

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL DIVISION

CIVIL SUIT NO. S1-22-34-2008

BETWEEN

SIMPRO ENGINEERING SDN BHD

.....PLAINTIFF

AND

1. DUTA BERKAT CORP. SDN BHD

2. MUHAMMED HADLI ABDUL RAHIM

.....DEFENDANT

GROUND OF JUDGMENT

This is the Defendants' application for striking out the Plaintiff's Writ and Statement of Claim under 0 18 r 19 (1) (a), (b) or (c) and/or (d) RHC 1980.

Brief facts:

The case of the Plaintiff is as follows:

Before the awarding of the tender for the project known as "to Design, Construction and Completion of Supervisory and Data Acquisition (SCADA) for Electrical Power Distribution and Power Systems in Petronas Twin Towers"(the project), the Plaintiff had an oral agreement with the 1st and the 2nd Defendants, in that the

Plaintiff shall be appointed to take on and complete the entire project using the Plaintiff's "SCADA SYSTEM" and their expertise.

Pursuant to the agreement reached the Plaintiff had undertaken on behalf of the 1st Defendant, to prepare and submit a comprehensive proposal in compliance with the requirement of the tender for the said project and had attended to the tender clarification process meeting to brief on the "SCADA SYSTEM". The tender was finally awarded to the 1st Defendant.

However after the tender was awarded to the 1st Defendant, both the Defendants had refused to appoint the Plaintiff as per the agreement to take on the project.

On the breach by both the Defendants the Plaintiff claims:

- for damages and the loss of profits from the project completion of RM 450, 000.00;
- Alternatively the Plaintiff claims that both Defendants commit conspiracy to deprive the Plaintiff the profits which both Defendants have obtained. Plaintiff claims for exemplary and aggravated damages.
- For a declaration that the oral agreement is a valid contract that binds both the Defendants and that both Defendants had committed a breach of the same.

Defence of the Defendants:

- a) No form of agreement exists between the Defendants and the Plaintiff;
- b) The 1st defendant had requested for a quotation from the Plaintiff for the protection relay works vide letter dated 13.5.2007 however the Plaintiff gave the 1st defendant the quotation for the 3 works. Defendant did not agree to the quotation by the Plaintiff and hence the contract was not awarded to the Plaintiff.
- c) The contract between the 1st Defendant and KLCC Sdn Bhd cannot be assigned to a third party without the consent of KLCC Urusharta Sdn Bhd.

The Court's Finding

The Plaintiff's letter dated 15.1.2006 in exhibit "LTH-1" of Enclosure 9 is a quotation from the Plaintiff to the 1st Defendant which states:

"With reference to the tender named above, we are pleased to append herewith our offer as detailed in the attached table...

.....

The terms of payment will be assignment of payment or some other mutually agreed term. Our offer is valid for the period of 90 days from the closing date of tender....."

Subsequently the contract was awarded to the 1st defendant on the 15.5.2007.

Via letter dated 30.5.2007 from the Plaintiff in exhibit No 2 of Enclosure 6 the Plaintiff wrote to the 1st Defendant:

“RE: Final Quotation for Protection and SCADA...

.....we are pleased to append herewith our revised final offer as detailed in the attached...

Both the letters above shows that parties are negotiating and no final agreement finalized yet. These quotations does not constitute binding offers. Therefore there is no contract between the Plaintiff and the 1st Defendant

Finally the 1st Defendant wrote to the Plaintiff as follows:

“Dear Ir.Lee,

Good evening. Our discussion at Duta Berkat on lih June 2007 refers.

As advised, it is our intention to undertake the SCADA and optic infrastructure portion of works by ourselves. Since Simpro assisted us during the tender stage, it is also our sincere intention to award the Electrical Protection System portion of work to Simpro. .

Please find attached the Bill of quantities for this proj ect. You are required to fill in your costs on the Electrical Protection System only in the relevant sections.

Kindly also quote as an alternative based on lump sum basis your services during the initial interfacing between the SCADA system and the protection relays.

We require your quotation by 15th June 2007 to allow us to make our final decision.

We look forward to a smooth project implementation and a long term business relationship.

Thank You.
Nazmi Othman
CEO"

From the reading of these letters it seems to suggest that there had not been any final agreement or contract between the Plaintiff and the 1st Defendant. The Plaintiff subsequently failed to forward its quotation as required by the letter, which prevents the 1st Defendant from making its final decision.

On the issue of the prohibition of KLCC Urusharta Sdn Bhd of the assignment of the works to third party, that is not an absolute prohibition. It is allowed provided the consent in writing from KLCC Urusharta is obtained.

As far as the 2nd Defendant is concerned on the face of the pleadings, he is not privy in the so called award which have been awarded to the 1st Defendant. He is merely a staff of KLCC Urusharta Sdn Bhd.

The Plaintiff also pleads conspiracy between both the Defendants to deprive the Plaintiff from obtaining profits, but the particulars of conspiracy are not pleaded by the Plaintiff.

Hence from the above there is no evidence shown from the correspondences from the parties that they have reached agreement as to the essential terms which can be termed into a binding agreement between them.

The Plaintiff quoted the case of ***First Consolidated Sdn Bhd v Padu Ehsan Sdn Bhd*** [1994] CLJ 375 which Plaintiff states on all fours with our present case. However upon reading the case, the facts are different from our case in that the said case shows that the Plaintiff had made various payments to the Defendant's agents, the tender documents, the salaries of the defendant's workers, the quantity surveyor's fees, SOCSO on Defendant's behalf. However that is not the situation in our case where none of the essential terms of a contract have not been shown to crystallize at all.

Therefore from the above the application of the Defendants is allowed with costs.

Datin Zabariah Mohd Yusof

Tarikh : 18.6.2009

Bagi Pihak Plaintiff : Encik Moses Susayan
Tetuan Raja Badrol Ramli & Azizi

Bagi Pihak Defendant :
Tetuan Haresh Mahadevan & Co