

HONG KONG / JUDGMENT

WING LEE ENGINEERING & TECHNICAL SERVICES LTD v. ALLIANCE BUILDING SERVICES ENGINEERING LTD

COURT

Court of Appeal

DECIDED

1 March 2007

CASE / FILE NUMBER

CACV275/2006

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bjbj 8l)R R gP z gP fendant was given leave by this court to appeal the judgment of Deputy District Judge W K Kwok, which was handed down on 21 March 2006 after a trial which lasted 4 days. Under that judgment, the defendant was ordered to pay the plaintiff the sum of \$214,046 together with interests thereon at the judgment rate, as well as costs to be taxed if not agreed. I understand that so far as the judgment debt is concerned, that had been the subject matter of garnishee proceedings, which resulted in the plaintiff being paid in full amount. Costs had since been taxed at \$229,360 together with interest of \$23,549.39, making a total of \$252,909.39, and the allocatur has been issued and served on the defendant. This is the defendant's application for a stay of execution in respect of such costs pending the appeal. The appeal has been fixed for hearing on 29 March 2007. There has been no stay of execution in relation to the judgment debt. Indeed, there had been an application before the judge which was refused by him. And as I have said, the judgment has been satisfied. The principles regarding stay of execution can be taken from the judgment of Ma J (as he then was) in *Wenden Engineering Services Co. Ltd. v Lee Shing Yue Construction Co. Ltd.*, HCCT 90 of 1999, (unreported) 17 July 2002. It is for the applicant for a stay to justify a stay. Here the defendant seeks to do so first on the basis of the merit of the appeal. The merit or lack of it is a relevant consideration, but this is not a case where the defendant can show that its appeal is highly likely to succeed. That is so notwithstanding that Le Pichon JA and Kwan J saw fit to grant leave to appeal overruling Yeung JA's refusal. But that was simply on the basis that the defendant had an arguable appeal. Having carefully considered the judgment of the Deputy District Judge Kwok as well as his decision refusing leave to appeal, I must say I am not satisfied that there is anything so particular or substantial about the merits of this appeal that execution should be stayed. The other reason is the allegation that the plaintiff has ceased business and had defaulted in paying MPF. It is said, therefore, that the plaintiff would not be able to return the money if paid. There is evidence filed on behalf of the plaintiff refuting both these allegations. Mr Raymond Fong, who appears for the applicant, asked for an adjournment so that the defendant could deal with this matter. However, I have been told by Mr

Damien Wong, who appears for the plaintiff, that the plaintiff is agreeable to having the amount recovered, should a stay of execution not be granted, to be held by their solicitors, pending the disposal of the appeal. That being the case, this ceases to be a point, because if the costs so recovered should be held by the solicitors on behalf of the plaintiff, then the financial circumstances of the plaintiff should cease to matter. I refuse this application for a stay of execution with costs. (Robert Tang) Vice-President Mr. Damien Wong, instructed by Messrs. Benny Kong & Peter Tang, for the Plaintiff. Mr. Raymond Wong, instructed by Messrs. Fung, Wong, Ng & Lam, 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 Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Microsoft Word Document MSWordDoc Word.Document.8

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