

SUPREME COURT OF SINGAPORE

4 April 2017

Media Summary

Singapore International Commercial Court Suit No 1 of 2016
Teras Offshore Pte Ltd v Teras Cargo Transport (America) LLC [2017]
SGHC(I) 04

The facts

1 The plaintiff and the defendant each provided marine logistics and support services to the offshore oil and gas industry worldwide. The defendant entered into three separate contracts (“the Main Contracts”) with Bechtel International Inc and Bechtel Oil Gas and Chemicals, Inc (collectively, “Bechtel”) to provide tugs and barges, administrative, technical and professional services in the performance of the marine transportation operations in relation to the construction of three liquefied natural gas plants (“the LNG Projects”) on Curtis Island, a small island off the coast of Queensland, Australia.

2 This work was then sub-contracted by the defendant to the plaintiff on back-to-back terms under three separate “parallel” sub-contracts (the “Sub-Contracts”). In broad terms, the Main Contracts required the defendant and, in turn, the Sub-Contracts required the plaintiff to provide tugs and barges and related services to transport modules (for the purpose of building the gas plants) to Curtis Island from Indonesia, Thailand and the Philippines. Over the course of the performance of these contracts, the plaintiff carried out approximately 87 voyages transporting 92 modules to Curtis Island for the LNG Projects. There were no reported losses or damages to any of the modules delivered to Curtis Island and all modules were delivered on time.

The dispute

3 The plaintiff commenced an action against the defendant for (i) reimbursement of a total sum of US\$3.5 million originally advanced by the plaintiff to the defendant in or about 2012 (the “Advance Payments”); and (ii) further sums referred to as “back-charges” totalling US\$24,500,178.99 and (as originally pleaded) A\$984,815.59 in respect of work done and services provided by the plaintiff in relation to the LNG Projects. All of the plaintiff’s claims were denied by the defendant on various grounds as well as a defence of set-off. The defendant also advanced its own substantial counterclaim for various sums totalling approximately US\$14 million, also in relation to the LNG Projects.

4 Notably, the defendant in this case was represented by a foreign lawyer who was granted full registration pursuant to s 36P of the Legal Profession Act (Cap 161, 2009 Rev Ed) and the Legal Profession (Foreign Representation in Singapore International Commercial Court) Rules 2014. This is the first case in which a Registered Foreign Lawyer has appeared in the Singapore International Commercial Court.

5 During the trial, after the plaintiff had called its witnesses and at the close of its case, the defendant elected not to call any of its three scheduled witnesses. Following a failed attempt to have the documents referred to in the affidavits of evidence-in-chief of its three witnesses put in evidence despite their non-attendance at the hearing, the defendant admitted the claim for US\$3.5 million and withdrew its set-off and counterclaim. The plaintiff’s other claims remained in dispute.

The decision and reasons

6 The result of the defendant’s admission of the plaintiff’s claim for the Advance Payments and its withdrawal of its set-off and counterclaim was that the plaintiff was entitled to judgment in the sum of US\$3.5 million with interest; and that TCT’s counterclaim was dismissed. In relation to the plaintiff’s various

claims totalling approximately US\$25 million for the additional “back-charges”, the Court accepted the plaintiff’s submission that the monies claimed were in respect of work done or services provided by the plaintiff in relation to the Sub-Contracts; and that all such work and services were properly reflected in the invoices issued by the plaintiff to the defendant.

7 The defendant advanced two main arguments in defence to the claims for the “back-charges”. First, it submitted that all three Main Contracts and, in turn, all three Sub-Contracts were, by their express terms, “all-inclusive” contracts; and that since the plaintiff’s claims were in respect of work done or services provided which fell within the existing contractual scope of work, all the plaintiff’s claims must fail *in limine*. The Court rejected this argument, finding that both sets of Contracts were not all-encompassing and that they identified specific areas of work which were excluded from the scope of work to be performed by the defendant under the Main Contracts and, in turn, the plaintiff under the Sub-Contracts. On the evidence, the Court found that each of the plaintiff’s claims related to work which was “out of scope” of the Contracts, and that such work was carried out either under agreements between the parties or, at the very least, pursuant to requests made by or on behalf of the defendant with regard thereto.

8 Second, the defendant submitted that there was no independent obligation on the defendant to pay unless and until the defendant was itself paid the corresponding amount by Bechtel; and that since the defendant had not yet received payment, the plaintiff’s claims must again fail *in limine*. The Court found that, as pleaded, this formulation of the defendant’s case related, at most, to only certain of the plaintiff’s claims. In any event, those pleas were fatally flawed because the defendant called no evidence to show that Bechtel had not made the corresponding payments to the defendant or had only agreed to pay a limited sum in respect of such claims, or that the plaintiff was “aware” that this was the case. This defence therefore fell away in the absence of evidence to support it.

9 The Court therefore held that the plaintiff's claims succeeded in full and that the plaintiff was entitled to judgment against the defendant in the amounts of US\$3.5 million plus interest for the Advanced Payments; and US\$24,500,178.99 and A\$619,339.91 plus interest for the "back-charges".

This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.
