IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 19

Civil Appeal No 15 of 2016

Between

Vinod Kumar Ramgopal Didwania

… *Appellant*

And

Hauslab Design & Build Pte Ltd

… *Respondent*

GROUNDS OF DECISION

[Building and Construction Law] — [Statutes and Regulations] — [Building and Construction Industry Security of Payment Act]

[Building and Construction Law] — [Building and Construction Contracts] — [Novation]

[Building and Construction Law] — [Dispute Resolution] — [Alternative Dispute Resolution Procedures]

Vinod Kumar Ramgopal Didwania
v
Hauslab Design & Build Pte Ltd

[2017] SGCA 19

Court of Appeal — Civil Appeal No 15 of 2016
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Tay Yong Kwang JA
19 January 2017

17 March 2017

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 This was an appeal brought by Vinod Kumar Ramgopal Didwania ("the Appellant") against the decision of the High Court judge ("the Judge") in Originating Summons No 312 of 2015 ("OS 312/2015") (see *Hauslab Design & Build Pte Ltd v Vinod Kumar Ramgopal Didwania* [2017] 3 SLR 103 ("the Judgment")). The Judge dismissed the Appellant's application to set aside an Order of Court dated 8 April 2015 ("the Order"), which granted Hauslab Design & Build Pte Ltd ("the Respondent") leave to enforce an adjudication determination that had been rendered in respect of a dispute between the parties (SOP/AA081 of 2015 dated 20 March 2015). Among the main issues that were raised in this appeal was the question of the standard of proof that the Appellant had to meet, in relation to the defences that he mounted in his

attempt to resist the Respondent's claim for payment. After hearing the parties, we dismissed the appeal with a brief statement of our reasons. We now furnish the detailed grounds for our decision.

The relevant factual background

2 The Appellant is the owner of Lot 6950A MK 17 at 202A Lornie Road Singapore 298732.

3 On 15 April 2013, the Appellant entered into a contract with Hauslab D&B Pte Ltd ("D&B") which required D&B to design and build on his property a two-storey detached house with an attic and an open roof terrace ("the Construction Contract"). Under the Construction Contract, the Appellant was the "Employer", and D&B was the "Builder" and "Contractor". The contract sum was $5,098,411.67.

4 Although D&B and the Respondent have similar names, in fact, they are separate entities. Both D&B and the Respondent are wholly-owned subsidiaries of Hauslab Holdings Pte Ltd ("Hauslab Holdings"). Mr Tan Sinn Aeng Ben ("Mr Tan") is a director of both D&B and of Hauslab Holdings; but he is not a director of the Respondent.

5 A week after signing the Construction Contract, the Appellant formally appointed his wife, Ms Nidhi Vinod Didwania ("Mrs Didwania"), as his nominee, giving her the authority to "issue direct instructions relating to the works to [D&B], on [his] behalf and also act on [his] behalf with respect to all payment matters moving forward".

The Novation Agreement

6 It was not disputed that sometime in December 2013, Mr Tan produced a draft novation agreement ("the Novation Agreement") dated 1 December 2013 and handed it to either the Appellant or Mrs Didwania. D&B wanted to novate the entire Construction Contract to the Respondent through the Novation Agreement. The Novation Agreement provided that the Appellant would "release and discharge [D&B] from any and all obligations and liabilities owed to [the Appellant] under the [Construction Contract]"; and that in D&B's place, the Respondent would "be bound by the terms of the [Construction Contract] in every way as if [it] was, and had been from the inception, a party to the [Construction Contract] in lieu of [D&B]".

7 According to Mr Tan, he had raised the possibility of novating the Construction Contract from D&B to the Respondent sometime between August and October 2013. Subsequently, in December 2013, he personally handed the Novation Agreement to the Appellant or Mrs Didwania. Mr Tan's evidence was that the Appellant "fully agreed" to the Novation Agreement. The Appellant also assured Mr Tan that he (that is, the Appellant) would sign the Novation agreement and return it after his daughter, a lawyer in private practice, had reviewed it. Mr Tan therefore left the Novation Agreement with the Appellant. His evidence was that the Novation Agreement was never returned to him.

8 The Appellant disagreed with Mr Tan's version of the facts. His evidence was that Mr Tan had handed the Novation Agreement to Mr Didwania, but no agreement was reached. Both the Appellant and Mrs Didwania refused to sign it because they were "unwilling to hand over the redevelopment of [their] home to some other company on a whim", especially

one in which Mr Tan (who had been recommended to them by their property agent) was not a director. According to the Appellant, the Novation Agreement was returned unsigned to D&B on the very next day after Mr Tan handed it Mrs Didwania.

The application for permission to carry out structural works

9 In the meantime, on 4 November 2013, Alan Yap Engineers & Associates Pte Ltd, the Structural Engineer under the Construction Contract ("the Structural Engineer"), sent a letter to the Building and Construction Authority ("BCA"). The letter was titled "Joint Application for Permit to Carry out Demolition Works (Change of Builder)". It enclosed a form signed by the Appellant re-applying to the BCA for permission to carry out structural works under s 6 of the Building Control Act (Cap 29, 1999 Rev Ed) ("the Re-application Form"). Both the letter and the Re-application Form identified the Respondent as the Builder under s 8(1)(*c*) of the Building Control Act, either by name or by identifying its Unique Entity Number ("UEN") (201327267G). The letter also attached a copy of the Respondent's builder licence issued by the BCA, and a certificate issued by D&B stating the percentage of works it had completed and the types of works which were outstanding in respect of the Appellant's property. Apart from this certificate, there was no other mention of D&B in the joint application. We pause to emphasise that the entire point of the application, which as we have noted, was signed by the Appellant, was to secure the permission of the BCA for the Respondent to carry out the remaining works under the Construction Contract.

10 On 14 November 2013, the BCA issued a permit to carry out structural works on the Appellant's property, naming only the Respondent as the Builder

of the project. The permit was addressed to several parties, including the Appellant.

Progress claim no. 18

11 On 2 February 2015, the Respondent served Progress Claim No. 18 (dated 31 January 2015) on the Appellant for the sum of $396,875 (inclusive of GST) for work done between April 2013 and 31 January 2015. It was undisputed that the Appellant had satisfied all the previous 17 progress claims. The payments in respect of Progress Claim Nos. 10 to 17 had been made by cheques issued by or on behalf of the Appellant to the Respondent.

12 On 3 February 2015, Mrs Didwania informed the Respondent that the Appellant's contract was with Mr Tan of D&B and not with the Respondent. She therefore questioned the basis on which Progress Claim No. 18 had been issued by the Respondent.

13 The Appellant also gave evidence that D&B's works at the property had come to a standstill sometime in January 2015, shortly before Progress Claim No. 18 had been presented. D&B eventually abandoned the worksite on 16 March 2015 and there has been no official handover of the premises. According to the Appellant, the subcontractors have also refused to complete the work because D&B has withheld payment due to them for the work they had thus far completed. The Appellant submitted, in the circumstances, that the Respondent was not entitled to any payment. The Appellant therefore did not provide any payment response or make any payment in respect of Progress Claim No. 18.

The adjudication

14 On 5 March 2015, the Respondent served on the Appellant its Notice of Intention to Apply for Adjudication. On the same day, the Respondent lodged its Adjudication Application with the Singapore Mediation Centre. The Adjudication Application was served on the Appellant the next day. The Adjudicator was appointed on 9 March 2015. On 13 March 2015, the Appellant lodged his Adjudication Response.

15 The adjudication determination was issued on 20 March 2015. The Adjudicator determined that the Respondent succeeded fully in its claim for $396,875 and ordered that the Respondent pay the entire sum comprised in Progress Claim No. 18 together with interest.

16 The Adjudicator held that because no payment response had been provided by the Appellant, he was not entitled to raise any justification to withhold payment of the claimed amount in the Adjudication Response. Based on the evidence before him, the Adjudicator also found that the Appellant had agreed to novate the Construction Contract from D&B to the Respondent. This was evidenced in the Appellant's conduct in drawing cheques in favour of the Respondent rather than of D&B when making payment of a number of progress claims between 23 May 2014 and 15 December 2014.

17 The Respondent subsequently applied for leave to enforce the adjudication determination. The Order granting such leave was issued by an Assistant Registrar on 8 April 2015.

18 On 28 April 2015, the Appellant applied to the High Court to set aside the adjudication determination as well as the Order granting leave to enforce the adjudication determination.

The decision below

19 The Appellant's application before the High Court rested on two grounds. First, that the Adjudicator had no jurisdiction to adjudicate the dispute between the parties, because the Appellant had never entered into a contract with the Respondent, within the meaning of s 4 of the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("the Act"). The Appellant contended that his contract was with D&B and this had never in fact been novated. Second, he argued that the Adjudicator had breached his duty under s 16(3) of the Act to comply with the principles of natural justice. For the avoidance of doubt, the latter ground was not pursued on appeal.

20 The Appellant also raised a preliminary issue, which concerned the standard of proof that is required of a party seeking to set aside an adjudication determination and the order of the Court granting leave to enforce the adjudication determination. On this, the Appellant maintained that the applicable standard of proof should be that which applies to a summary judgment application so that all he had to show was an arguable case that there had been no effective novation of the Construct Contract from D&B to the Respondent. In particular, on his case, he did not have to prove this on a balance of probabilities.

21 The Judge ruled against the Appellant and held that any defence had to be established on the balance of probabilities (at [66] of the Judgment). The Judge rejected the Appellant's reliance on precedents from England and from New South Wales ("NSW"). He held that in fact, none of the cited NSW authorities supported the Appellant's submission that an adjudication determination may or would be set aside as long as the respondent was able to

make out an arguable case of a lack of jurisdiction (at [85], [93], [98] and [102] of the Judgment). On the contrary, proceedings to set aside adjudication determinations are brought as judicial review proceedings (at [88] of the Judgement, referring to *Chase Oyster Bar Pty Ltd v Hamo Industries Pty Ltd* [2010] NSWCA 190 at [5]). Hence, the applicant would have to establish its position on a balance of probabilities.

22 As for the English authorities, the Judge found them to be unhelpful in considering the appropriate standard of proof because Singapore's adjudication regime differs significantly from that in England. The English regime is founded on contract, unlike Singapore's, which is founded on statute (that is, the Act).

23 Consequently, in England, "the usual remedy for failure to pay in accordance with an adjudicator's decision will be to issue proceedings claiming the sum due, followed by an application for summary judgment" (*Macob Civil Engineering Ltd v Morrison Construction Ltd* [1999] All ER (D) 143 ("*Macob*") at [37]). A claimant in England who seeks summary judgment is required to establish that "the defendant has no real prospect of successfully defending the claim", which is the test laid out in Part 24.2(a) of the English Civil Procedure Rules. If the claimant is unable to secure a summary judgment on an adjudication determination in his favour on the basis that an arguable case has been raised against the summary enforcement of the adjudicator's decision, he will nevertheless have the opportunity to overcome this by establishing the merits of his claim on the particular issue in question at trial.

24 By contrast, in Singapore, an application to set aside an adjudication determination is resolved once and for all (at least at first instance) when the High Court decides whether to grant the application. The setting-aside

application does not itself go to trial. Once the High Court disposes of the setting-aside application, there will be no further opportunity to consider at first instance whether the jurisdictional challenge was validly brought. The jurisdictional issues must therefore be decided once and for all and with finality, subject only to appeal.

25 The Judge further considered that requiring the defendant to prove the disputed question of fact on the balance of probabilities as opposed to the lower standard of an arguable case would be consistent with the underlying purpose of the Act which is to yield an adjudication determination that carries temporary finality. This purpose would be undermined if such temporary finality were not sufficiently resilient and could be displaced more easily, merely by raising an arguable case.

26 On the issue of the Adjudicator's jurisdiction, the Judge held that the Adjudicator did not exceed his jurisdiction in proceeding to determine the parties' dispute. The Judge was unable to find, on a balance of probabilities, that the Appellant never agreed to novate the Construction Contract to the Respondent. This was so for at least two reasons. First, the Appellant named the Respondent as the Builder in his re-application to the BCA for permission to carry out structural works. Second, Mrs Didwania, on the Respondent's behalf, had issued several progress claims between May 2014 and January 2015 by way of cheques drawn in favour of the Respondent rather than D&B. The Judge was also unpersuaded by the Appellant's claim that he refused to sign the Novation Agreement because Mr Tan, who was recommended by his estate agent, was not a director of the Respondent. This was because the Appellant also accepted that Mr Tan continued to be personally involved in the project even after 1 December 2013. For these reasons, the Judge held that there was a contract between the parties. Progress Claim No. 18 had been

issued on the basis of that contract. The Adjudicator therefore did not exceed his jurisdiction in determining the parties' dispute.

The issues

27 Having considered the parties' submissions on appeal, two main issues arose for our determination:

(a) First, what is the standard of proof in an application to set aside an adjudication determination or an order giving leave to enforce the same; and

(b) Second, whether the Appellant has discharged his burden of proof on the question of whether there was a contract between himself and the Respondent within the meaning of s 4 of the Act.

Our decision

The burden of proof

28 Before us, the Appellant, whilst accepting that the *burden* of proof in the present setting-aside application was with him, maintained his position that the applicable *standard* is equivalent to that in a summary judgment application. The Respondent, on the other hand, sought to uphold the decision of the Judge.

29 We were in broad agreement with the Judge with respect to the appropriate burden of proof. An applicant seeking to set aside an adjudication determination would have to establish his case on the balance of probabilities. However, we arrived at the same conclusion for slightly different reasons. The Judge based his decision on the distinction between the adjudication regimes

in England and in Singapore, and specifically on the fact that the former is contractual in nature whereas the latter is founded on statute. While this is true, in our judgment, the more important point of distinction is the difference in the way an adjudication determination may be *enforced* under each regime.

30 It would be helpful to begin with a reiteration of the concept of temporary finality, which undergirds the adjudication regime in Singapore. In short, the Act creates an intervening, provisional process of adjudication which, although provisional in nature, is final and binding on the parties to the adjudication until their differences are ultimately and conclusively determined or resolved whether by arbitration or litigation. This generally takes place after the completion of the works and the arbitrator or the court is empowered *in that context*, to review, open up, and set aside the earlier adjudication determination. But until then, the adjudication determination binds the parties.

31 Admittedly, this abbreviated process of dispute resolution is a species of rough justice (*W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 ("*W Y Steel*") at [22]). But we tolerate this because it ensures that payments are made upfront. Because cash flow is the life blood of those in the building and construction industry, timeous payment for work done or materials supplied ensures that the construction work will proceed with minimal disruption as far as this is possible (*W Y Steel* at [18]). Any shortcomings in the process is offset by the fact that the resultant decision only has temporary finality in that there remains the possibility of argument and reversal of the adjudicator's determination after the construction project is completed in another more thorough and deliberate forum (*W Y Steel* at [22]). We echoed this in *Grouteam Pte Ltd v UES Holdings Pte Ltd* [2016] 5 SLR 1011 ("*Grouteam*") at [63] albeit in a slightly different context.

32 The concept of temporary finality admittedly underlies all those systems found in other parts of the world for the immediate, *albeit* temporary enforcement of construction claims, on which the Singapore system has been modelled. This includes the English regime (*Singapore Parliamentary Debates, Official Report* (16 November 2004) vol 78 at col 1112 (Cedric Foo Chee Keng, Minister of State for National Development); *W Y Steel* at [20]). Nevertheless, there are significant differences between the schemes of adjudication in England and in Singapore, especially in the way the adjudication decision is enforced.

33 In England, an adjudication determination will be enforced by issuance of a writ seeking payment of the sum in question and this will frequently be followed by an action for summary judgment (*Macob* at [37]; *Pegram Shopfitters Ltd v Tally Weijl (UK) Ltd* [2004] 1 WLR 2082 ("*Pegram Shopfitters*") at [9]). Enforcement proceedings are first brought in accordance with the procedure set out in Part 8 of the English Civil Procedure Rules, which applies to claims in which there are no substantial disputes of fact (see Part 8.1(2)(a)). Following this, an application for summary judgment may be brought under Part 24 of the English Civil Procedure Rules, the analogue of our O 14 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed). The court may grant summary judgment in favour of the claimant in respect of the whole of a claim or on a particular issue if it considers that the defendant has "no real prospect of successfully defending the claim or issue" (see Part 24.2(a)(ii)).

34 The English courts have generally adopted a "broad brush policy" with respect to the enforcement of adjudication determinations in order to ensure that the Housing Grants, Construction and Regeneration Act 1996 (c 53) (UK) ("HGCRA") continues to provide a speedy and efficient mechanism for settling construction disputes on a provisional basis. Hence, decisions of

adjudicators are commonly enforced by way of summary judgment pending the final determination of the underlying disputes by arbitration, litigation, or agreement (s 108(3) of the HGCRA; *Pegram Shopfitters* at [8]). Nonetheless, the fact that adjudication determinations must be enforced by way of a writ followed by an application for summary judgment means that a claimant, if it is to succeed in its application, will have to establish that there is no triable issue standing in the way of summary judgment being granted.

35 In that context, if the respondent is able to raise a triable issue as to the adjudicator's jurisdiction, though not ordinarily as to the underlying merits of the dispute, then summary judgment will not be granted to enforce the adjudicator's award and the parties' dispute on the issue in respect of which a triable issue has been raised will have to proceed to trial (see for example, *Pegram Shopfitters* at [10]-[12], [35]; *Project Consultancy Group v Trustees of the Gray Trust* (1999) 65 ConLR 146 at [32]). This has significant consequences for the ease with which the enforcement of an adjudicator's decision may be resisted in England. In particular, the adjudication determination is liable not to be enforced summarily even without the respondent having to go into the merits of the dispute if, for example, the respondent is able to establish that there is at least an arguable case that no valid payment claim was served or that no contract was formed between the parties (see for example, *Project Consultancy* at [32]). The English Court of Appeal in *Pegram Shopfitters* recognised that "[f]ears have been expressed that, if challenges to an adjudicator's jurisdiction are too readily entertained", Parliament's intent of providing a "pay now, argue later" system of adjudication would be "frustrated" (at [9] and [11]). In *Project Consultancy*, however, Dyson J, sitting at first instance in the Technology and Construction Court, thought that these fears were "exaggerated" and that the adjudicator and

the court would be "vigilant to examine the arguments [on the adjudicator's jurisdiction] critically" (at [8]). Whether or not the fears are exaggerated, the fact remains that it is possible, given the enforcement regime in place in England and Wales, to resist enforcement of the adjudication determination by raising an arguable case on matters that go to whether the adjudicator acted with jurisdiction in making his determination.

36 This stands in contrast with the position here, in that a claimant may, with leave of court, directly enforce an adjudication determination "in the same manner as a judgment or an order of the court to the same effect" (s 27 of the Act).

37 The Act also provides a framework of self-help remedies that may be pursued once an adjudication determination has been rendered. We refer to these as "self-help" remedies because the claimant may avail of these without invoking the assistance of the court. These remedies are set out in Part V of the Act. Specifically, a successful claimant who is not paid the whole or any part of the adjudicated sum within the prescribed time may do one or more of the following:

> (a) if the claimant is not the main contractor, the principal of the respondent may, in response to the claimant's request, make payment of the sum outstanding or any part thereof (s 24). Hence, a sub-contractor may in such circumstances secure payment directly from the employer;
>
> (b) a lien may be exercised by the unpaid claimant in respect of goods supplied by the claimant to the respondent under the relevant contract and which remained unfixed and unpaid for (s 25); and

(c) the claimant may suspend the carrying out of construction work, or the supply of goods or services (s 26).

38 In England, the only self-help remedy available is the right to suspend works (s 112 HGCRA). The differences between the ways in which adjudication determinations are enforced in England and in Singapore are significant because they demonstrate that the court's review of the adjudication determination in Singapore is a limited one. There is no need to obtain summary judgment in order to enforce the adjudication determination. The adjudication determination can be enforced directly through self-help remedies or with leave of court as a judgment or an order.

39 More specifically, although a court faced with an application for summary judgment on an adjudication decision in England would not generally examine the merits of the determination, that being a matter to be considered in proceedings that may eventually be brought to reopen and set aside the adjudication, that is not the case when it comes to the question of jurisdiction. If an arguable case can be raised that the adjudicator lacked jurisdiction, the English court would give leave to defend.

40 In Singapore too, matters of jurisdiction may be raised to resist enforcement of an adjudication determination, but this has to be done in an entirely different way. In *Citiwall Safety Glass Pte Ltd v Mansource Interior Pte Ltd* [2015] 1 SLR 797, we said as follows at [48]:

> Put simply, in hearing an application to set aside an [adjudication determination] and/or a s 27 judgment, the court does not review the merits of the adjudicator's decision, and any setting aside must be premised on issues relating to the jurisdiction of the adjudicator, a breach of natural justice or non-compliance with the [Act]. Applications to set aside [adjudication determinations] and/or s 27 judgments are thus *akin* to judicial review proceedings, and are not appeals on the

> merits of the adjudicator's decision. In our judgment, it is consistent with the purpose of the [Act], which is to facilitate cash flow in the building and construction industry, that the court, in hearing such applications, does not review the merits of the [adjudication determination] in question…
>
> [emphasis in original]

41 The point is that the adjudication determination or a judgment entered based on such a determination may be set aside on the grounds of a jurisdictional deficit but the burden would be on the applicant to demonstrate that there is such deficit and we can see no reason at all for thinking that in Singapore, this should be shown on anything less than a balance of probabilities. To put it another way, the question before our courts is whether the adjudicator lacked jurisdiction; whereas the question before an English court faced with an application for summary judgment to enforce an adjudication determination is whether there is an arguable case for thinking that the adjudicator lacked jurisdiction. In our context if the answer is that the adjudicator lacked jurisdiction the matters ends there unless a fresh application can be brought; in the English context, if the answer is that there is an arguable case for thinking that the adjudicator might lack jurisdiction, then that issue would go to trial.

42 It should be noted that the position on jurisdiction may depend on factual matters such as whether there was a novation in fact, as was contended here, or even on the context surrounding the compilation of the contract documents. A somewhat similar issue arose in *Grouteam*, where we had to identify the particular clause which governed the time for the service of payment claims under the contract and this in turn depended on establishing just what the contractual documents were. In our analysis of the issue, we made the following observations at [40]:

> …The *difficulty in construction is compounded by the lack of any evidence* as to the context surrounding the preparation and execution of the Preliminaries, the SOCN and the Sub-Contract as a whole, to which we have already alluded. Further, the Sub-Contract itself is voluminous and certain parts are inconsistent with others. Unfortunately, such contracts are *not uncommon* in the building and construction industry. Nonetheless, *it remains our task to divine the objective intention of the parties based on the material that is before us*. Before we proceed, we should make it clear that our findings in this regard are made in the context of an adjudication determination under the Act. Such a determination is accorded *temporary finality* until and unless it is set aside. In considering whether the [adjudication determination] in this case should be set aside for non-compliance with the applicable contractual provisions, we must take a view on what those provisions are on the basis of the material that is available to us. However, *we do not think this would necessarily bind the arbitral tribunal or court which ultimately determines the dispute between the parties with the benefit of a fuller picture.*
>
> [emphasis added]

43 As we also observed in *Grouteam* at [40], in many construction disputes, the documents will be incomplete and messy and so will the case that is put forward. The issue of jurisdiction, which rests on establishing the proper contractual foundation, will therefore not always be straightforward. But unlike in England, where such issues would have to be resolved by proceeding to trial where a triable issue with respect to jurisdiction has been raised, that is not the position here. Indeed, it is simply not an available option in this context. Hence, we observed in *Grouteam* at [40], the notion of temporary finality underlying the Act requires us to make the best out of the material that is available before us even on the terms and on the interpretation of the contract. This difficulty will be exacerbated if documents have not been produced at the adjudication and cannot therefore be referred to. Nonetheless, even on jurisdiction, the question is whether *on the materials presented*, it is established.

44 Seen in this light, it was clear in our judgment that the burden should be on the balance of probabilities and not anything lower. We also agreed with the Judge that if adjudication determinations are liable to be set aside more easily because the threshold is lower than proof on a balance of probabilities, the purpose of the Act may be severely undermined, since contractors will often be left to await till the very end, after the dispute is finally determined at trial, adjudication, or some other dispute resolution proceeding (s 21(1)(*b*) of the Act), before receiving payment.

45 For these reasons, we were satisfied that:

(a) the court's determination on all questions, including on the terms and existence of a contract and hence on the adjudicator's jurisdiction, is subject to the same constraints of temporary finality;

(b) these issues can subsequently be revisited at arbitration, trial, or any other dispute resolution proceeding brought to reopen or set aside those decisions;

(c) it is within those confines that the court makes a decision on whether the grounds to set aside the adjudication determination have been established; and

(d) when it does, it must be satisfied as to the facts, on the basis of the material before it, on a balance of probabilities.

Whether a contract was formed between the parties

46 In the light of these principles, we turn to the facts that were before us. The Appellant's position was that there was no binding novation agreement between the parties. He argued that the parties' correspondence after the

alleged date of novation (that is, 1 December 2013) showed that D&B remained as the counterparty under the Construction Contract. D&B was named as the payee in respect of Progress Claims Nos. 6 to 9 even though they involved work done after 1 December 2013. It was only from Progress Claim No. 10 onwards that the beneficiary for payment was changed to the Respondent and payment was made to the Respondent's bank account. The invoices for Progress Claims Nos. 6 to 9 were also issued by D&B. Further, D&B's UEN appeared in all payment claims prior to Progress Claim No. 18.

47 The Respondent on the other hand submitted that the parties' conduct and correspondence through the course of the project clearly showed that the Appellant had intended to and did in fact enter into the Novation Agreement and that the contract had been validly novated from D&B to the Respondent. First, the Appellant signed the Re-application Form addressed to the BCA re-applying for permission to carry out structural works and naming the Respondent as the new Builder. Second, subsequent to the Novation Agreement, the progress claims were paid to the Respondent.

48 In our judgment, there was ample basis to find on the balance of probabilities, as the Judge did, that by the time Progress Claim 18 was issued, the Construction Contract between the Appellant and D&B had been novated. The Appellant and Respondent were therefore party to a contract within the meaning of s 4 of the Act, which formed the basis of the Adjudicator's jurisdiction to determine the dispute with respect to Progress Claim 18.

49 We refer in this regard to the following facts and circumstances:

(a) The Appellant named the Respondent as the Builder in the Re-application Form seeking permission to carry out structural works (see above at [9]);

(b) In response, on 14 November 2013, the BCA issued a permit to carry out structural works on the Appellant's property, naming only the Respondent as the Builder of the project (see above at [10]);

(c) Although the Appellant argued that D&B was named as the payee for Progress Claims Nos. 6 to 9, this appeared to be an incomplete narration of the events. We noted that for each of the claims from Progress Claim No 6, which was dated 31 December 2013, a progress payment statement or payment request was issued by the Respondent; the document in question also reflected the Respondent as the contractor; and the covering letter was also issued in the name of the Respondent. At or about the same time, D&B would issue a separate claim for payment to the Appellant. In respect of Progress Claims Nos. 6, 7, 8, and 9, the Respondent claimed the sums of $325,584.92, $335,749.93, $399,369.16, and $435,903.27 respectively; and at about the same time, D&B issued requests for payments in the sums of $100,000, $120,000, $100,000, and $100,000 respectively. Thereafter there did not appear to be any more claims from D&B. What was telling was the fact that all progress claims issued after 1 December 2013 (namely, Progress Claims Nos. 6 to 18) consistently named the Respondent as the contractor. Yet, the Appellant took no issue with this until Progress Claim No. 18 (dated 31 January 2015); and

(d) Mrs Didwania paid several progress claims on the Appellant's behalf between May 2014 and December 2015 by way of cheques drawn in favour of the Respondent rather than D&B (see above at [11]).

50 As to these, the Appellant contended that the relevant sections in the Re-application Form were blank when he signed it; and further, that when Mrs Didwania signed the cheques, they only reflected "Hauslab" as the payee, without any additional words to indicate whether the intended payee was D&B or the Respondent. We rejected these contentions because we found it improbable that the Appellant would sign the Re-application form in blank. Indeed, if he did, it would suggest that he was indifferent to whom the fresh permit might be issued. This too, therefore, did not help his case.

51 Still less did we find it probable that Mrs Didwania would sign cheques for substantial amounts of money without knowing the party to whom the money was to be paid. Indeed, if she was content to sign the cheques based on the mention only of "Hauslab" then she too must have been indifferent to which specific company was to receive the payment. We found this wholly incompatible with the Appellant's evidence, which was that Mr Tan had sought the novation but then he and his wife having considered it, refused to accede to it (see [8] above). Were this the case, still more would Mrs Didwania have been anxious to ensure that they were paying the correct party.

52 The Appellant also claimed that he had always believed that his contract was with D&B and not the Respondent because D&B's UEN was reflected in all payment claims prior to Progress Claim No. 18. Therefore, he and Mrs Didwania did not take issue with the progress claims until Progress Claim No. 18 when the Respondent's UEN was shown instead. We found it

wholly improbable that the Appellant would focus on such an inconspicuous part of the payment claims when Progress Claims 6 to 18 clearly stated the name "HAUSLAB DESIGN & BUILD PTE LTD" as the claimant for the works.

53 For these reasons, we agreed with the Judge that the parties had agreed to novate the Construction Contract from D&B to the Respondent. The Adjudicator therefore did not exceed his jurisdiction when he determined the dispute arising from Progress Claim No. 18.

Conclusion

54 We accordingly dismissed the appeal and fixed the costs at $18,000, inclusive of reasonable disbursements, to be paid by the Appellant to the Respondent. We also ordered that the usual consequential orders would apply.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Tay Yong Kwang Judge of Appeal

Steven Lam, Madeline Choong (Templars Law LLC) for the appellant;
Rey Foo Jong Han, Munirah Mydin (KSCGP Juris LLP) for the respondent.