

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

**[2021] SGHC 63**

Suit No 1298 of 2018

Between

Vim Engineering Pte Ltd

*... Plaintiff*

And

Deluge Fire Protection (SEA)  
Pte Ltd

*... Defendant*

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**GROUND OF DECISION**

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[Building and Construction Law] — [Building and construction contracts]  
[Building and Construction Law] — [Scope of works] — [Variations]  
[Building and Construction Law] — [Quantum meruit]  
[Building and Construction Law] — [Damages]  
[Evidence] — [Admissibility of evidence] — [Hearsay]

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**Vim Engineering Pte Ltd**  
**v**  
**Deluge Fire Protection (SEA) Pte Ltd**

**[2021] SGHC 63**

General Division of the High Court — Suit No 1298 of 2018  
Andre Maniam JC  
30 June, 1– 3, 7– 9 July 2020, 9 February 2021

22 March 2021

**Andre Maniam JC:**

**Introduction**

1 Where a construction contract stipulates that variation works shall be carried out only with written instructions from a designated person, can a contractor nevertheless get paid on his variation claims because he trusted that he would be paid notwithstanding what the contract said? The contractor (“Vim”) argued that “a gentleman’s word is his bond”,<sup>1</sup> and so its employer (“Deluge”) should pay for variation works that had been *orally requested*, although the contract between the parties stipulated that variation works shall be carried out ***only with written instructions*** from Deluge’s project manager (and there were no such written instructions).

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<sup>1</sup> Plaintiff’s Closing Submissions (“PCS”) at para 6.

2 After reserving my decision, I gave judgment substantially in favour of Deluge, with oral grounds. Vim has appealed and these are my written grounds of decision.

***The parties***

3 The defendant, Deluge, was a subcontractor of Samsung C&T Corporation (“SCT”), the main contractor for a building and construction project. Deluge in turn subcontracted certain plumbing and sanitary works for part of the project to the plaintiff, Vim (the “Subcontract”).

***Vim left the site before the main works were completed, and before the end of the defects liability period***

4 On 5 February 2018, Vim left the project site, and did not do any further work there. This was after the temporary occupation permit (“TOP”) was obtained on 20 October 2017, but before the end of the defects liability period (“DLP”) which ran for 12 months from the date the TOP was obtained.

***Vim’s claims***

5 Vim’s Subcontract sum was \$1,750,000 for its original scope of works (main works), excluding payment for any variations.<sup>2</sup> Vim pleaded that a balance payment of \$458,772.85 was due to it for the main works.<sup>3</sup> It claimed a further \$697,130.58 for alleged variation works.<sup>4</sup> Vim thus claimed a total of

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<sup>2</sup> Statement of Claim (“SOC”) at para 1.

<sup>3</sup> SOC at para 1.

<sup>4</sup> SOC at para 3.

\$1,155,903.43;<sup>5</sup> alternatively, it claimed a fair and reasonable sum based on *quantum meruit*.<sup>6</sup>

6 It was common ground that the value of the main works when Vim left the site was \$1,742,537.74, *ie*, \$7,462.26 less than Vim’s Subcontract sum of \$1,750,000. \$7,462.26 was reflected as an omission from the Subcontract sum in Vim’s revised final progress claim, which was sent to Deluge by email on 2 June 2018.<sup>7</sup>

***Deluge’s counterclaims***

7 Deluge said that it incurred costs of \$7,200 in completing the remaining main works (which was less than the \$7,462.26 contractual value of those remaining works),<sup>8</sup> and a further \$105,300 in attending to rectification works during the balance of the DLP, after Vim left the site.<sup>9</sup> These costs, totalling \$112,500, exceeded the balance Subcontract sum of \$7,462.26 by \$105,037.74. Deluge thus asserts a set-off and counterclaim for that sum of \$105,037.74.<sup>10</sup>

8 Deluge also claimed against Vim for back-charges (which Vim disputed) for:<sup>11</sup>

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<sup>5</sup> SOC at para 18.

<sup>6</sup> SOC at para 18.

<sup>7</sup> Affidavit of Evidence-in-Chief of Muruganandham Mathi Selvan (“Mr Anand’s AEIC”) at pp 2154 and 2157.

<sup>8</sup> Defence & Counterclaim (Amendment No. 1) (“D&CC”) at para 20.

<sup>9</sup> D&CC at para 21.

<sup>10</sup> D&CC at paras 22–23.

<sup>11</sup> D&CC at paras 12–19 and 53.

- (a) supply of manpower by Deluge to complete Vim's works (due to shortage of manpower provided by Vim and/or the failure of Vim to complete its works);
- (b) corresponding back-charges from SCT to Deluge for supply of manpower to complete works within the scope of Vim's Subcontract due to shortage of manpower provided by Vim and/or the failure of Vim to complete its works; and
- (c) penalties imposed by SCT on Deluge for health and safety infractions attributable to Vim.

9 Back-charges amounting to \$116,722.93 were incorporated into Deluge's payment certificates 10, 13, 14 and 15 (as deductions).<sup>12</sup> Deluge asserted a set-off and counterclaim in respect of a further \$870,507.09 comprised in its back-charge invoices 16A, 17, 18 and 19.<sup>13</sup>

## Issues

10 I address the following in turn:

- (a) what did Deluge pay Vim for the main works?
- (b) Vim's variation claims;
- (c) Deluge's claim for costs incurred in completing Vim's works; and
- (d) Deluge's claim for back-charges and/or damages.

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<sup>12</sup> D&CC at paras 15–16; Agreed Bundle of Documents ("ABOD") at pp 927, 2221, 2501 and 2837.

<sup>13</sup> D&CC at paras 17–19; ABOD at pp 2799, 3404, 4238 and 4471.

**What did Deluge pay Vim for the main works?**

11 The following was common ground:

- (a) When Vim left the site, the value of the main works completed was \$1,742,537.74.<sup>14</sup>
- (b) Deluge's payment certification was based on the main works being valued at \$1,742,537.74 as aforesaid, but Deluge deducted \$116,722.83 in back-charges.
- (c) Vim issued invoices for the sums certified by Deluge, which Deluge paid.
- (d) Deluge had paid Vim \$1,302,549.13 (which included payment for materials purchased by Vim).<sup>15</sup>

12 A range of figures was provided for what Deluge had paid (or certified in favour of) Vim for the main works:

- (a) according to Vim, Deluge had paid \$1,283,764.89, and so Vim pleaded that \$458,772.85 was still due for the main works;<sup>16</sup>
- (b) according to Deluge, it had paid \$1,288,624.80;<sup>17</sup>
- (c) according to Deluge, it had certified \$1,292,997.37;<sup>18</sup> and

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<sup>14</sup> D&CC at para 10; SOC at para 1.

<sup>15</sup> Defendant's Further Submissions ("DFS") at para 4.

<sup>16</sup> SOC at paras 1, 10 and 18.

<sup>17</sup> D&CC at para 6.

<sup>18</sup> D&CC at para 7.



(d) according to Deluge’s written submissions, it had certified and paid \$1,293,104.90.<sup>19</sup>

13 I invited further submissions from the parties on this point. In response:

(a) Vim put forward yet another figure: that Deluge had paid \$1,291,987.72 (on the basis that Deluge had paid \$10,561.41 for materials);<sup>20</sup> and

(b) Deluge said it had paid \$1,288,624.80 (see [12(b)] above, *ie*, what was pleaded in its Defence and Counterclaim)<sup>21</sup> – Deluge said it had paid \$13,924.33 for materials.<sup>22</sup>

14 Vim’s figure of \$1,291,987.72 meant that it was claiming from Deluge \$450,550.02 as balance payment,<sup>23</sup> down from \$458,772.85 as pleaded (see [5] above).

15 I accepted Deluge’s explanation that there were clerical errors in the certification process, which led to incorrect figures being certified for payment, and that the correct figure for what Deluge paid Vim for the main works is \$1,288,624.80. That is *less* than Vim’s figure of \$1,291,987.72, so more is due to Vim as balance payment for the main works (and I would expect Vim to have no complaint about this).

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<sup>19</sup> Defendant’s Closing Submissions (“DCS”) at paras 25–27.

<sup>20</sup> Plaintiffs’ Further Submissions (“PFS”) at para 3.

<sup>21</sup> D&CC at para 6.

<sup>22</sup> DFS at para 5.

<sup>23</sup> PFS at para 3.

16 The value of the main works up to the point Vim left the site was \$1,742,537.74 (see [11(a)] above), and accordingly there is a difference of \$453,912.94, *ie*, \$1,742,537.74 - \$1,288,624.80.

17 That, Deluge contended, was offset by: (a) the net sum of \$105,037.74 which Deluge incurred in completing Vim's works as described in [7] above (after giving credit for the \$7,462.26 balance of the Subcontract sum);<sup>24</sup> (b) initial back-charges amounting to \$116,722.93 (see [9] above);<sup>25</sup> and (c) further back-charges of \$870,507.09 (see [9] above).<sup>26</sup>

### **Vim's variation claims**

18 Clause 16 of the Subcontract provides that "[a]ny variation work such as [additions] or [omissions] or [modifications], shall be on a back-to-back basis with the Main Contract. *Such variation shall be carried out only with written [instructions] from [Deluge's] Project Manager ...* [Vim] shall be entitled to ninety percent (90%) ... or shall allow a discount of 10% (Profit & Attendance) for [Deluge], on any approved variation claim for additional work orders" [emphasis added].<sup>27</sup>

19 I found that Vim's variation claims failed because: (a) there were no written instructions from Deluge's project manager as required under the Subcontract;<sup>28</sup> and (b) there was no waiver or estoppel in this regard.<sup>29</sup>

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<sup>24</sup> D&CC at para 11(b).

<sup>25</sup> D&CC at paras 15–16.

<sup>26</sup> D&CC at paras 11(a) and 17–19.

<sup>27</sup> ABOD at p 231.

<sup>28</sup> DCS at paras 78–87 and 101–108.

<sup>29</sup> DCS at paras 71–77 and 234–250.

***The lack of written instructions from Deluge’s project manager***

20 The need to comply with contractual conditions for variation claims was emphasised in *Mansource Interior Pte Ltd v CSG Group Pte Ltd* [2017] 5 SLR 203 (“*Mansource v CSG*”). In that case, the court dismissed the variation claims although certain variation works had been carried out pursuant to verbal instructions (*see Mansource v CSG* at [94]). The contract had contained an express term precluding variation claims save for variation works authorised and approved by the main contractor (*Mansource v CSG* at [7]). It was undisputed that the main contractor had not authorised or approved any of the variation works for which the subcontractor claimed payment. Accordingly, the contractual conditions for a successful variation claim were not satisfied (*Mansource v CSG* at [101]).

21 The same reasoning applied here: the Subcontract expressly provides that variation works shall be carried out only with written instructions from Deluge’s Project Manager.

22 Vim did not plead that it had any written instructions to support its variation claims; instead, it asserted that Deluge was estopped from denying its claims because Deluge allegedly:<sup>30</sup>

- (a) waived the requirement for “written instructions”;
- (b) verbally instructed Vim to carry out the variation works;

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<sup>30</sup> Reply and Defence to Counterclaim (Amendment No. 1) dated 3 September 2019 (“Reply”) at para 33; SOC at paras 11–16.

- (c) assured and/or represented to Vim that Deluge will pay the claim for variation works (and what was outstanding under the Subcontract for the main works); and/or
- (d) accepted Vim's invoices for variation works by signing on them.

23 Both of Vim's witnesses, Arun Meyyappan ("Mr Arun") and Muruganandham Mathi Selvan ("Mr Anand"), admitted on the stand that Vim did not have written instructions for the alleged variations works that it was claiming payment for.<sup>31</sup> Likewise, Deluge's project manager Veeraiah Nagasundarapandian ("Mr Sundar") denied having issued any such written instructions.<sup>32</sup>

24 Initially, Vim thus seemed to accept that it did not have written instructions from Deluge's project manager, but it belatedly tried to say that for some of the variation claims, it had received drawings from SCT which constituted the necessary written instructions. However, what clause 16 of the Subcontract requires is written instructions from *Deluge's project manager*, not from SCT.

25 Vim had, moreover, not pleaded that those drawings were written instructions for the purposes of its variation claims, and its witnesses admitted that there were no such written instructions (see [23] above).

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<sup>31</sup> Transcript, 30 June 2020, p 45 lines 25–32; p 46 line 1; 1 July 2020, p 47 lines 5–20.

<sup>32</sup> Affidavit of Evidence-in-Chief of Veeraiah Nagasundarapandian ("Mr Sundar's AEIC") at paras 44–61.

26 Further, of the 49 purported variation works for which Vim claimed payment, only six involved any shop drawings: UIC/DE/002,<sup>33</sup> UIC/DE/005,<sup>34</sup> UIC/DE/006,<sup>35</sup> UIC/DE/008,<sup>36</sup> UIC/DE/016,<sup>37</sup> UIC/DE/018.<sup>38</sup>

27 I was not satisfied that any of these six claims involved written instructions for variation works, let alone written instructions from Deluge's project manager:

- (a) the drawing for UIC/DE/002, dated 6 January 2016, predates the Subcontract (dated 2 August 2016) and would not involve a variation of what Vim contracted to do;
- (b) the drawings for UIC/DE/005 and UIC/DE/006 have references to rectification, and rectification of Vim's defective work would not be a variation;
- (c) the drawings for UIC/DE/008, UIC/DE/016 and UIC/DE/018 were not explained by Vim in evidence.

28 I found that there were no written instructions from Deluge's project manager for the purpose of variation works and variation claims under clause 16 of the Subcontract. Accordingly, the contractual conditions for a successful variation claim by Vim were not satisfied.

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<sup>33</sup> ABOD at pp 2946 and 2948.

<sup>34</sup> ABOD at pp 2982 and 3022–3025.

<sup>35</sup> ABOD at pp 3026, 3064, 3067, 3074, 3083–3087.

<sup>36</sup> ABOD at pp 3091–3092.

<sup>37</sup> ABOD at pp 3184 and 3188–3193.

<sup>38</sup> ABOD at pp 3219 and 3223–3234.

***Was there waiver or estoppel?***

29 Vim asserted that, notwithstanding the lack of written instructions from Deluge’s project manager, Deluge has waived this requirement, or is estopped from relying on it (see [22] above).

30 I found that there was no such waiver or estoppel.

31 Vim asserted that it acted on verbal instructions; but that, in itself, cannot amount to a waiver or estoppel in relation to a contractual clause requiring written instructions (*ie*, clause 16 of the Subcontract). The alleged giving of verbal instructions simply means that the contractual requirement of written instructions has not been complied with.

32 Vim argued that “a gentleman’s word is his bond” and so Deluge should pay notwithstanding the lack of written instructions.<sup>39</sup> In the first place, however, Vim gave *its* word, as embodied in clause 16 of the Subcontract, that it would only carry out variation works with written instructions from Deluge’s project manager. In not paying for alleged variation works carried out without such written instructions, Deluge was simply honouring what parties had contractually agreed to in clause 16 of the Subcontract.

33 Vim pleaded that it trusted that Deluge would pay,<sup>40</sup> but that does not avail Vim. Given that Vim contracted on the basis that it would only carry out variation work with written instructions from Deluge’s project manager, it should have expected its variation claims to be rejected for the lack of such

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<sup>39</sup> PCS at para 6.

<sup>40</sup> PCS at para 5.

instructions. If Vim truly trusted Deluge to pay it nevertheless (which I am not persuaded of), that trust was truly misplaced.

34 Vim also relied on the signatures of Mr Sundar and Mr Manickam Tamilarasan (“Mr Tamil”), Deluge’s project manager and Mr Sundar’s subordinate, on various purported variation works invoices, to say that Deluge thereby accepted that Vim had carried out variation works, and that Deluge would pay for them.<sup>41</sup> I rejected this.

35 I accepted the evidence of Mr Tamil and Mr Sundar that they were simply acknowledging that the works in question had been carried out, and not that those works were *variation* works or that Vim would be paid for them.<sup>42</sup> Moreover, Mr Sundar had, on all the acknowledgment pages signed by him, added a comment to this effect: “[w]e will submit to SCT accordingly. Upon approval respond to [Vim]”.<sup>43</sup> That does not mean Mr Sundar acknowledged that *variation works* had been done by Vim for which Vim should be paid. To the contrary, Mr Sundar was saying that the *claims* would be submitted to SCT for approval, and he would let Vim know the outcome of that. At most, Mr Sundar was saying that if SCT were to approve and pay Deluge for those claims, Deluge would in turn pay Vim. There was, however, no evidence that SCT approved or paid Deluge for any of Vim’s variation claims.

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<sup>41</sup> PCS at para 12.

<sup>42</sup> Affidavit of Evidence-in-Chief of Manickam Tamilarasan (“Mr Tamil’s AEIC”) at para 65; Mr Sundar’s AEIC at para 49; Transcript, 7 July 2020, p 38 lines 27–31; p 39 lines 1–3; 8 July 2020, p 65 lines 18–20, p 67 lines 9 and 11, p 76 lines 24–25.

<sup>43</sup> ABOD pp 3350, 3352, 3355, 3357, 3359, 3361, 3363 and 3365.

36 In any event, I found that neither Mr Sundar himself nor Mr Tamil (who was Mr Sundar’s subordinate) had the authority to waive the requirement of written instructions under clause 16 of the Subcontract.

37 The requirement of written instructions from a designated person serves various objectives. First, it provides for a written record, thus obviating disputes as to what was allegedly said (which happened in the present case). Second, it focuses the parties’ attention, at the time, on whether in principle there may be an adjustment to the contract sum. If, without written instructions, Vim proceeded to do work that it considered to be a variation, it did so at its own risk. As a corollary, if there had been written instructions from Deluge’s project manager, Deluge would be recognising that – in principle – Vim might get additional payment. Firming up the parties’ positions contemporaneously as to whether variation works are involved is better than fighting about it in court (and in hindsight) long after the project.

38 These objectives would be defeated if the designated person (or his subordinate) could dispense with written instructions, which the parties had contractually stipulated for.

39 Vim however said that a director of Deluge, Mr Tan Ann Kiong (“Mr AK Tan”), had promised that Vim would be paid.<sup>44</sup> What did Mr AK Tan supposedly promise Vim? As pleaded, it was just that Vim would be paid “upon Deluge receiving payment from SCT”.<sup>45</sup> In conjunction with that, Vim pleaded

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<sup>44</sup> SOC at para 12.

<sup>45</sup> SOC at para 12.



that Deluge had been paid by SCT (in respect of Vim’s variation claims) but had refused to pay Vim in turn.<sup>46</sup> But Vim had no evidence of this.

40 In its particulars, Vim put the alleged promise by Mr AK Tan in a more extreme form: that Deluge “will settle all outstanding [amounts] claimed by Vim”.<sup>47</sup> Mr AK Tan is said to have promised this on various occasions or during various meetings, specifically at meetings in October 2017, May 2018, and September 2018. Vim’s particulars of this representation were however internally inconsistent: on the one hand, Vim says that Mr AK Tan attended those meetings with Deluge’s contract officer (Joey Teng) and contract manager (Vince Tho);<sup>48</sup> on the other hand, Vim says that Mr AK Tan attended those meetings with Mr Sundar instead.<sup>49</sup>

41 It made no commercial sense for Deluge to have promised to pay Vim on its variation claims, regardless of whether they were accepted and paid for by SCT. Vim had been sending invoices for variation claims since 6 April 2017 when it emailed to Deluge the first six such invoices (all dated 27 March 2017).<sup>50</sup> Vim continued sending variation claim invoices until those dated 2 October 2017, in conjunction with progress claim 19.<sup>51</sup> Up until then, Deluge did not certify any of the variation claim invoices for payment. Instead, Deluge had been deducting back-charges, starting from its email of 23 February 2017 enclosing payment certificate 10 and its first four back-charge invoices all dated

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<sup>46</sup> SOC at para 12.

<sup>47</sup> Plaintiff’s Further and Better Particulars dated 29 Jan 2019 (“Plaintiff’s FBP”) at paras 11 and 18.

<sup>48</sup> Plaintiff’s FBP at para 11.

<sup>49</sup> Plaintiff’s FBP at para 18.

<sup>50</sup> ABOD at pp 1587–1700.

<sup>51</sup> ABOD at p 4266

10 February 2017.<sup>52</sup> On 3 October 2017, Deluge sent Vim payment certificate 17 with back-charges of over \$800,000. That certified payment of a negative amount of \$694,674,78.<sup>53</sup>

42 Given that history, it was incongruous and unlikely for Deluge to have done a U-turn in October 2017 and promised to pay Vim “all outstanding [amounts] claimed by Vim”. By that time, Deluge and SCT had both carried out certain works within Vim’s scope on account of defects and delays. The TOP was then obtained on 20 October 2017. The evidence did not support an inference that in October 2017, Deluge was prepared to pay Vim hundreds of thousands of dollars to secure Vim’s cooperation on the verge of the TOP being obtained, or after the TOP was obtained.

43 It made even less sense that in May and September 2018 (after Vim had left the site in February 2018 while the DLP was still running), Deluge would make any promises of payment to Vim.

44 There was nothing in writing, whether in an email, a WhatsApp message, or otherwise, recording Mr AK Tan’s alleged promise to pay Vim. Given the significance of the promise, one would have expected Vim to put it in writing. Vim’s excuse for not doing so was that it had trusted Deluge. This was a hollow excuse given that Vim left the site in February 2018, without the main works having been completed, and it did not return to attend to any rectification of defects thereafter (although the DLP had not ended). On Vim’s case, by the time Mr AK Tan promised in September 2018 that Deluge would pay Vim, this was at least the third time he was promising this (after promising

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<sup>52</sup> ABOD at pp 926–957.

<sup>53</sup> ABOD at p 3392.

the same at meetings in October 2017 and May 2018) – almost a year had passed, and Deluge had not made any payment to Vim. It was unbelievable that in September 2018, Vim still trusted Deluge to honour these promises and so chose not to put them in writing.

45 In Vim’s lawyers’ letter of demand dated 4 October 2018, there was no mention of Deluge having made any promises of payment.<sup>54</sup> In December 2018, Vim sued Deluge and asserted for the first time that there were such promises (albeit only on the basis that Deluge would pay Vim *if SCT paid Deluge*).

46 I accepted Mr AK Tan’s evidence that there was a meeting in October 2017, and that he did not promise then (or ever) that Deluge would pay Vim its variation claims.<sup>55</sup>

47 I was reinforced in my conclusion by the fact that one Velumani (“Mr Mani”) – identified by Vim as one of its two representatives at the meetings – was not called by Vim as a witness (see further [54] below). Vim only had the evidence of Mr Anand, which I did not accept.

48 In all the circumstances, there was no waiver or estoppel in relation to the requirement for written instructions from Deluge’s project manager for variation works (and claims) in clause 16 of the Subcontract.

49 With my findings above, I dismissed Vim’s variation claims.

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<sup>54</sup> ABOD at p 4563.

<sup>55</sup> Affidavit of Evidence-in-Chief of Tan Ann Kiong (“Mr AK Tan’s AEIC”) at paras 22(a)–(d); Transcript, 9 July 2020, p 84 lines 10–29; p 86 lines 27–32; p 87 lines 1–19.

***Other issues concerning Vim’s variation claims***

50 I made the following observations on the nature, and quantification, of Vim’s variations claims.

*Were the alleged variation works truly “variations”, or just afterthoughts?*

51 I do not need to specifically find which of Vim’s variation claims (if any) concerned true “variations”, *ie*, work done at Deluge’s request, beyond the scope of Vim’s main works.<sup>56</sup> I would, however, observe that one reason for having a clause which stipulates that variation works are only to be carried out with written instructions from a designated person, is to avoid precisely this kind of a dispute.

52 Moreover, Vim’s witnesses (Mr Arun and Mr Anand) were not well placed to testify from their own personal knowledge as to any oral instructions given for variation works to be carried out.

53 Mr Arun admitted that he did not attend site meetings or go to the site; he did not have personal knowledge of what happened there – he would learn about that from his colleagues, principally Mr Mani.<sup>57</sup> Mr Anand said he would be on site for a while in the morning, about four days a week, before leaving for his other job.<sup>58</sup>

54 As I noted above (at [47]), Mr Mani was not called as a witness. This was despite Mr Anand saying that Mr Mani “[was] often present at the site

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<sup>56</sup> D&CC at para 28; DCS at paras 65–70.

<sup>57</sup> Transcript, 30 June 2020, p 22 lines 26–32; p 23 lines 1–6.

<sup>58</sup> Transcript, 1 July 2020, p 9 lines 6–27.

during the [p]roject”<sup>59</sup> and him agreeing that Mr Mani was “the man who was really in charge of the project.”<sup>60</sup>

55 If Mr Arun and Mr Anand were relying on what they had heard from Mr Mani or others on site, that was hearsay.

56 I would further observe that the variation invoices appeared to have been a reaction to Deluge levying back-charges (see [41] above). Indeed, the invoices for variation claims 27 and 36 to 47 were only provided after proceedings had commenced, in conjunction with the provision of particulars.<sup>61</sup> None of those late invoices bears Mr Sundar’s signature, and it was not put to him that he had received them before proceedings were commenced.

*Were Vim’s variation claims excessive?*

57 Likewise, I did not need to find if Vim’s variation claims (which I have dismissed) were in any event excessive, as Deluge contended.<sup>62</sup>

58 I did, however, accept that Vim did not quantify its variation claims in accordance with the Subcontract.

59 Clause 16 of the Subcontract provides that “[Vim] shall be entitled to ninety percent (90%) ... or shall allow a discount of 10% (Profit & Attendance) for [Deluge], on any approved variation claim for additional work orders”.<sup>63</sup>

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<sup>59</sup> Mr Anand’s AEIC at para 19.

<sup>60</sup> Transcript, 1 July 2020, p 32 lines 7–9.

<sup>61</sup> D&CC at para 26; Reply at para 30; Transcript, 30 June 2020, p 58 lines 9–32; p 59 lines 1–10.

<sup>62</sup> DCS at paras 133–150 and Annex A.

<sup>63</sup> ABOD at p 231.

60 Besides there being no approved variation claims for additional work orders to begin with, Vim did not give Deluge the stipulated 10% discount.<sup>64</sup> Instead, Vim compounded its non-compliance with clause 16 of the Subcontract by adding on a 15% admin charge, that it was not entitled to.<sup>65</sup>

61 Vim also claimed payment with reference to an email dated 31 May 2017 by Susan Ngu (“Ms Ngu”) (Deluge’s quantity surveyor),<sup>66</sup> characterising that as an agreed schedule of rates.<sup>67</sup> Ms Ngu’s email was not an agreed schedule of rates – it was sent to Vim “for [Vim’s] reference only”. Vim had already sent its rates to Deluge on 14 July 2016<sup>68</sup> but it did not use those in claiming payment for variations.

### ***Quantum meruit***

62 Vim pleaded that Deluge had received and accepted its variation works and further that Deluge had been paid for the same by SCT.<sup>69</sup> However, Vim had no evidence that Deluge had received any additional payment from SCT for what Vim claimed were variation works. On the evidence before the court, Deluge was not unjustly enriched, bearing in mind that the Subcontract stipulated in clause 16 that variation works shall be carried out only with written instructions from Deluge’s project manager, and if Vim had in fact performed any variation works, it did so contrary to clause 16. Accordingly, I dismissed Vim’s *quantum meruit* claim.

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<sup>64</sup> Transcript, 30 June 2020, p 56 lines 31–32; p 57 lines 1–6.

<sup>65</sup> Transcript, 30 June 2020, p 57 lines 7–20.

<sup>66</sup> ABOD at p 2263.

<sup>67</sup> PCS at para 18.

<sup>68</sup> ABOD at p 84.

<sup>69</sup> SOC at para 17.

### **Costs incurred by Deluge in completing Vim's works**

63 I accepted that Deluge incurred costs in completing Vim's works, which Deluge is entitled to counterclaim and set-off against what may be due to Vim.

64 It was common ground that a small amount of main works was not completed by Vim, contractually valued at \$7,462.26 (see [6] above). Deluge incurred a lesser sum of \$7,200 finishing up those works,<sup>70</sup> and indeed gave credit to Vim for the cost savings of \$262.26. I allowed this claim by Deluge.

65 Deluge also claimed \$105,300 for rectification of defects during the balance of the DLP after Vim left the site.<sup>71</sup> Deluge assigned one supervisor and two workers for that purpose,<sup>72</sup> which I accepted as reasonable.

66 Accordingly, for completing Vim's works I found that Deluge had a good counterclaim and set-off in the sum of \$105,037.74, *ie* \$7,200 – \$7,462.26 + \$105,300.

### **Deluge's claim for back-charges and/or damages**

#### ***Contractual provisions***

67 Clause 19 of the Subcontract (on "Back-Charge") provides as follows:<sup>73</sup>

19.1 If, under the provisions of this Subcontract, [Vim] is notified by [Deluge] to correct defective or non-conforming Subcontract works, or to perform Subcontract works in accordance with (and so as to comply with) the Subcontract's Programme, and [Vim] states or, by its actions, indicates that it

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<sup>70</sup> Affidavit of Evidence-in-Chief of Mr Cheo Hwee Kwang ("Mr Cheo's AEIC") at para 119.

<sup>71</sup> Mr Cheo's AEIC at para 120.

<sup>72</sup> Mr Cheo's AEIC at para 120.

<sup>73</sup> ABOD at p 231.

is unable or unwilling to proceed with the Subcontract works or corrective action or otherwise fails to do so in a reasonable time, [Deluge] may, upon written notice, perform or procure the performance of the redesign, repair, rework or replacement of nonconforming or non-performed Subcontract works by any reasonable means available at [Vim's] cost including any cost for supervision and/or overhead.

19.2 [Deluge] will notify [Vim] of any work performed or procured by it pursuant to [Clause 19.1]. The performance or procurement of such work by the [Deluge] shall not relieve the [Vim] of any of its responsibilities under the Subcontract including, but not limited to, express or implied warranties, specified standards for quality, contractual liabilities and indemnifications and [Deluge's] Programme.

19.3 If at any time [Deluge] performs or procures the performance of work pursuant to [Clause 19.1], [Deluge] shall have the right to retain, deduct, withhold or set-off the cost thereof from any payment to be made by [Deluge] to [Vim] or otherwise claim such amount from [Vim] without the need for a notice or an order of a court or tribunal sanctioning the intent of any such notice.

68 Further, clause 21 of the Subcontract (on “Delay and Liquidated Damages”) provides as follows:<sup>74</sup>

[Vim] shall perform all its obligations stated in this Subcontract and shall be liable for any delay in the completion of the services which are due to [Vim's] negligence or fault.

If the completion of services is likely to cause a delay, [Deluge] is entitled to take all necessary actions to mitigate the delay in the delivery or completion of services at [Vim's] cost. ...

In the event of any delay due to [Vim's] own fault, [Vim] is required to reimburse [Deluge] all losses, damages and expenses incurred because of the delay cause solely by [Vim].

***Vim did not accept Deluge's back-charges***

69 Deluge contended that Vim had accepted the first \$116,722.93 in back-charges, because Vim only invoiced for the amounts that Deluge certified (after Deluge had deducted those back-charges), and moreover Vim had not

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<sup>74</sup> ABOD at p 232.



commenced proceedings under the Building and Construction Industry Security of Payment Act (Chapter 30B, 2006 Rev Ed) (“the SOPA”).<sup>75</sup> I did not agree with Deluge on this.

70 First, notwithstanding Deluge’s deduction of back-charges, Vim’s subsequent progress claims sought payment for the full value of Vim’s main works, and also variation claims. In invoicing only for the amounts certified by Deluge, Vim was not accepting that Deluge was correct to deduct back-charges. It was simply invoicing the amounts that Deluge indicated it would pay (which Deluge then paid).

71 Second, the fact that Vim did not make an application under the SOPA is not an admission that Deluge’s deduction of back-charges was correct. It was up to Vim whether to make an application under the SOPA, or simply to sue (as Vim did). In view of the back-charges that Deluge asserted, an application by Vim under the SOPA might not have resulted in Vim getting any additional payment on an interim basis.

72 The question remained whether Deluge was entitled to the back-charges.

***Deluge’s case on back-charges***

73 Deluge supported its claim for back-charges by the evidence of its witnesses,<sup>76</sup> documents, and submissions, albeit that Deluge’s written submissions were focused on its later back-charges, totalling \$870,507.09.<sup>77</sup>

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<sup>75</sup> DCS at paras 28–53.

<sup>76</sup> Mr Tamil’s AEIC at paras 82–101; Mr Sundar’s AEIC at paras 29–43; Mr Cheo’s AEIC at paras 49–54 and 113–116.

<sup>77</sup> DCS at para 168; also see [9] above.

74 In Vim’s pleadings, it denied liability for the back-charges, and put Deluge to strict proof of them;<sup>78</sup> Vim also asserted that Deluge had not given notice as required under clause 19 of the Subcontract.<sup>79</sup>

75 The evidence shows that there were delays and defects in Vim’s works, about which there were various SCT site memoranda.<sup>80</sup>

76 Based on the evidence of Mr Tamil and Deluge’s submissions, I accepted that Vim would have needed some 80 or more workers on site per day to carry out its works successfully; but the evidence showed that Vim never had more than 53 workers present on any one day, and on average only 27 workers were there per day. This was borne out by the daily toolbox meeting attendance records of Vim’s workers (including third party “supply workers”).<sup>81</sup>

77 Further, it was questionable whether Vim’s workers (and especially the supply workers it used to supplement its own workforce) had certificates issued by the Building and Construction Authority for plumbing and pipe fitting. In particular, the supply workers were likely general labour rather than skilled in the specific tasks Vim had contracted with Deluge to carry out under the Subcontract.

78 Vim also placed orders for materials on very short notice, even for items that Vim itself was expected to provide.

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<sup>78</sup> Reply at para 13.

<sup>79</sup> Reply at paras 19–28.

<sup>80</sup> DCS at para 172.

<sup>81</sup> Defendant’s Supplementary Bundle of Documents (“DSBD”); Transcript, 2 July 2020, p 4 lines 2–7.

79 The delays and defects culminated in two site meetings with SCT, where Vim was informed that SCT would mobilise workers if the situation did not improve.

80 There was a site meeting on 21 December 2016 which was attended by Vim's Mr Manikandan and Mr Mani, and Deluge's Mr Tamil. The minutes record:<sup>82</sup>

Deluge [plumbing and sanitary] to catch up progress [sic] within [two] weeks [by] [4th Jan 2017].

... They agreed that SCT [is to] [mobilise] other party for Residential [plumbing and sanitary] [works], if they do not catch up progress by [4th Jan 2017].

81 There was then a meeting on 3 February 2017 attended by Vim's Mr Manikandan and Mr Anand, and Deluge's representatives including Mr Tamil. A site memorandum from SCT about that meeting records the following:<sup>83</sup>

1. Deluge take note and committed to improve site work progress and supervision for [plumbing and sanitary] works as highlighted by SCT of the following during meeting:

I) Unit Ceiling Clearance for lower stack are delayed for more than [two] weeks based on revised schedule due to pipe was installed wrongly [sic].

II) SCT also noted one of the reasons for [Deluge's] work delay is due to lack of manpower and supervision.

III) SCT highlighted that SCT with no other alternative *had to [mobilise] our workforce* to rectify [Deluge's] faulty pipe installation and to catch up delay work which had caused "bottle neck" to other subsequent works [sic].

2. Deluge shall increase the manpower (currently 47) and improve situation to prevent rework as affected site progress [sic].

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<sup>82</sup> ABOD at p 710.

<sup>83</sup> ABOD at p 3591.

3. Deluge agreed [with] the manpower [mobilised] by SCT working together to catch up schedule until site progress is stabilising [*sic*].

[emphasis added]

82 In its minutes and site memoranda, SCT collectively referred to Deluge and Vim as “Deluge”. Vim knew from the first meeting on 21 December 2016 that on account of delays in its works, SCT would be placing manpower to attend to works within Vim’s scope, if the situation did not improve. Vim knew from the second meeting on 3 February 2017 that SCT had done so. Vim would have expected SCT to look to Deluge for the costs of doing so, and for Deluge in turn to look to Vim.

***Vim’s reasons for not being liable for back-charges***

83 Vim put forward a range of reasons why it should not be held liable for the back-charges asserted by Deluge.

84 First, Vim suggested that it had not caused any delays or defects. Mr Anand said “all work was done properly and in a timely manner by [Vim]”<sup>84</sup> and “all our works were always done properly without any delay”.<sup>85</sup> In similar vein, Vim suggested that SCT’s workers had “purposely” damaged Vim’s completed pipe work,<sup>86</sup> and SCT had “purposely” complained about delays.<sup>87</sup> I rejected this given the evidence of Deluge’s witnesses, which was consistent with the contemporaneous site memoranda issued by SCT.<sup>88</sup> It was also absurd

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<sup>84</sup> Mr Anand’s AEIC at para 16.

<sup>85</sup> Mr Anand’s AEIC at para 28.

<sup>86</sup> Transcript, 30 June 2020, p 51 lines 8–17.

<sup>87</sup> Transcript, 1 July 2020, p 18, lines 7–10;

<sup>88</sup> Mr Tamil’s AEIC at paras 82–101; Mr Sundar’s AEIC at paras 29–43; Mr Cheo’s AEIC at paras 49–54.

to suggest that SCT, the main contractor, had purposely damaged Vim's completed work and made up claims to incriminate Vim – this was not borne out by the evidence.

85 Second, Vim suggested that any delays<sup>89</sup> were caused by Deluge – in delaying the supply of materials or payment to Vim,<sup>90</sup> or because Mr Tamil did not conduct regular checks on Vim's works "at least twice a day or whatever".<sup>91</sup> These allegations were not made out:

- (a) The evidence shows that if materials were supplied late, it was because Vim had ordered the materials late.
- (b) Vim did not say that it had delayed its works because of payment issues (at least not prior to it leaving the site, as it did). Moreover, in relation to Vim's progress claims 6 through 11 there were no delays in payment.
- (c) Vim had its own project supervisor, Mr Manikandan, and it could not blame Deluge's Mr Tamil for not supervising its workers.

86 Third, Vim suggested that any delays and defects were merely "minor".<sup>92</sup> There was nothing in this point: Deluge's right to levy back-charges was not dependent on delays and defects being "major" rather than "minor".

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<sup>89</sup> ABOD at pp 533 and 548.

<sup>90</sup> Transcript, 30 June 2020, p 110 lines 3–15 and 23–29.

<sup>91</sup> Transcript, 2 July 2020, p 94 lines 29–32, p 95 lines 1–2.

<sup>92</sup> Transcript, 2 July 2020, p 172 lines 16 – 19; 7 July 2020, p 59 lines 12–16, p 83 lines 8–10.

87 Fourth, Vim argued that some of the contemporaneous documentation, including the following, amounts to hearsay evidence: (a) documents issued by SCT, such as site memoranda; (b) documents issued by third parties engaged to complete Vim’s works or rectify defects, such as Systems Engineering & Resources Pte Ltd (“SER”); and (c) records of attendance of Vim’s workers at daily toolbox meetings.

88 A basic problem with Vim’s hearsay objection, was that Deluge did not just have the above documents as evidence of the matters they relate to. Deluge also had the Affidavits of Evidence-in-Chief and oral testimony of its witnesses, in particular, Mr Tamil and Mr Sundar, as to what happened in relation to matters covered by those documents: delays; defects; the manpower situation on site; meetings; and what Deluge, SCT, and third parties did to address delays and defects caused by Vim.

89 Further, all these categories of documents which Vim objected to, were in the nature of business records, for which s 32(1)(b)(iv) of the Evidence Act (Cap 97, 1997 Rev Ed) makes an exception to the hearsay rule. In so far as Deluge was relying on documents issued by SCT and SER not for the truth of their contents, but for the fact that those documents were issued, and that the statements in them were made, that did not offend the hearsay rule in the first place. Thus, Deluge could rely on the fact that it had sent site memoranda to Vim, as constituting notice to Vim of what the site memoranda were about. Deluge could also rely on the documents it received from SER to support its witnesses’ evidence that Deluge had engaged SER.

90 As for the toolbox records: when they were admitted and marked as trial exhibits by Deluge’s counsel, Vim’s counsel was asked “[if he had] any issue with [those] documents being admitted”. He responded that he “[did not] really

have an issue, but [he did not] really see ... how [those documents] [were] going to help [Deluge] in their case”.<sup>93</sup> In the event, the admission of the toolbox records was not objected to, and neither were their contents.

91 Finally, Vim argued that Deluge had not given written notice as required under clause 19.1 of the Subcontract. Although Vim sought to distinguish the case of *Mansource v CSG* ([20] *supra*) in relation to the lack of written instructions to support its variation claims under clause 16 of the Subcontract, Vim embraced *Mansource v CSG* as an authority to say that the lack of written notice under clause 19.1 of the Subcontract was fatal to Deluge’s claim for back-charges. I disagreed with Vim.

92 Clause 16 and clause 19 are drafted differently. Clause 16 says variation works “shall be carried out *only* with written instructions from [Deluge’s] Project Manager” [emphasis added].<sup>94</sup> Clause 19, on the other hand, does not say that Deluge can take action to redress defects and delays in Vim’s works *only* upon written notice. Clause 19.1 says that “ [Deluge] may, *upon written notice*, perform or procure the performance of the redesign, repair, rework or replacement of nonconforming or non-performed Subcontract works by any reasonable means available at the [Vim’s] cost” [emphasis added]<sup>95</sup> and clause 19.3 states that “[Deluge] shall have the right to retain, deduct, withhold or set-off the cost thereof from any payment to be made by [Deluge] to [Vim] or otherwise claim such amount from [Vim]”.<sup>96</sup>

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<sup>93</sup> Transcript, 30 June 2020, p 91 lines 8–11.

<sup>94</sup> ABOD at p 231.

<sup>95</sup> ABOD at p 231.

<sup>96</sup> ABOD at p 231.

93 If Deluge acted without written notice to Vim, Deluge could not thereafter levy a back-charge within clause 19 of the Subcontract. However, clause 19 does not preclude Deluge from claiming against Vim for breach of contract, and indeed Deluge had (as an alternative to counterclaiming for a specific sum) sought damages to be assessed.<sup>97</sup>

94 Clause 21 of the Subcontract (which contains no requirement of notice or written notice) stipulates that:<sup>98</sup>

- (a) Vim shall be liable for any delay in the completion of the services which are due to its negligence or fault;
- (b) if the completion of services is likely to cause a delay, Deluge is entitled to take all necessary actions to mitigate the delay at Vim’s cost; and
- (c) in the event of any delay due to Vim’s own fault, Vim is required to reimburse Deluge all losses, damages and expenses incurred because of the delay caused solely by Vim.

95 Deluge did not need to rely on clause 19 of the Subcontract to seek damages for breaches on Vim’s part – Deluge also has clause 21, and its remedies for breach of contract at general law. Vim, on the other hand, needed clause 16 of the Subcontract in order to get additional payment for variation works – there is no general contractual right to be paid for the doing of additional work as “variations”.

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<sup>97</sup> D&CC at para 54.

<sup>98</sup> ABOD at p 232.



96 In any event, Deluge had given Vim written notice that action would be taken if Vim did not redress defects and delays in its works.<sup>99</sup>

97 In so far as the back-charges were in respect of manpower placed by SCT (rather than by Deluge itself), or were for health and safety infractions by Vim (for which SCT charged Deluge), those fall outside the ambit of clause 19.1 of the Subcontract (which deals with *Deluge* “[performing] or [procuring] the performance of the redesign, repair, rework or replacement of nonconforming or non-performed Subcontract works”).<sup>100</sup> Accordingly, any lack of written notice from Deluge would not avail Vim for the SCT-related back-charges. Moreover, in relation to the delays and defects in its works, Vim was aware of what SCT would do, and had done, from the site meetings it had attended (see [79]–[81] above), which were then recorded in minutes and a site memorandum.

98 Vim relied on the fact that when it complained by its email of 20 February 2017 to Deluge about SCT’s supply of manpower for Vim’s scope of works,<sup>101</sup> Deluge adopted what Vim said and complained to SCT by way of a letter dated 21 February 2017.<sup>102</sup> Vim argued this shows that Deluge agreed that SCT’s back-charges to Deluge (that were related to the complaints) were unjustified, and consequently Deluge’s back-charges to Vim were unjustified. I did not accept this.

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<sup>99</sup> DCS at paras 205, 206, 214, 228–229; Defendant’s Reply Submissions (“DRS”) at para 26; Mr Tamil’s AEIC at para 90; Mr Sundar’s AEIC at para 37.

<sup>100</sup> ABOD at p 231.

<sup>101</sup> ABOD at p 880.

<sup>102</sup> ABOD at p 916.

99 As Deluge’s Mr AK Tan explained,<sup>103</sup> Deluge was simply trying to convince SCT not to impose any back-charges; however, if any back-charges were imposed by SCT against Deluge, Deluge would have passed on the same to Vim (as Vim was ultimately responsible for the works in question).

***What should Deluge be allowed for back-charges and/or damages?***

100 On the evidence, I found that Deluge had substantiated its claims against Vim in respect of the back-charges asserted and/or damages, save for the 15% admin charge which Deluge added to some of its back-charge invoices.

101 I note that what Deluge did in performing or procuring the performance of non-conforming or non-performed works pursuant to clause 19.1 of the Subcontract is “at [Vim’s] cost including any cost for *supervision and/or overhead*” [emphasis added].<sup>104</sup> However, Deluge’s claims also included what SCT did (rather than what Deluge did) in supplying manpower in respect of matters that were within Vim’s scope of works. On the evidence, Deluge did not undertake any supervision of the manpower supplied by SCT.

102 When Deluge back-charged Vim \$1,100 in back-charge invoice 4 for health and safety infractions that SCT had charged Deluge for,<sup>105</sup> Deluge did not add a 15% admin charge. However, Deluge’s back-charge invoice 17 included an amount for “safety fine” and another amount for “waste disposal”, and a 15% admin charge was added to those.<sup>106</sup>

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<sup>103</sup> Mr AK Tan’s AEIC at paras 9–16.

<sup>104</sup> ABOD at p 231.

<sup>105</sup> ABOD at p 950.

<sup>106</sup> D&CC at Annex A1.

103 I did not consider it justified for Deluge to add 15% to the back-charges which SCT imposed on Deluge, in back-charging the same to Vim.

104 As for the manpower which Deluge itself supplied, that already included the cost of supervisors.<sup>107</sup> Deluge did not satisfy me that an additional 15% admin charge should be allowed as costs for “supervision and/or overhead” allowed under clause 19.1 of the Subcontract. Nothing extra in this regard was claimed by Deluge for completing Vim’s works (including defect rectification): see [63]–[66] above. As for third parties engaged by Deluge, Deluge did not substantiate what costs it incurred by way of supervision and/or overhead.

105 Accordingly, I disallowed the following amounts representing Deluge’s 15% admin charge:<sup>108</sup>

(a) \$1,242 on back-charge invoice 1;<sup>109</sup>

(b) \$5,940 on back-charge invoice 2;<sup>110</sup>

(c) \$483 on back-charge invoice 3;<sup>111</sup>

(d) \$300 on back-charge invoice 5;<sup>112</sup>

(e) \$378.98 on back-charge invoice 8;<sup>113</sup>

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<sup>107</sup> ABOD at pp 843, 848 and 854.

<sup>108</sup> D&CC at para 15.

<sup>109</sup> ABOD at p 935.

<sup>110</sup> ABOD at p 939.

<sup>111</sup> ABOD at p 944.

<sup>112</sup> ABOD at p 1043.

<sup>113</sup> ABOD at pp 2230 and 2846.

- (f) \$45 on back-charge invoice 9;<sup>114</sup>
- (g) \$168 on back-charge invoice 10;<sup>115</sup>
- (h) \$240 on back-charge invoice 11;<sup>116</sup>
- (i) \$2,316.26 on back-charge invoice 12;<sup>117</sup>
- (j) \$2,244.90 on back-charge invoice 13;<sup>118</sup>
- (k) \$619.50 on back-charge invoice 14;<sup>119</sup>
- (l) \$1,103.62 on back-charge invoice 15;<sup>120</sup>
- (m) \$232.05 on back-charge invoice 16A;<sup>121</sup>
- (n) \$93,323.31 on back-charge invoice 17;<sup>122</sup>
- (o) \$3,159 on back-charge invoice 18;<sup>123</sup> and
- (p) \$16,830.04 on back-charge invoice 19.<sup>124</sup>

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<sup>114</sup> ABOD at pp 2231 and 2846.

<sup>115</sup> ABOD at pp 2232 and 2846.

<sup>116</sup> ABOD at pp 2233 and 2846.

<sup>117</sup> ABOD at pp 2511 and 2846.

<sup>118</sup> ABOD at pp 2405–2408 and 2846.

<sup>119</sup> ABOD at pp 2217 and 2846.

<sup>120</sup> ABOD at pp 2634 and 2846.

<sup>121</sup> ABOD at pp 2799 and 4544.

<sup>122</sup> D&CC at Annex A1.

<sup>123</sup> ABOD at pp 4238 and 4543.

<sup>124</sup> D&CC at Annex B1.

106 These amounts totalled \$128,625.66. I thus allowed Deluge's claim for back-charges and/or damages, as follows:  $\$116,722.93 + \$870,507.09 - \$128,625.66 = \$858,604.36$ . As mentioned at [66] above, I also allowed Deluge's claim for \$105,037.74 for completing Vim's works (including rectification of defects). The sums of  $\$105,037.74 + \$858,604.36$  allowed to Deluge were to be offset against the sum of \$453,912.94 mentioned at [16] above, being the value of main works for which Vim has not been paid.

107 On the basis of the calculations above, a net sum of  $\$105,037.74 + \$858,604.36 - \$453,912.94 = \$509,729.16$  was thus to be paid by Vim to Deluge.

### **Costs**

108 Deluge is the successful party in this lawsuit. Deluge claimed legal costs of \$141,000 and disbursements of \$40,100, totalling \$181,100. The matter had been scheduled for eight days of trial, but with the cooperation of the parties and counsel (for which I am grateful), and longer hearing hours, it was concluded in seven days (avoiding the matter being part heard, since the 8th day was polling day). There was a substantial volume of documents, a range of claims on both sides, and several rounds of written closing submissions and post-trial correspondence. The parties' costs schedules were submitted at or around the time of the first round of submissions, and more work was done in correspondence and submissions thereafter.

109 I considered Deluge's claim for costs to be reasonable. I was fortified in this conclusion by Vim's claim for costs, which was higher both as regards legal costs, and the total claimed: Vim claimed \$166,000 in legal costs and disbursements of \$32,940, totalling \$198,940.

110 I thus awarded Deluge costs in the total sum of \$181,100, as claimed.

### **Conclusion**

111 I found that Vim was entitled to \$453,912.94 as the unpaid value of the main works. Other than that, I dismissed Vim's claims.

112 I allowed Deluge's counterclaims for \$105,037.74 for completing Vim's works (including rectification of defects), and for \$858,604.36 in back-charges and/or damages. Those amounts were to be set-off against the \$453,912.94 due to Vim for the main works.

113 I thus granted Deluge judgment in the net sum of \$509,729.16 together with costs in the sum of \$181,100.

### **Postscript**

114 When I granted judgment, I had relied on Deluge's back-charges summary for work done until 31 May 2017<sup>125</sup> in determining the amounts claimed by Deluge as 15% admin charge in back-charge invoices 5, and 8 to 15 (see [105(d)] to [105(l)] above). In preparing these written grounds of decision, however, I noticed that back-charge invoices 8 and 10 *themselves* included certain amounts as a 15% admin fee: \$166.50 and \$133.23 in back-charge invoice 8, and \$52.17 in back-charge invoice 10. Deluge then claimed a 15% admin charge on the invoiced amounts. Had I noticed this at the time I gave oral judgment, I would not only have disallowed the 15% admin charge claimed on the back-charge invoices (see [105] above), I would also have disallowed the 15% admin charges invoiced in back-charge invoices 8 and 10, totalling

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<sup>125</sup> ABOD p 2835 at p 2846.

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$\$166.50 + 133.23 + \$52.17 = \$351.90$ . The net sum allowed to Deluge would then have been \$509,377.26 instead of \$509,729.16.

Andre Maniam  
Judicial Commissioner

Charan Singh s/o Bantar Singh (Charan & Co) for the plaintiff;  
Namazie Mirza Mohamed, Ong Ai Wern (Mallal & Namazie)  
for the defendant.

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