

# Singapore: looking behind the contract



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Policy disputes are not unusual and often require the parties to resolve any ambiguity through taking a sensible commercial review of a policy's terms and conditions. In England there are limited circumstances in which a court will consider extrinsic evidence such as pre-contract negotiations and draft policy wordings.

This is on the basis of the parole evidence rule; the document is the best proof of the deal struck. Singapore has a more open approach to extrinsic evidence and the ramifications for contracts of insurance are significant.

The Singapore Court of Appeal's decision of *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design Construction Pte* (2008) considered the interpretation of an exclusion under a contractor's all-risk policy.

The policy was purchased to cover a specific maintenance and works contract for B-Gold's client Mediacorp. Zurich argued losses arising from a fire at Mediacorp were excluded under the policy on a literal interpretation.

In *Zurich Insurance* the Court of Appeal held the parole evidence rule only operated where the contract is intended to contain all the terms of the agreement pursuant to proviso (f) to s94 of the Evidence Act (Cap 97, 1997 revised edition). The Court of Appeal allowed the extrinsic evidence for the purpose of explaining, "the sense of the words used by the parties" but did not allow evidence that contradicted the plain reading of the policy.

This approach was recently reaffirmed in the High Court of Singapore in *Sembcorp Marine Ltd v PPL Holdings PTE Ltd and another* (2012); the decision considered a joint venture between PPL Holdings and Sembcorp in PPL Shipyard.

A dispute arose when PPL Holdings sold its shares in PPL Shipyard to a direct competitor of Sembcorp, which was obviously not a desirable situation. In very general terms Sembcorp argued there were a number of implied terms including the terms the joint

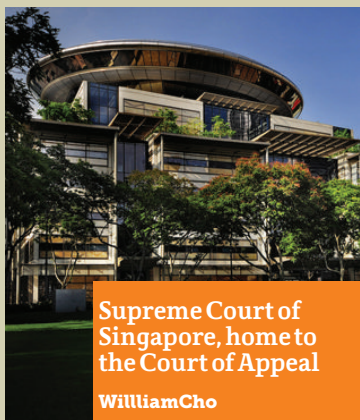
venture would cease to apply if one of the parties acquired a majority of the share capital in PPL Shipyard and that each party would not act in any manner that would cause the other to end up being a partner with a party who was controlled or owned by someone other than the principals to the joint venture.

In *Sembcorp* the court held extrinsic evidence could be considered to ascertain the meaning of the contract to consider whether the implied terms that Sembcorp sought to imply were consistent with the contract. The court dismissed Sembcorp's claim and an appeal has been lodged.

The *Sembcorp* decision affirms the broader contextual interpretation that applies in Singapore which allows extrinsic evidence of, *inter alia*, pre-contractual negotiations and the subsequent conduct of the parties as long as it is: (i) relevant; (ii) reasonably available to the parties; and (iii) relates to a clear context of the contract.

Even in the case where there is an "entire agreement clause", the court may consider extrinsic evidence should the construction of that clause allow it to interpret the other terms in the contract. Insurers need to be aware of this distinction and its operation in Singapore as the terms of a Singapore-based policy may not be the last word on a matter. ■

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Supreme Court of Singapore, home to the Court of Appeal

William Cho