

HONG KONG / JUDGMENT

KIN SHING ENGINEERING (HK) CO LTD v. VINSON ENGINEERING LTD

COURT

Court of Appeal

DECIDED

5 February 2007

CASE / FILE NUMBER

CACV138/2005

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bjbj cacv 138/2005 AND cacv 224/2006 cacv 138/2005 in the high court of the hong kong special administrative region court of appeal civil appeal no. 138 of 2005 (on appeal from HCCT 108/2002) BETWEEN KIN SHING ENGINEERING (H.K.) CO., LTD. Plaintiff VINSON ENGINEERING LTD. Defendant cacv 224/2006 in the high court of the hong kong special administrative region court of appeal civil appeal no. 224 of 2006 (on appeal from HCCT 108/2003) BETWEEN KIN SHING ENGINEERING (H.K.) CO., LTD. Plaintiff VINSON ENGINEERING LTD. Defendant Before: Hon Rogers VP in Chambers Date of Hearing: 5 February 2007 Date of Decision: 5 February 2007 D E C I S I O N These are two appeals. They contain similar subject matter but very different issues arise in the cases, so it is unlikely that they will be heard together. If they are heard together they will be argued quite separately, so I shall treat them as separate cases. The nub of the case is that the Plaintiff says he was a subcontractor of the Defendant, which they were, and it has been kept out of his money for the work and he still has not received it. It has not been paid the costs, which have been taxed at \$2 million. It seems to me that there is sufficient here. There are also, I would add, winding-up proceedings against the Defendant. I have looked at the Defendant s accounts and they are not healthy at all. On the face of all that, I am satisfied that the Defendant is in financial straits, such that there must be a very severe doubt that if the Plaintiff were successful on the appeal and the appeal were dismissed, it would be unlikely that it would see very much in the way of costs. In those circumstances, I consider that it is justifiable to order security for costs. I take into account that these are cases which took a long time before the judge. Costs have been taxed in one of the cases at \$2 million. I propose that in each case the security of the costs, which of course is not an estimate of the full amount but a reasonable estimate of what should be paid as security, that there should be a payment of \$250,000 in each case. I propose to use the standard form of order that the Defendant do on or before, since Chinese New Year is coming up to give them a bit longer, 19 March give security to answer costs in case any shall be awarded to be paid by the Defendant to the Plaintiff by making lodgement in court of the sum of \$250,000 by cash or banker s draft or by the provision of a bank guarantee of the like amount; which guarantee shall have been approved by the Registrar and such lodgement shall be made and notice thereof given to the Registrar and to the solicitors for the Plaintiff, such notice to be given on the same day as

the lodgement is made or proceedings in the said appeal to be stayed. In default of the Defendant making such lodgement as aforesaid within the time specified above or within such further time as the court may for special reasons allow the said appeal do, upon the solicitors for the Plaintiff certifying such default to the Registrar, stand dismissed out of this court without further order. In the event that the appeal is dismissed in the circumstances provided for above, the Defendant do pay to the Plaintiff its costs occasioned by the said appeal, such costs to be taxed and the costs of this application be costs in the appeal and the same order in each case. (Anthony Rogers) Vice-President Mr P K Chan, instructed by Messrs Peter Lau & Co., for the Plaintiff/Respondent Mr Louie Chan, instructed by Messrs Ho & Ip, for the Def 1udk 1udk 2QX[2QX[2QX[H; < jFen & 6" ABC-Final (fair)1.dot setup Microsoft Word 9.0 Judiciary Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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