

The Adjudicator

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November 2016

JFC Builders Pte Ltd
v
Permasteelisa Pacific Holdings Ltd
[2016] SGHC 247

Coram Lee Seiu Kin J
9 September; 7 November 2016

Statutory interpretation – meaning of “construction work” in section 3(1) of the SOP Act - whether installation of built-in fitment constitutes “construction work” under the SOP Act

Civil procedure – application to set aside adjudication determination – whether separate application for leave to enforce necessary

The Plaintiff was the main contractor of a hotel development and the Defendant was its sub-contractor for the supply, fabrication and installation of particular items of built-in fitment.

The Defendant had obtained an adjudication determination in its favour (“**the AD**”), under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) (“**the Act**”).

The Plaintiff applied to set aside the AD on the ground that the Defendant’s works do not fall within the definition of “construction work” under the Act, and hence its claim is outside the scope of the Act.

At the hearing of the application, the Defendant asked that the Plaintiff pay the Defendant the Plaintiff’s share of adjudication costs and balance interest on the adjudicated amount (“**the balance amounts**”), as the amount paid into court by the Plaintiff only covered the adjudicated amount and part of the interest payable under the AD.

Held, dismissing the Plaintiff’s application and ordering that the Plaintiff pay the Defendant the balance amounts:

(1) The Defendant’s works were for the supply, fabrication and installation of furniture that was attached to the building, with such attachment intended to be permanent. This is indicated both by the individual descriptions of the works and the general description that the furniture to be supplied, fabricated and installed was “built-in”.

(2) The Defendant’s works fall within the definition of “construction work” in s 3(1) of the Act.

- The meaning of the phrase “*fittings that form, or are to form, part of the land*” (“**the phrase**”) in limb (c) of the definition of “construction work” in s 3(1) has to be determined with reference to the purpose of the Act, which is to preserve cash flow in the construction industry, so that construction projects are not disrupted or delayed.
- The phrase clearly includes furniture that is attached to, and that is intended to be permanently attached to, the building. Contractors undertaking the installation of such furniture are as engaged on the site as those undertaking the installation of the other fittings expressly mentioned in limb (c), and cash flow is equally important to all of them. There is no reason to treat the installation of such furniture differently and to exclude it from the ambit of the phrase.
- The common law on fixtures is not imported into the definition of “construction work” in s 3(1) of the Act. Accordingly, whether something is a fixture in law is an inquiry that is beside the point.

(3) The Court had residual or inherent power to order the Plaintiff to pay the balance amounts as the Act already provides for payment into court of the adjudicated amount. Requiring the Defendant to take out a separate application for leave to enforce the AD

would cause the Plaintiff to incur further losses disproportionate to the amount in question.

Editorial comment

As an act to facilitate payments in the building and construction industry, the scope of the Building and Construction Industry Security of Payment Act is limited to contracts for the carrying out of construction work or the supply of goods or services in relation to construction work.

The term “construction work” is, in turn, defined in s 3(1) of the Act.

If a contractor’s work falls outside the definition of “construction work” in s 3(1), the contractor will not have recourse to the adjudication process provided for by the Act, and will have to turn to other more costly and time-consuming dispute resolution mechanisms to recover payment.

In this connection, the decision in *JFC Builders Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2016] SGHC 247 provides welcome guidance by the Singapore High Court on the meaning of one of the components of “construction work” in s 3(1), which states:

“construction work” means —

...

(c) the installation in any building, structure or works of fittings that form, or are to form, part of the land, including systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, and security or communications systems;

In practice, the Court’s clarification of the meaning of “*fittings that form, or are to form, part of the land*” will allow contractors and other stakeholders to determine, more certainly, whether the installation of a particular type of fittings falls within the ambit of “construction work” under the Act, and consequently whether recourse to the Act’s speedy and low cost adjudication process may be had.

The practical manner in which the issue of consequential orders was resolved in this case is also noteworthy; Lee J’s decision sets a sensible precedent for a defendant in an application to set aside an adjudication determination that has been

dismissed, to recover the amounts due under the determination, without having to make a separate application for leave to enforce the determination. This saves time and costs for both the plaintiff and the defendant.

Readers with any questions or comments on the contents of this article are welcome to write to **Chan Neo LLP** at 133 Cecil Street, Keck Seng Tower #16-02, Singapore 069535 or send an email to admin@channeo.sg.

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