

SUPREME COURT OF SINGAPORE

31 May 2019

Case summary

Singapore International Commercial Court Suit No 1 of 2017

AKRO Group DMCC v Discovery Drilling Pte Ltd [2019] SGHC(I) 08

Decision of Patricia Bergin IJ

Outcome: SICC finds the Cross-Defendants liable for fabricating/forging invoices.

Background

1 In late 2015, the defendant (“DDPL”) purchased the rig “Rowan Louisiana” (“the Rig”) for the purposes of providing it to another company, Jindal Drilling and Industries Ltd (“JDIL”). The Rig required various works including refurbishment, repair and installation of equipment before delivery (“the Project”). On 4 November 2015, the plaintiff (“AKRO”) and DDPL executed an agreement (“the Contract”) pursuant to which AKRO agreed to provide DDPL specialised project management services (“SPM Services”) for the Project.

2 In 2016, AKRO commenced these proceedings against DDPL, seeking payment of allegedly outstanding project management fees. DDPL denied its indebtedness on various bases including alleged breaches of contract by AKRO and counterclaimed for damages. In particular, DDPL alleged that the Rig was delivered late, resulting in DDPL being liable for damages to JDIL, which DDPL then in turn claimed for from AKRO. DDPL also counterclaimed against AKRO for inflating charges for the supply of goods and services for the Project.

3 Subsequently, DDPL was granted leave to amend its Counterclaim to include claims in fraud and conspiracy against AKRO, two of AKRO’s directors (“Mr Kandoth” and “Mr Fowler”), AYBI Energy FZE (“AYBI”), a company related to AKRO, and two former representatives of DDPL (“Mr Kumar” and “Mr Arora”) (collectively the “Cross-Defendants”). These claims were based on allegedly fraudulent and/or fabricated invoices purportedly from third-party suppliers created by AKRO and AYBI with the involvement and assistance of Mr Kumar and Mr Arora.

4 After DDPL filed its amended pleadings, AKRO took no further part in the proceedings. The other Cross-Defendants also took no part in these proceedings. On DDPL’s application in reliance upon AKRO’s failure to appear and to comply with the Court’s orders, Judgment was entered in favour of DDPL on AKRO’s claim against it and on its claim against AKRO, except for the claims in respect of the allegedly fraudulent and/or fabricated invoices.

5 Subsequently, DDPL’s former solicitors withdrew from further acting for DDPL. A practitioner from India applied to become a Registered Foreign Lawyer (“RFL”) with the SICC for the purpose of acting for DDPL at trial. The RFL application would be allowed if a decision was made that the proceedings were an “offshore case”, *ie*, an action that has no substantial connection with Singapore (“the offshore decision”). DDPL also applied for an extension of time within which to bring an application for the offshore decision.

The Court's decision

Offshore decision

6 The Court granted the application for an extension of time for the following reasons. DDPL acted promptly and diligently when it became apparent that an application for an offshore decision was necessary. None of the Cross-Defendants had taken part in any of the proceedings since DDPL made its allegations of fraud and conspiracy. It was understandable that DDPL wished to have legal representation in circumstances where its claims were not free from complexity. Finally, it was also a matter of some importance from the Court's perspective (at [45]–[47]).

7 The Court decided that this was an offshore case for the following reasons. The Rig was repaired and refurbished in Houston, Texas in the USA. The contract negotiations occurred in Houston and the Contract was executed in Delhi, India. The Contract was performed in Texas and then between Texas *via* Corpus Christi in the US Gulf of Mexico and Gujarat, India and Mumbai, India. Further, the majority of the conduct alleged in the claim and counterclaim occurred in the USA and partly *en route* to and in India. The payments that were made by DDPL to AKRO were made *via* its Singapore office. The fact that DDPL is a Singapore company was not of itself, nor combined with the fact that monies were paid *via* its office in Singapore, a basis for a conclusion that the action or the dispute had a substantial connection to Singapore (at [50]–[54]).

Assessment of damages for Judgments entered in DDPL's favour

8 In relation to the late delivery of the Rig, the Court accepted DDPL's unchallenged evidence that DDPL was liable to pay JDIL US\$1,123,470. The Court also accepted that loss suffered for charter hire from JDIL amounted to US\$1,169,566. The total of the damages in respect of the late delivery of the Rig were therefore assessed at US\$2,293,036 (at [63]–[66]).

9 The Court also accepted DDPL's unchallenged evidence that the charges for supply of labour for the Project were inflated and that by reason of such inflation DDPL suffered loss. The total damages in this respect were assessed at US\$352,324.46 (at [67]–[73]).

DDPL's other claims

10 In relation to the claims in fraud and conspiracy, the Court found that there were numerous instances of quotes/invoices that have been manipulated or fabricated or forged. The Court found that the Cross-Defendants had participated in the fabrication of invoices. The Court accepted the assessment of DDPL's expert witness that the charges were inflated by an average of 35.57% (at [86]–[134]; [145]).

11 DDPL also made claims in respect of a number of invoices in respect of which it was not able to obtain the original documentation from the suppliers. The Court was satisfied that it was more probable than not that these invoices were also dealt with by the Cross-Defendants in the same manner as those that were fabricated. The Court also accepted that it was reasonable to assume in the circumstances that the charges in relation to these invoices were also inflated by 35.57%. Thus, the Court found that DDPL's loss in relation to the invoices was US\$5,743,155.14 (at [144]–[148]).

12 The Court found that AKRO owed (1) fiduciary duties to DDPL to ensure that it obtained quotes from third parties honestly; and (2) contractual duties to manage the Project. The Court found that by creating false documents so that DDPL's records would show that its own quotes were to be preferred, AKRO had breached those duties (at [149]–[152]).

13 The Court also found that Mr Arora and Mr Kumar, as representatives of DDPL, owed duties of loyalty and fidelity to DDPL; to act in the best interests of DDPL; to inform DDPL of any activity which could damage its interests; not to act in a manner that conflicted with their duty to DDPL; and not to make any profit from transactions relating to the supply of goods and/or services for the Project without DDPL's consent (at **[153]**). The Court found that Mr Arora and Mr Kumar were in breach of their fiduciary obligations to DDPL in receiving secret profits in the form of payments of cash and the receipt of mobile phones (at **[155]**).

14 The Court also found that AKRO by itself and in concert with Mr Kandoth and Mr Fowler and Mr Arora and Mr Kumar created fabricated or falsified documents. This conduct was pursued with the intention of harming DDPL and obtaining a benefit for itself (at **[156]**). Further, AYBI by itself and in concert with Mr Kandoth and Mr Fowler and Mr Arora and Mr Kumar created fabricated or falsified documents. This conduct was pursued with the intention of harming DDPL and obtaining a benefit for itself (at **[157]**).

15 The Court further found Mr Arora and Mr Kumar were also involved with AKRO, Mr Kandoth and Mr Fowler in the conspiracy as pleaded, and that they acted with the intention of harming DDPL and made secret profits for themselves (at **[158]**). It was also found that Mr Arora and Mr Kumar were also involved with AYBI, Mr Kandoth and Mr Fowler in the conspiracy as pleaded, and that they acted with the intention of harming DDPL and made secret profits for themselves (at **[159]**).

16 In the circumstances, judgment was entered in favour of DDPL against each of AKRO, Mr Kumar, Mr Arora, Mr Kandoth and Mr Fowler in the amount of US\$5,743,155.14 (at **[174]**). Since AYBI was party to the fabrication of its invoices only, judgment was entered in favour of DDPL against AYBI in respect of its invoices in the amount of US\$3,270,505.65, 35.57% of which is US\$1,163,318.86 (at **[147]** and **[176]**).

17 Judgment was also entered in favour of DDPL against Mr Kumar and Mr Arora in respect of the secret profits that they received in the amount of US\$500,000 (at **[178]**).

This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.