

CONSTRUCTION LAW FOCUS

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Qwik Built-Tech International Pte Ltd v Acmes-Kings Corp Pte Ltd [2013] SGHC 278 [Lionel Yee JC] (31 December 2013)

Whether a party who enters a contract for the purposes of utilising its letter of credit facility displaces its obligations under the contract – whether partnership agreement entitles plaintiff to only reimbursements at cost price – whether construction contract that does not include any unit rates renders its terms “unbelievable” – claim for tools and additional materials procurement and provision of technical services

The present case involves various claims by Qwik Built-Tech International Pte Ltd (“the Plaintiff”) for monies allegedly due and payable arising from a building construction project at Kuda Huraa Island (“the Project”). When HPL resorts (Maldives) Pte Ltd (“HPL”) was seeking tenders for the Project, the Plaintiff did not have sufficient finances to take on the Project as a main contractor and so it was agreed that it would submit its steel framing system design proposal through Acmes-Power Building Services Pte Ltd (“APBS”), a subsidiary company of the defendant company (“the Defendant”) Acmes-Kings Corp Pte Ltd.

Until early March 2011, months after HPL awarded the Project to APBS for a fixed sum of US\$2,184,950.00, the Plaintiff had been forwarding its quotation and invoices to APBS. However, the Plaintiff was later instructed by a Joe Wong and other staff of the Defendant company to reissue the necessary delivery orders and invoices under the name of the Defendant instead of APBS. This was because only the Defendant had the letter of credit of facility to facilitate payments. Further, the Plaintiff also issued to the Defendant a new quotation (“Main Contract/MC”), which was signed

by Joe Wong on behalf of the Defendant. Thereafter, the Plaintiff continued to issue commercial invoices and other relevant documents to the Defendant or under the Defendant’s name. The Plaintiff then discharged its obligations under the MC by completing the steel framing system for the Project.

In the court action, the Plaintiff claimed \$1,223,438 and \$413,496.35 under the (“MC”) and further contracts (“FC”) respectively. The Defendant disputed such claims. In particular, it challenged the Plaintiff’s claims that it was rightly the proper party to the present suit as only APBS had a contractual relationship with the Plaintiff. Additionally, the Defendant contended that the Plaintiff was only entitled to reimbursements at cost price as both parties were in a partnership where they would jointly tender for the project and then equally distribute the profits between them (the “partnership agreement”).

Held: After offsetting the judgment sums in respect of the monies already paid to the Plaintiff, the Defendant is to pay the Plaintiff the balance of S\$437,256.51.

1. The Defendant is the proper party to the suit.

The MC that duly addressed the Defendant was signed by Joe Wong on the Defendant’s behalf and was a formal written agreement entered into between the Plaintiff and the Defendant; prima facie the Defendant was bound by its terms: *L’Estrange v Graucob Ltd* [1934] 2 KB 394 at 404. The defendant also claimed to be merely an accessory used to obtain a letter of credit. However, the court relied on case law and held that where there is an express agreement, the burden of proving there is

nevertheless no intention to create legal intentions is on the party who asserts is (*Edwards v Skyways*). It has not been discharged in this case. The Defendant cannot rely on its uncommunicated belief that the MC would not be binding on it. In addition, evidence showed that the Project had simply proceeded on the basis that the Defendant and APBS were interchangeable as far as the Plaintiff was concerned.

2. **The partnership argument was rejected.** While the Defendant claimed that the Plaintiff was only entitled to reimbursement at cost price because the parties had a profit sharing agreement, the court held that the existence of a true partnership between the parties is largely irrelevant in this context because the present case involves claims by the Plaintiff for sums of monies allegedly due under a written contract as well as a number of primarily oral agreements. The Defendant only needed to prove that the existence of any profit sharing agreement between the parties or of any agreement that the Defendant would reimburse the Plaintiff at cost price. However, there was insufficient evidence of any such agreement.
3. **The MC was a lump sum contract** in that the Plaintiff undertook to perform defined work at fixed price. In the present case, there was sufficient evidence to show that the Plaintiff would accordingly bear the risk if more materials entailing a higher cost than stated in the MC were needed. Thus, the court held that to the extent that the MC did not specify the unit rate or the quantity of items or materials to be provided, the Plaintiff's obligation would be to supply such quantities as would be required for the purposes of the Project.
4. **Claim for tools, materials procurement and provision of technical services granted.** As the express contract and agreement between parties do not cover the rate of remuneration, the court held that a term that the Plaintiff would be remunerated at a reasonable rate for these items is to be implied into the Tools Contract ("TC") and Materials Contract ("MAC"). The Plaintiff then has the burden of adducing

evidence to show what that reasonable rate is: *MGA International v Wajilam Exports*. However, there was insufficient evidence adduced by the Plaintiff in this regard. The court then held that the Plaintiff is only entitled to be paid the cost price of the tools and additional building materials.

EDITORIAL COMMENT

We concur with the High Court's decision that the Defendant is the true defendant to this suit. If a party to a contract could simply disregard its obligations stated in the contract by way of being an accessory, then the law does not fully safeguard all parties' interests as it would lead named parties to think that they could easily shirk their contractual responsibilities. The case reiterates the general position at law that a construction contract is important for all stakeholders involved in a construction project.

This dispute could have been avoided if the construction contract had been more precise. In addition, it is important that the contracting parties neither over commit nor under commit under the contract. For instance, the construction contract should specify the amount finalised to complete certain tasks. This amount should be mutually agreed by all parties and make sure that there are no hidden costs to be incurred later on.

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