

Syarikat Hj Idris Kalong Sdn Bhd

AND

LSL Sdn Bhd

**(Intermediate Court of Brunei Darussalam)
(Civil Suit No.38 of 2016)**

Dk Hj Norismayanti binti Pg Hj Ismail, Judge.

5th November 2018

*Summary Judgment – partial judgment of claim – variation of Court Order – offer or admission of claim
– pre-judgment interest – judicial discretion*

Mr Eric Siao & Jonathan Cheok (M/S Abrahams, Davidson & Co.) for Plaintiff/Appellant.
Ms Evelyn Lee (M/S YC Lee & Lee) for Defendant/Respondent.

Cases cited in Judgment:

The Dorchester Group Limited t/a The Dorchester Collection v Kier Construction Limited
[2015] EWHC 3051 (TCC)

Lee Guan Par v. Hotel Universal Sdn Bhd [2005] 4 MLJ 589

JUDGMENT ON APPEAL AGAINST REGISTRAR'S ORDER

Dk Hajah Norismayanti, Judge:

Introduction

1. This is the Plaintiff's appeal against the decision of the learned Senior Registrar made on the 27th September 2017. In accordance with the Order, the Senior Registrar granted the following:

- Part judgment for the sum of \$102,560.00 (contractual sum)
- Interest at the rate of 6% per annum on the judgment sum from the date of Judgment to date of full and final payment
- The Defendant to pay cost of the application to the Plaintiff, to be taxed if not agreed.

It was further ordered that: -

- Leave be granted to the Defendant to defend on the balance of the Plaintiff's claim on the sum of \$111,111.67 subject to the condition that the Defendant pays into court the said sum of \$111,111.67 within 14 days from the date of the Order.

Summary of the case

2. Briefly stated, the Plaintiff's claim is for the payment of rental of scaffolding and for services of the Plaintiff's employees for erecting and/or moving and/or dismantling the said scaffolding. The claim for rental of scaffolding totals \$128,721.67 and the claim for services rendered totals \$84,950.00. Plaintiff's total claim amounts to \$213,671.67.
3. The Plaintiff sought an Order for final Judgment via summons in chamber no.64 of 2016 on the sum of \$161,507.44 being part of the Plaintiff's claim of \$213,671.67 together with pre and post judgment interest at the rate of 6% per annum. The Plaintiff also applied for orders in the alternative for the court to grant final judgment on the sum of \$102,560.00 together with pre and post judgment interest at the rate of 6% per annum.
4. In accordance with the Senior Registrar's Order, the Defendant made payment of the judgment sum of \$102,560.00 to the Plaintiff on the 9th October 2017 and subsequently paid into Court the total amount of \$111,111.67 on the 11th October 2017

Subject of appeal

5. On appeal, the Plaintiff seeks to set aside the Senior Registrar's Order and for final judgment to be granted on the sum of \$161,507.44 as well as the award for pre and post judgment interest. Alternatively the Plaintiff seeks for the court to vary the Senior Registrar's Order by adding an order for pre-judgment interest from the 17th October 2015 to the date of judgment.

Issues in contention

6. There are two main contentions and they are as set out below:

(a) Judgment based on admission

The Plaintiff contends that the application for final judgment was made pursuant to an admission made by the Defendant via an email dated 14th September 2015 (hereafter referred as "the email") from Jimmy Wong (the Defendant's employee) to Fiona Chong (Plaintiff's employee). It is the Plaintiff's assertion that the email constituted an admission on behalf of the Defendant calculating the total amount owing to the Plaintiff as \$161,507.44. The Defendant on the other hand submits the email was merely an offer made in the course of negotiations and was not intended as an admission in any way.

I have considered the email carefully and it is my finding that the email does not constitute an admission. This finding is made on the basis that it is clear and obvious from the reading of the email that it contained:

- Defendant's proposal of a reduction on the amount owing;
- The Defendant's calculations provided under the headings for "Manpower" and "Materials" were part of the proposal for reduction;

- The email clearly states “*Hoping your management can accept our offer as a goodwill gesture*” (emphasis mine).

It is to be noted that the Defendant’s offer was subsequently rejected on the 29th September 2015.

To be accepted as an admission, the court must be satisfied that the email must be clear and unequivocal to that effect. In support of this finding, I refer to the principles laid out in the case of *The Dorchester Group Limited t/a The Dorchester Collection v Kier Construction Limited* [2015] EWHC 3051 (TCC) where the Honourable Coulson, J. stated “*First, the letter of 21 September 2015 was an open offer. It contained a package of terms which Dorchester could either accept or reject. It would be contrary to the whole basis of an offer if Dorchester were permitted to accept what they say was part of it (by claiming that it was an admission), whilst rejected other elements of the same package.*” The judge further stated “*Courts must always encourage parties to make offers, in whatever form is appropriate. That is in accordance with the overriding objective. It would be contrary to that policy if the recipient of an offer like this could pick over its terms, accept parts and reject others, and thereby ensure that the litigation continues. That is not the purpose of an offer of this sort.*” Applying the same approach, the Plaintiff cannot just take parts of the email which is beneficial to them for the purposes of entering a judgment especially when they had rejected the offer soon after. Therefore, the Court finds no grounds to set aside the Senior Registrar’s decision in granting final judgment on the sum of \$102,560.00.

(b) Award of pre-judgment interest at 6% per annum from 17th October 2015 to the date of Judgment

It is not in issue that the Court has the discretion to award pre-judgment interest in appropriate cases, if it thinks fit. It is also not in dispute that in considering whether it is appropriate to award pre-judgment interest, it is for the Court to assess whether the Defendant has kept the Plaintiff out of his money (see *Lee Guan Par v. Hotel Universal Sdn Bhd* [2005] 4 MLJ 589).

The Plaintiff submits despite the issuance of the Plaintiff’s invoice dated 16th October 2015, the Defendant has neglected and/or failed and/or refused to make payment to the Plaintiff thereby effectively depriving the Plaintiff of the use of the monies. On the other hand, the Defendant submits that they have always maintained that the contractual amount of \$102,560.00 was payable to the Plaintiff and has always been willing and able to pay the said amount to the Defendant. I am also satisfied that the Defendant had made attempts to settle this matter amicably. I also take into account that the Defendant had made an Order 22A offer that would sufficiently cover the contractual amount but this offer was also rejected by the Plaintiff. I further take into account that there was a delay in the Senior Registrar’s decision for the application for final judgment of over one year. It can be seen from the efforts made by the Defendant in dealing with this claim that they have not purposely kept the Plaintiff out of their monies.

It is my finding that having considered the facts and circumstances of this case, I do not find this case fit for the Court to exercise its judicial discretion to award pre-judgment interest.

Conclusion

7. Based on the court’s findings made under paragraph 6(a) and 6(b) above, the Plaintiff’s appeal fails and stands dismissed in its entirety.

8. Cost of this appeal is to be borne by the Plaintiff, to be taxed if not agreed.

DK HJH NORISMAYANTI PG HJ ISMAIL
Judge, Intermediate Court