loss of administration fee"), I find that the extension of the Defect Liability Period resulting from the delays in rectifying defects were caused by Mr Chua's non-responsiveness as evinced from the email correspondences adduced in evidence. [\[note: 5\]](#)

9 In sum, the plaintiff succeeds in his claim against the defendant for unpaid sums in breach of the Oral JVA. Taking into account the \$680,000 already paid to the plaintiff, the defendant is to pay the plaintiff \$357,700.50 (see *Annex D: computation of award*). I award the plaintiff interest on the sum of \$357,700.50 at the rate of 5.33% per annum from the date of service of the writ to the date of judgment. The defendant's counterclaims are dismissed. I will hear the parties on costs.

Annex A: plaintiff's expenses

The plaintiff's expenses

S/No.	Description [note: 6]	Amount awarded	Comment(s)
1	Plant and equipment	\$28,286.25	Of the \$28,486.25 claimed by the plaintiff for this item, the invoices in relation to Soon Long do not add up to \$12,300 and the amount adds up only to \$12,100; therefore, the amount is amended to \$28,286.25.
2	Scaffolding Works	\$14,752.00	-
3	Debris Removal	\$68,573.67	-
4	Hoarding Works	\$57,960.00	-
5	Lightning Conductor	\$5,500.00	-
6	Electrical Works	\$87,950.00	-
7	Site Management Fees	\$47,350.00	-
8	Gutter Works	\$32,506.00	-

9	Roofing Works	\$112,169.00	-
10(a)	Ceiling Works - Plaster	\$25,201.70	-
10(b)	Timber Ceiling Works	\$190,000.00	Amount reduced from \$202,517.60 claimed by plaintiff
11	Shop drawing/progress photo	\$75,060.00	-
12	Miscellaneous	\$67,148.17	-
Total		\$812,456.79	-

Annex B: defendant's expenses

The defendant's expenses

S/No.	Description [note: 7]	Amount awarded	Comment(s)
1	PE salary	\$12,200.00	As Chua Yuen Shen's work as the safety supervisor was on a part-time basis, I allow an amount of \$6,300 based on 7 months' work at \$900 per month. I further allow \$5,900 for Chua Yuen Shen's supervision of the remedial works during the defect liability period.
2	Safety Supervisor	\$1,467.50	Accepted by plaintiff
3	General worker	Not awarded	The defendant claims \$45,403 but this amount is not substantiated and there is no evidence that the workers were hired for the Project.
4	Shop drawing and Photo taking by Rufino	\$7,200.00	The plaintiff's proposed computation based on 3 months' work at \$2,400 per month is accepted.
5(a)	Equipment - Crane	\$7,870.00	Only this amount is supported by the documentary evidence
5(b)	Equipment - Lorry and Crane	\$3,290.00	Accepted by plaintiff
6	Scaffold and Rental of Scissor Lift	\$9,400.00	Accepted by plaintiff
7	Debris Removal	\$9,950.00	Accepted by plaintiff
8	Temporary Hoarding & Lighting	\$104,365.62	Total computation from Huang Huat invoices (See Annex C)
9	Insurance & Bond	\$5,992.07	The defendant "double counted" the amount as \$11,987.78

10	Canvas	\$576.00	Accepted by plaintiff
11	Repair and Cladding Timber Beam	-	Included in item 8 (Total computation from Huang Huat invoices)
12 to 14	Stainless Steel Gutter	\$10,000.00	Only this amount was paid and the balance of \$7,883 was left unpaid.
15 to 16	Regrading of RC Gutter	\$1,455.50	Accepted by plaintiff
17	Fascia Board	-	Included in item 8 (Total computation from Huang Huat invoices)
18	Rafter & Batten	-	Included in item 8 (Total computation from Huang Huat invoices)
19	Connectors	\$1,035.00	Accepted by plaintiff
20	Connectors	\$720.00	Accepted by plaintiff
21	Insulation	\$15,900.00	Accepted by plaintiff
22	Insulation	\$9,382.80	Accepted by plaintiff
23	Roof Tile	\$175,000.00	Accepted by plaintiff
24	Painting	\$9,557.00	Accepted by plaintiff
25	Painting	\$323.00	Accepted by plaintiff
26	Gypsum Ceiling	\$646.80	Only this amount out of the \$3,376.80 claimed is supported by the documentary evidence.
27	Subcontract to Commercial Engrg	\$4,389.00	Accepted by plaintiff
28	Subcontract to S Electric	\$17,000.00	Accepted by plaintiff
29	Subcontract to LSK Engrg	\$12,922.00	Accepted by plaintiff
30	Subcontract to Fast Flow	\$11,000.00	Accepted by plaintiff
31	Metal Roof	\$9,896.51	Accepted by plaintiff
32	10 Year Warranty	Not awarded	The defendant claims \$65,000 but adduces no evidence of any expenditure.
33	Factory License	\$540.00	Accepted by plaintiff
34	Tender expense	\$2,004.00	Accepted by plaintiff

35	Pui Cheng Giap's consultation fees for the preparation of the tender documents	\$24,000.00	The plaintiff argues that the defendant's claim of \$24,000 for this item should not be included as there was an informal agreement only between Pui Cheng Giap and the defendant in relation to this item. I find that there is a close enough nexus with the Project for this to be a Project expense.
36	Hardware Purchase	\$6,993.30	Only this amount out of the \$10,843.30 claimed is supported by the documentary evidence
37	Composition fines	\$1,000.00	Accepted by plaintiff
38	Rental of Pick-up for Chua Yuen Shen	Not awarded	The amount of \$27,500 claimed is not substantiated apart from bare assertions that the expense was incurred.
39	Repair works	\$300.00	Accepted by plaintiff
40	Purchase of Hardware	\$754.35	Accepted by plaintiff
41	Legal suit	\$6,238.89	Accepted by plaintiff
Total		\$483,369.34	-

Annex C: Huang Huat Invoices

The Huang Huat invoices

S/No.	AB Vol 1, page no.	Amount	Comment(s)	
1	152	\$7,587.49	-	
2	164	\$6,287.40	-	
3	175	\$481.16	-	
4	183	\$3,994.62	-	
5	192	\$9,998.73	-	
6	199	\$833.70	-	
7	230	\$6,892.20	-	
8	235	\$11,151.13	-	
9	236	\$1,537.68	-	
10	238	\$293.93	-	
11	243	\$3,097.50	-	

12	249	\$4,777.50	-	
13	250	\$8,032.41	-	
14	251	\$5,499.90	-	
15	256	\$12,233.17	-	
16	257	\$778.00	-	
17	258	\$796.11	-	
18	261	\$1,837.50	-	
19	272	\$3,669.12	-	
20	280	\$4,006.38	-	
21	283	\$2,295.78	-	
22	299	\$3,066.00	-	
23	304	\$693.00	-	
24	309	\$787.56	-	
25	334	\$1,417.50	-	
26	338	\$1,455.91	-	
27	342	\$383.25	-	
28	343	\$153.30	-	
29	352	\$75.69	-	
Total		\$104,113.62	-	
30	165	\$252.00	Invoice was omitted in the defendant's submissions	
Grand Total		\$104,365.62	-	

Annex D: Computation of award

The computation of award

Project expenses	Amount
The plaintiff's expenses (see Annex A: plaintiff's expenses)	\$812,456.79
The defendant's expenses (see Annex B: defendant's expenses)	\$483,369.34
Total Project expenses	\$1,295,826.13
Profit earned in relation to the Project	

Project fees including variations	\$1,738,071.54
Skylight works	\$8,242.00
Less total Project expenses	(\$1,295,826.13)
Total Profit	\$450,487.41
50 percent share of Total Profit to be paid to the plaintiff	\$225,243.71
Amount due to plaintiff	
The plaintiff's expenses	\$812,456.79
50 percent share of Total Profit to be paid to the plaintiff	\$225,243.71
Less monies paid by defendant to the plaintiff	(\$680,000.00)
Total sum awarded to plaintiff in this action	\$357,700.50

[\[note: 1\]](#) Transcript dated 11 February 2015, p 91, lines 17-19.

[\[note: 2\]](#) Exhibit marked P8.

[\[note: 3\]](#) AEIC of See Kian Teck, PBAEIC Vol 3, Tab L, p 36 at para 108.

[\[note: 4\]](#) AB Vol 1, p 125.

[\[note: 5\]](#) AB Vol 1, pp 91-93.

[\[note: 6\]](#) See plaintiff's Closing Submissions dated 12 June 2014, Annex A.

[\[note: 7\]](#) See defendant's written submissions dated 29 June 2015 and plaintiff's skeletal reply submissions dated 1 July 2015.