

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2024] SGHC(A) 26

Appellate Division / Civil Appeal No 131 of 2023

Between

Seatrium New Energy Ltd
(formerly known as Keppel
FELS Ltd)

... Appellant

And

HJ Shipbuilding &
Construction Co, Ltd (formerly
known as Hanjin Heavy
Industries and Construction Co
Ltd)

... Respondent

EX TEMPORE JUDGMENT

[Contract — Contractual terms — Whether party's claim precluded by contractual term excluding liability]

[Contract — Contractual terms — Warranties — Whether latent defects that do not manifest or are not discovered during the warranty period are nonetheless caught by the warranty]

[Equity — Estoppel — Promissory estoppel]

[Tort — Negligence — Duty of care — Whether duty of care can be imposed in addition to a co-terminous contractual duty]

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Seatrium New Energy Ltd (formerly known as Keppel FELS Ltd)

v

HJ Shipbuilding & Construction Co, Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd)

[2024] SGHC(A) 26

Appellate Division of the High Court — Civil Appeal No 131 of 2023
Kannan Ramesh JAD, See Kee Oon JAD and Philip Jeyaretnam J
16 September 2024

16 September 2024

Kannan Ramesh JAD (delivering the judgment of the court *ex tempore*):

1 This is an appeal against the decision of a Judge of the General Division of the High Court (the “Judge”) dismissing the appellant’s claim against the respondent for defective work carried out by the respondent pursuant to a subcontract between them in relation to a vessel. The Judge’s decision is reported at *Seatrium New Energy Ltd (formerly known as Keppel FELS Ltd) v HJ Shipbuilding & Construction Co, Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd)* [2023] SGHC 264. For the reasons below, we dismiss the appeal.

Background

2 We set out the facts briefly insofar as they are salient to the issues.

3 Pursuant to an agreement dated 17 August 2012, the appellant, Seatrium New Energy Ltd (formerly known as Keppel FELS Ltd) (“Seatrium”), contracted with Floatel International Ltd to build and deliver an accommodation support vessel that was to be connected to an offshore production facility in the Norwegian Continental Shelf (the “Vessel”). The Vessel was to provide living quarters and other amenities for staff working in the facility. There were four addenda to the agreement, through which the contract was novated to Floatel Endurance Ltd (“Floatel”).

4 Seatrium subcontracted the fabrication, assembly and erection of the pontoons and lower columns of the Vessel (the “Works”) to HJ Shipbuilding & Construction Co, Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd) (“Hanjin”), pursuant to an agreement dated 17 January 2013 (the “Sub-Contract”). Under the Sub-Contract, the Works were to be completed by 30 October 2013. However, Hanjin did not meet the deadline and, despite multiple chasers, never completed the Works.

5 As a result, the parties entered into what was effectively a variation of the Sub-Contract, described as the “Side Letter” dated 27 December 2013, under which Seatrium agreed to take over construction of the outstanding works. The Side Letter comprised several documents of which the principal document was a “Letter Agreement” also dated 27 December 2013. Much of the arguments in this appeal focus on the Letter Agreement, in particular its fifth paragraph (the “5th Para”).

6 Seatrium completed the outstanding works and delivered the Vessel to Floatel on 16 April 2015. This date is critical for the computation of time for

the warranty claim by Seatrium against Hanjin on the basis of warranties provided in the Sub-Contract.

7 In or around mid-August 2016, Floatel notified Seatrium that there were defects in the Vessel. Urgent repairs of only some of the key defects were carried out. On 24 August 2016, Seatrium put Hanjin on notice of the defects and attributed them to the work that Hanjin had carried out. Significantly, Hanjin replied on 6 September 2016 that Seatrium's claim was subject to the warranty period which had since expired. Indeed, this has consistently been Hanjin's position in the correspondence and is pleaded as a defence in the suit below. Whether Hanjin's position is correct is an issue in this appeal.

8 Further defects were identified when the Vessel was berthed for inspection between 14 December 2017 and 21 July 2018 in Rotterdam. Again, numerous defects were discovered and only critical repairs were carried out.

9 Efforts by Seatrium between 29 August 2018 and 19 February 2019 to have Hanjin discuss the defects and repairs that were needed were met with silence. On 23 January 2019, Seatrium sent a letter to Hanjin stating on record its position that Hanjin had breached its contractual and tortious duties in view of the defects. This was also met with silence. Seatrium then carried out another round of inspection and repairs at its own cost and expense. The Vessel was inspected again, and further defects were identified. These were eventually resolved by Seatrium in July 2019.

10 In the suit below, Seatrium sought to hold Hanjin liable for the defects and claimed damages for alleged breaches by Hanjin of its contractual and tortious duties. Seatrium was unsuccessful. The Judge found that Hanjin's works were defective and in breach of the Sub-Contract – there is no cross-

appeal by Hanjin against this finding. However, the Judge also held that Seatrium's claim was precluded by the 5th Para of the Letter Agreement, and Hanjin was not estopped from denying liability for breach of the Sub-Contract. The Judge was also of the view that Hanjin did not owe Seatrium a separate tortious duty of care that was co-terminous with its contractual duties. Finally, the Judge concluded that Hanjin was not liable under its warranty obligations as the warranty had expired before the defects were discovered.

Issues

11 The central issue in this appeal is whether pursuant to the Letter Agreement, in particular the 5th Para, Seatrium was precluded from bringing a claim for breach of the Sub-Contract for the defects, save for a warranty claim under the Sub-Contract. If so, the consequential question is whether the warranty claim was still available as the warranty had expired by the time the defects were discovered in mid-August 2016 and Seatrium had put Hanjin on notice of the defects on 24 August 2016. Another issue is whether, as Seatrium asserts, Hanjin is estopped from denying liability for breach of the Sub-Contract for the defects. The final issue is whether Hanjin owed a duty of care in tort to carry out the works with due skill, care and diligence, in relation to Seatrium's alternative claim in tort for the defects.

12 We consider these issues in turn.

Whether Seatrium was precluded from bringing a claim for breach of the Sub-Contract pursuant to the Letter Agreement?

13 We reproduce the 5th Para:

In consideration for the Sub-Contractor's acknowledgement and agreement above, Builder acknowledges and agrees that,

save for Sub-Contractor's warranty obligations for the Sub-Contract Works which it has carried out, *Builder shall not have any claims whatsoever against Sub Contractor for the works which will have to be carried out by Builder to complete/remedy the Sub-Contract Works.*

[emphasis added]

14 Pursuant to the 5th Para, Seatrium would have *no claim* against Hanjin for any work that it would have to carry out either to complete the outstanding works under the Sub-Contract that Hanjin had failed to do or to remedy the works that Hanjin had already carried out but were defective prior to Seatrium taking over the Sub-Contract. The only exception to this is the work that Hanjin had carried out that was caught by its warranty obligations under the Sub-Contract. As such, if the defects were covered by the warranty obligations, Seatrium would be able to pursue recovery under the warranty claim provided the defects were discovered within the warranty period. We will address this issue later.

15 Seatrium submits that the portion of the 5th Para emphasised in italics above should be limited to the outstanding works that Seatrium had agreed to take over from Hanjin and did not include works that Seatrium would have to carry out to remedy the defective works completed by Hanjin prior to handover. The difficulty with Seatrium's submission is that it does not conform with the language of the 5th Para.

16 A further difficulty is that if, indeed that was the intention, the parties would have used the term "Outstanding Items" instead of "Sub-Contract Works". "Outstanding Items" was the term used and defined in the Letter Agreement as referring to the outstanding works that Seatrium took over from Hanjin. Instead, the term used in the 5th Para was "Sub-Contract Works" which, read with the first paragraph of the Letter Agreement and cl 1.2 of the Sub-

Contract, refers to the work to be performed by Hanjin under the Sub-Contract as set out in the Works Order dated 17 January 2013, *ie*, the outstanding works that Hanjin failed to complete *and* the works that Hanjin had already completed and asserted to be defective.

17 It is important that the 5th Para states “save for Sub-Contractor’s warranty obligations for the Sub-Contract Works which it has carried out”. Clearly, any work covered by the warranty obligations would have to refer to work carried out by Hanjin under the Sub-Contract and not the outstanding works that Seatrium had agreed to complete. The 5th Para evidently carves out and subjects only the work carried out by Hanjin under the Sub-Contract to a warranty claim. This carve out of the warranty obligations could never apply to the outstanding works as it would be Seatrium and not Hanjin which would undertake them.

18 In our view, the interpretation above accords with commercial sense. Once the pontoons and lower columns of the Vessel were handed over by Hanjin to Seatrium in their unfinished state on 27 December 2013, Hanjin would have had no knowledge of the additional works that Seatrium would carry out on them. In such circumstances, Hanjin would want to protect itself against liability for any defects which could have resulted from Seatrium’s subsequent works, over which Hanjin had no visibility and control. On the other hand, Seatrium would know that it would have the opportunity to undertake such inspections and tests as Seatrium thought appropriate on Hanjin’s prior work, in the period between handover by Hanjin to Seatrium and Seatrium’s eventual delivery to Floatel. Such inspections and tests could have resulted in defects in Hanjin’s prior work being discovered. Seatrium would have protection from such defects

as the warranty obligations would also cover this period, a point which counsel for Hanjin, Mr Kenneth Tan SC, accepted.

Whether a warranty claim under the Sub-Contract was available to Seatrium?

19 We set out the warranty clause under cl 16 of the Sub-Contract in full below:

16 WARRANTY

16.1 The Sub Contractor warrants and guarantees that:

a. the Sub Contract Works shall be performed in accordance with the requirements and conditions of this Sub Contract, and—in accordance with Marine and Offshore Standard of Practice and good and sound engineering and construction practices;

b. the Sub Contract Works and all materials and equipment incorporated into the Sub Contract Works and all parts thereof shall be of merchantable quality, fit for the purpose and use for which the parties intended and shall be free from defects; and

c. upon performance of the Sub Contract Works, those parts of the Vessel, insofar as pertains to or in connection with the Sub Contract Works, shall perform in accordance with the requirements and conditions of this Sub Contract.

16.2 Any work required to meet the requirements and conditions set forth in this Sub Contract shall be for the account and responsibility of the Sub Contractor until such work so meets such requirements and conditions.

16.3 Irrespective of whether any designs, data or information have been provided or approved by the Builder, the Sub Contractor undertakes to maintain and keep the Sub Contract Works in proper working order and guarantees and warrants ~~the design,~~ workmanship and all materials and equipment fabricated or provided by it against any and all defects for the period stated in

the Works Order, or, if no such period is stated, then for a period of twelve (12) months from the date of official delivery of the Vessel to the Owner (“Warranty Period”). Unless otherwise stated, any period stated to be the Warranty Period in the Works Order shall commence from the date of official delivery of the Vessel to the Owner.

16.4 The Sub Contractor shall promptly execute, at its own cost, all such work of repair, rectification, replacement, making good of defects, imperfections and other faults in the Sub Contract Works attributable to the Sub Contractor.

16.5 Any work performed by the Sub-Contractor under this Clause shall be further warranted for the balance of the Warranty Period specified in Clause 16.3 or six (6) months after completion of such work, whichever is later.

16.6 The Sub Contractor’s obligations under this Clause are without prejudice to any other rights and remedies the Builder may have.

[underline and strikethrough in original]

20 We observe that Seatrium’s warranty claim against Hanjin is based on cl 16.3 only. Clause 16.1 was not relied upon by Seatrium in the pleadings, in the submissions below, and before us on appeal, assuming that cl 16.1 is relevant. Our observations are therefore limited to cl 16.3.

21 Seatrium contends that there is no notice requirement under cl 16.3 of the Sub-Contract and the defects were inherent in the Works at the time the pontoons and lower columns of the Vessel were delivered by Hanjin to Seatrium. As such, Seatrium’s claim for the defects fell within the warranty provided and should have been allowed. In our view, Seatrium’s focus on the absence of a “notice requirement” as well as the “inherent” nature of the defects misses the point. Notice is not the issue. It is clear that cl 16 does not require Seatrium to give notice as a formal requirement. The issue rather is whether latent defects that do not manifest or are not discovered during the warranty

period are nonetheless caught by the warranty. It is undisputed that the defects were latent and undiscovered during the warranty period. The warranty period commenced on 16 April 2015 when the Vessel was delivered to Floatel and expired 12 months later on 16 April 2016, and the first defects were only discovered in mid-August 2016. In our view, the warranty in cl 16.3 does not apply to defects that do not manifest or are not discovered during the warranty period.

22 The purpose and nature of a warranty obligation is that the warrantor provides assurance to the warrantee as to the quality of its work or goods by warranting that they will be of a certain condition and free from defects for a defined period of time, *ie*, the warranty period. Pursuant to this assurance, the warrantor undertakes to execute any necessary repairs or rectifications. The warrantee may therefore “activate” or “enforce” the warranty by calling upon the warrantor to make the necessary repairs or rectifications: see *GTMS Construction Pte Ltd v Ser Kim Koi (Chan Sau Yan (formerly trading as Chan Sau Yan Associates) and another, third parties)* [2021] SGHC 9 at [443] and [454]. As the warrantor’s assurance is only for the duration of the warranty period, the defects must either manifest or be discovered prior to the expiry of the warranty. In that event, the warrantee may “activate” or “enforce” the warranty. If the defects go unrectified, then the warrantor would be in breach of the warranty, and the warrantee is entitled to seek compensation for the loss caused by the breach: see *Management Corporation Strata Title Plan No 3556 (suing on behalf of itself and all subsidiary proprietors of Northstar @ AMK) v Orion-One Development Pte Ltd (in liquidation) and another* [2020] 3 SLR 373 at [172]; *Management Corporation Strata Title No 964 v Gordon Industrial Land Pte Ltd and another* [1998] SGHC 365 at [18].

23 In *Gorski v General Motors of Canada Ltd* [1998] BCJ No 3106, the court had to deal with the very question that the present case poses, namely whether the warranty covers latent defects that are brought to the defendant’s attention after the expiration of the warranty period. The court held that the defendant was not obligated to rectify latent defects that arise after the warranty period, finding that while the warranty covers all defects, its terms clearly and unambiguously limit the defendant’s liability for repairs to the duration of the warranty period. The relevant terms of the warranty were as follows – notably, there was also no “notice” requirement:

General Motors of Canada will provide for repairs to the vehicle during the WARRANTY PERIOD in accordance with the terms, conditions and limitations contained in this booklet.

WARRANTY PERIOD

The WARRANTY PERIOD for all coverages begins on the date the vehicle is first delivered or put in use ... It ends at the expiration of the COVERAGES shown below.

24 Therefore, only defects that manifest or are discovered during the warranty period are covered. This must be right. Otherwise, the warranty period becomes meaningless. If it applied to defects regardless of whether they manifested or were discovered during the warranty period, the warranty will effectively be open-ended – a warranty claim for a latent defect that manifests, for example, ten years after the Vessel was delivered would be covered. This does not sit well with the purpose and nature of a warranty obligation. We hasten to add that the position stated above is subject to terms of the warranty which may provide otherwise. That said, there is nothing in the language of cl 16.3 that assists Seatrium.

25 As the warranty period had expired by the time the defects in the present case were discovered, we are of the view that Hanjin is not liable for a breach of its warranty obligation under cl 16.3 of the Sub-Contract.

Whether Hanjin is estopped from relying on the Letter Agreement to deny Seatrium’s claim for breach of Sub-Contract?

26 Seatrium argues that Hanjin is estopped from relying on the 5th Para. However, the conduct that Seatrium relies on is Hanjin’s offer in its email dated 2 June 2017 to pay Seatrium US\$2.3m as repair costs. We do not accept Seatrium’s argument and agree with the Judge that the language in Hanjin’s correspondence with Seatrium suggests that Hanjin was making the offer out of goodwill, “to cooperate with [Seatrium] to solve this problem favourably”.

27 This is apparent when Hanjin’s offer is seen in the context of its emails of 6 September 2016 and 19 October 2016 where it asserted that it was not liable as the warranty period had expired, as well as Hanjin’s subsequent email dated 16 June 2017 (shortly after the 2 June 2017 email that Seatrium relies on) which conveyed the same position.

Whether Hanjin owed a duty of care in tort to carry out the works with due skill, care and diligence?

28 Seatrium argues that Hanjin has a duty of care in tort that is co-terminous with Hanjin’s contractual obligations under the Sub-Contract. Assuming there was such a duty, Seatrium’s argument does not comport with the interpretation of the 5th Para stated above. It makes no sense to conclude that such a duty survived the 5th Para if the parties’ intention was for Hanjin to be released from all claims for its prior work, save defects that fell within the warranty obligations. In this respect, we regard as pertinent that the release in the 5th Para

was for “any claims *whatsoever*” [emphasis added]. This suggests to us that both contractual claims and claims in tort were released.

Conclusion

29 For the reasons above, we dismiss the appeal and award costs to Hanjin in the sum of S\$60,000 including disbursements. The usual consequential orders apply.

Kannan Ramesh
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Philip Jeyaretnam
Judge of the High Court

Wong Soon Peng Adrian, Sara Sim Hui Li, Wayne Yeo (Yang Weien), Sia Bao Huei and Mark Tang Yu Zhong (Rajah & Tann Singapore LLP) for the appellant;
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