Sim Kim Seng (trading as Kim Seng Ship Building) *v* New West Coast Shipyard Pte Ltd [2016] SGHCR 2

Case Number	: High Court Suit 1143 of 2015 (Summons No 5883 of 2015)
Decision Date	: 03 February 2016
Tribunal/Court	: High Court
Coram	: Justin Yeo AR
Counsel Name(s)	: Mr Timothy Ng and Ms Cheryl Yeo (Timothy Ng LLC) for the Plaintiff; Mr Prabhakaran Nair and Ms Teo Li Mei (Derrick Wong & Lim BC LLP) for the Defendant.
Parties	: Sim Kim Seng (trading as Kim Seng Ship Building) — New West Coast Shipyard Pte Ltd

Civil Procedure – Summary Judgment

Contract – Quantum Meruit

3 February 2016

Justin Yeo AR:

1 The Plaintiff applied for summary judgment under O 14 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court") against the Defendant for the sum of $330,300 (subsequently revised to $333,300) or such other sum as the court deems fit, or alternatively, the sum of $250,500, as well as interest and costs.

Background facts

2 The Plaintiff is a sole proprietorship in the business of shipbuilding. The Defendant is in the business of providing, *inter alia*, shipbuilding and ship repair services. The Plaintiff was the Defendant's steel works contractor, and was generally involved in work relating to hull renewal, steel plates and steel fitting works.

3 The Defendant engaged the Plaintiff to carry out steel works to eight vessels docking at the Defendant's shipyard. Subsequently, the Plaintiff issued the Defendant eight invoices for a total amount of $333,300. It is undisputed that the Defendant received the invoices. It is also undisputed that there was neither any prior discussion between the parties on remuneration for the Plaintiff's services, nor any written contract between the Plaintiff and the Defendant.

4 The relevant repair works for all eight vessels were completed in December 2014 and there have not been any complaints of defects in quality of the work done since then.

5 On 6 November 2015, the Plaintiff commenced the present suit against the Defendant for the sum of $333,300 for "materials provided, work done and services rendered by the Plaintiff at the Defendant's request". [note: 1] The amount was premised on invoices that had been issued by the Plaintiff, as follows: [note: 2]

S/No.	Date of invoice	Invoice no.	Job no.	Name of vessel	Amount due (S$)
1.	25.10.2013	1175	J2013-1080	Naniwa Maru No. 1	73,000.00
2.	14.01.2014	1177	J2013-1127	SSE Camelia	9,800.00
3.	14.01.2014	1178	J2013-1131	Pentrader	31,500.00
4.	14.01.2014	1179	J2013-1137	Star Emerald	37,000.00
5.	14.01.2014	1180	J2013-1146	PTC-7	58,000.00
6.	01.6.2014	1187	J2014-1057	PNG Express	58,000.00
7.	09.09.2014	1192	J2014-1096	North West Pride	50,000.00
8.	01.12.2014	1197	J2014-1145	Coasta	16,000.00
Total					**333,300.00**

6 Alternatively, the Plaintiff claimed a reasonable sum, fixed at the same amount, on a *quantum meruit* basis, for "materials provided, work done and services rendered by the Plaintiff at the request of the Defendant". [note: 3]

7 The Plaintiff also pleaded that the Defendant had "certified the sum of $250,500.00 is due and owing by it to the Plaintiff". [note: 4] This is because, on each of the invoices stated at [5] above, the final figure was crossed out (by hand) and a lower amount was inscribed (also by hand). It is undisputed that the cancellations were made and reduced amounts written by the Defendant's representative. [note: 5]

8 The Defendant's case is that the sum of $333,300 was "unilaterally quoted" by the Plaintiff and had not been agreed to by the Defendant, [note: 6] and further contended that the sum claimed was "unreasonable and excessive" given that it was the Defendant, and not the Plaintiff, that had provided the raw materials for the work. [note: 7]

9 The Defendant further argued that it had not certified the sum of $250,500 as there were "no such words in any of the work orders indicating that it is a 'certification'", and that the amount was "at most an endorsement… of [the Defendant's representative's] perceived value of the work done". [note: 8] In this regard, the Defendant made reference to customary practices in the ship repair and maintenance industry, the gist of which is that it is the usual practice for the ship owner to seek a discount from the shipyard (in this case, the Defendant), that the shipyard will then inform the contractor (in this case, the Plaintiff) of the discount sought, and that the contractor will thereafter "give a discount" on the final invoiced amount. [note: 9] The Defendant therefore contended that it would have been "illogical" for the Defendant to have made such a certification "when it is known that the ship owners may very well demand a discount later on". [note: 10] The Defendant further contended that in the parties' previous course of dealings, the Plaintiff "had by conduct consistently accepted that the amounts stated in the Defendant's work orders were interim amounts subject to the ship owners' views". [note: 11]

The law on summary judgment

The law on summary judgment

10 The parties agreed that a summary judgment application is governed by the following principles:

(a) First, the plaintiff must show that he has a *prima facie* case, failing which his application ought to be dismissed with costs consequences (O 14 rr 3(1) and 7 of the Rules of Court).

(b) Second, if the plaintiff shows a *prima facie* case, the defendant then has the burden under O 14 r 3(1) of the Rules of Court to show that "there is an issue or question in dispute which ought to be tried". In this regard, the defendant must show grounds which raise a reasonable probability that he has a real or *bona fide* defence in relation to the issues that he says ought to be tried (see *Wee Cheng Swee Henry v Jo Baby Kartika Polim* [2015] 4 SLR 250 ("*Wee Cheng Swee Henry*") at [36]). The defendant may alternatively attempt to show that there "ought for some other reason to be a trial" (see O 14 r 3(1) of the Rules of Court), but as the Defendant is not pursuing this course of action, nothing more about it has to be said here.

(c) Third, in deciding whether the defendant has raised a triable issue, the court must look at the complete account of events put forth by the parties (see *Goh Chok Tong v Chee Soon Juan* [2003] 3 SLR(R) 32 at [25], citing *Microsoft Corporation v Electro-Wide Limited* [1997] FSR 580 at 593–594). The mere fact that the defendant supports his defence by way of an affidavit does not mean that the court must accept the evidence as if it was probably accurate. Rather, the court must independently assess, having regard to the evidence as a whole, if the defence is credible. In the final analysis, the court will grant summary judgment only if it is satisfied that there is no reasonable probability that the defendant has a real or *bona fide* defence in relation to the identified issues (*Wee Cheng Swee Henry* at [38]).

Issues

11 As a preliminary issue, the Defendant argued that the court should not entertain the claim for $250,500 as the Plaintiff had not specifically prayed for the sum of $250,500 in para 4 of the Statement of Claim under the heading "And the Plaintiff claims". [note: 12] To support this argument, the Defendant cited *Ngai Heng Book Binder v Syntax Computer* [1988] 1 SLR(R) 209 ("*Ngai Heng Book Binder*"), where Chao Hick Tin JC (as he then was) held that "the remedy prayed for in the statement of claim is important" (see *Ngai Heng Book Binder* at [6]). The Defendant therefore suggested that the Plaintiff's application "falls foul" of the requirements for a summary judgment application.

12 I disagree with the Defendant's argument. The proposition in *Ngai Heng Book Binder* was made in the context of O 14 r 3(1) of the Rules of Court, which provides that the court must have regard to the "*nature* of the remedy or relief claimed" (emphasis added). It was not meant to preclude a scenario where summary judgment is sought for a remedy of identical *nature* to, albeit of an *amount* lower than, that prayed for. This is patently clear from the phrasing of O 14 r 1 of the Rules of Court, which envisages that a plaintiff may take out an application for summary judgment for "a particular part of such a claim". In other words, there is no obstacle to the court granting summary judgment only over part of the claim (see also O 14 r 3(1) of the Rules of Court, which makes clear that Summary Judgment can be given over part of a claim; and see *Singapore Civil Procedure 2015* vol 1 (G P Selvam gen ed) (Sweet & Maxwell Asia, 2014) ("*Singapore Civil Procedure*") at para 14/1/11).

13 Having disposed of the preliminary issue, based on the principles outlined in [10] above, the following issues arise for determination:

(a) Did the Plaintiff establish a *prima facie* case?

(b) Did the Defendant raise any triable issues?

14 I will analyse each issue in turn.

Did the Plaintiff establish a *prima facie* case?

15 The Plaintiff's primary claim was for the sum of $333,300, being "materials provided, work done and services rendered by the Plaintiff at the Defendant's request", while the alternative claim was for the sum of $333,300, on a *quantum meruit* basis, for "materials provided, work done and services rendered by the Plaintiff at the request of the Defendant". In my view, there is no perceptible difference between the Plaintiff's primary and alternative claims. In the absence of any contractual agreement or provision, both claims are in essence *quantum meruit* claims. In this regard, for completeness, the parties confirmed that the present case involved contractual rather than restitutionary *quantum meruit* (for the distinction between the two, see *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 ("*MGA International*") at [113], citing *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR(R) 655 at [123]; and see the decision of the UK Supreme Court, *Benedetti and another v Sawiris and others* [2014] AC 938 at [9]).

16 In my view, the Plaintiff successfully established a *prima face* case for both the primary and alternative claims. This is because it is undisputed that the Plaintiff did carry out the specified work, and that the Defendant did receive the invoices amounting to a total of $333,300.

17 The Plaintiff also successfully established a *prima facie* case for his partial claim for $250,500. This is because it is undisputed that on each of the invoices set out at [5] above, the final figure was crossed out (by hand) and a lower amount was inscribed (also by hand). It is also undisputed that the cancellations were made and reduced amounts written by the Defendant's representative.

Did the Defendant raise any triable issues?

18 The Defendant raised four alleged triable issues.

(a) The first alleged triable issue concerned the total amount being claimed by Plaintiff based on the eight invoices. This issue was raised by the Defendant because the amount stated in prayer 1 of the present summons is for a sum of $330,300, while the amount stated in the supporting affidavit is for a sum of $330,000. [note: 13] Both these amounts are less than the sum of $333,300 stated in the amended Statement of Claim as well as on the invoices set out at [5] above.

(b) The second alleged triable issue was whether the Defendant's actions of cancelling the amounts in each of the Plaintiff's invoices and substituting them with lower amounts are to be taken as the Defendant's certification of, or admission to, the lower sum of $250,500 being a reasonable amount due to the Plaintiff.

(c) The third alleged triable issue related to the customary practice for the Plaintiff, as the ship repairer, to offer a discount for services provided (see [9] above). In this regard, it should be noted that the Plaintiff does not dispute that there was indeed a practice of ship owners requesting for discounts. However, the Plaintiff argued that the invoices in question were issued *post-discount*, *ie*, after the requested discounts from the ship owners had already been issued, and therefore, that the amounts stated therein were no longer subject to negotiations with the ship owners.

(d) The fourth alleged triable issue related to the previous course of dealings between the Plaintiff and Defendant under which the Defendant had allegedly offered discounts for previous repair work.

19 The first alleged triable issue is clearly a technical objection that has little, if any, substantive merit. It is undisputed that the Defendant had received all the Plaintiff's invoices and knew that the total amount being claimed was $333,300. Although the amount stated in the present summons had not been amended prior to the hearing, this is merely a technical defect that may be rectified with the leave of court. I therefore do not think that there is any triable issue in relation to the total amount being claimed on all eight invoices.

20 I pause here to note, for completeness, that there are clear triable issues *vis-à-vis* the Plaintiff's primary and alternative claims for $333,300. As stated by the Defendant, the sum of $333,300 was "unilaterally quoted" by the Plaintiff and had not been agreed to by the Defendant. The Plaintiff provided no evidence for the reasonableness of the sum claimed, save for an assertion on affidavit that the amount "is extremely reasonable". [note: 14] It is telling that counsel for the Plaintiff hardly addressed the $333,300 claim, instead indicating that he would first attempt to convince the court regarding the lower amount of $250,500.

21 I turn now to the second, third and fourth alleged triable issues, which relate to the Plaintiff's partial claim of $250,500. These alleged triable issues may be summarised as follows: whether, in the light of customary practice and the previous course of dealings between the parties, the Defendant's actions of cancelling and substituting the amounts on the invoices amounted to an admission that the sum of $250,500 (as a subset of the claimed $333,300) was reasonable remuneration for the work done by the Plaintiff.

22 The Defendant's case was that based on the parties' previous course of dealings, the Defendant's work orders were interim amounts subject to the final views of the ship owners. In response, the Plaintiff argued that the actual sequence of events suggested that the invoices in question were issued *post-discount*, or, in other words, that there was no more room for negotiation concerning the amounts due. However, the Defendant pointed out that the invoices issued by the Defendant to the ship owners were different from the invoices issued by the Plaintiff to the Defendant. The Defendant also stated on affidavit that in the light of the parties' previous course of dealings, the Defendant's work orders remained interim amounts subject to the final views of the ship owners. [note: 15] For instance, the Defendant showed samples of previous transactions where the final amounts paid by the Defendant to the Plaintiff were lower than the amounts stated in the Defendant's work orders as a result of price adjustments by ship owners which the Plaintiff had accepted through the issuance of credit notes. [note: 16]

23 I agree with the Defendant that it is not possible for the court, at this summary stage and without the benefit of a trial, to conclusively determine that the Defendant's cancellation and substitution of the figures are admissions that the sum of $250,500 was a reasonable sum to pay for the Plaintiff's services. On the evidence before me, it is not possible to preclude the possibility that the amounts stated were still subject to further negotiations. It is also not possible to determine if the sum claimed is reasonable in the light that the Defendant has alleged that it is the Defendant, and not the Plaintiff, that had provided the raw materials for the work. There are therefore triable issues and the Defendant should be granted unconditional leave to defend.

24 While this decision is *per se* sufficient to grant the Defendant unconditional leave to defend, I turn to address a further issue that arises on the facts of the present case. With regard to the

Plaintiff's partial claim, the court is faced with a situation concerning an application for summary judgment over *part* of a *quantum meruit* claim. This is different from the classic case in which a plaintiff seeks summary judgment over part of a claim where a defendant admits to a contractual debt *vis-à-vis* certain contracts while denying liability for others (or, extending the example to a *quantum meruit* scenario, a situation where a defendant agrees that the amounts claimed in certain invoices are reasonable, while disputing the reasonableness of the amounts claimed in the remaining invoices).

25 The question that arises is this: assuming, *ex hypothesi*, that the Defendant had admitted that the lower amount of $250,500 is a reasonable sum to pay for the services provided, as a matter of law, can summary judgment be granted over that lower amount, with the remaining amount of $82,800 (being $333,300 less $250,500) proceeding to trial? This brings to mind two further questions: First, what is the basis for granting summary judgment over $250,500? Second, what is the basis for the trial on the additional $82,800?

26 I put these questions to the parties, whose response may be summarised as follows:

(a) The Plaintiff submitted that summary judgment could be granted over the $250,500 on the basis of the Defendant's alleged admission that $250,500 was a reasonable sum. According to the Plaintiff, the basis for trial on the remaining amount of $82,800 would be that there remains a dispute as to whether the additional $82,800 was reasonably due to the Plaintiff for the work done.

(b) The Defendant submitted that summary judgment could theoretically be granted over the $250,500 with the remaining $82,800 proceeding to trial. In this regard, the Defendant cited para 14/1/11 of *Singapore Civil Procedure* for the proposition that a plaintiff may proceed under O 14 for part of a claim, and further cited the case of *Lloyds Bank Ltd v Ellis-Fewster and another* [1983] 1 WLR 559 ("*Lloyds Bank*") as an example in which the court granted summary judgment over part of a claim.

27 I am not convinced, based on the parties' submissions, that a court may "bifurcate" a claim for *quantum meruit* such that the Plaintiff obtains summary judgment over a sum lower than the amount the Plaintiff thinks reasonable (*ie* $250,500), while preserving a cause of action in *quantum meruit* to proceed to trial for the remaining amount (*ie* $82,800).

28 First, the questions raised in [25] above must be considered against the backdrop that the valuation of *quantum meruit* is an exercise in the court's objective assessment of a reasonable sum of money for the work done. It involves "not merely fact but the application of judgment by the court in determining reasonableness" (see, *eg*, *MGA International* at [121]). Even assuming that the Defendant had certified $250,500 to be a reasonable amount, it should be noted that the Plaintiff *did not agree* that this was a reasonable amount; indeed, the Plaintiff stated on affidavit that the amount of $333,300 is the reasonable amount, and that $250,500 "is not acceptable to [the Plaintiff]". [note: 17]

29 In view of the parties' dispute concerning the reasonable amount for the work done, should the court grant summary judgment over the $250,500 (as part of the total claim of $333,300)? If summary judgment is granted over the $250,500, would the court be finding that amount to be reasonable (in which case, there appears to be little, if any, room for the Plaintiff to proceed to trial for the additional $82,800) or taking no position on the reasonableness of the claim (in which case, it is unclear what the basis for granting summary judgment is)? In any case, as there is a dispute between the parties as to the valuation of *quantum meruit*, the court is called upon to undertake an objective assessment to determine what amount would be reasonable – an exercise that cannot take

place in the absence of a trial. Indeed, it should not be ruled out that the court may, after a trial, even come to the view that on a holistic assessment of the work done, the reasonable sum is *less* than $250,500. These points are raised not to prejudge the reasonableness of the sum of $250,500, but rather, to illustrate that in the face of parties' disputes as to the reasonableness of the amount claimed, neither the Defendant's alleged admission nor the Plaintiff's alleged evidence would be conclusive (at the summary stage) insofar as a *quantum meruit* valuation is concerned.

30 Second, it is not clear whether the *Lloyds Bank* case, as cited by the Defendant, applies to the present case. In *Lloyds Bank*, the plaintiff bank had claimed against the two defendants the sums of £99,787.33 and £103,783.13 respectively as monies owing under a joint and several guarantee of all monies and liabilities owed to the bank. The High Court judge, with whom the Court of Appeal agreed, held that the guarantee should, at the summary stage, be limited to the amount outstanding on a specific account. Summary judgment was granted over the sum of £36,500, being the sum which the parties had agreed to be outstanding on that specific account. It must first be emphasised that *Lloyds Bank* did not deal with a situation where contractual *quantum meruit* was claimed. Further, it should be noted that the court granted summary judgment over a *discrete* part of the claim, *viz*, over monies outstanding on a *specific account*, where parties were able to agree as to the amount of monies outstanding. *Lloyds Bank* therefore appears to be somewhat similar to the classic case mentioned in [24] above.

31 In contrast, in the present case, the court is unable to summarily determine that the amount of $250,500 is reasonable, for two reasons:

(a) First, even if the Defendant is taken to have admitted the reasonableness of $250,500, the Plaintiff disagrees that the amount is reasonable; and

(b) Second, there is no agreement on the reasonableness of the sum claimed in any of the eight invoices. The situation may well have been different had the Defendant admitted to the reasonableness of the Plaintiff's quoted amounts in specific invoices.

32 In other words, the court cannot, without the benefit of a trial, determine what the reasonable amount, holistically assessed, would be. It follows that even if the Defendant had admitted that the sum of $250,500 was a reasonable amount, this might not be sufficient for the Plaintiff to obtain summary judgment over $250,500.

33 I should add, for completeness, that the above does not mean that summary judgment can never be entered where *quantum meruit* is claimed. For instance, the outcome might have been different had (a) the Defendant admitted to $333,300 being a reasonable sum; (b) the Plaintiff taken the position that $250,500 was a reasonable sum and therefore discontinued the claim for the additional $82,800; or (c) as already alluded to, the Defendant admitted to the reasonableness of the Plaintiff's quoted amounts in specific invoices. In the first two situations, there would be no dispute between the parties as to the reasonableness of the sums claimed and therefore no triable issue. In the third situation, there would be no dispute between the parties as to the reasonableness of the sums claimed on the specific invoices and therefore no triable issue on those invoices. As such, in these situations, it is conceivable that summary judgment could be entered on a *quantum meruit* basis over either $333,300 or $250,500, as the case may be.

Conclusion

34 I therefore dismiss the Plaintiff's application for summary judgment and grant the Defendant unconditional leave to defend. I also make an order for costs to be in the cause.

[note: 1] Statement of Claim (Amendment No. 1), at para 1.

[note: 2] Statement of Claim (Amendment No. 1), at para 1.

[note: 3] Statement of Claim (Amendment No. 1), at para 2.

[note: 4] Statement of Claim (Amendment No. 1), at para 3.

[note: 5] Affidavit of Wee Poh Eng dated 17 December 2015, at para 25.

[note: 6] Defence, at paras 5 and 6.

[note: 7] Defence, at paras 7, 8 and 9; and Affidavit of Wee Poh Eng dated 17 December 2015, at paras 20–23.

[note: 8] Defence, at para 10. The quoted portions are from the Affidavit of Wee Poh Eng dated 17 December 2015, at para 30.

[note: 9] Defence at paras 11, 12, 13 and 14; and Affidavit of Wee Poh Eng dated 17 December 2015, at para 28.

[note: 10] Affidavit of Wee Poh Eng dated 17 December 2015, at para 30.

[note: 11] Affidavit of Wee Poh Eng dated 17 December 2015, at para 34.

[note: 12] Affidavit of Wee Poh Eng dated 17 December 2015, at paras 16 and 17.

[note: 13] Affidavit of Sim Kim Seng dated 4 December 2015, at para 8.

[note: 14] Affidavit of Sim Kim Seng dated 4 December 2015, at para 8.

[note: 15] Affidavit of Wee Poh Eng dated 17 December 2015, at paras 28 to 39.

[note: 16] Affidavit of Wee Poh Eng dated 17 December 2015, at para 35.

[note: 17] Affidavit of Sim Kim Seng dated 4 December 2015, at para 8.