IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 248

Suit No 434 of 2015

Between

Doka Formwork Pte Ltd

… Plaintiff

And

Grandbuild Construction Pte Ltd

… Defendant

JUDGMENT

[Building and Construction Law] — [Damages] — [Damages for Defects]

[Building and Construction Law] — [Damages] — [Delay in Completion]

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Doka Formwork Pte Ltd
v
Grandbuild Construction Pte Ltd

[2016] SGHC 248

High Court — Suit No 434 of 2015
Andrew Ang SJ
26, 27, 28, 29 April, 6, 16, 23 May 2016

4 November 2016 Judgment reserved.

Andrew Ang SJ:

Introduction

1 The dispute before me arises from several contracts for the supply of *formwork*, which is a type of mould used in the construction of higher floors of a multi-storey building. The plaintiff claims under the contracts for unpaid rental (arising from its supply of formwork), the unpaid price of consumables supplied, and for loss arising from damage the defendant allegedly caused to its formwork. The defendant denies that the sums claimed are owed, and instead counter-claims for losses arising out of the plaintiff's late delivery of formwork and from the defects in the design of the formwork.

Background facts

2 Doka Formwork Pte Ltd ("the Plaintiff") is a supplier of system formwork.[1] Grandbuild Construction Pte Ltd ("the Defendant") is a company

engaged in the business of building construction[2] and was hired as a contractor in the construction of a four-storey warehouse at 7 Sungei Kadut Street 3 ("the Project").[3]

Principal Contract

3 On 22 January 2014, parties entered into a contract, under which the Plaintiff was to supply formwork to the Defendant for use in connection with the Project ("the Principal Contract").[4] For a contract sum of $260,000, the Plaintiff agreed to "sell and/or hire out Doka system formwork, formwork accessories in new and used stock conditions for the purposes of construction of concrete structural walls, beams, slabs, supports for high shoring and structural load bearing to [the Defendant]".[5]

4 One of the advantages of the Plaintiff's system formwork is that once the formwork is fully assembled, it would not have to be taken apart and reassembled to be reused at the higher levels.[6] Once the concrete had been cast in the formwork (which, as stated, is a mould to hold in place until it set the concrete used to form the walls, beams, slabs *etc* of each storey), the formwork is released and the Plaintiff's formwork, with its "Staxo Wheels", may be wheeled out and lifted to the next level by crane.[7]

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[1] Ng Chai Poh's AEIC at para 4

[2] Ng Chai Poh's AEIC at para 5

[3] Ng Chai Poh's AEIC at para 2

[4] Statement of Claim ("SOC") at para 1

[5] Clauses 1a and 2; AB vol 1 at p 49

[6] Plaintiff's closing submissions at para 10

[7] Plaintiff's closing submissions at para 12

5 The parties contemplated a contract period of four months, from February to May 2014 (see cl 5). I shall now consider a few of the contractual clauses in greater detail to explain the mechanics of the Principal Contract.

6 Under cl 9, the parties agreed that delivery was to commence within six to eight weeks of "the signing of the contract and confirmation of the delivery schedule with [the Defendant], and with all detailed drawings, clarification of all technical issues resolved and the receipt of the Security Deposit".[8] In particular, Annex A makes clear that the Defendant was obliged to "[p]rovide latest structural drawings given by owner upon confirmation of project"[9]; only upon receiving the structural drawings of the Project could the Plaintiff start designing the formwork. Under cl 5, the Plaintiff was to deliver goods as and when *requested* by the Defendant; the Defendant agreed "to inform [the Plaintiff] 03 days in advance of the actual 1st Delivery Date for the Goods".[10]

7 Upon delivery, cl 8 stipulates that the Defendant "shall inspect the Goods delivered to site, sign the delivery notes and return them to [the Plaintiff]". If defects or shortages were found in the goods delivered by the Plaintiff, the Defendant was to inform the Plaintiff in writing immediately. Clause 8 stipulates that "[i]f no such notification is given by [the Defendant] within three (3) working days after the Goods being delivered, it shall be conclusive that the Goods delivered are in working condition and of the correct quantity".[11]

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[8] AB vol 1 at p 48A

[9] AB vol 1 at p 46

[10] AB vol 1 at p 48A

[11] AB vol 1 at p 48A

8 Clause 10 stipulates the agreed procedure for returning the Plaintiff's goods at the end of the contract period or upon the determination of the contract. The Defendant was obliged to return the Plaintiff's goods to the Plaintiff's warehouse. The cost of transporting the goods back to the Plaintiff's warehouse was to be borne by the Defendant (see cl 9.1). The Defendant had to give the Plaintiff advance notice of three working days prior to returning the goods, and all return of materials was to take place "from Monday to Friday, 8:00am to 4:00pm". Clause 10 also states that rental goods and equipment had to be (a) returned in reasonably good working condition (fair wear and tear excepted), and (b) cleaned and bundled in accordance with the Plaintiff's standards.[12]

9 Clause 6 governs the "Extension of Rental Duration". It states "[i]n the event that there is an extension of the rental duration of the Goods required by [the Defendant], [the Defendant] shall inform [the Plaintiff] in writing immediately, and [the Plaintiff] shall be entitled to claim extended rental for the Goods on site, which shall be charged at the same rate to the rates found at Annex C – Agreed Rental Rates per calendar month or the rates found in the Materials Price List at Annex E – Material List Price for Goods not returned after the contract period".[13]

10 In the event that the Plaintiff's goods or materials are damaged or lost, cl 11 of the Principal Contract stipulates[14]:

> (a) the Defendant shall pay the Plaintiff for damaged and lost goods based on the price list at Annex F;

[12] AB vol 1 at p 48

[13] AB vol 1 at p 48A

[14] AB vol 1 at p 48

(b) items which can be repaired shall be returned to the Plaintiff's warehouse for assessment of damages and losses based on the Plaintiff's standard criteria;

(c) non repairable goods should be left on site; and

(d) the Defendant, through its authorised representative, shall be present at the Plaintiff's warehouse to conduct a joint inspection to assess damages and losses and if the Defendant fails to be present during the inspection exercise, the finding made solely by the Plaintiff shall be conclusive and binding.

Commencement of the Principal Contract

11 On 4 February 2014, the Defendant emailed the Plaintiff structural drawings of the Project so that the Plaintiff could prepare the formwork drawings.[15] The Plaintiff replied on the same day requesting for construction drawings when available, but indicated that it would, in the meantime, use the structural drawings for its formwork concept drawings. The Plaintiff's reply also records that the delivery of materials was to be expected in the middle of March, as the parties had discussed on telephone.[16]

12 On 28 February 2014, the Plaintiff emailed its slab formwork and column formwork drawings to the Defendant.[17] On 29 March 2014, the Defendant made its first request for delivery of formwork by email, asking that the Plaintiff deliver the "500x500 column formworks" on 2 April 2014.[18]

[15] Defendant's closing submissions at para 1; AB vol 3 at p 674

[16] AB vol 3 at p 673

[17] AB vol 3 at pp 684-686; AB vol 1 pp 53-56

[18] AB vol 1 at p 52

The Plaintiff commenced delivery on 2 April 2014, and the "Delivery Notes" signed by the Defendant indicate that multiple deliveries took place across April and May 2014.[19]

The variation orders for the lift core

13 It is undisputed that on 30 June 2014 and 15 July 2014, the Plaintiff and the Defendant subsequently entered into two variation orders for the supply of formwork for the cargo lift core and passenger lift core respectively.[20] What is disputed, however, is whether the Plaintiff should have supplied the said formwork earlier. The Defendant claims that the formwork for the lift cores was not supplied by the Plaintiff in a timely fashion. These contested allegations will be considered in more detail subsequently. At this juncture, I shall set out certain undisputed facts relating to the supply of formwork for the lift cores.

14 On 10 April 2014, the Plaintiff sent an email to the Defendant attaching draft drawings of the cargo lift core and passenger lift core, requesting for confirmation of the dimensions of *both* the cargo lift core and the passenger lift core so that it could start designing the formwork for the lift cores.[21] On the same day, the Defendant forwarded the Plaintiff's request for confirmation of the dimension of the lift core to its consultants/subcontractors.[22] Between April and June 2014, the parties continued to communicate on the supply of formwork for the lifts.

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[19] AB vol 1 at pp 57-77

[20] Plaintiff's closing submissions at para 17; Defendant's closing submissions at para 1

[21] AB vol 3 at pp 687-689

[22] AB vol 3 at p 690

15 In relation to the cargo lift core, confirmed dimensions were only sent via email to the Plaintiff on 13 June 2014[23]. The Plaintiff replied with preliminary formwork drawings for the cargo lift core for the Defendant's review, comments and approval on 16 June 2014[24]. On 25 June 2014, the Defendant replied asking the Plaintiff to "proceed with the liftcore material to be delivered to site as soon as possible".[25] On 27 June 2014, the Plaintiff instructed its operations team to prepare the materials and deliver it to the Defendant as soon as possible.[26] It is observed that all this took place prior to the signing of the variation order in relation to the cargo lift core formwork. Indeed, in an email from the Plaintiff's commercial manager, Tan Soon Kwan, to the Plaintiff's head of sales, Peter Tan, on 27 June 2014, Tan Soon Kwan noted that "[t]o invoice, let Joanne have the V.O. number and the amount, even if the V.O. is still not signed" ("V.O." being a reference to "variation order").[27]

16 Shortly after, on 30 June 2014, the parties formalised the variation order and signed the contract for the Plaintiff to supply its formwork for the construction of the cargo lift ("the Cargo Lift Quotation"). The terms of the Cargo Lift Quotation are broadly similar to the terms of the Principal Contract. The Plaintiff claims[28], and the Delivery Notes[29] suggest, that the Plaintiff

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[23] AB vol 3 at p 708

[24] AB vol 3 at p 707

[25] AB vol 1 at p 78; AB vol 3 at pp 719-720

[26] AB vol 3 at pp 718-719

[27] AB vol 3 at p 718

[28] Plaintiff's closing submissions at para 17(9)

[29] AB vol 1 at pp 93-100

started delivering materials for the construction of the lift core from 1 July 2014.

17 In relation to the passenger lift core, the Defendant sent the Plaintiff the details of the passenger lift core on 11 July 2014, asking the Plaintiff to "expedite the design for the formwork system to be utilised".[30] The Plaintiff replied on the same day with finalised drawings seeking confirmation of the passenger lift core dimensions so that it could start the formwork design.[31] On 14 July 2014, the Defendant replied asking the Plaintiff to proceed.[32] The parties signed the contract for the Plaintiff to supply its formwork for the construction of the passenger lift ("the Passenger Lift Quotation") on 15 July 2014.[33] The Plaintiff claims[34], and the Delivery Notes[35] suggest, that the Plaintiff started delivering the formwork for the passenger lift core on 14 August 2014. The Defendant's position, however, is that materials for the passenger lift core were only delivered mid-September 2014.[36]

Change in Project drawings

18 On 25 July 2014 at 2.38pm, the Defendant emailed the Plaintiff with updated drawings of the Project site, asking the Plaintiff to check if the formwork system needs to be altered to suit the updated drawings. In the same

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[30] AB vol 3 at pp735-736

[31] AB vol 3 at p 735

[32] AB vol 3 at p 741

[33] AB vol 1 at pp 122-129

[34] Plaintiff's closing submissions at para 17(9)

[35] PBOD vol 3, pp 1067-1073

[36] Defendant's closing submissions at para 1

email, the Defendant asked the Plaintiff to make the necessary amendments to its formwork design and send the appropriate materials over accordingly.[37]

19 On the same day, at 5.26pm, the Plaintiff replied to the Defendant's project manager[38], Mr Vincent Koh, stating[39]:

> Dear Mr Vincent,
>
> Referring to the revise Slab 2nd Storey Structural drawings, its come to our notice significant revisions/changes happened, from previous design drawings provided to us. This will affect the Slab formwork design.
>
> **Perimeter beam depth 600mm change to 1000mm** – For this changes of beam depth the **Staxo Table type slab formwork,** will have difficulty to move out from the perimeter edge beam locations!!
>
> The extensions wont clear the beam depth!!
>
> Same time, we need to know, if there is any changes in level 1 drawings? If there are drops in slabs, it will affect the Staxo frame arrangement!!
>
> For your references, we attached the files that the Structural drawing that we based for formwork design and now the revise 2nd storey.
>
> [emphasis in original]

Minutes later, at 5.31pm, the Plaintiff sent a second email to the Defendant, stating[40]:

> Dear Mr Vincent,
>
> In addition for below email.
>
> Please note, as per your request, we have delivered half zone of Zone B.

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[37] AB vol 3 at pp 754-757

[38] Transcript, day 2, p 31 line 19

[39] AB vol 3 at pp 753-754

[40] AB vol 3 at p 753

> Do not assemble any Staxo towers till the design is resolved.

20 On 29 July 2014, the Defendant replied the Plaintiff. At 10.39am, the Defendant sent the following email to the Plaintiff[41]:

> Hi Paulo,
>
> We are in the process of getting the engineer to consider changing the beam size to suit the table form.
>
> We will update you at a later date.
>
> In the meantime, please stop the deliver of the material and also the rental charges until we can get a firm reply from the consultant.

Then, at 11.09am, the Defendant sent a second email to the Plaintiff[42]:

> Hi Paulo,
>
> What is the maximum beam depth that you can work with?
>
> Please advise.

21 On the same day, at 11.54am, the Plaintiff replied as follows[43]:

> Dear Mr Vincent,
>
> In Zone 2 (Grid Line 4 – 9), by Lowering the **Staxo 40 screw jack U-head and Staxo 40 screw jack foot** the maximum beam depth that we could move out the Staxo 40 table from the perimeter edge beam is **750mm**..
>
> Please note that we need to follow whatever the consultant design (Structural drawings) and we would do the revision accourdingly [*sic*].. Once Consultant finalize the Structural drawings..
>
> [emphasis in original]

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[41] AB vol 3 at p 761

[42] AB vol 3 at pp 758-759

[43] AB vol 3 at p 758

22 Based on the evidence before the court, the correspondence between the Plaintiff and the Defendant on this issue did not continue thereafter. On 21 August 2014, the Plaintiff's project engineer, Mr Flores Juan Paulo Rivera, internally emailed the Plaintiff's sales engineer, Mr Boon Chun Wui, regarding the Project, as follows[44]:

> Dear Boon,
>
> Any update for this project?? Just want to check with you the following..
>
> 1.) When is the next delivery for the remaining materials for Zone 2 and Zone 3 as well??
>
> 2.) Do we got already the VO for redesign?? Just want to highlight to you i haven't do anything for the revision. Kindly advice..

23 There is no written record of what Boon Chun Wui's reply was, but on 25 August 2014, Flores Juan Paulo Rivera emailed Boon Chun Wui again, suggesting that he had received instructions to deliver the formwork based on the *old* formwork design[45]:

> Dear Boon,
>
> Just want to informed/highlight to you the following.
>
> 1.) As per your instruction, This material list for Zone 2 (GL6-9) is based in OLD Design.
>
> 2.) Materials to be deliver are **Material in Zone 2 (GL 6-9)**. Support in beam (GL 9) is not included in the Material list.. This is part of Zone 3 list.
>
> 3.) In Perimeter beam (depth 1m) Staxo Table type will have difficulty to move out to the next level.
>
> [emphasis in original]

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[44] AB vol 3 at p 794

[45] AB vol 3 at p 795

24 In the interim, the Defendant changed its project manager and sometime in September 2014, Mr Arasappan Palaniappan ("Mr Palaniappan") was assigned to the Project. It appears that Mr Palaniappan was never updated on the problems the change in project drawings potentially created in relation to the formwork. Mr Palaniappan's evidence was that he proceeded to cast the formwork for the second storey slab one month after he came on board the Project, and that he never spoke to the previous project manager, Vincent Koh, about the potential problems that would arise in using the Plaintiff's formwork given the change in beam depth.[46] This may very well have been the cause of the problems that arose. The Plaintiff and Defendant corresponded on this matter again in October 2014. On 15 October 2014, the Defendant informed the Plaintiff to start preparing the formwork drawings for the third storey.[47] The Plaintiff's project engineer, Flores Juan Paulo Rivera, replied on 16 October 2014, asking for further details before starting on the third storey slab formwork drawings.[48] On the same day, the Plaintiff's Group Leader of Engineering, Jerry George Varghese, sent an email to the Defendant's new project manager, Mr Palaniappan, proposing solutions to the repositioning issues faced by the Defendant arising from the change in beam depth[49]:

> Dear Mr Pala,
>
> Reference to the above subject, and request from our Sales to mention to you about the repositioning of the Staxo Towers now at Level 1 slab of Zone 2.
>
> We checked internally with the possibility of the use of the Staxo trolley unit to facilitate the lowering of the Staxo Towers from present height condition to the reduced height, so as to hoist the towers later to the upper levels.

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[46] Transcript day 4, p87 lines 18-27, p89 lines 2-31

[47] AB vol 3 at pp 819-820

[48] AB vol 3 at p819

[49] AB vol 3 at p818

> For this to happen, we would need to modify the trolley from current set up.
>
> This would take additional time and checking from our side.
>
> Please note, this manner also was never done at any previous projects and need additional verification from our Static side.
>
> We request from your side, to not wait, but use all other means to proceed to carry on with the works to lower the towers by disassembling the Top Construction portion and frames manually or by using the Fork-lift method.
>
> **We always highlighted this issue many times to all the previous construction management team of this project, who knew that, <u>any change from the Design stage Structural Construction drawings, will have repositioning difficult[] situation which is being faced now</u>.**
>
> Moreover, the same will happen to the upper levels, where we need to see what modification is required for the Tower set up to cater to the new structural layout!!
>
> Please provide all info that Paulo had requested in previous email, for us to expedite the works at the earliest.
>
> [emphasis in original]

25 On 24 October 2014, the Plaintiff sent the Defendant its slab formwork drawing for the third storey. The Plaintiff informed the Defendant that "the 1.2m Staxo frame need to change to 0.9 frame to move out the Staxo table slab formwork in the perimeter edge beam 1.0m depth". The Plaintiff gave the Defendant the option of exchanging the 1.2m frame with a 0.9m frame, or adding a 0.9m frame with a variation order.[50]

26 On 27 October 2014, the Defendant replied asking the Plaintiff to bear in mind the "1m beam" so that they can avoid the problems faced with the first storey and reminded the Plaintiff to double check the "design on the dismantling part". The Defendant otherwise agreed with the Plaintiff's

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[50] AB vol 3 at pp 829, 846

formwork drawings.[51] On the same day, the Plaintiff replied noting the Defendant's email.[52]

27 On 29 October 2014, the Plaintiff emailed the Defendant stating "[a]s discussed [through] phone, [w]e will proceed for the option attached below".[53] From the email exhibited in evidence, it is not clear what the "option attached" refers to. The Defendant claims that this refers to the parties' agreement to use the forklift to reposition the frames for the higher floors, rather than to amend the formwork design.[54] The Plaintiff claims that this agreement related to changing the design of the formwork[55] which is why, on 31 October 2014, the Plaintiff sent a variation order to the Defendant to, *inter alia*, reduce the 1.2m frame to a 0.9m frame.[56] This variation order, however, was never accepted by the Defendant.[57] Subsequently, on 21 November 2014, the Plaintiff sent the Defendant an email attaching a minutes of meeting dated 21 November 2014, wherein it was recorded that the third storey slab formwork design would, as discussed, be revised "as per original design" and the "[r]eservation list for the VO in 3rd Storey Slab formwork would be release. Since we would use the original design".[58] This is consistent with the undisputed fact that the 31 October 2014 variation order was never accepted by the Defendant and the formwork design was ultimately never amended.

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[51] AB vol 3 at p 845

[52] AB vol 3 at p 844

[53] AB vol 3 at p 844

[54] Defendant's closing submissions at pp 6-7

[55] Jerry George Varghese's AEIC at para 15

[56] Plaintiff's bundle of affidavits at pp 24-27

[57] Jerry George Varghese's AEIC at para 16, Defendant's closing submissions at p 7

[58] AB vol 3 at pp 886-887

28 For the construction of the subsequent storeys, the Defendant ended up "remov[ing] one frame (from the staging) in order to create enough space to loosen/lower the framework and use a forklift to get the formwork to the crane, to be lifted to the next storey".[59]

Supply of beam connector plates and Staxo 40 Frame

29 Separately, the Defendant requested for the Plaintiff to supply additional beam connector plates and a Staxo 40 Frame. The Defendant issued a purchase order for 1,000 beam connector plates on 25 July 2014[60] and on 25 August 2014, the parties concluded a contract for the Plaintiff to supply 1000 beam connector plates at a price of $767.50.[61] On 10 October 2014, the parties concluded a separate contract for the Plaintiff to supply one set of Staxo 40 Frame at a price of $8,160.[62]

Payment claim and settlement negotiations

30 On 28 February 2015, the Plaintiff issued Payment Claim No 11 for a sum of $472,443.66 ("the February 2015 Payment Claim").[63] The Plaintiff's claim in the present suit is premised on the February 2015 Payment Claim.

31 From March to June 2015, the parties were in active discussion about the possibility of settling the Plaintiff's claims against the Defendant. The following offers were made by the Defendant, but rejected by the Plaintiff:

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[59] Arasappan Palaniappan's supplementary AEIC at para 16

[60] AB vol 4 at p 955

[61] AB vol 4 at pp 956-957

[62] AB vol 4 at pp 958-959

[63] AB vol 2 at p 369

(a) in April 2015, the Defendant handed the Plaintiff eight post-dated cheques totalling $220,000 to be paid in eight monthly instalments from May to December 2015, but this was rejected by the Plaintiff on 23 April 2015[64]; and

(b) in June 2015, the Defendant offered the Plaintiff six post-dated cheques for a total sum of $321,000 but the Plaintiff insisted on an additional personal guarantee from the Defendant's director, Ng Chai Poh, who refused to give one, and hence, this settlement attempt failed as well.[65]

The Plaintiff's claim and the Defendant's counter-claim

32 The Plaintiff's claims can be broken down in the following way:

(a) $226,429.58 for rental of the formwork under the contract (after taking into account $113,376.65 already paid by the Defendant)[66] ;

(b) $166,968.03 (before GST) for the extended rental of the formwork[67]; and

(c) $36,662.52 (before GST) for the Staxo 40 Frame[68];

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[64] Boon Chun Wui's AEIC at paras 15-16; Peter Tan's AEIC at paras 12-14; Ng Chai Poh's AEIC at para 40

[65] Boon Chun Wui's AEIC at paras 19-20; Peter Tan's AEIC at paras 17-21; Ng Chai Poh's AEIC at para 41

[66] SOC at para 2(a); Plaintiff's closing submissions at para 2

[67] Plaintiff's closing submissions at para 5

[68] Plaintiff's closing submissions at para 3

(d) $767.50 (before GST) for the supply of beam connector plates[69] ;

(e) $42,015.61 (after GST) for the damage caused to the formwork[70] .

The Plaintiff acknowledges that the Defendant has already made payment of $14,707.36 in relation to items (b) to (d) above, and hence, reduces its claim accordingly.[71] The Plaintiff computes its total claim for (b) to (d) to be $203,998.56, after adding GST and deducting the $14,707.36 already paid.[72]

33 The Defendant's counterclaims are as follows:

(a) $100,905 and damages to be assessed for losses caused by the Plaintiff's failure to deliver the lift cores for both the passenger and cargo lift cores when a request was made[73]; and

(b) $180,905 and damages to be assessed for losses caused by the defects in the design of the formwork.[74]

34 I note that the parties are in agreement that a sum of $166,084.10 has been paid by the Defendant[75] (which is roughly the two sums of $113,376.65 and $14,707.36 conceded by the Plaintiff at [32] above, plus the additional

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[69] Plaintiff's closing submissions at para 4

[70] SOC at para 2(c); Plaintiff's closing submissions at para 7

[71] Plaintiff's closing submissions at para 3

[72] Plaintiff's closing submissions at para 6

[73] Defence and Counterclaim (Amendment No 1) ("Defence") at para 8

[74] Defence at para 9

[75] Plaintiff's opening statement at para 6; Ng Chai Poh's AEIC at para 9

$40,000 security deposit which the Plaintiff received). I shall thus proceed by ascertaining the Plaintiff's total claim without deducting any sums for monies that have been repaid, and then, deduct the full $166,084.10 from the global sum owed to the Plaintiff.

Issues

35 In the present judgment, I shall consider the parties' claims in the following order:

(a) Plaintiff's claim for sums due under the contract prior to any variation, and extended rental, including the rental of the additional Staxo 40 Frame

(b) Plaintiff's claim for the purchase price of the beam connector plates

(c) Plaintiff's claim for damage caused to its formwork

(d) Defendant's claim for damages caused by the Plaintiff's delay in delivering formwork for lift core

(e) Defendant's claim for damages caused by the Plaintiff's defective formwork design

Sums due under the contracts and extended rental

36 The Plaintiff's claim for rental of its formwork and the consumables supplied has been broken down in the following way in the February 2015 Payment Claim:

(a) Anticipated sums due under the contracts (both for rental and purchase of consumables): the Plaintiff claims that $315,706.75 (which is $337,806.23 after GST) is owed to it under the contracts[76]. The way the sum of $315,706.75 was derived has been detailed in the February 2015 Payment Claim, which reflects that *most* of the materials were leased for a period of four months and two weeks.[77] I note that this sum is roughly the same as the $339,806.23 claimed at [32(a)] above (being $226,429.58 + $113,376.65).

(b) Extended rental: the Plaintiff claims $166,968.03 (or $178,655.79 after GST) for the rental of its formwork after the contractually stipulated period. The way this was derived has been detailed in the February 2015 Payment Claim, which reflects that for most of the items supplied, the extended rental is charged from August 2014 to February 2015.[78]

(c) Rental of additional Staxo 40 Frame from October 2014 to February 2015: the Plaintiff claims $36,662.52 (or $39,228.90 after GST) as detailed in the February 2015 Payment Claim under "Additional materials for Staxo Tower (494-000779-Q8).[79]

37 In response to the Plaintiff's claims, the Defendant submits that:

(a) the Plaintiff did not prove that it only delivered the goods and materials *when requested* by the Defendant[80];

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[76] Plaintiff's closing submissions at para 2

[77] AB vol 2 at pp 370-371

[78] AB vol 2 at pp 372-374

[79] AB vol 2 at p 372

(b) the Plaintiff did not prove that *only the requested goods and materials* were delivered to the Defendant[81];

(c) the Plaintiff's goods were not delivered in a *good, usable condition*[82];

(d) the Plaintiff has not shown that it delivered the goods requested within a reasonable time of the Defendant's request[83];

(e) the Plaintiff has not proven that the goods and materials comprised in the Delivery Notes were in fact delivered to the Defendant[84]; and

(f) the Plaintiff has not adduced proof of when the goods were returned and any late returns were the fault of the Plaintiff.[85]

38 In my view, none of the Defendant's objections can withstand scrutiny. The Defendant does not dispute that the Plaintiff's claims are supported by signed Delivery Notes. While the Defendant does assert that several Delivery Notes were signed by *unauthorised* persons, this objection cannot take the Defendant very far because (a) it is undisputed that many of the Delivery Notes were properly signed by the Defendant's foreman, Mr Ng Sing Lye[86], (b) the allegedly unauthorised Delivery Notes have not been specifically

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[80] Defendant's closing submissions at paras 42-47, 57

[81] Defendant's closing submissions at paras 48-50

[82] Defendant's closing submissions at para 51

[83] Defendant's closing submissions at para 52

[84] Defendant's closing submissions at para 53

[85] Defendant's closing submissions at paras 54-55

[86] Ng Sing Lye's AEIC at para 10; Transcripts, day 3, p 82 lines 7-14

identified in the pleadings and closing submissions (although some reference was made to it when Ng Sing Lye was cross-examined[87]), and (c) it is unbelievable that the Delivery Notes were indeed signed by unauthorised personnel over such a substantial period of time without the Defendant eventually realising that unauthorised deliveries were being made and raising the matter with the Plaintiff and/or stopping the unauthorised acceptance of deliveries. Ng Sing Lye claimed that he did call the Plaintiff to protest the deliveries but could not communicate with an unknown lady who picked up the phone because of a language barrier.[88] However, there is no evidence to suggest such a call was made apart from Ng Sing Lye's bare allegation. Moreover, if the Defendant was unsuccessful in raising the matter via a phone call, it would be odd for them not to take the matter up further with the Plaintiff's personnel with whom they were familiar and in active communication with at that point. Based on the evidence before the court, there has not been a *single instance* where the Defendant had, during the course of the deliveries, *protested* the Plaintiff's delivery of goods on the basis that it was delivered without a request, it was not delivered within a reasonable time, the items delivered were wrong, or that the materials delivered were not in a good and usable condition. Further, looking at the minutes of meetings, this complaint was *never* raised at the site meetings. Indeed, the Defendant's case is based solely on broad objections that the Plaintiff has *failed to prove* certain facts; ***particulars*** of unrequested deliveries or instances of poor quality deliveries *etc* are ***conspicuously missing*** from the defence. In most instances, the Defendant stops short of saying that the Plaintiff's materials were not requested for, or were not in good and usable condition *etc*.

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[87] Transcripts day 3, p 92

[88] Transcript day 3, p83

39 The Defendant did raise one example in relation to the delivery of formwork after the Project drawings were amended on 25 July 2014. It refers to the email sent on 29 July 2014 at 10.39am asking the Plaintiff to stop delivery of materials and rental charges until it decides how to proceed (see [20] above). The Plaintiff claims however that thereafter, the Defendant requested for the deliveries to continue.[89] It is clear on the facts that the parties eventually proceeded with formwork based on the *old design* (see [27] above). It is thus likely that the Defendant did ask the Plaintiff to resume delivery at some point (even if it is not clear when). Further, it is undisputed that the Defendant never protested or repudiated any of the deliveries made by the Plaintiff. This is inconsistent with the Defendant's allegation that the Plaintiff had delivered goods despite the Defendant's express instructions to stop delivery. Indeed, even now, the Defendant has failed to identify the *specific deliveries* which it claims were wrongful and unrequested for.

40 I also note the Defendant's allegation that the Plaintiff has not proven that the goods and materials that it is claiming payment for were *actually delivered* to the Defendant. In my view, given the existence of signed Delivery Notes, it is incumbent on the Defendant to identify the specific Delivery Notes which it claims were signed *without the actual delivery of the goods*. The fact that they have failed to cite even a single instance where that was the case is, to me, suggestive of the fact that this defence is slightly disingenuous. The Defendant would know whether it did receive the items in the Delivery Notes and should be in the position to particularise its complaints. By failing to do so, the Defendant is essentially alleging with this defence that *none* of the Delivery Notes reflect *actual* deliveries of materials, and hence that none of the Plaintiff's claims should be entertained; this is clearly not a true reflection

[89] Plaintiff's closing submissions at para 33

of what happened on the ground – the Defendant did complete the Project with the Plaintiff's formwork.

41 Thus, I find that the Plaintiff has sufficiently proven its entitlement to the sums due under the contract. The Plaintiff has kept a meticulous record of the items delivered to the Defendant in the February 2015 Payment Claim, and these are supported by signed Delivery Notes. Further, the Defendant did complete the Project with the Plaintiff's formwork. While there may not *always* be documentary evidence of *when* the Plaintiff's goods were requested by the Defendant (I note there is at least *some* evidence of the Defendant's requests – see [12] above), the fact that the deliveries were accepted by the Defendant without any protest is enough to establish, at least *prima facie*, that the goods were delivered in accordance with contract. The burden is then on the Defendant to prove, or at least cite specific instances, where goods were delivered prematurely, late, or in an unusable state. The Defendant has not been able to do so.

42 In relation to the return of the goods, the Defendant first states that the Plaintiff has not proven *when* the goods were returned. It is clear from the Defendant's *own witnesses* that returns did take place and were only complete in June 2015. The Defendant's director, Ng Chai Poh, stated in his affidavit of evidence in chief ("AEIC") that the Plaintiff's equipment was only fully returned by June 2015 and exhibited a whole series of return receipts at Tab 7 of his AEIC. Indeed, I note that it is the Defendant's own case that there was delay in deliveries and that even as late as end January 2015, the parties were still discussing delivery dates.[90] Thus, the Defendant cannot be suggesting that

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[90] Arasappan Palaniappan's AEIC at paras 17-21

deliveries were complete before *February 2015*, which is the extent of the Plaintiff's present claim.

43 The Defendant, however, also claims that the delays in the returns were the Plaintiff's fault. In its Defence and Counterclaim (Amendment No 1) at para 5, it pleads:

> The Defendants further aver that the Plaintiffs did not properly schedule their acceptance of the Defendants' return of the formwork and accessories under the Contract. Due to the Plaintiffs' inability to properly schedule these returns, the formwork and accessories remained with the Defendants pending the Plaintiffs' schedule. However, the Defendants had already put the Plaintiffs on notice that the Defendants would not pay the Plaintiffs rental for those formwork and accessories if the formwork and accessories remained with the Defendants due to the Plaintiffs' inability to properly schedule these returns. As such, the Defendants are not liable for these rental charges.

I accept that there is some correspondence suggesting that there were occasions where the Plaintiff could not always accept returns on the Defendant's proposed dates because of stock taking exercises.[91] Nevertheless, as the Defendant's project manager, Mr Palaniappan, himself concedes, there were occasions when the Defendant had to cancel on the scheduled return dates as well. Clause 10 of the Principal Contract merely states that the Defendant is obliged to give three days' advance notice to the Plaintiff prior to any return[92]; it is silent on the parties' respective obligations to be available at all times to receive returns, or to keep to the scheduled return dates. In my view, unless the Plaintiff was unreasonable in its inability to accept returns, the Defendant is obliged to bear the rental of the Plaintiff's formwork until it is returned. Exigencies such as stock taking exercises, which render the

[91] Arasappan Palaniappan's AEIC at tab 3, pp 123-126

[92] AB vol 1 at p 48

Plaintiff unable to accept returns for a few days, cannot be said to be unreasonable. In any event, I note that the Defendant has not been able to identify what portion of the extended rental claimed in this case, if at all, was incurred *due to* the Plaintiff's inability to accept returns on the Defendant's proposed return dates.

44 Finally, the Defendant takes objection on the ground that under cl 6 of the Principal Contract, extended rental can only arise if the Defendant makes a written request to the Plaintiff to extend the rental period, and there is no evidence of any written request. In my view, the Defendant cannot rely on *its own failure to make a written request* to deny the Plaintiff's claim for extended rental. The Defendant has not produced any evidence to show that the Plaintiff's materials were returned *before February 2015*, and hence that the claim for extended rental is unfounded. On the contrary, while the Plaintiff has not given precise evidence on when each item was delivered and returned, the Delivery Notes, return receipts, and evidence of the Defendant's own witnesses on the returns process as discussed above is more consistent with the Plaintiff's case.

45 Thus, I find that the Plaintiff has proven that it had kept its end of the bargain under the contracts, and that the sums owed to it for the supply of consumables and for the rental of its formwork should be paid by the Defendant. I note that the Defendant has not raised any ground to dispute the Plaintiff's *computation* of the sums owed in the February 2015 Payment Claim, or the sum claimed for the additional Staxo 40 Frame supplied pursuant to the variation contract concluded on 10 October 2014 (see [29] above). I therefore order that the Defendant pay the Plaintiff a sum of:

(a) $337,806.23 for the sums owed to it under the contracts;

(b) $178,655.79 for extended rental; and

(c) $39,228.90 for the rental of the additional Staxo 40 Frame from October 2014 to February 2015.

It should be noted that these sums include GST.

Beam connector plates

46 It is undisputed that the parties entered into a contract for the supply of additional beam connector plates at a price of $767.50 (before GST) on 25 August 2014 (see [29] above). The Defendant has raised no defence to this. I therefore find the Defendant liable to pay this sum of $821.23 (inclusive of GST) to the Plaintiff.

Damage to the Plaintiff's formwork

47 The Plaintiff claims $42,015.61 (after GST) for the damage caused to the formwork rented out to the Defendant. This has been particularised in the February 2015 Payment Claim, which states that losses of $38,340.28 arose because materials were destroyed, and $928.65 was spent on reconditioning materials which could be salvaged.[93] The Plaintiff primarily relies on the following terms of the Principal Contract[94]:

(a) the goods delivered are presumed to be in working condition if the Defendant raises no objection within three working days after receiving delivery (cl 8);

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[93] AB vol 2 at p 372

[94] Plaintiff's closing submissions at para 23

(b) the Defendant shall pay the Plaintiff for damaged and lost goods based on the price list at Annex F (cl 11); and

(c) the Defendant shall be present at the Plaintiff's warehouse to conduct a joint inspection to assess damages and losses and if the Defendant fails to be present during the inspection exercise, the finding made solely by the Plaintiff shall be conclusive and binding (cl 11).

The Plaintiff submits that the Defendant never attended a joint inspection, and hence, its findings are final.[95]

48 The Defendant submits that:

(a) the Plaintiff cannot rely on the contractual clauses because (i) they were not pleaded, and (ii) they are unreasonable under the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) ("UCTA");

(b) the Plaintiff has not explained the criteria for destroyed or reconditioned goods and how it applied to the goods returned by the Defendant[96]; and

(c) the joint inspection report has not been adduced as evidence in the present proceedings[97].

49 In my view, the contract terms are clear – the Defendant did not object to the quality of the goods delivered to the Defendant at any point, and even signed the Delivery Notes. The evidence of the Plaintiff's witness, Tan Soon

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[95] Plaintiff's closing submissions at para 23

[96] Defendant's closing submissions at para 64

[97] Defendant's closing submissions at para 66

Kwan, is that when the goods were returned to the Plaintiff, there was never any joint inspection.[98] The Defendant maintains that there were joint inspections and/or that it was the Plaintiff's fault that the joint inspections were not conducted. In my view, the Plaintiff's position is more consistent with the evidence.

50 First, on the stand, the Defendant's project manager, Mr Palaniappan conceded that joint inspections were not conducted[99]:

> A: Actually, beginning the time, first one or two load, we sent them back. They---we don't ask them to come for joint inspection.
>
> Q: So you only honoured the contract with returns with tool deliveries, is it?
>
> A: I do---I not---I got no idea about that. But we sent the material to them. They receive the material, but they never inform us early. 1 week later, they say this material is rejected...
>
> Q: Yes, Mr Pala. And--
>
> A: So---
>
> Q: ---that's why you should have attended the joint inspection.
>
> A: Yes.
>
> …
>
> A: Actually, in this case, my--my intention, why I write this email, we already sent the material, they also received it. But they never get back to us at least 2, 3, days.
>
> Q: Yes, Mr Pala, but---
>
> A: Almost 1 week, 10 days' later, they say, "Reject".
>
> Q: Yes, but Mr Pala, that's because---
>
> A: Yah
>
> Q: ---no joint inspection took place---

[98] Transcript, day 2, p 153 line 27 to p 154 line 6

[99] Transcript day 4, p 78 lines 8-17; p 79 lines 1-9

A: Yah.

51 Second, contemporaneous email communication from the Plaintiff to the Defendant records that the Defendant failed to attend joint inspection. In an email sent on 27 February 2015, 11.58am, the Plaintiff emailed the Defendant as follows[100]:

> Dear A Palaniappan,
>
> Pls send your guy to collect the damaged materials as per attach by 6th Mar 15. If no we will dispose of the materials after that.

52 The Defendant replied on the same day, at 1.21pm as follows[101]:

> Joanne
>
> If the material damaged why your side received? Can I know the actual problem? Even if we re-collect that material for what?
>
> Hi Boon – kindly check what is going on. We had return the materials about 3 weeks back why the below e-mail coming now?

53 The Plaintiff's Tan Soon Kwan then replied to the Defendant on the same day at 5.31pm[102]:

> Dear Palaniappan,
>
> These damaged materials are all from your returns. If you see the attached mail, you will recall that we have requested for participation in joint inspection of your returns. We also inform your representative who accompanies the return trucks.
>
> *So far you have not replied to the invitation nor turned up for any joint inspection. If you have participated in the joint*

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[100] Arasappan Palaniappan's AEIC at p 146

[101] Arasappan Palaniappan's AEIC at p 146

[102] Arasappan Palaniappan's AEIC at p 145

> *inspection, you would have seen these damaged materials physically.*
>
> We are giving notice that we will dispose of these damaged materials by 6 March. It is perfectly acceptance if do not want to collect these damaged materials. We will proceed with the disposal.
>
> [emphasis added]

54 On 7 March 2015, at 11.45am, the Defendant's Arasappan Palaniappan replied Tan Soon Kwan's email, stating:

> Hi Tan Soon Kwan
>
> Your below e-mail totally unaccepted. so far I always liaise with your project in charge Boon, I had requested your Whyman to be here for joint inspection many time but never present??? then how you want us to conduct joint inspection?
>
> Take note 1st thing is your fault if you are saying some materials damaged means you should revert back that material during our return. But your side no one do that? during our material return you receiver already accepted then now you are writing these type e-mail totally unaccepted. Our side very clear based on your material acceptance DO consider these materials are return to doka that's it.

55 It is clear from the above that a joint inspection of the damaged materials was *not conducted*. This was because the Defendant expected a joint inspection to be conducted at the Project site, even though cl 11 of the Principal Contract clearly states that the joint inspection shall be conducted at the Plaintiff's warehouse. Further, while the Plaintiff did take a while to raise issues with the quality of the materials returned, there is no clause within the contract requiring the Plaintiff to reject the goods within a certain period if joint inspection is not undertaken.

56 The only question which remains, therefore, is whether (a) the Plaintiff may rely on the contractual clauses given that they were not specifically

pleaded, and (b) the clauses are invalid under UCTA. I first consider the pleadings objection.

57 In *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*"), the Court of Appeal held that adhering to the rules of pleadings is important because (a) it promotes good case management and results in cost and time saving efficiencies (at [36]), and (b) pleadings serve to uphold the rules of natural justice because it avoids trial by ambush (at [37]). The Court of Appeal, however, added that "[p]rocedure is not an end in itself, but a means to the end of attaining a fair trial" (*V Nithia* at [39]). The law permits a departure from the general rule of pleadings where no irreparable prejudice would be caused to the other party or where it would be clearly unjust for the court not to do so (*V Nithia* at [40]). The court therefore does have a degree of discretion in allowing parties to rely on points that were not expressly or specifically pleaded.

58 In the present case, the Plaintiff's Statement of Claim is, undoubtedly, bare. The Defendant is correct to point out that the Plaintiff did not plead the specific clauses in the contract which it is presently relying on. Nevertheless, I find that the Defendant was *not* irreparably prejudiced by the Defendant's failure to plead the contractual clauses because:

(a) the contract itself was pleaded in the Statement of Claim;

(b) the Plaintiff's reliance on the above contractual clauses became plain at the time AEICs were filed (see for example, Tan Soon Kwan's AEIC at para 10);

(c) the Plaintiff expressly referred to the contract clauses in its Opening Statement; and

(d) the Defendant had full opportunity during trial and closing submissions to question the Plaintiff on whether joint inspections were held *etc* and to make submissions on the Plaintiff's reliance on the contractual clauses.

59 Indeed, I observe that the Defendant has been unable to explain the specific prejudice it suffered from the Plaintiff not having specifically pleaded the contract clauses that it was going to rely on. In the circumstances, I find that the Defendant had sufficient notice of the Plaintiff's reliance on the contractual clauses and hence, reject the Defendant's pleadings objection.

60 I next consider whether the contractual clauses relied on by the Plaintiff are invalid under UCTA. The Defendant relies on s 3 of UCTA, which states:

> **Liability arising in contract**
>
> 3.—(1) This section applies as between contracting parties where one of them deals as consumer or on the other's written standard terms of business.
>
> (2) As against that party, the other cannot by reference to any contract term —
>
> (a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or
>
> (b) claim to be entitled —
>
> (i) to render a contractual performance substantially different from that which was reasonably expected of him; or
>
> (ii) in respect of the whole or any part of his contractual obligation, to render no performance at all,

> except in so far as (in any of the cases mentioned in this subsection) the contract term satisfies the requirement of reasonableness.

61 The first requirement in s 3(1) is that the Defendant must be dealing as a consumer or on the Plaintiff's written standard terms of business. In this case, the Defendant was dealing on the Plaintiff's written standard terms of business. The question that then arises is whether the relevant clauses "exclude or restrict any liability" for breach of contract (s 3(2)(a)), or otherwise allow the Plaintiff to render no performance or a substantially different performance from that which was reasonably expected (s 3(2)(b)). In particular, s 13(1) of UCTA defines "exclusion or restriction of any liability" as including "excluding or restricting any right or remedy in respect of the liability" and "excluding or restricting rules of evidence or procedure". In my view, there is a strong case that the provisions deeming the goods delivered to be in working condition if no objections are raised by the Defendant, and rendering the Plaintiff's findings conclusive and binding, are caught under s 3(2)(a) read with s 13(1)(b) and (c) of UCTA.

62 The court must therefore consider whether the clauses satisfy the requirement of reasonableness. The requirement of reasonableness is that "the term shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made" (s 11(1) of UCTA). The burden is on the Plaintiff to show that the contractual terms satisfy the requirement of reasonableness.

63 In my view, the present contractual clauses cannot be said to be unreasonable. The Defendant was given an opportunity at every stage to object to the quality of the materials delivered and the Plaintiff's findings on the

condition of the materials returned (via a joint inspection). There is no suggestion that three days was too short a time or that requiring the Defendant to attend a joint inspection was unreasonable. Indeed, there is *no evidence* that the Defendant protested the quality of the Plaintiff's goods *after* the three-day timeline. It is also well-established that "when dealing with two commercial entities a court should not be too quick to intervene on the ground of unreasonableness" (*Kay Lim Construction & Trading Pte Ltd v Soon Douglas (Pte) Ltd and another* [2013] 1 SLR 1 at [93]). The Defendant is clearly a commercial entity with experience in the construction trade. While it is less of an expert in the formwork business than the Plaintiff is, there is no suggestion that there was a lack of alternative formwork suppliers in the industry, or that the Defendant was otherwise forced to accept the Plaintiff's terms. In the circumstances, I do not find any unequal bargaining power (as the Defendant insinuates[103]), nor do I find the contractual clauses unreasonable.

64 To sum up, I find that the Plaintiff is entitled to rely on the relevant contractual clauses and under cl 11 of the Principal Contract, the Plaintiff's findings as to the condition of the goods returned are conclusive and binding on the Defendant. While an inspection report with the Plaintiff's findings on the damaged goods has not been adduced in evidence, the February 2015 Payment Claim contains the Plaintiff's findings and is sufficient evidence for present purposes, especially since the Defendant is not in any event allowed to challenge the findings recorded therein. I would add that the contemporaneous emails exchanged at the material time suggest that the Plaintiff did indeed find defects in the goods returned, and brought it immediately to the Defendant's attention. The claim was not simply made up for the purposes of litigation. As

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[103] Defendant's closing submissions at para 30

such, the Plaintiff has established its claim of $42,015.61 (after GST) for the damage cause to the formwork rented out to the Defendant.

Delay in delivering formwork for lift core

65 The Defendant submits that the Plaintiff should have delivered the formwork for the lift cores by mid-March 2014 because they were informed in February 2014 that the Defendant required formwork for the lift cores.[104] Instead, formwork for the cargo lift core was only delivered in early July 2014, and formwork for the passenger lift core was only delivered in early September 2014.[105] The Defendant pleads that this amounts to a breach of contract.[106] Specifically, the Defendant claims that:

(a) if separate quotations/contracts were needed for the lift core, the Plaintiff should have put the paperwork in place immediately upon being told that the Defendant needed the formwork for the lift cores in February 2014, rather than only in end June/mid-July 2014[107];

(b) the Plaintiff departed from its usual procedure by finalising the lift core drawings and confirming it had the materials before issuing the Cargo Lift Quotation and the Passenger Lift Quotation, and it did so because it did not have the goods and materials on hand[108];

(c) the Plaintiff did not actually need the drawings and detailed dimensions that it asked for[109]; and

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[104] Defendant's closing submissions at paras 1 and 69

[105] Defendant's closing submissions at para 79

[106] Defence at para 8

[107] Defendant's closing submissions at paras 69-71, 81, 82

[108] Defendant's closing submissions at paras 72-73

(d) this caused significant delay to the Defendant[110].

66 The Plaintiff, however, claims that it only knew about the Defendant's need for formwork for the lift cores in April 2014.[111] The only request made by the Defendant for lift core formwork was on 25 June 2014, after which the first batch of cargo lift core formwork was delivered.[112] Further, the Plaintiff claims that its alleged late delivery of formwork did not cause actual delay to the Defendant's construction because the columns had to be erected before the construction of the lift cores started, and as of September 2014, only five columns had been built.[113]

67 In my view, the Defendant's counter-claim for damages arising from the Plaintiff's alleged delay in delivering formwork for the lift core is unsustainable. First, the Defendant has been unable to identify a breach of contract on the Plaintiff's part given that the Plaintiff was only under a contractual obligation to deliver the lift core formwork *after* it signed the Cargo Lift Quotation and the Passenger Lift Quotation (*ie*, the contracts to supply the formwork for the lift core), which took place on 30 June 2014 and 15 July 2014 respectively. It is undisputed that the Principal Contract did not impose on the Plaintiff an obligation to deliver formwork for the lift cores – this was precisely why the parties signed the Cargo Lift Quotation and the Passenger Lift Quotation. It is also undisputed that soon after the parties signed the quotations, the Plaintiff commenced delivery of the lift core

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[109] Defendant's closing submissions at paras 75-77

[110] Defendant's closing submissions at para 92

[111] Plaintiff's closing submissions at para 46

[112] Plaintiff's closing submissions at para 47

[113] Plaintiff's closing submissions at para 49

formwork. The Defendant's main complaint is that there was significant delay in the preparation of the contracts for the supply of the lift core formwork. This, however, *does not amount to a breach of contract*. The Plaintiff was not under any contractual obligation to prepare the Cargo Lift Quotation and/or the Passenger Lift Quotation within a specified time. Even if the Defendant is correct that the Plaintiff was delaying the signing of the lift core quotations because it did not have the materials on hand to commence the supply of formwork for the lift core earlier, this seems to me to be the only responsible thing to do. I see no issue with the Plaintiff choosing to contractually agree to supply formwork for the lift cores *only after* it ascertained the designs for the lift core and the availability of materials in its warehouse.

68 Second, I find also that the Plaintiff's version of events is more believable. The Defendant claims that it informed the Plaintiff of its need for lift core formwork way back in February 2014, and that the Plaintiff had sufficient information to commence the supply of formwork by March 2014. The Defendant further claims that it expected delivery of the lift core formwork by mid-March 2014. In my view, the evidence does not sit comfortably with the Defendant's version of events:

(a) First, the email correspondence seems to suggest that the parties only started discussing the lift core drawings on 10 April 2014 (see [14] above), the dimensions of the cargo lift core were only confirmed on 13 June 2014 (see [15] above), and the dimensions of the passenger lift core were only confirmed on 14 July 2014 (see [17] above). In *none* of the email correspondence did the Defendant raise questions about why the lift core drawings were only submitted so late, state that the Plaintiff already had enough information to proceed and should not be delaying the process with additional requests for

information, or otherwise complain that the lift core formwork should have been delivered much earlier. The only evidence of urgency on the Defendant's part is in its email on 25 June 2014, where it asked the Plaintiff to "proceed with the liftcore material to be delivered to site as soon as possible"[114] (see [15] above). Shortly after that, on or about 1 July 2014, the Plaintiff commenced delivery of the cargo lift core formwork (see [16] above).

(b) Second, in the minutes of meeting dated 9 April 2014 attended by representatives of both the Plaintiff and the Defendant, the delivery dates for both the "Column Formwork" and the "Slab Formwork" were agreed upon, but for the "Lift core", the minutes state "As agreed, Revise Offer Price would be forwarded to Customer once we got 1st the Construction drawing. (Structural drawings in particular)".[115] Thus, as of 9 April 2014, the agreement seemed to be that the lift core formwork would only be delivered after the drawings and contract price was finalised. There is no sign in the minutes that the parties expected the lift core formwork to be delivered earlier (as alleged now by the Defendant).

(c) An email sent by the Defendant's quantity surveyor, one Ong Boon Choon, on 13 June 2014 to the Plaintiff's Peter Tan states:

> Dear Mr Peter Tan,
>
> Kindly provide the system formwork for liftcore to the above mentioned project. Please find the attached file for your information.

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[114] AB vol 1 at p 78; AB vol 3 at pp 719-720

[115] PBOD vol 4 at p 1218

> This strongly suggests, as the Plaintiff submits, that confirmation that system formwork for the lift core was needed was only given by the Defendant in June 2014.[116]

69 To conclude, given my finding that (a) the Defendant's claim that it had requested lift core formwork in February 2014 is unbelievable, and (b) in any event, the Defendant can show no breach of contract on the Plaintiff's part in allegedly delaying the preparation and signing of the Cargo Lift Quotation and the Passenger Lift Quotation, I find that the Defendant's counter-claim for damages due to the Plaintiff's alleged delay in delivering the lift core formwork must fail. I note that the Plaintiff also questions whether *actual delay* to the project was in fact caused given the columns had not been fully erected by September 2014 (see [66] above), but given my findings on the other issues, I need not consider that any further.

Defective formwork design

70 Finally, the Defendant claims for damages arising from what it alleges to be defectively designed formwork. In this regard, it is undisputed that the Defendant was unable to use the Plaintiff's formwork as intended: (a) the formwork could not be dismantled in a single piece, but instead had to be dismantled into smaller pieces; and (b) the Defendant could not wheel the formwork using a wheelbarrow or trolley, but instead had to use a forklift to move the frames to the next storey.[117] The only question is whether the above was caused by a defect in the Plaintiff's formwork design, rendering the Plaintiff in breach of contract.

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[116] Plaintiff's closing submissions at para 51(d); PBOD vol 4 at p 1351

71 The Plaintiff designs its formwork based on the structural or construction drawings of the construction site provided by the client. In this case, it is undisputed that the Plaintiff based its formwork designs for the Project (excepting the lift core formwork) on the structural drawings provided by the Defendant in February 2014 (see [11] above). The Defendant does *not* claim that the formwork designed and delivered by the Plaintiff was not designed in accordance with the February 2014 structural drawings. Rather, problems arose because of a *change in the Project drawings*, which the Defendant informed the Plaintiff about only on 25 July 2014 (see [18] above). The inquiry must therefore be focused on whether the Plaintiff was in breach of contract for not taking steps to remedy the situation after knowing about the change on 25 July 2014.

72 In this regard, the Defendant's complaints are as follows:

(a) the Plaintiff should have re-designed the formwork but did not do so[118]; and

(b) the Plaintiff made no attempt to warn the Defendant before delivering formwork based on the old design[119].

73 In my view, it is critical to look closely at the events that transpired after 25 July 2014. First, the emails exchanged between the Plaintiff and the Defendant on 25 July 2014 itself amply demonstrate that the Plaintiff's engineer *did warn* the Defendant that with the change of perimeter beam depth, "the Staxo Table type slab formwork will have difficulty to move out from the perimeter edge beam locations"[120] (see [19] above). Further, the

[118] Defendant's closing submissions at para 98

[119] Defendant's closing submissions at para 102

Plaintiff's subsequent email on 25 July 2014 at 5.31pm shows that the Plaintiff did warn the Defendant not to "assemble any Staxo towers till the design is resolved"[121] (see [19] above).

74 Second, the Plaintiff was clearly willing to amend its formwork design:

(a) in its email to the Defendant on 29 July 2014 at 11.54am, the Plaintiff indicated its willingness to revise its formwork design after receiving the finalised structural drawings[122] (see [21] above);

(b) on 24 October 2014, when the parties were communicating about the formwork drawings for the third storey, the Plaintiff informed the Defendant that the 1.2m Staxo frame should be exchanged with a 0.9m Staxo frame[123] (see [25] above); and

(c) on 31 October 2014, the Plaintiff sent a variation order to the Defendant to, *inter alia*, reduce the 1.2m frame to a 0.9m frame[124] (see [27] above).

75 The only reason the amendment was never made ultimately, it seems, is because the Defendant had rejected the proposed variation order for an amendment of the formwork design. In its closing submissions, the Defendant claims that it rejected the 31 October 2014 quotation because "the parties had already agreed to use a forklift to resolve the difficulty...".[125] In the

[120] AB vol 3 at p 753

[121] AB vol 3 at p 753

[122] AB vol 3 at pp 758-759

[123] AB vol 3 at p 846

[124] Plaintiff's bundle of affidavits at pp 24-27

[125] Defendant's closing submissions at p 7

circumstances, it does not lie in the mouth of the Defendant to complain that the formwork design was never amended. The evidence makes abundantly clear that a re-design of the formwork was offered to the Defendant, but rejected by it. Instead, the Defendant chose to proceed with the forklift method.

76 The Defendant relies on its first email sent on 25 July 2014 at 2.38pm, asking the Plaintiff to make the necessary amendments to its formwork design and send the appropriate materials over accordingly (see [18] above).[126] In my view, given the subsequent exchanges between the parties, that preliminary request was *clearly overtaken by events*, which include subsequent discussions on how the Project should proceed. It is not reasonable for the Defendant to have expected the Plaintiff to immediately start amending its formwork design after receiving the 25 July 2014 email. Indeed, as things transpired, the Defendant ultimately chose *not* to accept the variation order for an amended formwork design; the Plaintiff would have been out of pocket if it had simply gone ahead with the amendments.

77 In summary, it is clear that the Plaintiff's formwork was properly designed in accordance with the February 2014 structural drawings. Problems subsequently arose only because of the change in the Project drawings, which is not the fault of the Plaintiff. The Plaintiff did act reasonably in offering alternative solutions to the Defendant. However, the Defendant ultimately chose (for whatever reason) to reject the Plaintiff's offer to amend the formwork design. In the circumstances, there is no basis to find the Plaintiff liable for any loss caused to the Defendant due to the fact that the formwork could not be dismantled in one piece. For the above reasons, I dismiss the

[126] AB vol 3 at pp 754-757

Defendant's counterclaim for losses arising out of the allegedly defectively designed formwork.

Conclusion

78 In conclusion, I allow the Plaintiff's claims and dismiss the Defendant's counter-claims. The Plaintiff is awarded:

(a) $337,806.23 for the sums owed to it under the contracts;

(b) $178,655.79 for extended rental;

(c) $39,228.90 for the rental of the additional Staxo 40 Frame from October 2014 to February 2015;

(d) $821.23for the beam connector plates; and

(e) $42,015.61 for the damage caused by the Defendant to the Plaintiff's formwork.

Total: $598,527.76

79 After deducting the $166,084.10 which the parties agree has been repaid by the Defendant (see [34] above), I order that the Defendant pay the Plaintiff ***$432,443.66*** ($598,527.76 – $166,084.10 = $432,443.66).

80 I would add that this outcome is perfectly consistent with the Defendant's own position in settlement negotiations that outstanding sums were rightly due to the Plaintiff. If the Defendant truly believed that the Plaintiff did cause it loss such that the sums it owes the Plaintiff can be entirely set off by the loss caused to it (as it claims in the present suit), it is

inconceivable that the Defendant would have offered the Plaintiff up to $321,000 to settle the Plaintiff's claims.

81 I will hear the parties on costs and the appropriate interest to be ordered.

Andrew Ang
Senior Judge

Wee Xunji (CK Tan & Co) for the plaintiff;
Gan Kam Yuin and Eu Li Lian (Bih Li & Lee LLP) for the defendant.