

Construction Law Focus

CHAN TAN & PARTNERS

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NO.1 COLOMBO COURT #09-26/27 SINGAPORE 179742

1994 was invalid or void.”

Claim against PWD by contractors - interim injunction granted by the arbitrator restraining call on the bond - declaratory order against the Government - powers of the arbitrator - SIAC Rules

Re An Arbitration between Bocotra Construction Pte Ltd & Ors and Public Works Department, Government of the Republic of Singapore [1995] 1 SLR 567

In this case, the contractors had furnished a performance bond to the Director-General of Public Works (PWD) pursuant to the terms of a construction contract. Disputes arising from the construction contract was referred to arbitration before a sole arbitrator. A set of rules based on the Arbitration Rules of the Singapore International Arbitration Centre (SIAC) was adopted by agreement between the parties.

By a letter dated 5 February 1994, PWD through the Attorney-General, gave notice to the contractors and their surety bank of their intention to call on the bond. A few days later, the solicitors for the contractors wrote to the arbitrator seeking for and succeeding in obtaining from him an order “restraining” the PWD from calling the bank guarantee. This order was withdrawn by the arbitrator when he was notified by the Attorney-General for the PWD that he lacked jurisdiction to make such an order by virtue of s. 27 of the Government Proceedings Act (Cap. 121). On receiving further submissions, the arbitrator, however, directed the PWD to “preserve the bank guarantee” by “desisting from making a call” and directed that the matter be heard at a hearing fixed on 25 February 1994. At the conclusion of this hearing, the arbitrator made an order declaring “that the respondent is not entitled to demand or otherwise take any steps to call for payment of any such sum.

under the letter of guarantee ... until such time as the respondent's entitlement to make such or any call for payment under the said letter of guarantee has been determined in this arbitration.” The Attorney-General then filed an originating motion for inter alia, “a declaration that the interim award dated 25 February

The matter came before Goh Joon Seng J who declared that the order of the arbitrator of 25 February 1994 was not binding on the PWD. The court gave three main reasons.

First, the court found that the enforceability and construction of the bond were not matters that had been referred to the arbitrator for his decision; accordingly, the arbitrator has no jurisdiction to grant the order of 25 February 1994.

Second, the order granted by the arbitrator as an interim declaration intended to preserve the status quo pending adjudication of PWD's entitlement to call on the bond was not a relief known to law. An order declaring the rights of the parties must in its nature be a final order.

Third, r.18(g) of the agreed rules “is meant to apply to preservation, storage, sale or other disposal of property or thing particularly of a perishable nature which property or thing forms the subject matter of the arbitration or is otherwise relevant thereto.” The court referred to O. 29 r. 2(1) of the Rules of the Supreme Court which contains a similar provision and to the decision of the U.K. Court of Appeal in *Potton Homes Ltd v Coleman Contractors (Overseas) Ltd* (1984) 28 BLR 19 for assistance. Goh J quoted the U.K. court's comment on O.29 r. 2(1) including the view they expressed that it did “not think that the cash proceeds of the bond can correctly be described as ‘property’ within r 2(1).” The contractors had appealed against Goh J's decision.

EDITORIAL COMMENT

This case is useful for the light it throws on a number of issues. First, it is important to remember that an arbitrator is only empowered to decide on matters that are properly before him. His jurisdiction and consequently his powers are conferred on him by the arbitration agreement between the parties. Second, one should be careful in taking out an application for an interim injunction against the Government. A direct injunction is not feasible in view of the Government Proceedings Act. If one seeks instead a declaratory order (which ostensibly appears to be permissible), the declaratory order cannot be an interim declaration as such a relief appears to be unknown to law. Third, the provision adapted from the SIAC Rules relating to the preservation of property may not be the correct provision on which an arbitrator can ground any

decision to grant an interim injunction.

Case Update

Walter Wright Mammoet (Singapore) Pte Ltd v Resources Development Corp Ltd [1995] 1 SLR 528

The Court of Appeal has reversed the decision of the the High Court in the above case. The facts of this case have been set out in the previous issue No 2 of 1995. Upon appeal, the Court of Appeal held that the Plaintiffs' undertaking to provide insurance was not sufficient by itself to imply that the insurance taken out was intended to enure for the benefit of both the contracting parties such that the risk of damage caused by the negligence or breach of contract on the part of the Defendants was to be borne solely out of the funds provided by such insurance and that the Plaintiffs

International organisations on the World Wide Web

would not have any right of recourse against the Defendants.

We have been given the site addresses on the World Wide Web of the following international rganisations involved in research and documentation on technology, standards, codes, practices and innovation in construction. Readers are welcomed to visit any of these sites on the internet. Anyone logging into these sites would no doubt find a wealth of construction related information.

The Institute for Research in Construction of the National Research Council, Canada
Web site: <http://www.nrc.ca/irc>

Building Research Establishment, United Kingdom
Web site: <http://www.bre.co.uk>

U.S. National Institute of Standards and Technology
Web site: <http://www.nist.gov/welcome.html>
CSIRO: Division of Building Construction and Engineering (Australia)
Web site: <http://www.dbce.csiro.au>

International Council for Building Research Studies and Documentation
Web site: <http://delphi.kstr.lth.se:80/w78>

Fraunhofer Institute for Building Physics (Fraunhofer-Institut für Bauphysik)
Web site: <http://www.fhg.de/depts/ibp-e.html>

Infrastructure Technology Institute
Web site: <http://iti.acns.nwu.edu/>

We have received an e-mail from The Department of Building & Real Estate at the Hong Kong Polytechnic University on the following publication:

The 5th annual review report on the Hong Kong Construction Industry, which is commissioned and published by the Shui On Group is now available. Below is a list of content of this year's issue:

- Review of Public Sector Construction and Infrastructure Development
- A Review of the Hong Kong Property Market
- Review of Public Housing Development
- Construction Market Review and Outlook
- Review of Construction Cost

In addition, there are two interesting interview reports with:

- the Chairman of the Hong Kong Construction Association (Building Committee), and
- the Director of the Environment Protection Department

Anyone who is interested in the report can contact us and we will forward your request to Hong Kong.

Readers with any questions or comments on the contents of this issue are welcomed to write to us or send us an e-mail to our internet address at chantan@singnet.com.sg