

HONG KONG / JUDGMENT

MAN SANG ENGINEERING CO LTD v. HUNG WAN CONSTRUCTION CO LTD

COURT

Court of First Instance

DECIDED

26 March 2007

CASE / FILE NUMBER

HCCT24/2006

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

bjbj HCCT24/2006 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE CONSTRUCTION AND ARBITRATION PROCEEDINGS NO.24
OF 2006

BETWEEN MAN SANG ENGINEERING CO. LTD Plaintiff and HUNG WAN CONSTRUCTION CO.
LTD Defendant

Before : Hon Burrell J in Chambers Date of Hearing : 19 March 2007 Date of Decision : 26 March
2007

D E C I S I O N

AUTONUMOUT This is a plaintiff's application under Order 24, rule 7 for further discovery. In the original summons there were seven categories of documents. Since issuing the summons the issues between the parties have been narrowed as a result of : (a) the plaintiff informing the defendant and the court that it will not pursue Items 2, 4, 6 and 7 (this was done well in advance of the hearing) and (b) the plaintiff amending the terms of Items 3 and 5 (this was done at the hearing). AUTONUMOUT The items which remain in dispute are : Item 1 The cover page of the instructions and their assessments passing between the defendant and the employer and/or Messrs C.S. Toh & Sons under the main contract concerning the instructions to have additional works to the original scope of the sub contract works as marked or referred to on the defendant's facsimile date 7 January 2006. Item 3 All documentary evidence/records passing from the defendant to Messrs C.S. Toh & Sons and the employer concerning the loss and expenses claims for prolongation period (in connection with and including those letters referred in Messrs C.S.

Toh & Sons dated 10 July 2001, 19 April 2002, 20 June 2002, 22 October 2002, 7 November 2002, 20 December 2002 and 30 December 2002). Item 5A All the defendant's interim payment applications and the interim payment certificates (including all measurement, breakdown or supporting documents enclosed thereof) between the employer/architect/quantity surveyor and the defendant which related to the sub contract works disclosing : the % complete in respect of all trades including its calculation; and the scope and assessment of work done and variation works under the sub contract. Item 5B The following parts of the final account : Appendix A; and Supplemental Deed mentioned in Item 6. AUTONUMOUT The plaintiff was a steel and metal work sub contractor to the defendant who was the main contractor in a substantial residential project in Tin Shui Wai. The employer was the Hong Kong Housing Authority. AUTONUMOUT In short, Item 1 concerns the instructions to carry out variation works between the main contractor and the employer. Item 5 concerns the payment applications between the main contractor and the employer. Item 3 concerns the question of prolongation costs between the main contractor and the employer. AUTONUMOUT The defendant's position in relation to Items 1 and 5 is that they have complied sufficiently with their discovery obligations. Documents have been provided. However, various parts of those documents have been edited or concealed because they are not relevant. Item 1 AUTONUMOUT Under Item 1, the defendant says that the covered parts related to : (a) other sub contracts (the plaintiff was merely one of a multitude of sub contractors) and (b) build ups of the quantities and rates between itself and the employer. AUTONUMOUT The plaintiff, through its counsel, Mr Jerry Chung, conceded that because of the age of this contract (it goes back almost 10 years) the plaintiff has mislaid some of its documentation and this application, in part, was a request for documents to fill the gaps in its own case. AUTONUMOUT Given that : (a) the documents requested refer to matters not directly concerned with the plaintiff's contract with the defendant; (b) the information requested can be ascertained from other documents (such as the as built drawings); and (c) the request is in the nature of a wide fishing exercise designed to repair the plaintiff's own case, I dismiss the request under Item 1. AUTONUMOUT am satisfied that the defendant has discovered sufficient relevant documentation to enable the court to resolve the issue concerning the reasonableness of the plaintiff's claim for the variation works under its contract. Item 5 AUTONUMOUT As with Item 1, the defendant has not ignored this request. The issue is whether or not the purported compliance is sufficient. Once again the contents of documents relating to other trades and other sub contracts has been concealed. AUTONUMOUT do not propose to set out which documents have in fact been discovered. They are considerable and I accept that the defendant has made a genuine and conscientious attempt to discover all that it regards as relevant. AUTONUMOUT However, I will accede to the plaintiff's summons in two very specific regards. I allow Items 5A(1) (the % complete figure) and Item 5B(1) (Appendix A to the final account). By this I do not intend to impose new onerous obligations on the defendant. It is intended to be narrow and specific. I believe they are documents which may fairly lead the plaintiff in a proper and relevant chain of inquiry (for example, the issue of delay). However, this does not give the plaintiff a right to roam through all the payment applications unrelated to their own sub contract. Item 3 AUTONUMOUT The issue here is somewhat different. Whereas for Items 1 and 5, the defendant submit they have made sufficient discovery, in Item 3 they accept that they have not made any discovery. They

submit that the plaintiff is not entitled to any documents under this category. AUTONUMOUT By its amendment of Item 3, made at the hearing of the summons, the plaintiff narrowed its scope and made it less of a fishing expedition. AUTONUMOUT In short, in its counterclaim against the plaintiff for prolongation costs, the defendant has given credit for \$2.2 million, being the sum it has received from the employer in relation to the prolongation issue. AUTONUMOUT The plaintiff seeks discovery of the underlying documents relating to this credit to assess its reasonableness and the propriety of its acceptance by the defendant. AUTONUMOUT think this is a relevant issue and I allow Item 3 but in more specific terms, namely, The applications and supporting documents made by the defendant to Messrs C.S. Toh & Sons dated 10/7/01, 19/4/02, 20/6/02, 22/10/02, 7/11/02, 20/12/02 and 30/12/02. AUTONUMOUT Both Mr Chung for the plaintiff and Mr Geoffrey Shaw for the defendant made submissions in relation to costs at the hearing. I therefore make this final order on costs. AUTONUMOUT The totality of the plaintiff s application contained a strong fishing element. The amendment of the summons was only made at the conclusion of the hearing to which Mr Shaw s succinct response was better but still opposed . The original draft was undoubtedly too wide in many of its terms. AUTONUMOUT However, the plaintiff has not gone away empty handed. It seems to me to be a case in which no order as to costs is the fairest to both parties. I so order. (M.P. Burrell) Judge of the Court of First Instance High Court Mr Jerry Chung, instructed by Messrs Leung, Chan & Pang, for the Plaintiff Mr Geoffrey Shaw, of Messrs Deacons, for the Defendant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#\$ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary 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=56499
CASE PAGE	https://chat.esheria.ai/case-law/hong-kong/man-sang-engineering-co-ltd-v-hung-wan-construction-co-ltd-2007

Prepared on 29 October 2026 · Esheria