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

[2022] SGHC 221

Suit No 519 of 2021

Between

DSL Integrated Solution Pte Ltd

… *Plaintiff*

And

Triumph Electrical System Engineering Pte Ltd

… *Defendant*

JUDGMENT

[Building and Construction Law — Termination — Repudiation of contract]
[Building and Construction Law — Contractors' duties]
[Contract — Formation — Acceptance]

TABLE OF CONTENTS

INTRODUCTION **1**

UNDISPUTED FACTS **3**

AGREED ISSUES **9**

WHETHER THERE IS AN AGREEMENT BETWEEN THE PLAINTIFF AND THE DEFENDANT IN RELATION TO THE ELECTRICAL WORKS **10**

PARTIES' POSITION 10

MY DECISION 16

WHAT WERE THE TERMS OF THE AGREEMENT? **32**

DEFENDANT'S CESSATION OF WORK **37**

PLAINTIFF'S CLAIMS OF THE DEFENDANT'S BREACH OF MAIN CONTRACT **53**

CONCLUSION **57**

DSL Integrated Solution Pte Ltd
v
Triumph Electrical System Engineering Pte Ltd

[2022] SGHC 221

General Division of the High Court — Suit No 519 of 2021
Kwek Mean Luck J
18–20 July 2022, 25 July 2022, 19 August 2022

15 September 2022 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The Plaintiff, DSL Integrated Solutions Pte Ltd ("DSL"), and the Defendant, Triumph Electrical System Engineering Pte Ltd ("Triumph Electrical"), are companies involved in building and construction activities. Qingjian International (South Pacific) Group Development Co Pte Ltd ("CNQC") is the main contractor in the Forett Condominium Project ("the Project"). The Plaintiff was CNQC's subcontractor for the design, supply and installation of electrical works ("Electrical Works") at the Project ("Electrical Project"). The Plaintiff's contract with CNQC shall be referred to as the "Main Contract".

2 In this action, the Plaintiff claims against the Defendant for (a) damages arising out of alleged breaches of a sub-contract between the Plaintiff and the Defendant; (b) interest; and (c) costs.

3 The Plaintiff contends that it had sub-contracted the Electrical Works to the Defendant on terms which had been agreed. As such, there is a binding agreement between the parties. The Plaintiff says that the Defendant wrongfully repudiated the agreement by unjustifiably stopping work in May 2021. The Plaintiff further argues that the Defendant also breached the agreement by failing to perform several key obligations under the Main Contract. The Plaintiff consequently terminated the agreement on 3 June 2021. It claims for an indemnity against all claims from CNQC due to the termination of the Main Contract and damages for the breach of the sub-contract.

4 The Defendant's position is that there were no such breaches of contract because no such sub-contract was formed. Alternatively, the Defendant argues that even if there is a sub-contract, it was entitled to terminate the contract because the Plaintiff repudiated the contract by its failure to (a) allocate 20 man-year entitlement ("MYE"); (b) provide an on-site dormitory for the Defendant's workers; and (c) issue a 10% performance bond to CNQC. The Defendant counterclaims for *quantum meruit* for works carried out at the Plaintiff's request, pending the parties' negotiation and agreement on a proposed sub-contract which was never agreed upon.

5 Mr Gary Lee Chee Seng ("Gary"), the Managing Director of the Plaintiff, Mr Lawrence Li Detong ("Lawrence"), the Project Manager for the Plaintiff from 2018 to 2020, and Mr Edward Yeo Xi Yue ("Edward"), the Executive Director of the Defendant, testified at the trial.

Undisputed facts

6 The undisputed facts are set out below:

Date	Event
24 August 2020	Edward approached Lawrence to find out more about the Project.[1]
29 August 2020	Lawrence sent Edward the following documents: (a) the Plaintiff's quotation to the Main Contractor dated 26 August 2020; and (b) the tender clarification and documents provided by the Main Contractor.[2]
31 August 2020	Lawrence met Edward at the Plaintiff's office.[3]
3 September 2020	Edward, the Plaintiff's Mr Allan Tan and the Main Contractor's representative attended a meeting at the Plaintiff's office.[4]
17 September 2020	Edward, on behalf of the Defendant, issued a quotation for the provision of electrical installation works by way of WhatsApp ("WA") to Lawrence.[5]
21 September 2020	The following individuals met at the Defendant's office:

1 Yeo Xi Yue's Affidavit of Evidence-in-Chief dated 11 May 2022 ("Edward's AEIC") at [10]; Li Detong's Affidavit of Evidence-in-Chief dated 9 May 2022 ("Lawrence's AEIC") at [12].

2 Edward's AEIC at [11]; Lawrence's AEIC at [14].

3 Edward's AEIC at [15]; Lawrence's AEIC at [17].

4 Edward's AEIC at [18]; Lawrence's AEIC at [18].

5 Edward's AEIC at [27]; Lawrence's AEIC at [26].

	(a) Lawrence; (b) Gary; (c) the Plaintiff's Mr Dan Ling; (d) Mr Allan Tan; and (e) Edward.[6]
22 September 2020	The Plaintiff sent an email ("Confirmation Email") enclosing a revised version of the Defendant's quotation ("Revised Quotation") to the Defendant. The first page of the Revised Quotation contains the following words inserted by the Plaintiff: "This quotation approved in principle and pending official main contractor's contract."[7]
Between 22 to 24 September 2020	Lawrence had a telephone call with Edward about the Revised Quotation.[8]
24 September 2020	After the aforesaid telephone call, Lawrence sent a WA message to Edward at about 10.57 am stating: "Please help me to state 20 mye per year purely for this forett project." Edward subsequently sent an email at 11.00 am to the Plaintiff stating: [9]

6 Edward's AEIC at [30]; Lawrence's AEIC at [31].

7 Edward's AEIC at [47], pp 100 to 108; Lawrence's AEIC at [43], pp 204 to 212.

8 Edward's AEIC at [51]; Lawrence's AEIC at [47].

9 Edward's AEIC at pp 110 and 111.

	As per discussed with Lawrence and agreed[.] We will need MYE support of 20 MYE per year. Solely for Forett project. And site dormitory of 20 Men throughout the project.
September 2020	The Defendant commenced work sometime in late September 2020.[10]
23 December 2020	Edward sent an email to the Main Contractor stating, *inter alia*, that: "These are all the documents compile under Triumph Electrical System Engineering Pte Ltd as DSL sub-con".[11]
23 December 2020	The Plaintiff sent a copy of the Main Contract (between the Plaintiff and the Main Contractor) dated 2 October 2020 to the Defendant by way of email. The Plaintiff also requested for a meeting to be held on 29 December 2020.[12]
29 December 2020	Gary, Mr Dan Ling, and Edward met at the Plaintiff's office at the Plaintiff's request.[13]
8 January 2021	Edward sent a WA message to Gary enquiring: "Bond settle already [or] not boss". Gary responded: "Processing".[14]
13 January 2021	Edward sent a WA message to Gary chasing for various

10 Edward's AEIC at [56].

11 Gary's AEIC at [46].

12 Edward's AEIC at [61] to [62], p 118.

13 Edward's AEIC at [61] to [64].

14 Edward's AEIC at [87].

	things. Gary responded: "Wait. I finish meeting will look into it".[15]
18 January 2021	The Defendant assisted the Plaintiff to prepare its first progress claim to the Main Contractor dated 18 January 2021.[16]
15 February 2021	The Main Contractor issued its first payment response in response to the Plaintiff's payment claim dated 18 January 2021. The certified amount was $82,800 (before GST).[17]
24 February 2021	The Plaintiff submitted its second progress claim to the Main Contractor dated 24 February 2021. The Defendant helped to prepare the second payment claim.[18]
March 2021	The Plaintiff was engaged in negotiations with the Main Contractor in respect of the on-demand performance bond.[19]
25 March 2021	The Plaintiff submitted its third progress claim to the Main Contractor dated 25 March 2021.[20]
26 March 2021	By way of a WA message, Gary informed Edward at about 8.15pm that: "Bro. Next week Tuesday can

15 Edward's AEIC at [88] to [89].

16 Edward's AEIC at [81].

17 Edward's AEIC at p 221.

18 Edward's AEIC at p 226; 20 July 2022 Transcript p 14, lines 19 to 21.

19 Gary's AEIC at [58].

20 Edward's AEIC at p 244.

	collect payment".[21]
1 April 2021	Edward sent a WA message to Gary enquiring on the status of the performance bond. Gary responded: "I am now waiting for their revised contract clause for the PG. [O]nce the revised copy our then I will proceed with the issuance of bond."[22]
6 April 2021	The Main Contractor issued its second payment response. The certified amount was $152,949.[23] The Main Contractor had withheld the sum of $690,000 from the response amount pending the provision of the on-demand performance bond.[24]
13 April 2021	Gary sent a WA message to Edward to ask if the Defendant would be keen to take over the Main Contract from the Plaintiff.[25]
19 April 2021	The Main Contractor issued its third payment response. The certified amount was $161,349.[26]

21 Core Bundle of Documents ("CBD") at p 700.

22 Edward's AEIC at [94].

23 Edward's AEIC at p 253.

24 Edward's AEIC at p 253.

25 Edward's AEIC at [98].

26 Edward's AEIC at p 267.

3 May 2021	Gary sent a WA message to Edward informing him that the payment for another project ("TC16 Project") was ready for collection. Edward sent the following series of WA messages to Gary between 5.03pm to 5.04pm:[27] Boss so this week you issuing to Qing Jian we stop work? All halt? Let you pressure them? My bond insurance did quote but shit price la $450k for 10% bond
6 May 2021	Edward sent a series of WA messages to Gary between 11.03am to 11.05am. The series of WA Messages included the following:[28] I not interested to continue liao still want bond… I quote any job now also better budget than Forett In Sept 2020 Copper is $7k/tonnes Now May 2021 Copper is $9.9k/tonnes Gary emailed Edward at about 5.41pm that the Plaintiff would require the Defendant to furnish a performance bond.[29]
7 May 2021	Edward responded to Gary's email of 6 May 2021,

[27] Edward's AEIC at p 289.

[28] Edward's AEIC at p 291.

[29] CBD at p 475 and 476.

	stating that the Defendant is "unable to accept this performance bonds due to the huge quantum" and that the Defendant has not received payment or any official Letter of Award.
7 May 2021	Edward sent the following WA message to Gary: "By this week all my works will stop".[30]
18 May 2021	Edward sent the following WA messages to Gary:[31] Boss Please proceed to void the contract Advisor say if we void due to they [*sic*] dragging also can arbitrage Since we can show all work done
22 May 2021	The Defendant's solicitors wrote to the Plaintiff and served the Defendant's "Notice to Cease Work".[32]
2 June 2021	The Plaintiff terminated the purported sub-contract through its solicitors.

Agreed Issues

7 The proceedings have been bifurcated. Hence this tranche of the trial is only on liability. The agreed issues are:

(a) whether there is an agreement between the Plaintiff and the Defendant in relation to the Electrical Works ("Issue 1");

(b) if there is a binding agreement:

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30 Edward's AEIC at p 292.

31 Edward's AEIC at p 292.

32 Edward's AEIC at p 320.

(i) what were the terms of the agreement ("Issue 2");

(ii) whether there had been a breach of the terms of the agreement by the Plaintiff and/or the Defendant, as the case may be, the particular terms which were breached and how they were breached ("Issue 3");

(iii) whether any such breach amounted to a repudiatory breach of the agreement ("Issue 4");

(iv) whether the agreement has been wrongfully terminated ("Issue 5");

(v) the liability for breach and/or wrongful termination in respect of each of the Plaintiff and/or the Defendant if any ("Issue 6"); and

(c) if there was no binding agreement between the parties, whether the Defendant is entitled to a *quantum meruit* claim for the Electrical Works carried out ("Issue 7").

Whether there is an agreement between the Plaintiff and the Defendant in relation to the Electrical Works

8 Issue 1 is whether there is an agreement between the Plaintiff and the Defendant in relation to the Electrical Works.

Parties' position

9 The Plaintiff submits that there was a valid agreement between the parties for the following reasons:[33]

[33] Plaintiff's Opening Statement ("POS") at [11].

(a) Both parties intended the Defendant to be the Plaintiff's sub-contractor for the Electrical Works since the tender stage for the Main Contract.

(b) The terms in the Confirmation Email and the Revised Quotation are comprehensive. They have all the necessary ingredients for a construction contract, namely the parties, scope of work, contract period and price.

(c) The Defendant did not raise any objections to the Confirmation Email or the Revised Quotation. After receiving these documents, the Defendant commenced work on 23 September 2020.

(d) On 24 September 2020, Edward replied to the Confirmation Email. He did not object to the terms of the Confirmation Email or the Revised Quotation.

(e) From end of September 2020 to May 2021, the Defendant had completed the Electrical Works for the site office at the Project, installed temporary electrical works at the site, prepared and submitted design drawings to the project consultant, represented to CNQC that it was the Plaintiff's sub-contractors, communicated with CNQC as the Plaintiff's sub-contractor and prepared and submitted payment claims for the Plaintiff.

(f) The Defendant did not reject the terms of the Main Contract which was forwarded to them on 23 December 2020.

(g) Sometime in January 2021, the Defendant assisted the Plaintiff to prepare its first progress claim to CNQC. This progress claim was

based on the formula set out in the Revised Quotation (*ie*, 8% from the Main Contract) and the price breakdown set out in the Main Contract bills of quantities. The 2nd and 3rd progress claims were made on 24 February 2021 and 25 March 2021. This was repeated by the Defendant in a document dated 22 May 2021 which is labelled as its fifth payment claim.

10 The Defendant makes a preliminary objection that the Plaintiff's pleadings are defective because the allegation that the Defendant accepted the agreement by way of conduct has not been pleaded.[34]

11 The Defendant's main submission on this issue is at two levels.

12 First, the Defendant submits that the Revised Quotation is a counter-offer that is incapable of acceptance at law.[35]

(a) The contract price was indeterminate. The relevant provision of the Revised Quotation read: "as per breakdown amount of $6,430,800 (8% from CNQC's contract sum)". The Defendant submits that this could either mean that the contract price is 8% of CNQC contract sum or that it is 8% less of CNQC contract sum. The Defendant argues that both figures are wrong. The former would mean that the CNQC contract sum is around $18.375m, which it is not. If it is the latter, then the Revised Quotation should have stated $6,348,000, not $6,430,800. The Defendant submits that the contract price indicated in the Revised

34 Defendant's Skeletal Submissions ("DSS") dated 22 July 2022 at [2].

35 Defendant's Opening Statement ("DOS") at [22] to [28].

Quotation is indeterminate and any purported contract must be void for uncertainty.

(b) DSL qualified the Revised Quotation with the words "approved in principle and pending official main contractor's contract". This was followed by reiterating that DSL "would like to confirmed [*sic*] [Triumph Electrical's] service in principal [*sic*]…". DSL indicated that the Revised Quotation "shall be an back to back contract with commerical [*sic*] having certain acceptation [*sic*]", without specifying what are the exceptions. At the time the Revised Quotation was sent, the Main Contract had yet to be signed. The Defendant argues that it would not be possible for a contract to come into existence in the circumstances when it was not even aware of the terms of the Main Contract — there can be no meeting of minds when the terms of the agreement are yet unknown.

13 Second, the Defendant submits that on the evidence, there was no agreement between the parties:

(a) The Plaintiff unilaterally revised several terms in the Revised Quotation and omitted to include terms relating to (i) MYE support, (ii) provision of an on-site dormitory, and (iii) payment, that were agreed on during a meeting on 21 September 2020. The Defendant did not approve the terms of the Revised Quotation. Edward's email dated 24 September 2020 in response to the Revised Quotation represents a rejection of the Revised Quotation and the terms set out therein.[36]

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[36] DOS at [18] to [20].

(b) Edward told Lawrence during their telephone call sometime between 22 September to 24 September 2020 that he did not accept the Revised Quotation. Lawrence requested the Defendant to start work first due to the urgency in completing the works, while he would get the Plaintiff's team to sort out the disputed terms.[37]

(c) The Defendant's version of the facts is supported by: (i) the follow-up WA message from Lawrence dated 24 September 2020 to Edward in which he said: "Please help me to state 20 mye per year purely for this forett project"; and (ii) Edward's email of 24 September 2020 in response to the Revised Quotation where he specifically reiterated that the Defendant would require 20 MYE.[38]

(d) The Defendant relies on discussions during meetings on 3 September 2020 and 21 September 2020 to show that there was no agreement.[39]

(e) There was no acceptance of the Revised Quotation by conduct. The reference to the Defendant as "DSL sub-con" in an email dated 23 December 2020 sent by the Defendant to CNQC, was for ease of reference in communications with CNQC. The provision of workers' names, organisation chart, risk assessment, etc, were necessary for Triumph Electrical to commence works first as requested by DSL, pending parties' agreement on the proposed sub-contract.[40]

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37 DOS at [30].

38 Edward AEIC at [53] to [55].

39 Edward's AEIC at [18] to [26], [30] to [46].

40 DOS at [42(c)].

(f) The Defendant relies on the following conduct to show that parties did not enter into a sub-contract:

(i) On 23 December 2020, the Defendant received an email from the Plaintiff's Angelia attaching a signed copy of the Main Contract. In the same email, the Plaintiff requested for a meeting to discuss the terms of the proposed sub-contract between DSL and Triumph Electrical.[41]

(ii) Edward sent further chasers to Gary on the proposed sub-contract and unresolved issues in WA messages on 13 January 2021 and 15 January 2021.[42] Gary's response was that he would look into it. Notably, Gary did not dispute the fact that the sub-contract had not been entered into or deny that there were unresolved issues in his response.[43]

(g) Only to the extent of the Plaintiff's request for the Defendant to commence work on the Electrical Project while parties are negotiating the proposed sub-contract, the Plaintiff had agreed to pay to the Defendant 92% of the value of the amount which has been certified by CNQC, while the Plaintiff would receive the remaining 8%.[44]

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41 DOS at [43(a)].

42 DOS at [43(b)]; Edward's AEIC at [87] to [88].

43 Edward's AEIC at [89].

44 DOS at [61].

My decision

14 I will deal first with the Defendant's preliminary objection that the conduct showing agreement was not pleaded by the Plaintiff. I agree with the Plaintiff that there is no basis for this objection, as the Plaintiff has pleaded that the Defendant had accepted the Revised Quotation by its conduct, "when it commenced work in September 2020 and continued to do so in January 2021 and up to May 2021"[45], and also pleaded the facts of such conduct.[46] The Defendant complains that this was in the Reply and not in the Statement of Claim. However, it is undisputed that the Defendant had sight of what was in the Reply and responded to this point in Edward's Affidavit of Evidence-in-Chief ("AEIC"). The Defendant clearly knew what case it had to meet at trial. It is trite law that the court may permit an unpleaded point to be raised, provided that the other party is not taken by surprise or irreparably prejudiced: *OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 at [18]; *Lu Bang Song v Teambuild Construction Pte Ltd* [2009] SGHC 49 at [17]. In the present case, there was clearly no irreparable prejudice to the Defendant. Counsel for the Defendant acknowledged that the Defendant was not surprised by the material facts being pleaded in the Reply.

15 I will deal next with the Defendant's submission that the counter-offer in the Revised Quotation was incapable in law of being accepted.

16 The Defendant first submitted that the price was indeterminate. This is because the Revised Quotation either meant 8% of the CNQC contract sum or 8% less than the CNQC contract sum, both of which were inaccurate.

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45 Plaintiff's Reply and Defence to Counterclaim ("RDCC") at [12.1].

46 RDCC at [9A] and [9B].

17 I do not find that the first of the Defendant's interpretations was a possible intended meaning. The Revised Quotation stated "8% *from* CNQC's contract sum" and not 8% "of" the CNQC contract sum. A plain reading of this phrase is that the parties intended for the contract price to have an 8% difference *from* the CNQC contract sum. This is supported by the Confirmation Email, which stated "we would like to confirmed [*sic*] your service in principal [*sic*] with eight (8%) different [*sic*] from our awarded CNQC's Contract". In other words, the parties intended for the Plaintiff to retain 8% of the contract price in the Main Contract and the Defendant to retain the remaining 92%.

18 The Defendant also argues that the final contract price in the Main Contract is $6,900,000 and that 92% of this sum would be $6,348,000, not $6,430,800 which was stated in the Revised Quotation. However, I do not find that this slight difference results in any indeterminacy of contract term on pricing. As mentioned, the Confirmation Email made clear that the contract price between the parties is an 8% difference from the awarded CNQC contract. The Defendant themselves in preparing their progress claims, took $6,348,000, which is 8% from the contract sum in the Main Contract, as the basis for their milestone claims.

19 Second, the Defendant submitted that the Revised Quotation was an inchoate counter-offer since it was pending the Main Contract.[47]

20 It is undisputed that the Main Contract was sent to the Defendant only on 23 December 2020. The Defendant would not have had sight of any of the terms of the Main Contract prior to then. In these circumstances, I find that the

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47 DOS at [28].

parties could not have intended for a "back-to-back" contract in the manner argued by the Plaintiff — that all the terms in the Main Contract to be incorporated in their agreement on 24 September 2020.

21 The term "back-to-back contract" is "not a term of art": *GIB Automation Pte Ltd v Deluge Fire Protection (SEA) Pte Ltd* [2007] 2 SLR(R) 918 ("*GIB Automation*") at [35]. It is essentially a pragmatic term of incorporation which incorporates into a subcontract the terms of the head contract. What is key is that "despite these words of incorporation appearing in a subcontract, the subcontract and the head contract remain distinct contracts": *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2020] SGHC 165 at [62].

22 In *Hi-Amp Engineering Pte Ltd v Technicdelta Electrical Engineering Pte Ltd* [2003] SGHC 316 at [98], the court held that there was no "back-to-back" contract because the defendants did not furnish the main contract documents to the plaintiff when the parties signed the sub-contract, and the plaintiff was unaware of the terms of the main contract. Here, not only was the Defendant unaware of the terms of the main contract, it is undisputed that the Main Contract had not even been signed as of the date of the Confirmation Email on 22 September 2020 or when the Defendant replied to it via email on 24 September 2020. It was only signed around 21 December 2020[48] and conveyed to the Defendant around 23 December 2020. Since both the Plaintiff and the Defendant were unaware of the terms of the Main Contract, it cannot be said that all the terms of the Main Contract were imported into the parties' agreement as of 24 September 2020.

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[48] 18 July 2022 Transcript, p 70, lines 12 to 22.

23 In *GIB Automation*, it was held at [48] and [50]:

> 48 The weight to be attached to the fact that a party has not seen the main contract must be considered in the light of the factual matrix as a whole. It may not be decisive if the circumstances are such that the terms said to be affected by the back-to-back provision are matters that would fall within the general appreciation and knowledge of the parties to the subcontract. On the other hand, if the terms are highly technical and particular, it may be more important. Further, consideration should be given to the sub-contractor's ability to ask for a copy of the main contract. It may also be overcome with sufficiently explicit language making it clear that the head contract was being incorporated and that the sub-contractor was deemed to have acquainted itself with its terms.
>
> …
>
> 50 Just what is incorporated will depend in each case upon such things (among others) as what was objectively known to the parties at the time they entered into the contract, what specific references were made to the main contract document, and whether the terms of the main contract relevant to the back-to-back provision were of such a nature that they should have been and were specifically brought home to the sub-contractor or whether they were sufficiently general that they would fall within the general appreciation and knowledge of the parties. By way of example, it may be generally known to a sub-contractor that the main contractor would in due course make an application for payment to the employer in respect of works done by the sub-contractor. On the other hand, it may not be generally known to the sub-contractor that requests have to be in a very particular format.

24 Applying the analysis in *GIB Automation*, it would only be the terms of the Main Contract that were within the general appreciation and knowledge of the parties, that could be incorporated by the back-to-back clause. On the facts, I find that this includes the contract price, the work scope of the Main Contract and that the Defendant would be paid 92% of the contract price as set out in the Main Contract. I will deal with the other clauses in the Main Contract that the Plaintiff relies on later.

25 The next issue I turn to consider is whether, notwithstanding the fact that the terms of the Main Contract had not been incorporated as of 24 September 2020, there could nonetheless be a binding agreement between the parties on 24 September 2020 based on the Revised Quotation and the Confirmation Email. In *Toptip Holding Pte Ltd v Mercuria Energy Trading Pte Ltd and another appeal* [2018] 1 SLR 50 at [40], the Court of Appeal held that:

> ... It is established law that a contract may be formed despite the fact that some terms have not yet been finalised. This occurs when an objective appraisal of the conduct and language of the negotiating parties leads to the conclusion that, having agreed on the essential terms, though not all the terms, they nevertheless intended to be bound immediately...

26 The determination of the essential terms in a contract is a factual inquiry that depends on the circumstances of the parties' dealings with each other, including the nature of the transaction envisaged by the parties: *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 03.235; *Norwest Holdings Pte Ltd (in liquidation) v Newport Mining Ltd* [2010] 3 SLR 956 ("*Norwest Holdings*") at [28]. Typically, the essential terms of a contract would include the parties, the price, and the subject matter: *Tan Ngiap Tong v Tan Ngep Hong* [2021] SGHC 220 at [5].

27 In *Drake and Scull Engineering Limited v Higgs and Hill Northern Limited* (1995) 11 Const LJ 214, the defendants were main contractors for certain works to a Liverpool hospital and the plaintiffs were the sub-contractor for the supply and installation of mechanical and electrical installations. Notwithstanding the fact that the parties did not agree on the plaintiffs' daywork rates, the Official Referee found that there was a binding contract, reasoning that:

> I am satisfied that by 11 May all the terms save one necessary for a binding sub-contract to come into being were 'agreed'. That is to say, inter alia, *price, commencement date of the contract, duration of the contract and obligations under the contract*... [emphasis added].

28 In *Hock Chuan Ann Construction Pte Ltd v Kimta Electric Pte Ltd* [1999] 2 SLR (R) 237, the court held at [59] that "in some cases, the battle is won by the man who fires the last shot, the other party being taken to have agreed to his terms by conduct in proceeding to perform the agreement without objection.".

29 With these in mind, I will next examine the evidence on whether there was a binding agreement between the parties as of 24 September 2020.

30 It is undisputed that prior to the Confirmation Email, information pertaining to the Electrical Project, including its work scope, had been conveyed to the Defendant at the tender interview and the documentation about the Project had been sent to the Defendant.

31 On 22 September 2020, the Plaintiff emailed the Defendant the Confirmation Email, enclosing the Revised Quotation, which contained their amendments to the Defendant's Quotation. The email stated:[49]

> Dear Edward,
>
> Hereby [a]ttached our amended Quotation confirmation for your kind attention.
>
> Please referred [*sic*] to attached below CNQC email and we would like to confirmed your service in principal [*sic*] with eight (8%) different from our awarded CNQC's Contract.

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[49] Edward's AEIC at p 111.

> Appreciated [*sic*] if you would note that this shall be an [*sic*] back to back contract with commercial having certain acceptation.
>
> This letter shall serve as written confirmation for appointing your company as our comprehensive subcontractor for this particular CNQC Forett Condo at Bukit Timah Road.
>
> For more clarification please have a short meeting on coming Friday (25.09.2020) at 1500 to further detail all necessary with our appointed PM.

32 The Defendant replied, by an email dated 24 September 2020 stating:[50]

> Dear Cheryl
>
> As per discussed with Lawrence and agreed
>
> We will need MYE support of 20 MYE per year.
>
> Solely for Forett project.
>
> And site dormitory of 20 Men throughout the project.
>
> Thank you
>
> Edward

33 Edward explains that what he meant by "[a]s per discussed with Lawrence and agreed", is the phone conversation he had with Lawrence around 22 to 24 September 2020, where he told Lawrence that he could not accept the terms in the Revised Quotation.[51]

34 Lawrence accepts that the telephone call took place.[52] His evidence is that he understood the phrase "[a]s per discussed with Lawrence and agreed" in Edward's 24 September 2020 email, to mean that Edward agreed to most of the terms in the Revised Quotation, and the only thing was that he needed DSL to

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50 Edward's AEIC at p 111.

51 Edward's AEIC at [51].

52 Lawrence's AEIC at [47].

support the MYE request.[53] Lawrence's evidence on the stand was that he and Edward discussed the terms of the Revised Quotation. He said he went through with Edward the terms that were amended from the Defendant's quotation and Edward agreed with them.[54] By then, Edward had been given the tender clarifications and information for the tender that they were seeking from CNQC. Some of the tender clarifications are contained in the Main Contract[55] although there remained outstanding issues such as the exact number of MYE, dormitory support, work materials and the performance bond. However, Lawrence's view was that these were minor issues to be worked out along the way and did not affect the agreement.[56] The Defendant submits that Lawrence's evidence that the Defendant agreed to most things shows that there was no contract between the parties. However, that misconstrues Lawrence's testimony, which was clear in highlighting the parties had already agreed on the remaining terms of the contract, save for the MYE issue. Lawrence testified that "they already have a common understanding, during that time when they write this, so we already agree most of the thing, except for some MYE, and can proceed on".[57]

35 Lawrence acknowledged that Edward also raised the MYE issue. In this regard, Lawrence explained that there is generally about 1 MYE for every $500,000 of the contract sum,[58] which meant that the Defendant would definitely be receiving MYE. As such, the issue was just about the quantum of

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53 19 July 2022 Transcript at p 95, lines 6 to 13.

54 Lawrence's AEIC at [47]; 19 July 2022 Transcript at p 48, lines 5 to 11.

55 CBD at p 166.

56 19 July 2022 Transcript at p 70, lines 19 to 24; p 93 line 21 to p 94 line 6.

57 19 July 2022 Transcript at p 96, line 24 to p 97 line 2.

58 19 July 2022 Transcript at p 51, lines 18 to 24.

MYE that the Defendant would receive.[59] This in turn would depend on the amount of MYE that CNQC could secure from the Ministry of Manpower ("MOM"). As CNQC had not been allocated its MYE from MOM, Lawrence could not confirm how many MYE the Defendant would receive. Nonetheless, Lawrence told Edward to write in and put his MYE request in "black and white".[60]

36 The Defendant submits that Edward's version of the event, that he told Lawrence he could not accept the Revised Quotation in their telephone call, is supported by Lawrence's WA message on 24 September 2020, in which he stated "[p]lease help me to state 20 mye per year purely for this forett project". I am unable to agree. Lawrence's WA message of 24 September 2020 does not say in any way that Edward informed Lawrence of his disagreement with the Revised Quotation. Lawrence's WA message only asks Edward to state his MYE request, which is consistent with Lawrence's evidence that he told Edward to state down his MYE request in black and white.

37 The Defendant further submits that there was no agreement on the Revised Quotation because it did not record material terms sought by the Defendant, such as (a) the allocation of 20 MYE to the Defendant, (b) the provision of an on-site dormitory for the Defendant's workers, and (c) the issuance of the performance bond to CNQC. However, there is no documentary evidence that these terms were regarded as so material that they would prevent the parties' agreement on the Revised Quotation.

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59 19 July 2022 Transcript at p 63 line 24 to p 64 line 2.

60 19 July 2022 Transcript at p 52 lines 8 to 15.

38 Notably, Edward did not say in his 24 September 2020 email that he disagreed with the Revised Quotation. Neither did Edward say that the Defendant's agreement to the Revised Quotation was conditional on the Plaintiff's provision of 20 MYE per year and an on-site dormitory for 20 men.

39 Given the above, Edward's email could possibly be read as him saying that he had no objections to the Revised Quotation, but that he also needed the support of 20 MYE and an on-site dormitory. I find that this reading of Edward's 24 September 2020 email is reinforced by Edward's subsequent conduct.

40 The Defendant started work on the Electrical Project in late September, at around the time of Edward's email reply of 24 September 2020. Edward evidence is that the Defendant only commenced work because Lawrence requested that the Defendant start work first due to the urgency in completing the works, and had assured Edward that he would get the Plaintiff's team to sort out the disputed terms.[61]

41 However, while it could be the case that a party may start work on the basis of some agreed essential terms while some disputed terms are being ironed out, this is not the Defendant's position. Edward's evidence is that the Defendant agreed to start work without any agreement at all, except for the term that DSL would pay to Triumph Electrical 92% of the works certified by CNQC.[62]

42 Taking the Defendant's position to its logical conclusion, it would mean that the Defendant agreed to start work without any agreement on the price or

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61 Edward's AEIC at [51].

62 Edward's AEIC at [52].

the exact scope of work. In relation to the price, it would have meant that the Defendant had agreed to start work even if the final contract price was less than the $6.9m that it had tendered for. Seen in this light, the Defendant's position is less than credible. It is even less so when seen with the other actions of the Defendant.

43 For not only did the Defendant start work around the time he replied to the Confirmation email in late September 2020, the Defendant also represented to CNQC that the Defendant was the Plaintiff's sub-contractor.

44 In Edward's email dated 23 December 2020 to CNQC, he informs CNQC that: "[t]hese are all the documents compile[d] under Triumph Electrical System Engineering Pte Ltd *as DSL sub-con* …" [emphasis added].[63] On the face of this email, Edward recognised the Defendant as "DSL's sub-contractor" for the Electrical Project and is representing that to the main contractor, CNQC. This must mean that he accepted that there is a valid agreement between the parties. The only basis for the Defendant being the Plaintiff's sub-contractor is the correspondence between them that led to an acceptance by the Defendant of the Revised Quotation.

45 There is certainly no documentation that states the Defendant was prepared to carry out the Electrical Works on the basis of the Plaintiff paying it 92% of the works certified by CNQC, without any other terms. There is certainly also no documentation stating that the Plaintiff accepted such an offer.

46 Edward seeks to explain the Defendant's representation to CNQC by saying that CNQC was aware that the Defendant was carrying out works and

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63 Gary's AEIC at [46].

submitting documents to CNQC on behalf of the Plaintiff, which was why in correspondence with CNQC, the Defendant was sometimes referred to as "DSL sub-con" for ease of reference.[64]

47 However, this was not a mere matter of ease of reference. The same email from Edward enclosed the Defendant's Risk Assessment, Safe Work Procedures, Method Statements, details of the Defendant's workers, and the Defendant's "Project Organisation Chart".[65] This supports the view that Edward was, in that email, representing to CNQC as the main contractor, that the Defendant was the Plaintiff's sub-contractor for the Project.

48 Indeed, CNQC would have no reason to otherwise deal with the Defendant, if it were not the Plaintiff's sub-contractor. The Defendant would also be eligible for the MYE allotment secured by CNQC for the Electrical Project from MOM, only if it was a sub-contractor of the Plaintiff, *ie*, it was one of the parties involved in the Electrical Project. By its representation to CNQC, the Defendant was indicating that it accepted being the Plaintiff's sub-contractor and would be proceeding with the works in that capacity. The only manner in which the Defendant could be the Plaintiff's sub-contractor for the Project was to accept the terms of the Revised Quotation, which was the Plaintiff's offer on the table.

49 The Defendant cited the case of *L & M Equipment Pte Ltd (formerly known as L & M Engineering Logistic Pte Ltd) v Hyundai Engineering & Construction Co Ltd and Others* [1999] SGHC 182 ("*L&M*") in which the court

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64 Edward's AEIC at [57].

65 Edward's AEIC at p 196.

found that there was no contract between the sub-contractor and the sub-sub-contractor, notwithstanding the fact that latter had already commenced work at the former's request.

50 However, the circumstance of that case is different from the present case. In *L&M*, the court reasoned that (a) the sub-sub-contractor negotiated directly with the main contractor without involving the sub-contractor; (b) the written agreement between the sub-sub-contractor and the sub-contractor was never signed; and (c) the parties had not agreed on the valuation of work for interim payments (at [40]–[41]). In the present case, the evidence shows that the Defendant liaised directly with the Plaintiff in relation to the Electrical Works. The Revised Quotation bore the signatures and company stamps of the parties. Tender Addendum No 4 to the Revised Quotation also provided the breakdown prices of the Defendant's work.[66]

51 Moreover, the Defendant prepared and submitted payment claims to CNQC in its capacity as the Plaintiff's sub-contractor for the Electrical Project. The progress claims from the 1st progress claim in January 2020 to the 5th progress claim dated 22 May 2021, were prepared by the Defendant and sent to CNQC. In the payment claims prepared by the Defendant, Edward included items which were not in his original Quotation, but which were in the Main Contract.[67] Edward accepted that he was claiming for these items based on what was in the Main Contract. This undermines his claim that there was no agreement between the Plaintiff and the Defendant.

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66 CBD at pp 30–37.

67 CBD at pp 37 and 555.

52 The Defendant refers to other incidents to support Edward's version of events, but I find that these do not support him.

53 First, Edward claims that when the Plaintiff's Angelia sent an email to Edward on 23 December 2020, saying "[p]lease find the contract for Forett and we would like to arrange a meeting on next Tuesday at 2pm in our Toh Guan Office", Edward's understanding was that the meeting was intended to discuss the terms of the proposed sub-contract between the Plaintiff and the Defendant now that the sub-contract with CNQC has been finalised.[68] However, there is nothing in Angelia's email that indicates so. It simply states that the Plaintiff would like to arrange a meeting with the Defendant.

54 Second, Edward relies on his WA correspondence with Gary on 13 January 2021, which is set out below:[69]

> Edward: Boss the following are the things I need to resolve to move forward 1. our contract confirmation with breakdown 2. Get our first claim in. 3. Settle MYE support 4. Site dormitory issue. 5. Site is chasing for temp supply work. **including licensing and incoming**. We have not received any payment till date to cater for the above high running cost ... Our claims easily reach $100k
>
> Gary: Wait. I finish meeting will look into it
>
> [emphasis in original]

55 The Defendant submits that it was clear from Gary's response that there was no binding agreement on any sub-contract between the Plaintiff and the Defendant.[70] However, an examination of this WA correspondence indicates

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68 Edward's AEIC at [61], p 117.

69 Edward's AEIC at [88]–[89], p 273.

70 Edward's AEIC at [89].

that what Gary was looking into were operational issues arising from the Electric Project, rather than issues regarding an agreement. A key concern raised by Edward in his 13 January 2021 WA message, was that the Defendant's claims "easily reach $100k" based on work done to date but they had not "received any payment till date to cater for the above high running cost". Gary's response "will look into it", thus appears to be him looking into the payment issue, rather than the terms of the agreement.

56 In summary on this issue, on an examination of the evidence, including the Defendant's subsequent conduct, I find that by Edward's email dated 24 September 2020 to the Plaintiff, the Defendant had accepted the Plaintiff's counter-offer as set out in the Plaintiff's email dated 22 September 2020 and the Revised Quotation. These contained the essential terms such as the name of the parties, scope of work, contract period and price.

57 For completeness, the Defendant also argued that there could not have been a binding agreement as of 24 September 2020 because the Revised Quotation contained the following words inserted by the Plaintiff: "This quotation approved in principle and pending official main contractor's contract".[71]

58 Gary testified that what the Plaintiff intended by saying "pending main contractor's contract" was to state that the agreement between the Plaintiff and the Defendant would be called off if CNQC subsequently did not appoint the Plaintiff as a sub-contractor. This had to be so as there would then be no job for the Plaintiff, and consequently for the Defendant to do. The plain text supports

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71 Edward's AEIC at [47], pp 100 to 108; Lawrence's AEIC at [43], pp 204 to 212.

such an interpretation. It also accords with the commercial realities for the parties.

59 I am accordingly of the view that the reference to "pending main contractor's contract" did not negate the parties' intention to be legally bound by the essential terms set out in the Revised Quotation and Confirmation Email on 24 September 2020. Rather, the legal effect of this clause is to allow parties to terminate their agreement if the Main Contract is not awarded to the Plaintiff.

60 In any event, the Main Contract was eventually concluded between CNQC and the Plaintiff. The Plaintiff subsequently emailed the Defendant the Main Contract by email on 23 December 2020 and arranged a meeting with the Defendant. Gary, the Plaintiff's Mr Dan Ling, and Edward met at the Plaintiff's office on 29 December 2020.

61 Notwithstanding the fact that there remained some unresolved issues between the parties after the 29 December meeting, the Defendant did not raise any objections to the existence or validity of its contract with the Plaintiff. The Defendant continued to carry out works on the Electrical Project and did so until end April 2021 when it stopped work. The Defendant even prepared and sent to CNQC the first progress payment claim in January 2021, which was based on the contract sum stated in the Main Contract and in reliance on the payment milestones provided for different work items as set out in the Main Contract. These circumstances suggest that there must have been a binding contract between the Plaintiff and the Defendant.

62 Therefore, even if I accept the Defendant's case that there was no binding contract between the parties as of 24 September 2020 pending the conclusion of the Main Contract, I am of the view that there must have been a binding agreement

between the parties as of 23 December 2020 when the Main Contract was concluded and sent to the Defendant.

What were the terms of the agreement?

63 Following from the above analysis, the terms of the agreement would include the terms set out in the Confirmation Email and the Revised Quotation.

64 There was, however, no clear indication that the Defendant accepted all the terms contained in the Main Contract. As explained above, the "back-to-back" clause in the Revised Quotation did not have the effect of incorporating the Main Contract terms as of 24 September 2020, since the Defendants had not even seen the Main Contract then. When Angelia emailed the Main Contract to Edward on 23 December 2020, there is no written confirmation from Edward that he accepted the terms of the Main Contract. The Plaintiffs had in the same email forwarding the Main Contract to the Defendant, asked to meet with the Defendant. This took place on 29 December 2020. There is no evidence that Edward agreed to all the terms in the Main Contract at the 29 December 2020 meeting.

65 On 8 January 2021, Edwards asks Gary by WA: "Bond settle already a not", to which Gary replied "Processing", which suggests the Plaintiff was sorting out the issues with the performance bond with CNQC. Under clause 27.2 of the Main Contract, the sub-contractor must furnish an unconditional performance bond to the main contractor, CNQC. If this was truly a "back-to-back" contract in the manner argued by the Plaintiff, the Defendant should be liable for all of the Plaintiff's obligations under the Main Contract and should be expected to issue the performance bond to CNQC under clause 27.2. However, Gary's reply suggests that the Plaintiff was responsible for issuing

the performance bond. This undermines the Plaintiff's case that every term in the Main Contract was automatically incorporated into the sub-contract between the Plaintiff and the Defendant pursuant to the "back-to-back" clause.

66 Furthermore, in Edward's 13 January 2021 WA messages to Gary as set out at [54] above, Edward informed Gary that he would need certain issues resolved before he could move forward, which included the MYE and site dormitory issues. This further indicates that the parties have not come to an agreement on all the terms of the Main Contract. In addition, Gary sent a WA message to Edward on 8 March 2021, saying: "U free either tmr or Wednesday. Can we meet up and wrap up the forette contract."[72] This suggests that there were still issues on the Main Contract to wrap up. When cross-examined on this by Defendant's counsel, Gary explains:[73]

> What I mean by wrap up on Forett contracts, it might be other issues. It might be pertaining to payment issue, it might be pertaining to bond issues, okay?... So doesn't mean that wrap up the Forett contract, that means to conclude that I will award the contract to you. No, this is not my intention.

Even if Gary's evidence is taken as it is, his testimony reinforces that there were issues under the Main Contract that were not resolved, such as the bond issue.

67 As set out above, the contract price and the work scope of the Main Contract were within the general appreciation and knowledge of the parties and would be incorporated by the back-to-back clause. Moreover, the evidence is that the Defendant relied on the overall contract price and the price breakdown of items contained in the Main Contract, to make its progress claims. I find that

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72 CBD at p 698.

73 18 July 2022 Transcript at p 128, lines 11 to 17.

even if not incorporated by the back-to-back clause in the Main Contract, by such conduct, the Defendant did accept these terms of the Main Contract. I will deal with the other terms of the Main Contract below.

68 The Defendant submits that if there is a binding agreement between the parties, the terms of agreement would also include the following terms ("Negotiated Terms"):[74]

(a) Upon CNQC certifying the Plaintiff's works, whether by a payment certificate or otherwise, the Defendant would be entitled to 92% of the value of the sum certified by CNQC, while the Plaintiff was entitled to the remaining 8%, regardless of whether CNQC had paid the Plaintiff ("Payment Term").

(b) The Defendant would be allocated with 20 MYE per year (instead of 50 during the entire duration of the Project) ("MYE Term").

(c) The Plaintiff and/or CNQC shall provide an on-site dormitory to accommodate the Defendant's workers ("Dormitory Term").

69 The Defendant claims that the Negotiated Terms were orally agreed at the 21 September 2020 meeting. The Plaintiff denies this and says that it could not have done so because it was unable to provide 20 MYE or on-site dormitory accommodation at that time, as these were subject to CNQC's confirmation.

70 I do not find sufficient evidence that the MYE Term, Dormitory Term and Payment Term were agreed on by the parties. Rather they were points of

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74 DOS at [15]; Edward's AEIC at [38].

concern that were highlighted by the Defendant, but which the Plaintiff had yet to accept as part of their agreement, such that it would be bound to them.

71 First, in relation to the MYE Term, it is accepted by parties that MYE is allocated by MOM to the main contractor of a project. Edward accepted that as of 21 September 2020, neither the Plaintiff nor the Defendant knew if CNQC would be giving them 20 MYE for the Electrical Project.[75] Gary and Lawrence testified that they would want to support the Defendant with the MYE that CNQC would allocate for the project, but they could not have promised 20 MYE at that time, since CNQC had not firmed up the allocation.[76]

72 Lawrence and Gary's evidence is supported by Edward's WA discussion with Allan Tan (representing Plaintiff) in January 2021, the material parts of which are set out below:[77]

Edward:	We need the MYE very soon boss
Edward:	Still haven't come back?
…	
Allan Tan:	Already talk to [CNQC's] CM & write in to request for it
Edward:	Thank you very much!
…	
Allan Tan:	Confirmed 500k one mye
…	
Allan Tan:	Need more then got to talk to PM later on
Edward:	So only 13.8?

[75] Transcript 19 July 2022, p 105, lines 12 to 22.

[76] Transcript 18 July 2022, p 166, lines 15 to 20; Transcript 19 July 2022, p 54, lines 18 to 24.

[77] CBD at pp 688-689.

Edward:	This one overkill sia
…	
Edward:	My lowest recently is $250k for 1 MYE
Edward:	Your one shock my life
…	
Allan Tan:	CM also say need additional mye later talk & write in to PM to request

73 The above conversation between Edward and Allan Tan reinforces my view that the issue of the exact number of MYE has not been settled between the parties as of January 2021. Notably, Edward did not object or say that 20 MYE was promised by the Plaintiff in their meeting on 21 September 2020.

74 Second, in relation to the Dormitory Term, Edward accepted that the Plaintiff was agreeable to provide the dormitory subject to confirmation from CNQC that they would provide the same.[78] Edward also accepted that as of April 2021, there was still no confirmation about the dormitory.[79] Edward accepted during cross-examination that following from the above, there could not be any so-called breach from DSL in April 2021, in relation to the provision of the dormitory.[80]

75 Third, in relation to the Payment Term, Edward's evidence was that the Defendant would be entitled when CNQC certifies the Plaintiff's work, by payment certificate or otherwise. The latter phrase "or otherwise" meant that if the Project Manager signed-off on the works in the Payment Claim, the Defendant would be entitled to the signed-off sum, even if CNQC subsequently

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78 Transcript 19 July 2022, p 131, lines 4 to 17.

79 Transcript 19 July 2022, p 135, lines 7 to 15.

80 Transcript 19 July 2022, p 135, lines 16 to 23.

certified a lower sum in the Payment Certificate.[81] Edward agreed when it was put to him by counsel, that there was no agreement on the Payment Term as he had set out at [38(a)] of his AEIC, since it was clearly very unusual and would result in DSL having no control over the payment process and in effect, give up their margins in some instances.[82]

76 Consequently, I find that there was no agreement on the MYE, Dormitory or Payment Terms and consequently no breach thereof.

Defendant's cessation of work

77 I will next address whether the Defendant was justified in ceasing work. The Defendant did so by way of a Notice on 22 May 2021 through its solicitors whereby it informed the Plaintiff that it would "cease work forthwith".[83] As the Plaintiff has accepted that the Defendant had done work and that even if there is no agreement, the Defendant is entitled to bring forth claims for *quantum meruit,* the issue of the Defendant's cessation of work does not affect the Defendant's claims for work done. Instead, it goes towards the Plaintiff's claim for a declaration that the Defendant indemnifies the Plaintiff for all the losses and damages that CNQC as the main contractor claims against the Plaintiff due to the termination of the Main Contract.

78 Both parties cite *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*"). There, it was held that where a contract does not clearly and unambiguously provide for the event or

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81 Transcript 20 July 2022, p 9, line 23 to p 14, line 14.

82 Transcript 20 July 2022, p 24 lines 2 to 8.

83 Edward's AEIC at p 324.

events pursuant to which an innocent party is entitled to terminate the contract, the innocent party may be entitled to terminate under four possible situations (at [91]–[101]). The two relevant situations in the present case are Situation 3(a) and Situation 3(b), as follows:

> (a) "Situation 3(a)": where the term breached was a condition, *ie*, that it is one that is so important that any breach, regardless of the actual consequences of such a breach, would entitle the innocent party to terminate the contract (*RDC Concrete* at [97]).
>
> (b) "Situation 3(b)": where the breach in question will give rise to an event which will deprive the party not in default of substantially the whole benefit which it was intended that he should obtain from the contract (*RDC Concrete* at [99]).

79 The Defendant submits that the Plaintiff's refusal to provide the 20 MYE and the on-site dormitory would fall under Situation 3(a) or Situation 3(b) of *RDC Concrete*, given the importance and necessity to the Defendant of having the MYE and on-site dormitory as cost-saving measures. As I have found that the MYE Term and Dormitory Term were not part of the agreement, there is no foundation for this legal submission of the Defendant.

80 The Defendant also submits that it is entitled to terminate the contract because the Plaintiff failed to furnish the performance bond to CNQC, which effectively caused CNQC to withhold the equivalent amount in their certification of progress claims, with the material consequence that the Defendant would not be paid for the works carried out. As of 7 May 2021, about eight months after the Defendant had commenced work on the Project, it had not received a single progress payment for the work done on the Project despite

CNQC having certified the sum of $161,349 in the value of works carried out (without taking into account the sums withheld for the performance bond). The Defendant argues that the Plaintiff's repeated and prolonged failure to pay amounted to a repudiatory breach which entitled it to treat the Plaintiff as having repudiated the sub-contract.

81 On the evidence, I am of the view that the issuance of the performance bond was the Plaintiff's responsibility. The parties' subsequent conduct and correspondence were consistent with Edward's testimony that the parties agreed for the Plaintiff to issue the performance bond to CNQC. Notably, under the Defendant's quotation, there was no mention of any issuance of performance bond on the part of the Defendant. Even in the Revised Quotation, the Plaintiff did not include any terms requiring the Defendant to issue a performance bond, despite adding two new clauses at the bottom of the page.

82 The parties' WA correspondence further supports the view that the Plaintiff bears the responsibility to issue the performance bond:

(a) On 8 January 2021, Edward asked Gary: "Bond settle already [or] not boss [?]", to which Gary responded "[p]rocessing".[84]

(b) On 1 April 2021, Edward sent Gary a screenshot of his correspondence with CNQC in which CNQC informed Edward that "[for your information] contract & performance bond is required before we can proceed payment ... [please] check with [DSL] how long can revert to us for performance bond." Gary replied "I am now waiting for

[84] Edward's AEIC at p 272.

their revised contract clause for the PG. [O]nce the revised copy out then I will proceed with the issuance of bond."[85]

(c) On 6 April 2021, Edward asked Gary about the progress payments and Gary replied, "But nobody expect[ed] the unconditional bond so hard to punch through, is never in my plan to pay so much for bond".[86]

(d) More importantly, on 13 April 2021, Gary messaged Edward over WA and asked Edward if Triumph Electrical could "take over fully" because it made no sense to him to "pay so much on the bond and profit so little".[87]

83 All these suggest that at all material times, the parties' understanding was that the Plaintiff was responsible for issuing the performance bond to CNQC. If the Defendant was obliged to issue the performance bond to CNQC, there would be no reason for Gary to request the Defendant to take over in his WA of 13 April 2021. Gary sought to explain this by saying that it is a matter of how he treated his sub-contractor and that he was prepared to take up the bond to help his subcontractor if "the sum is not huge".[88] However, that does not explain why he did not simply inform the Defendant that the Defendant had to fulfil its contractual obligation to execute the performance bond in favour of CNQC. Instead, he approached Edward with a request for the Defendant to issue the performance bond, which Edward rejected.

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85 Edward's AEIC at pp 279–280.

86 Edward's AEIC at p 282.

87 Edward's AEIC at p 283.

88 Transcript 18 July 2022, p 89, lines 7 to 10.

84 Failure to make payments can amount to a repudiatory breach if they are prolonged and substantial. In such circumstances, it may be inferred that this demonstrates an intention not to be bound by payment obligations. The Court of Appeal in *Diamond Glass Enterprise Pte Ltd v Zhong Kai Construction Co Pte Ltd* [2021] 2 SLR 510 summarised the position on this at [96]:

> … There may be instances in which a persistent course of payment delays, or a protracted delay in the payment of a very substantial sum amounts to a repudiation of the contract: see for example *AL Stainless Industries Pte Ltd v Wei Sin Construction Pte Ltd* [2001] SGHC 243 at [194], citing Chow Kok Fong, *Law and Practice of Construction Contract Claims* (Longman, 2nd ed, 1993) at p 264. However, not every instance of non-payment by a contracting party will suffice to constitute repudiation. This was made clear in *Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd* [2004] 3 SLR(R) 288 ("Jia Min") at [55], where the court stated, citing *Lubenham Fidelities and Investments Co Ltd v South Pembrokeshire District Council* (1986) 33 BLR 46: '[i]t appears settled law that a contractor/subcontractor has no general right at common law to suspend work unless this is expressly agreed upon. This is so even if payment is wrongly withheld'. The court also cited *Halsbury's Law of Singapore*, vol 2 (LexisNexis Singapore, 2003 Reissue) at para 30.321, *Keating on Building Contracts* (Sweet & Maxwell, 7th ed, 2001) at para 6-96 and *Hudson's Building and Engineering Contracts*, vol 1 (Sweet & Maxwell, 11th ed, 1995) at para 4-223 for the same principle. The rationale for this, the court explained, was that 'the existence of such a right [to suspend work upon the other party's failure to make payment] could create chaos within the building industry if contractors were to muscle their way through disputes with threats or actual threats or suspension instead of having their disputes adjudicated' (at [57])…

85 In determining whether the failure to make payments amounted to a repudiatory breach, the court will examine the circumstances surrounding the non-payment in determining whether the non-paying party's conduct demonstrates an intention not to be bound by payment obligations.

86 In *AL Stainless Industries Pte Ltd v Wei Sin Construction Pte Ltd* [2001] SGHC 243, the court found that the defendant's non-payment of $90,000 for the plaintiff's progress claim amounted to a repudiatory breach because the defendant withheld the entire sum of $90,000 for the third progress claim even after it was recommended for payment by the Quantity Surveyor, due for payment and after the defendant had agreed to pay the same. In addition, the entire $90,000 was withheld without any attempts to assess the impact of the plaintiff's delay on the main contract or the cost of rectifying defects: at [196]–[197]. In these circumstances, the court found that the defendant had acted in an arbitrary and oppressive manner and was "quite content not to abide by such obligations as and when they fell due if this suited its purpose": at [198].

87 In *Brani Readymixed Pte Ltd v Yee Hong Pte Ltd* and another appeal [1994] 3 SLR(R) 1004 ("*Brani Readymixed*"), the defendants were late by 22 days in the payment of the bulk of the outstanding invoices. The court found that the defendants were not merely stalling for time to make payment to the plaintiffs and that they did not intend to pay the plaintiffs at all and held that these amounted to a repudiation of the contract: at [18].

88 The court will also examine the extent of non-payment – whether there is a complete failure to pay throughout the contract or whether the complaining party has already been paid substantially for its progress claims. In *Zhong Kai Construction Co Pte Ltd v Diamond Glass Enterprise Pte Ltd* [2021] SGHC 277, it was held that there was no persistent course of payments delays which justified the defendant's repudiation of the contract because prior progress claims were not fully rejected but certified for lower sums, and the plaintiff had substantially paid the amounts that were certified: at [70]–[77]. In contrast, the present case is not one of underpayment. The Defendant did not receive any

progress payments for its eight months of work, because the Plaintiff failed to issue the performance bond to CNQC, which resulted in CNQC setting-off the progress payments from the outstanding performance bond sum.

89 The Plaintiff makes three submissions on this.

90 First, the Plaintiff submits that there were further certifications that had to be carried out by the Plaintiff before payment was due to the Defendant.[89] However, I note that the Plaintiff is not able to point to anywhere in the documentation or correspondence that makes reference to such a requirement. The Plaintiff mentions item 9 of the Revised Quotation which states "as per progress claim". However, this does not state that there has to be certification by the Plaintiff before payment could be made. The Plaintiff also refers to item 12 of the Revised Quotation which states "[t]o receive payment certificate within 14 days" and submits that this must mean certification by the Plaintiff and not CNQC. However, the clause itself does not indicate that it must be the Plaintiff that certifies, rather than CNQC. The context of their arrangement was such that even though the Plaintiff was the sub-contractor of CNQC, the Defendant as the Plaintiff's sub-contractor would be executing the works for CNQC. Moreover, there is nothing in the correspondence or documentation prior to the Notice to Stop Work on 22 May 2022, that indicates that the Plaintiff required the Defendant to be first certified by the Plaintiff before it could be entitled to payment, even after CNQC certifies payment. On the contrary, the correspondence between Gary and Edward shows that the issue blocking payment was the performance bond and not the lack of certification by the Plaintiff. This can be seen below from the examination of the WA

[89] Plaintiff's Further Closing Submissions dated 12 August 2022 ("PFCS") at [25].

correspondence between them. I hence find no evidential basis for this submission.

91 Second, the Plaintiff submits that the payments were not yet due to the Defendant. The Plaintiff submits that the Defendant did not plead the date on which payment was due from the Plaintiff, nor was it mentioned in Edward's AEIC. The Plaintiff cites s 8(2) of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) which provides that where parties have not agreed on the due date for payment in a construction contract, payment is due to a GST-registered claimant within 14 days after the submission of a tax invoice.[90] This is not directly relevant since clause 12 of Revised Quotation itself states that the Defendant is to "receive payment within 21 days from tax invoice". The Plaintiff argues that no tax invoices have been submitted by the Defendant to the Plaintiff. As such, no payment was due to the Defendant.

92 The Defendant submits that Edward did seek to issue a tax invoice, but it was Gary who asked Edward not to issue the tax invoice until the Plaintiff had resolved the bond issues with CNQC. At [57] of Gary's AEIC, he extracts a WA message that Edward sent him on 23 March 2021 saying "Please help me with the 2 payments. Let me know when I can collect and issue Tax Invoice."[91] However, Gary only tells Edward to issue the Tax Invoice for another project that the parties are engaged in, namely "TC16". In respect of the Electrical Project, he informs Edward instead that "[he] will be meeting CNQC [tomorrow] to discuss the payments also". By this time, CNQC had already

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90 Plaintiff's Skeletal Closing Submissions ("PSCS") dated 25 July 2022 at [90].

91 CBD at p 699.

certified two progress claims prepared by the Defendant and submitted by the Plaintiff.

93 The parties' WA correspondence on 23 March 2021 suggests that the parties' working relationship was one where Edward will seek Gary's instructions before issuing any tax invoices. Edward was clearly seeking the Plaintiff's instructions as to whether he should issue tax invoices for the two projects. Gary permitted Edward to issue Tax Invoice for TC16 but not for the Electrical Project, saying that he would meet with CNQC to discuss payments on the next day.

94 Notably, when Edward chased Gary for payment again on 26 March 2021, Gary informed Edward on the same day "Bro. Next week Tuesday can collect payment".[92] Gary did not mention that he needed Edward to issue the tax invoice before he could receive the payment.

95 The payment did not happen on Tuesday. On 1 April 2021, Edward asked "Boss Settled already??? My cash flow dry up [already]".[93] Gary responded that he was waiting for the revised contract clause for the performance bond. Once again, Gary did not indicate that payment was not made to Edward because Edward did not issue any tax invoices – his sole concern appeared to be the performance bond.

96 More importantly, on 13 April 2021, after Gary asked Edward to take over for fully, Gary said "No matter what will still settle your payment. But bcos

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92 CBD at p 700.

93 CBD at p 700.

[*sic*] if CNQC don't confirm the bond I can't proceed also".[94] This clearly suggests that Gary was not prepared to make the payment to Edward until the bond issue was resolved. There was no discussion, or even contemplation, between the parties about Edward issuing a tax invoice for the progress payments, because DSL was not prepared to make payment until the bond issue was resolved.

97 Following from this evidence, and the finding above that parties agreed that the Plaintiff will issue the performance bond to CNQC, I find that:

(a) the parties' working relationship and common understanding was for the Defendant to confirm with the Plaintiff that payment would be made first, before issuing any tax invoices;

(b) the Defendant did not issue the tax invoice in the present case because the Plaintiff was not prepared to proceed with payment until it could renegotiate the bond issue with CNQC; and

(c) as the Plaintiff was the one that told the Defendant not to issue the tax invoice until it resolved the bond issues, the Plaintiff cannot now rely on that to deny the Defendant payment for work done.

98 Third, the Plaintiff submits that its alleged failure to make payment is not prolonged or substantial. Based on the undisputed facts, CNQC's first payment certificate was issued only on 15 February 2021. The second and third payment certificates were issued on 6 and 19 April 2021. When the Defendant ceased work at the end of April 2021, the first payment was 53 days late and the

94 CBD at p 701.

second payment was only 3 days late. The total amount payable, as of 30 April 2020 was $140,713.08, which is about 2.2% of the $6,348,000. The Plaintiff argues that this is not a substantial delay given that the Electrical Works were to be carried out over thirty-four months, and that the unpaid sum was also not substantial compared to the contract sum.[95]

99 However, as mentioned above at [87], in *Brani Readymixed*, the court found that the defendants' 22-day delay in the payment of the bulk of the outstanding invoices amounted to a repudiatory breach because the circumstances suggested that they did not intend to pay the plaintiff at all. Hence the duration of non-payment is not determinative in itself. It must be viewed in light of whether there is an intention on the part of the non-paying party to pay the other party in the first place. Neither is the percentage of the total contract sum determinative. It has often been said that cash flow is the life blood of those in the building and construction industry: *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 at [18]. It would hence be a relevant consideration in construction contracts whether the non-payment of progress payments would result in the sub-contractor's cashflow running dry.

100 On the evidence, the Defendant had carried out work since September 2020 and was not paid a single cent even as of May 2021. This is despite CNQC having certified the sum of $161,349 in the value of works carried out over three progress claims. The Plaintiff asserts that the amounts which CNQC has certified were payable had been deducted as part of CNQC's performance bond requirement. It would appear that CNQC was entitled to do so, on the basis of clause 27.2 of the Main Contract.

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95 PSCS at [97].

101 First, I note that it is not clear on the evidence that the Plaintiff had not been paid at all by CNQC. CNQC's 3rd Payment Response issued on 19 April 2021 states that there is an amount of $82,800 that had been "previous[ly] paid".[96] From the calculations in CNQC's payment certificate, this amount was not deducted from the sums that CNQC held back in lieu of the performance bond. In addition, there is a payment summary list that shows net payments over tranches, of $145,214.10 made by CNQC to DSL as of March 2021.[97] This is also supported by the 3rd Progress Claim submitted by DSL to CNQC (prepared by Edward), which accepts that CNQC had previously made a payment of $82,800.[98]

102 On the stand, Gary maintained that CNQC had not paid the Plaintiff and that the Plaintiff had not received monies from CNQC. However, he was not able to explain why CNQC would state that it had paid the Plaintiff in these documents. Gary could only maintain that the CNQC document was wrong, but he had no evidence to refute it and show that the Plaintiff had not been paid.

103 Even if Gary's evidence that the Plaintiff has not received monies from CNQC is true, the evidence shows that not all the $161,349 that CNQC had certified, were applied to the deduction for the Performance Bond. That is what DSL's own 3rd Progress Claim to CNQC shows. Edward also testified that the deductions made by CNQC towards the performance bond only started from the 2nd Progress Certification onwards.[99] His testimony is supported by the

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96 Edward's AEIC at p 348.

97 CBD at p 550.

98 CBD at p 547.

99 Transcript 20 July 2022 at p 66 at line 25 to p 67 line 8.

Payment Certificates. In other words, at least $82,800 out of the $161,349 that CNQC certified, was not held back because of the Performance Bond, contrary to what Gary testified. There is no evidence as to why this was sum withheld from the Defendant. On the face of the documents, the Plaintiff was entitled to $82,800 as part of certified payments from CNQC, and the Defendant was entitled to 92% of that sum, for which they were not paid.

104 Second, the prevailing context as of May 2021 was that it was not clear that the Plaintiff had any resolution to the performance bond issue, which in turn affected the payments from CNQC:

(a) Edward had indicated to Gary in his WA message on 1 April 2021 that his cash flow had dried up and Triumph Electrical had been "running on no fuel for 4 months already".[100]

(b) As of 6 April 2021, Gary informed Edward that the bond issue is still being worked out. Edward queries him saying "I thought we following Progress claims certified?" Gary did not confirm that payment would follow on from the progress claims that were certified but instead qualified it by saying "Yes. But nobody expect the unconditional bond so hard to punch through. Is never in my plan to pay so much for bond. Later I give u update."[101]

(c) On 12 April 2021, Edward again asked Gary if payment was ready.[102]

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100 Edward's AEIC at p 280.

101 Edward's AEIC at p 281.

102 Edward's AEIC at p 282.

(d) On 13 April 2021, Gary asked Edward if Triumph Electrical wanted to take over the performance bond fully. Gary said: "CNQC didn [*sic*] come back to me on the bond. Do u want to go direct to them? U can take over fully. To me it makes no sense to pay so much on bond and profit so little. Still need to finance."[103]

(e) Edward sent another message to Gary on 20 April 2021 asking if there was any resolution.[104]

(f) Gary replied on 22 April 2021 saying he would send a reminder again to CNQC's contract director.[105]

(g) On 6 May 2021, Edward sent Gary a message of the list of issues that need to be ironed out and stated that if these issues were not completed, "the works cannot continue". This included the bond matters and other issues. Gary also did not inform Edward of any resolution of the bond issue.[106]

(h) On 7 May 2021, Edward informed Gary via WA that he was stopping all his work by that week.[107]

(i) On 18 May 2021, Gary informed Edward that CNQC agreed to DSL's request to revise the bond downwards from 10% to 5%. He then

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103 Edward's AEIC at p 283.

104 Edward's AEIC at p 285.

105 Edward's AEIC at p 285.

106 Edward's AEIC at p 290.

107 Edward's AEIC at p 292.

told Edward that "[t]echnically speaking, [they] have no reason to void or … cancel the contract".[108]

105 The Defendant issued a Notice to Stop Work through their solicitors on 22 May 2021. Edward testified that there were still concerns for him as "even though they reduce[d] [the bond]", it was uncertain to him whether it would be settled and if so, what the timeframe would be.[109]

106 I note that throughout their WA correspondence, there was no indication from Gary to Edward on when payments could be made to the Defendant. As the Plaintiff had not paid for the performance bond, CNQC had been making deductions from the payments that were certified, as payments towards the bond. As set out above, the resolution of the performance bond under the Main Contract was a matter for the Plaintiff to resolve, not the Defendant. There was no agreement that the Defendant would provide the performance bond directly to CNQC. Thus, it was not the Defendant's fault that CNQC was making deductions from the certified payments towards the performance bond. Rather, it was due to the Plaintiff's failure to resolve the performance bond issue with CNQC, that payments to Triumph Electrical were being held back.

107 Throughout this, there was no dispute that work had been done by the Defendant from September 2020 to April 2021. In fact, CNQC itself had certified payments on three occasions, for a total of $161,349. Moreover, there was a payment that CNQC had agreed to, in the amount of $82,800, which was

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108 Edward's AEIC at p 292.

109 Transcript 20 July 2022 at p 76, lines 8 to 12.

not applied to the deduction for the performance bond, but which inexplicably, was not paid out to the Defendant.

108 In the midst of this, the Defendant had consistently informed the Plaintiff that it was running out of money. The Plaintiff in turn agreed that the Defendant should be paid. But it never did so, nor did it give any indication of when such payment would be forthcoming or for what amount. Indeed, the Plaintiff would have added to the concerns and uncertainty of the Defendant on 13 April 2021 by asking the Defendant to take over the bond fully, stating that it makes no sense for the Plaintiff to pay so much on the bond and profit so little. This would have reasonably suggested that DSL could not resolve the performance bond issues. This would have meant a further indeterminate period of complete non-payment to the Defendant, as CNQC would continue offsetting the amounts certified to be payable towards the meeting of the performance bond.

109 Gary did not give any indication to Edward that he would be paying the Defendant, even after the bond was revised downwards by CNQC to 5%. As of CNQC's 3rd Payment Response, CNQC had deducted $62,414.10 as payments towards the performance bond. Even with the bond reduced to 5%, that is from $960,000 to $480,000, there would still be approximately $414,585.90 of deductions to be made by CNQC towards the performance bond. There was no clarity from the Plaintiff of how long this would take to be resolved, before the Defendant would finally get paid, or if the Defendant would eventually be able to recover the sums that CNQC had deducted as payment towards the performance bond. In these circumstances, it would be unfair to expect the Defendant to continue working, after having received no payment at all for eight months from DSL, and without any indication of when the next payment would

be or for how much if it carried on working. I thus find that the Defendant was justified in terminating the agreement with the Plaintiff.

110 Consequently, I dismiss the Plaintiff's claim for a declaration that the Defendant shall indemnify the Plaintiff for CNQC's losses and damages, and dismiss the Plaintiff's claim for the loss of profit of $552,000 arising from the termination of the Main Contractor by CNQC.

Plaintiff's claims of the Defendant's breach of Main Contract

111 The Plaintiff claims that the Defendant has failed to adequately perform various obligation under the parties' agreement and the Main Contract:[110]

(a) the Defendant failed to produce shop drawings in Building Information Modelling ("BIM");

(b) the Defendant failed to provide full time supervision by an experienced engineer/supervisor for the proper execution of works on site;

(c) the Defendant failed to provide a full time project manager based on-site; and

(d) the Defendant failed to provide adequate manpower to ensure the progress of the sub-contract work.

112 From the outset, it should be noted that the counsel for both parties did not examine the witnesses on these alleged breaches by the Defendant at trial.

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110 PSCS at [85] to [89].

113 In relation to the Plaintiff's claim that the defendant failed to produce shop drawings, I note that clause 25 of Tender Addendum 4 of the Revised Quotation provides that the Defendant undertook to "complete shopdrawings and co-ordination drawings".[111] The Defendant has pleaded in its Defence that it had prepared and submitted the relevant shop-drawings.[112] The Plaintiff did not cross-examine the Defendant on this point.

114 Most of the Plaintiff's aforementioned claims, are based on clauses in the Main Contract. As I have found above, the inclusion of the term "back-to-back" in the Revised Quotation did not have the effect of importing all the terms of the Main Contract into the parties' agreement on 24 September 2020, because the Main Contract had not concluded at that point in time. The question is following the analysis in *GIB Automation*, whether such clauses would be regarded as technical and particular clauses or within the general appreciation and knowledge of parties, with only the latter incorporated.

115 The Plaintiff argued that Appendix 2 of the Main Contract should be incorporated into the parties' contract because the clauses are framed in a general nature and set out the scope of the Electrical Works in broad terms. The plaintiff cited clauses 6, 15 and 40 to show that these clauses seemed to be within the "general appreciation and knowledge" of the defendant, since it had done work pursuant to those clauses.[113]

116 However, the mere fact that some clauses in Appendix 2 are phrased in broad terms does not obviate the need to analyze the individual clauses to

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111 Edward's AEIC at p 363.

112 Defence and Counterclaim (Amendment No 1) at [45A].

113 PFCS at [9].

determine whether they fall within the "general appreciation and knowledge" of the parties. I therefore proceed to determine whether the individual clauses in Appendix 2 that the Plaintiff seeks to rely on are incorporated into the parties' agreement.

117 In relation to the requirement for submissions of drawings in BIM format, which is set out in clause 59 of Appendix 2 of the Main Contract, the Plaintiff argued that this was within the Defendant's general knowledge, since Edward testified on it. I note that the Plaintiff's case did not proceed on the basis that drawings in BIM format are the usual or default for such construction contracts. There was no evidence to this effect. Rather, the Plaintiff relied on Edward's evidence that this was discussed during the 21 September Meeting. However, Edward's testimony was that the parties agreed at the 21 September Meeting that there was no need for Triumph Electrical to provide BIM modelling. The BIM modelling would have been priced at approximately $120,000 if it were included in the scope of works of the proposed sub-contract between DSL and Triumph Electrical, and it was not feasible to provide this at the price of $6.99m which was discussed.[114]

118 Edward was not cross-examined on this. The Plaintiff submits that this oral agreement was not pleaded and hence it did not cross-examine Edward on it. However, what the Plaintiff is seeking to rely on, is the opposite of what Edward testified in his AEIC, which is that there was no agreement to include the requirement of BIM modelling. As it stands, the unchallenged evidence of Edward is that the Defendant was told that there was no need to provide BIM modelling. Given that the contract price was reduced significantly from the

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[114] Edward's AEIC at [41].

initial $9m to $6.9m, such evidence is not incredible. I find that the Plaintiff has not proven that there is a breach of the drawings in BIM format obligation.

119 The Plaintiff submits that the obligation in clause 40 of Appendix 2 of the Main Contract, should also be within the "general appreciation and knowledge" of the parties and incorporated into their agreement. Clause 40 states that "The Sub-contractor shall provide full time supervision by experienced engineer/supervisor for the proper execution of works on site".[115] The Plaintiff has not adduced any evidence that supervision by an "experienced engineer/supervisor" would be within the "general appreciation and knowledge" of contractors for a project of this nature. I consequently find that this has not been incorporated into the agreement of 24 September 2020.

120 The Plaintiff also claims for the cost of a full-time project manager ("PM") for the period February to May 2021.[116] Gary's evidence is that Edward requested Gary sometime around December 2020 to engage a full-time PM for one year and agreed that the Plaintiff could charge this cost to the Defendant. Pursuant to this, the Plaintiff employed a full-time PM and paid the PM $22,500 in salary for February to May 2021. Edward did not deny this in his AEIC and Gary's evidence on this at [113] of his AEIC was not challenged at trial. The Defendant made no submission refuting this. I hence allow this claim.

121 The Plaintiff also submits that the Defendant failed to provide sufficient workers for the lightning protection and earthing works. Such a clause would be within the general appreciation and knowledge of the Defendant. While the

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115 Gary's AEIC at p 268.

116 PFCS at [18].

invoices adduced by Gary states that the period of work is between March 2021 to June 2021,[117] the Plaintiff did not adduce any evidence as to why replacement workers were required in March or April 2021. The Defendant's worksheet of hours worked by the Defendant's workers, ends on 31 May 2021.[118] Edward accepted this document as final. He also accepted when asked, that his company stopped work roughly around end April 2021. This would have been before the Notice to Cease Work, which was issued on 22 May 2021. The Plaintiff would hence be entitled to claim for damages for the inadequate manpower on site from 1 May 2021 till 21 May 2021 when the agreement was terminated.

122 In summary, I find that:

(a) the Plaintiff has failed to prove on a balance of probability, its claims on the breaches of obligations in relation to the shop drawings, BIM format drawings and provision of experienced engineer/supervisor; and

(b) the Plaintiff is entitled to its claim for the cost of engaging a full-time PM from February to May 2021 and for damages for inadequate manpower for the lightning and protection works from 1 May 2021 to 21 May 2021.

Conclusion

123 In conclusion, I find that the Plaintiff is entitled to its claim for the cost of engaging a full-time PM from February to May 2021. The Plaintiff is also entitled to damages for inadequate manpower for the lightning and protection

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117 Gary's AEIC at p 956.

118 Agreed Bundle of Document ("ABD") Vol VII at p 2210.

work from 1 May 2021 to 21 May 2021. The Defendant is entitled to claim for 92% of the value of the work done prior to its termination of the works on 22 May 2021. CNQC certified the works done at $197,264.56 in its payment response dated 19 April 2021. In response to the court's queries on whether the amount certified by CNQC was $197,264.56 or the $214,418 claimed by the Defendant, the Defendant took the position that the amount taken as certified by CNQC should be $214,418[119], as a "Wong MT" had signed off on DSL's third progress claim dated 12 April 2021 for that amount.[120] The Plaintiff did not provide a position on this but asked that a Notional Final Account be prepared, which will include the value of works carried out by the Defendant up to the termination of the agreement.[121]

124 As this action is bifurcated and this tranche of the trial dealt only with liability, evidence was not led or cross-examined in respect of issues relating to the quantum of damages. Parties are to agree on the damages arising from the above entitlements or have the quantum of damages assessed.

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119 Letter of Defendant's Solicitors dated 31 August 2022.

120 ABD Vol II at p 1064.

121 Letter of Plaintiff's Solicitors dated 31 August 2022.

125 Both the Plaintiff and Defendant are only partially successful in respect of the issues and their claims. Parties are to agree on costs, or in the event that they are unable to agree, to submit their written submissions on costs, within seven days of this judgment.

Kwek Mean Luck J
Judge of the High Court

Tan Joo Seng, Ignatius Lee (Tyto LLC) for the plaintiff;
Clarence Lun YaoDong, Low Hong Quan (Fervent Chambers LLC) for the defendant.