

HONG KONG / JUDGMENT

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

COURT

District Court

DECIDED

7 December 2007

CASE / FILE NUMBER

DCCJ489/2007

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bjbj% DCCJ489/2007 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION CIVIL ACTION NO. 489 OF 2007 BETWEEN VINSON ENGINEERING LTD. Plaintiff and KIN SHING ENGINEERING 1st Defendant (H.K.) CO. LTD. PETER LAU & CO. 2nd Defendant Before: Her Honour Judge H C Wong in Chambers (Open to the public) Date of Hearing: 7 December 2007 Date of Delivery of Decision: 7 December 2007 D E C I S I O N The plaintiff applies for leave to appeal my decision on 24 October 2007, striking out the plaintiff's statement of claim and dismissing the action for want of a reasonable cause of action. Ms Chong, a director of the plaintiff who comes before me representing the plaintiff, submitted that I have failed to consider the Court of Appeal case of Kin Wah Construction v L & M Foundation Specialist Limited, CACV28 of 2005. It is a Hong Kong Court of Appeal decision of 28 July 2005. Ms Chong further claimed that I have failed to consider the correspondences between the parties at the time. She submitted that the plaintiff should be given its day in court and have the case tried by a judge so that the evidence could be heard and correspondences exchanged between the parties would be produced. I have set out my reasons for striking out fully in my decision on 24 October 2007. In it, I made references to the correspondences referred to by Ms Chong in paragraph 9 of my decision which the plaintiff claimed formed the basis of the 2nd defendant's agreement to defer execution of the court order against the plaintiff. It was on this basis that the plaintiff claimed the defendant should have notified the plaintiff before presenting a petition for winding-up against the plaintiff for failure to honour the deferment agreement. In a striking out application under Order 18 r-19, the courts do not make any findings on evidence. The courts would look at the statement of claim to see if it disclosed a cause of action. I have made references to Treitel's Law of Contract, page 94 and Vanbugen's case in paragraph 14 of my decision. I do not wish to repeat them here. At today's hearing, Ms Chong submitted that I have failed to take into consideration the decision of the Court of Appeal in Kin Wah Construction. In the Kin Wah Construction case, the plaintiff claimed for payment of costs of construction which was an unliquidated sum. The parties settled before the trial and a liquidated sum was agreed to be paid by the defendant within 10 days of the

settlement. There was a failure to pay the settlement sum. The court found there was a settlement between the parties. In the present case, the unchallenged taxed sum was a certified taxed debt ordered by the Registrar that the plaintiff has to pay immediately. The so-called deferred payment settlement was to delay the payment of the unchallenged taxed sum by the plaintiff which sum the plaintiff was bound to pay under the Registrar's certificate. The facts are completely different from the Kin Wah case. The Kin Wah case is clearly distinguishable to the present case. As to the plaintiff's reference to the UBC (Construction) Ltd v Sung Foo Kee judgment of Mr Justice Kaplan (as he then was) on 1 June 1993, where the William v Roffey Brothers case of 1999 had been referred to. The case of William v Roffey Brothers had been distinguished in the 1993 December decision of Re Selectmove Ltd by the United Kingdom Court of Appeal where the United Kingdom Court of Appeal held that: It was settled law that a promise to pay a sum which a debtor was already bound by law to pay was not good consideration. The principle that a promise to perform an existing obligation could amount to good consideration provided there were practical benefits to the promisee was confined to cases where the obligation involved was a supply of goods or services. It would be impossible, consistently with the doctrine of precedent, for that principle to be extended to an obligation to make a payment. (see headnote at page 532 of [1995] 2 All ER 531 of Re Selectmove Ltd). For reasons set out in my decision of 24 October 2007 and above, I am not satisfied the plaintiff has any prospects of success in the appeal. The application for leave to appeal is therefore refused, with costs to the defendants to be taxed if not agreed. (Discussion re costs) (H C Wong) District Court Judge Plaintiff represented by Ms Chong Lee-hing, Director Mr P C Lui, of Peter Lau & Co., for both Defendants PAGE - PAGE CRT8/7.12.2007/SY DCCJ489/2007/Decision 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 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 &`#\$`#\$ Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 25 October 2026 · Esheria