

BUILDING & CONSTRUCTION ADJUDICATION – RANGE CONSTRUCTION PTE LTD V GOLDBELL ENGINEERING PTE LTD [2020] SGHC 191

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Introduction

In the case of Range Construction Pte Ltd (“**Range**”) v Goldbell Engineering Pte Ltd (“**Goldbell**”) SGHC 191, the High Court considered, *inter alia*, whether the adjudicator has jurisdiction to consider a claim for liquidated damages in the adjudication and whether liquidated damages claims fall within the scope of Section 17(2A) of the Building and Construction Industry Security of Payment Act (Cap. 30B) (“**SOP Act**”), which precludes the adjudicator from considering a claim for damage, loss or expense that does not satisfy the conditions set out therein.

This update seeks to provide an overview of the legal arguments and reasoning set out in the case, as well as a brief commentary on the court’s decision.

Background of the case

Range was appointed as a contractor of Goldbell under a project. As Range was not agreeable to the contents of Goldbell’s payment response, it filed an adjudication application to dispute the same and was awarded a sum of \$205,647.43 under the adjudication application (“**Determination**”). It is pertinent to note that, in the Determination, the adjudicator deducted a sum of \$852,000 from the sum due to Range as the liquidated damages assessed to be owed by Range to Goldbell for the delay in handing over the project. This is notwithstanding that Goldbell did not issue a Handing-Over Certificate (“**HOC**”) under the project. The issuance of HOC was of particular significance in the determination of liquidated damages payable to Goldbell given that, pursuant to the terms of the relevant contract, the quantum of liquidated damages

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payable depended on the number of days between the contractual completion date and the date the HOC is issued. Put another way, without the HOC, it was uncertain when Range's exposure to liquidated damages would have ended.

On the facts of the case, the adjudicator determined that the issuance of a HOC was not a pre-condition for awarding liquidated damages. In coming to his decision, the adjudicator relied on an email dated 17 November 2018 from Range, where Range had evidenced its concurrence with the incomplete state of the works as at the same date. Accordingly, the adjudicator awarded liquidated damages between the contractual completion date (i.e. 7 September 2018) and the date of Range's email (i.e. 17 November 2018).

The case before the High Court

Range applied to set aside the Determination on the grounds that, *inter alia*, the adjudicator had no jurisdiction to award or consider liquidated damages under the SOP Act. It was argued that liquidated damages were compensatory damages for breach of contract, and claims for liquidated damages were not allowed under the SOP Act given that they were not loss and expense claims relating to the value of construction work done.

Range also highlighted that the above position has been clarified and evidenced by the introduction of Section 17(2A) in the SOP Act during the amendments in 2018:

"In determining an adjudication application, an adjudicator must disregard any part of a payment claim or payment response related to damage, loss or expense that is not supported by

- any document showing agreement between the claimant and the respondent on the quantum of that part of the payment claim or the payment response; or*
- any certificate or other document that is required to be issued under the contract."*

Range contended that the enactment of Section 17(2A) of the SOP Act excludes claims for liquidated damages from being considered during the adjudication process as they constitute "complicated prolongation costs, damages, losses or expenses", which are beyond the scope of the SOP Act based on the parliamentary debates.

The High Court's holding

The High Court took the opportunity to clarify that as the liquidated damages are contained in the payment response, the adjudicator has jurisdiction to consider them pursuant to Section 17(3)(d) of the SOP Act. Further, it was noted that liquidated damages are amounts that may become due and payable under the terms of the underlying contract. As such, the High Court concurred with the adjudicator's determination that Goldbell was entitled to include liquidated damages in the payment response, given that Section 6(a) of the SOP Act provides that progress payments are to be calculated in accordance with the terms of the contract.

As regards Section 17(2A) of the SOP Act, the High Court was also of the view that the mischief targeted by the section was the contractor's damage claims for costs incurred as a result of the employer's actions – otherwise referred to as "loss and expense claims". These, the High Court clarified, are different from liquidated damages claims.

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Conclusion

The High Court in the case of *Range Construction Pte Ltd v Goldbell Engineering Pte Ltd* SGHC 191 takes the position that liquidated damages claimed by the employer as provided by the terms of the contract are not “loss and expense claims” falling within the scope of Section 17(2A) of the SOP Act.

It should be borne in mind that liquidated damages are damages agreed by the parties to be payable on breach of a contract by one of the parties. In principle, liquidated damages constitute a genuine pre-estimate of the loss that the innocent party would suffer in the event of a breach of contract. In other words, a claim for liquidated damages may be viewed as a “loss and expense claim” that has been pre-agreed by the parties.

It seems from the reading of Section 17(2A) of the SOP Act, the same applies to all loss and expense claims regardless of complexity. However, based on the parliamentary debates, the Parliament introduced Section 17(2A) of the SOP Act with the intention to address the issue of the lengthening adjudication process as a result of the submission of complex claims involving complicated prolongation costs, damages, loss or expenses. The idea was for disputes in relation to such complex claims to be referred to other avenues such as arbitration or litigation. Will this apparent difference provide room for argument for future cases?

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