

HONG KONG / JUDGMENT

HUNG MAU DECORATION CO LTD v. DAVID WU

COURT

Court of First Instance

DECIDED

14 May 2007

CASE / FILE NUMBER

HCA1159/2005

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj HCA 1159/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE ACTION NO. 1159 OF 2005

BETWEEN HUNG MAU DECORATION COMPANY LIMITED Plaintiff and DAVID WU Defendant

Before: Deputy High Court Judge Muttrie in Chambers Date of Hearing: 7 May 2007 Date of
Judgment: 14 May 2007

J U D G M E N T

The plaintiff appeals against the order of Master S Kwang dated 13 March 2007 declaring that this action is not time barred and seeks to have it set aside.

Background

The defendant was and is the General Manager of the Kowloon Tsai Home Owners Association (the Association). The plaintiff is a decoration contractor. In 1996, the defendant on behalf of the Association contracted with the plaintiff to have some decoration works done to the Association s clubhouse, and at about the same time obtained an estimate from the plaintiff for certain decoration works to be done to the Association s staff quarters, where he was residing, for his own account. The plaintiff was asked to provide separate estimates for the works to the clubhouse and staff quarters, and did so. In respect of the staff quarters, the plaintiff on 22 November 1996 provided an estimate of \$834,300. On 6 November 1996, the defendant paid a deposit of \$120,000 to the plaintiff in respect of these works. Works were done to the clubhouse and the staff quarters from October 1996 to March 1997. The works at the clubhouse were duly

paid for. In respect of the works at the staff quarters, on 20 November 1996 the plaintiff issued an invoice for \$1,470,950 being \$1,590,950 for work done and materials supplied, minus the deposit. This invoice was never settled. In Action No. HCA 3609 of 2001, the plaintiff sued the Association on the invoice. In those proceedings, on 29 May 2002, the plaintiff made and signed a witness statement in which he said that the works on the staff quarters were done for his account; that it was orally agreed that notwithstanding the written estimate, the price of those works would be no more than \$500,000; that he requested further works to a staircase in the staff quarters, at a price of \$250,000; and that it was then agreed that the maximum figure for the whole of the works to the staff quarters would be no more than \$750,000. Action No. HCA 3609 of 2001 proceeded to trial before Deputy Judge Wright who, in a judgment delivered on 20 March 2003, found that the agreement in respect of the works to the staff quarters had been concluded between the plaintiff and the defendant, and not the plaintiff and the Association; and he dismissed the plaintiff's claim. His Lordship noted that the Association had denied liability on the basis that the work was done for the personal account of the defendant, but had placed in issue the quantum of the claim; and that no attempt had been made to join the defendant in those proceedings. In fact the Association paid into court \$850,000 in settlement of the plaintiff's claim and this was not accepted. Also, in a further ruling dated 15 April 2003, Deputy Judge Wright ordered the plaintiff to pay the Association's costs to be taxed on an indemnity basis. These Proceedings In the present proceedings, the plaintiff issued its Writ on 18 June 2006, some 27 months after Deputy Judge Wright delivered his judgment. It is now the plaintiff's case that the defendant accepted the estimate of \$834,300, but that because of agreed variations to the work, the cost increased to \$1,590,950, and it has never been paid. The defendant avers that the action is time barred under section 4(1) of the Limitation Ordinance, Cap. 347, being in respect of a claim brought after the expiration of 6 years from the date when the cause of action alleged in the Statement of Claim arose. The defendant further pleads that he never agreed the original estimate, but told the plaintiff that this was significantly higher than his budget of \$500,000; and the plaintiff agreed to adjust its estimate to remain within the defendant's budget. He accordingly paid \$120,000 as a deposit of about 25% of the budget figure. He denies liability for the final figure of \$1,470,950 or any figure. The Summons The plaintiff applied by summons dated 5 July 2006 for a declaration that the action is not time barred by reason that the defendant, by the written witness statement referred to above, acknowledged the plaintiff's claim and his indebtedness to the plaintiff. The learned Master on 13 March 2007 made the declaration accordingly. The Limitation Ordinance This action was raised more than six years after the cause of action accrued, and should therefore be time barred. However the plaintiff relies on section 23(3) and section 24 of the Ordinance. Section 23(3) of the Ordinance relevantly provides: Where any right of action has accrued to recover any debt or other liquidated pecuniary claim ... and the person liable or accountable therefore acknowledges the claim ..., the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment ... Section 24 provides that every such acknowledgment shall be in writing and signed by the person making the acknowledgment, and further that the acknowledgment shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged. The Issue There is no dispute that the limitation period had expired before the issue of the Writ, or that if the witness statement may properly be

regarded as an acknowledgment of the claim the effect of section 23(3) is to revive the cause of action in its entirety. The witness statement is in writing and signed by the defendant. There was no suggestion that it was not made to the plaintiff. It therefore meets the formal requirements of section 24. The witness statement states that the defendant is personally liable to the plaintiff to pay for the decoration works done to the staff quarters; but it does not admit to any specific amount. The plaintiff says that that does not matter. The defendant however argues that while it is not necessary for the document to specify the amount of the debt, that only applies so long as the amount can be ascertained by other means, including resort to extrinsic evidence, without requiring the parties further agreement; and that is not possible here. Discussion In giving evidence at the trial before Deputy Judge Wright, the defendant adopted the witness statement as evidence-in-chief. I have given the gist of what it says above but it is as well to note some of the specific words used, in particular: Mr Chan Hang Fat agreed that the plaintiff would do the work for me for less than \$500,000 (Paragraph 13); Mr Chan asked me to give a deposit of approximately 25% of the sum of \$500,000 (Paragraph 14); I requested that the staircase leading to the staff quarters be altered and for other additional work to be done. The plaintiff and I orally agreed that the maximum construction fee for the staff quarters would be no more than \$750,000. (Paragraph 15); The plaintiff did not ask me for payment until around 20th November 1997 when I received a bill for the balance of \$1,470,000 This was inconsistent with the agreed maximum of \$750,000. It is even more unreasonable that the plaintiff is chasing the defendant for this invoice as the plaintiff knew that I was personally liable for this amount. (Paragraph 16); As the plaintiff would not discount the final bill to a reasonable amount and would not acknowledge the agreement that we made, I did not pay this invoice. (Paragraph 17). Both counsel have referred me to the case of *New World Development Co. Ltd & Ors v Sung Hung Kai Securities Ltd & Anor* [2006] 3 HKLRD 345. In that case, Ribeiro PJ, having noted that the question whether a document is or is not an acknowledgment for the purposes of the section is a question of construction, went on to say at paragraph 92: Thirdly, the object of the construction exercise is to decide whether, fairly read, the document relied on constitutes an acknowledgment by the debtor of a liability to pay outstanding amounts to the creditor. There is no need for the document to specify the amount of the debt so long as it can be ascertained by other means, including resort to extrinsic evidence, without requiring the parties further agreement. Ribeiro PJ went on to cite various cases in support, in particular *Good v Parry* [1963] 2 QB 418 in which, at pp.423-424, Lord Denning MR articulated the principle as follows: ... there must be an admission that there is a debt or other liquidated amount outstanding and unpaid. ... In order to be an acknowledgment, however, the debt must be quantified in figures or, at all events, it must be liquidated in this sense that it is capable of ascertainment by calculation, or by extrinsic evidence, without further agreement of the parties. ... But if the debt is not quantified and is not ascertainable without further agreement, then there is no acknowledgment sufficient to satisfy the statute. No doubt a promise in writing by a debtor to pay whatever sum is found due on taking an account is a good acknowledgment today just as it was before the Act, provided always that the amount is a mere matter of calculation from vouchers, or can be ascertained by extrinsic evidence, and is not dependent on the further agreement of the debtor. At paragraph 102 of the judgment, Ribeiro PJ went on to hold that While [the document] did not accept the amount of the debt identified in

NWD s breakdown, it acknowledged a general indebtedness where the amount of the debt was ascertainable by a verification exercise conducted by accountants, i.e., by the taking of an account, without requiring any further agreement of the parties. Here the plaintiff argues that the witness statement acknowledges a general indebtedness which can be ascertained by reference to the invoices and records of the plaintiff and by reference to documents such as those referred to in the witness statement, e.g. the quotation and the invoice. I do not think this can be right. The tenor of the witness statement is that the specifics of the Quotation (Budget Estimate) of 22 October 1997 for \$834,300 were never agreed, and that the invoice for \$1, 470,950 was never accepted. Further, from the judgment in HCA 3609 of 2001 it appears that the plaintiff was not relying on its own figures either. See paragraph 20 of the judgment:

20. [Mr Chan, the plaintiff s sole witness] was asked about the document he called a revised quotation . He accepted that the first estimate was presented by him on or about 22 October 1996. He accepted that the work was completed, at latest, by August 1997. He accepted that the revised quotation was dated 20 November 1997. He was particularly unimpressive in his attempts to explain just what this document was supposed to be. He claimed that this was a quotation which the Plaintiff had to prepare before rendering an invoice : that the revised quotation had to be discussed with Mr WU for an agreement and to be checked with him: that although Mr WU was satisfied with the work, the revised quotation had to be submitted to him for further discussion. He accepted that there had been no discussions concerning costs between him and Mr WU between the dates of the two documents. He said that the Plaintiff previously had rendered invoices to customers before the amounts due were finally agreed. His evidence seems to amount to this: there was, in fact, no agreement as to the amount which would be paid to the Plaintiff; this was the amount which the Plaintiff would like to be paid; what it actually would accept in payment was subject to negotiation. His evidence on this issue is, literally, incredible. The exercise here is one of construction, to find out what the defendant meant by the witness statement; did he intend to admit a debt, and if so of how much? It is not an exercise of deciding how much he actually owes, or ought to pay, for the work which has been done. In fact the witness statement is not intended as an admission of any particular debt by the defendant; it is intended to show that the plaintiff did not contract with the Association but did contract with the defendant; and so to deny the Association s liability. The admission of liability of the defendant is secondary, and no specific amount is admitted. Only a reasonable amount is admitted by implication; the figure must be under \$750,000 but was open to further agreement. It is tempting to say that since the defendant referred to a maximum of \$750,000 he should be taken as having intended to acknowledge a debt of that sum. After all, if one agrees to pay someone up to \$750,000 for a construction project, it is unlikely that the final bill will be any less. This would be a practical solution. However I do not see that there is any good legal basis for it. The extent of the indebtedness admitted must be capable of ascertainment by calculation, or by extrinsic evidence, without further agreement of the parties . (Good v Parry, above). Here, the indebtedness is not ascertainable by calculation. There is no extrinsic evidence other than the documents referred to, and neither side seems to have considered that they

meant anything. There could be no further agreement of the parties; the witness statement referred to events five years before and stated that there had been no agreement on any figure. I do not see that it can properly be argued that the figure could be ascertained at trial; it might, but it would still be open to the court to find that no figure was ever agreed; and that is a far cry from the situation where the figure is to be ascertained one way or another by reference to documents and by the taking of an account.

Conclusion

I do not see that the witness statement can be taken as a proper acknowledgment of the plaintiff's claim for the purposes of section 23 of the Ordinance. It follows that the appeal must be allowed, and the Master's order set aside; and the defendant must have the costs of this application and the application before the Master, to be taxed if not agreed. (G.P. Muttrie) Deputy High Court Judge Mr Petteson, instructed by Messrs L H Kwan & Co., for the Plaintiff Mr Sanjay Sakhrani, instructed by Messrs Blank Rome, for the Defendant PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk P" (# i\$&`G Muttrie-HCA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=57067

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hung-mau-decoration-co-ltd-v-david-wu-2007>

Prepared on 28 October 2026 · Esheria