Citiwall Safety Glass Pte Ltd *v* Mansource Interior Pte Ltd [2015] SGCA 42

Case Number	: Civil Appeal No 39 of 2014
Decision Date	: 20 August 2015
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; Steven Chong J
Counsel Name(s)	: A Rajandran (A Rajandran) for the appellant; Lee Peng Khoon Edwin, Poonaam Bai, Vani Nair and Tay Kuan Seng Charles (Eldan Law LLP) for the respondent.
Parties	: Citiwall Safety Glass Pte Ltd — Mansource Interior Pte Ltd

Building and Construction Law – Dispute resolution – Alternative dispute resolution procedures

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2014] 3 SLR 264.]

20 August 2015

Chao Hick Tin JA:

1 This appeal was against the Judge's decision in *Mansource Interior Pte Ltd v Citiwall Safety Glass Pte Ltd* [2014] 3 SLR 264 ("the Judgment"). The Appellant, Citiwall Safety Glass Pte Ltd, asked that we set aside the Judge's decision below and uphold an Adjudication Determination which was made by the Adjudicator in disregard of the Adjudication Response of the Respondent, Mansource Interior Pte Ltd, because the Response was filed two minutes out of time. We allowed the appeal, and these grounds are issued to explain why we disagreed with the Judge.

2 Subsequent to our decision allowing the appeal, the Respondent requested for further arguments with the view to persuading us to review our decision. We declined to do so. In these grounds, we will also address the points which the Respondent had raised in its request for further arguments.

Facts

Background to the dispute

3 On 21 December 2012, the Respondent awarded the Appellant a subcontract ("the Subcontract") for certain construction works with a value of $1,252,750. Progress payments were to be made by the Respondent according to a schedule of payment under the Subcontract (the Judgment at [2]).

4 On 5 August 2013, the Appellant served on the Respondent a Payment Claim under s 10(1)(*a*) of the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("SOPA"). This claim was for $322,536.65. On 21 August 2013, the Respondent provided the Appellant with a Payment Response under s 11(1)(*a*) of the SOPA, and the response amount provided was only $93,732.10. This was $228,804.55 ("the Disputed Sum") less than that claimed by the Appellant (the Judgment at [3]).

The adjudication

5 The Appellant decided to seek adjudication under the SOPA in respect of the Disputed Sum. On 28 August 2013, the Appellant lodged an Adjudication Application with the Singapore Mediation Centre ("SMC") under s 13(1) of the SOPA. The Adjudication Application was served on the Respondent the following day, 29 August 2013, at 5.25pm as per s 13(4)(*a*) of the SOPA (the Judgment at [5]). The Respondent was then required to lodge its Adjudication Response with the SMC within seven days after it received the Adjudication Application from the SMC, which was by 5 September 2013 at 4.30pm according to the SMC Adjudication Procedure Rules (1 December 2012) ("the SMC Rules"). It lodged its Adjudication Response with the SMC on 5 September 2013 at 4.32pm, two minutes after the official closing hours of the SMC. The late lodgement of the Adjudication Response was the critical issue of the appeal, as r 2.2 of the SMC Rules states that the "opening hours" of the SMC are from 9.00am to 4.30pm on weekdays and any document lodged after 4.30pm shall be treated as being lodged the next working day (the Judgment at [5]).

6 The Adjudicator took the view that by virtue of r 2.2 of the SMC Rules, the Respondent only filed its Adjudication Response on 6 September 2013. It was therefore out of time. As such, he rejected the Adjudication Response pursuant to s 16(2)(*b*) of the SOPA and only considered the Appellant's written submissions attached to its Adjudication Application. He allowed the Appellant's claim for nearly the whole Disputed Sum, and ordered the Respondent to pay $233,956.50 as well as the Appellant's costs of the Adjudication Determination (the Judgment at [7]). The Respondent thus took out an application to set aside the Adjudication Determination but failed before the Assistant Registrar ("AR"). It then appealed to the Judge, who allowed the Respondent's appeal. The Appellant appealed against the Judge's decision to this court.

Decision Below

7 The Judge allowed the Respondent's appeal for the following reasons:

(a) Section 15(1) of the SOPA states that a respondent to an adjudication claim "shall, within 7 days after receipt of a copy of an adjudication application under s 13(4)(*a*), lodge with the authorised nominating body [*ie*, the SMC] a response to the adjudication application." However, as there was no provision under the SOPA to explain how time was computed, s 50(a) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act") provides guidance and it states that "a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done". Since the Respondent received the Appellant's adjudication application at 5.25pm on 29 August 2013, s 50(*a*) of the Interpretation Act meant that the seven days should only start running from 30 August 2013 (the Judgment at [14]).

(b) Section 2 of the SOPA defined day as "any day other than a public holiday within the meaning of the Holidays Act (Cap 126)". In *Black's Law Dictionary* (Bryan A Garner ed) (West Group, 9th Ed, 2009) at p 453, "day" is defined as any period of 24 hours beginning with one midnight and ending with the next. Therefore a seven-day period starting from 30 August 2013 ended on 5 September 2013 and the last day for the lodgement of the Adjudication Response would be before midnight of 5 and 6 September 2013; as long as the Respondent lodged its Adjudication Response on or before 11.59pm of 5 September 2013, it was lodged within time (the Judgment at [15]).

(c) The enactment of r 2.2 of the SMC Rules was *ultra vires* the powers of the SMC under the SOPA. The SMC's main role was to administer the adjudication process and merely serve as a conduit for the service of documents between the claimant, the respondent and the adjudicator. The SMC Rules should only be facilitative and should not affect the parties' substantial rights.

Therefore, it was wrong for the SMC Rules to deem that the Respondent's Adjudication Response was lodged out of time on the following day (the Judgment at [22]–[24]).

(d) Section 16(3)(*c*) of the SOPA required that an adjudicator "comply with the principles of natural justice" and if he failed to comply with those principles, the Adjudication Determination could be set aside (the Judgment at [26]). The Respondent had chosen to exercise its opportunity to be heard by lodging the Adjudication Response within time but the Adjudicator had relied on r 2.2 of the SMC Rules to reject its Adjudication Response. That was wrong and hence the Adjudication Determination was set aside on the ground that a rule of natural justice had been breached (the Judgment at [29]).

8 The Judge also dealt with the Respondent's two other submissions relating to fraud and the Adjudicator's failure to consider the material before him. For the purposes of this appeal, they were irrelevant.

The appeal

9 Four issues were raised in the appeal and they are being dealt with *seriatim* in the paragraphs that follow. As a preliminary point, the Appellant pointed out that the Judge at [16] of the Judgment had referred to the previous version of r 2.2 of the SMC Rules in his decision. The current r 2.2 (which was in effect when the adjudication was commenced) reads:

> All documents to be lodged with SMC shall be lodged during the opening hours of **9am to 4.30pm from Monday to Friday (except public holidays) and 9am to 12.00noon on the eves of Christmas, New Year and Chinese New Year**. Documents which are submitted after opening hours shall be treated as being lodged the next working day. [emphasis in original]

Issue 1: Is r 2.2 of the SMC Rules *ultra vires* s 15(1) of the SOPA?

10 First, the Appellant submitted that r 2.2 of the SMC Rules is not *ultra vires* s 15(1) of the SOPA. In its view, the SMC was appointed to administer the SOPA and the SMC Rules supplemented the Act for administration matters. It submitted that the Judge had paid undue attention to the technical definition of the word "day" without regard to practical reality; the SOPA was silent on procedure and left it to the SMC to set the procedural rules for the proper administration of the SOPA. By rejecting the Adjudication Response lodged, the Adjudicator was only abiding by s 16(2)(*b*) of the SOPA. The Respondent had to bear the consequences of its actions for filing the Adjudication Response late.

11 In response, the Respondent submitted that while s 28(4)(*e*) of the SOPA empowers the SMC to establish rules to facilitate SOPA adjudications, s 19(*c*) of the Interpretation Act states that no subsidiary legislation made under an Act shall be inconsistent with the provisions of the Act. Thus when the SMC makes a rule which is inconsistent with the SOPA, the rule has to be read subject to the SOPA. In its view, r 2.2 of the SMC Rules is inconsistent with s 15(1) of the SOPA as it changes the SOPA's position on deadlines for the lodgement of Adjudication Responses.

12 We agreed with the Appellant that r 2.2 is perfectly consistent with s 15(1) of the SOPA. Section 15(1) of the SOPA states that the respondent should file its Adjudication Response within seven days after receipt of the Adjudication Application and the issue in this appeal was whether the SMC had the power to make rules that restricted the lodgement of documents on a particular day to 4.30pm, which was its official closing time. Section 28(4)(*e*) of the SOPA reads as follows:

(4) An authorised nominating body shall, in relation to its authorisation under subsection (1) —

…

(e) *facilitate the conduct of adjudications under this Act, including the establishing of rules therefor not inconsistent with this Act or any other written law*, and provide general administrative support therefor; and

…

[emphasis added]

13 The SMC's power under s 28 to make rules must be read together with s 37 of the SOPA, which states:

Service of documents

37. —(1) Where this Act authorises or requires a document to be served on a person, whether the expression "serve", "lodge", "provide" or "submit" or any other expression is used, the document may be served on the person —

(a) by delivering it to the person personally;

(b) *by leaving it during normal business hours at the usual place of business of the person*; or

(c) by sending it by post or facsimile transmission to the usual or last known place of business of the person.

…

(2) Service of a document that is sent to the usual or last known place of business of a person under subsection (1)(c) shall be deemed to have been effected when the document is received at that place.

(3) The provisions of this section are in addition to, and do not limit or exclude, the provisions of any other law with respect to the service of documents.

[emphasis added]

14 Since the SOPA states explicitly that documents may be lodged by leaving it during normal business hours at the *usual place of business of the person*, a harmonious reading of ss 15(1) and 37(1)(*b*) would clearly indicate that there is nothing wrong in the SMC prescribing by its rules (*ie* r 2.2 of the SMC Rules) what are its business hours. Section 37(1)(*b*) does not envisage that the SMC should remain open until 11.59pm, as the Judge seemed to have thought, in order to enable a party who has business with the SMC to lodge the relevant documents. Pursuant to s 37(1)(*b*) and s 28(4)(*e*), SMC has by r 2.2 prescribed a clear and sensible arrangement as to how it would discharge its functions under the SOPA. With respect, we think it is wrong to fault the SMC for fixing the closure of its office hours for the business under SOPA earlier than 11.59pm. In our opinion, r 2.2 is wholly consistent with s 37(1)(*b*) and is therefore not *ultra vires*.

15 Mr Edwin Lee, counsel for the Respondent, tried to persuade us that s 37(1)(*b*) was not the only provision that we should be concerned with, and that s 37(1)(*a*) states that the lodgement of a document could be effected by delivering it to the person *personally*. In his view, s 37(1)(*a*) uses the word "person" which ordinarily refers to both natural persons and corporations, and s 48A(1)(*a*) of the Interpretation Act shows that where the legislature intended to refer only to natural persons, the word "individual" would have been used instead. On that basis, he submitted that since the SMC is a body corporate, s 387 of the Companies Act (Cap 50, 2006 Rev Ed) applies such that lodgement can be effected by leaving a document at or sending it by registered post to SMC's registered office. Thus, in his view, the situation here would fall within s 37(1)(*a*) of the SOPA and pass muster. He also buttressed his argument with s 37(3), which he submitted makes s 37(1)(*a*) *additional to* other legal provisions on document service. We were unable to accept this argument for three reasons.

16 First, we disagreed that a corporation will fall within the scope of s 37(1)(*a*). According to Oliver Jones, *Bennion on Statutory Interpretation* (LexisNexis, 6th Ed, 2013) ("*Bennion on Statutory Interpretation*") at p 508, it is a rule of statutory interpretation that where a statutory provision is grammatically capable of one meaning only, and on an informed interpretation, no real doubt as to what is meant has been raised by the interpretative criteria, the legal meaning corresponds to the grammatical meaning of the provision, and is to be applied accordingly. A term can also have different meanings under the same Act and while the term "person" typically applies to both natural persons and corporate bodies, it can mean otherwise where the context expressly or impliedly requires so (*Bennion on Statutory Interpretation* at p 531). *Craies on Legislation* (Daniel Greenberg gen ed) (Sweet & Maxwell, 10th Ed, 2012) at para 20.1.20 states:

> An obvious but important rule for approaching the construction of a piece of legislation is to look at the provision concerned in the context of the legislation as a whole. This is a rule of ancient origin, and one which owes its authority to common sense.

In our judgment, a reading of s 37 of the SOPA shows that s 37(1)(*a*) can only refer to natural persons. This is because of the word "personally" which follows the word "person". That word unequivocally suggests that the legislature had in mind an individual as only an individual can be served personally. Mr Lee seemed to have overlooked that critical word.

17 Secondly, we were unable to see how s 48A of the Interpretation Act assists the Respondent's case. For convenience, s 48A(1) is set out:

> **48A.—(1)** Where a written law authorises or requires a document to be served on a person, whether the expression "serve", "give" or "send" or any other expression is used, then, unless the contrary intention appears, the document may be served —
>
> (a) in the case of an individual —
>
> (i) by delivering it to the individual personally; or
>
> (ii) by leaving it at, or by sending it by pre-paid post to, the usual or last known address of the place of residence or business of the individual;
>
> (b) in the case of a partnership —
>
> (i) by delivering it to the secretary or other like officer of the partnership; or
>
> (ii) by leaving it at, or by sending it by pre-paid post to, the principal or last known

place of business of the partnership in Singapore;

(c) in the case of a body corporate —

(i) by delivering it to the secretary or other like officer of the body corporate; or

(ii) by leaving it at, or by sending it by pre-paid post to, the registered office or a principal office of the body corporate in Singapore.

18 Section 48A(1) begins with a generic reference to "person" before moving on to specify how service is to be effected in relation to different types of entities that can fall within the definition of a "person" in the legal sense. While we accept that in this provision the word "person" encompasses a corporation, it does not follow that that sense necessarily applies in a different statutory provision – the context is critical as to how it should be interpreted. It is pertinent to note that the provision has, in relation to a partnership or body corporate, expressly provided that service may be effected by delivering the document to "the secretary…" or leaving the document at the "principal or last known place of business of the partnership" or "the registered office …of the body corporate". There is no question of a partnership or body corporate being served "personally".

19 Thirdly, for the sake of argument, even if the Respondent's interpretation of s 37(1)(*a*) was adopted, *ie*, that it applies to a body corporate, the Respondent must still lodge the Adjudication Response on the SMC in accordance with the rules prescribed by the SMC. We have at [14] above explained why r 2.2 prescribed by the SMC is not *ultra vires* the SOPA. Therefore, the Respondent must observe what is set out in that rule. Since the Respondent had lodged the document late, the consequence as provided in the rule would follow.

20 Mr Lee also relied on *Thomas & Betts (SE Asia) Pte Ltd v Ou Tin Joon and another* [1998] 1 SLR(R) 380 ("*Thomas*") and *Augustine Zacharia Norman and another v Goh Siam Yong* [1992] 1 SLR(R) 746 ("*Augustine*") to contend that empowering provisions are to be construed strictly where the empowered authorities enact rules inconsistent with primary legislation. We did not agree with his use of those two authorities. *Thomas* concerned the calculation of the seven-day period during which further arguments could be applied for, and whether O 3 r 2 of the version of the Rules of Court then in force or s 50 of the Interpretation Act (Cap 1, 1997 Rev Ed) ("the Old Interpretation Act") governed the issue of reckoning the point in time at which the seven day period should be calculated from. It was held that since s 34(1)(*c*) of the Supreme Court of Judicature Act (Cap 322, 1985 Rev Ed) ("the Old SCJA") was the primary provision which specified the period within which further arguments could be applied for, s 50 of the Old Interpretation Act applied to determine how the seven day period ought to be reckoned and not O 3 r 2. In contrast, in the present case, there was no issue as to how the timeline for lodgement of the Adjudication Response was to be calculated.

21 In *Augustine*, the issue was whether O 55 r 1(5) of the Subordinate Court Rules 1986 (GN No S 59/1986) ("the Old Subordinate Court Rules") was *ultra vires* the Old SCJA as it took away the plaintiff's right of appeal to the High Court. The Court of Appeal held that the issue of the High Court's jurisdiction was beyond the scope of the Subordinate Courts Act (Cap 321, 1985 Rev Ed) and thus beyond the Old Subordinate Court Rules (at [9]). The present case was different. There was no issue of the SMC Rules reducing the number of days for which service of a document ought to be effected. The only issue was whether the SMC had the authority to circumscribe the hours during which lodgement of a document can be made on a particular day. To that extent, it was different from the facts in *Thomas* and *Augustine* and we were unpersuaded by the two cases raised by the Respondent.

22 In summary, we agreed with the Appellant on the first issue. This sufficed for us to allow the appeal. However, as the Respondent had also raised several other arguments before us, we will now briefly address them.

Issue 2: Do practical difficulties relating to the lodgement of documents matter?

23 Secondly, Mr Lee gave us several examples of difficulties in relation to lodging documents under the SMC Rules to show how r 2.2 is *ultra vires* the SOPA. We mention one: where the Adjudication Application is served on a party on a Friday, and the following Friday is a public holiday, the date on which the Adjudication Response must be lodged falls on a Saturday. Since the SMC is closed on a Saturday, it would be impossible for documents to be lodged. He submits that as a result of such practical difficulties, r 2.2 is *ultra vires* the SOPA.

24 In our judgment, the argument cannot stand. Since the SMC has the power to make rules limiting the lodgement of documents to its official opening hours, we also held that the Respondent could not contend that r 2.2 is *ultra vires* because of practical difficulties relating to the opening or closing hours of the SMC. The validity of a rule does not hinge on practical difficulties, but on whether the SMC *had* the power to make those rules. In our view, it has the power to prescribe its opening hours. In any event, the problem raised by Mr Lee and which we have highlighted in the last paragraph will be there whatever may be the prescribed operating hours of SMC. It has all to do with the SMC not being open for business on a Saturday. All that we wish to say is that the problem does not seem to be insurmountable. Perhaps we should be guided by the spirit behind s 50(c) of the Interpretation Act.

Issue 3: Does r 2.2 take away the Adjudicator's power to decide the matter?

25 Thirdly, Mr Lee submitted that s 16(2) of the SOPA requires an adjudicator to decide whether an Adjudication Response had been lodged on time and r 2.2 (assuming it is not *ultra vires*) curtails the exercise of the function conferred on the adjudicator in that regard. He relied on the following passage from *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board and another* [1997] 1 SLR(R) 52 ("*Lines International*") at [99]–[100] in support of his position:

> 99 The plaintiffs are correct in their submission that PSA as the authority entrusted with the control over berths and, accordingly, the discretion as to how such berths are to be allocated, has also the duty to exercise that discretion itself after considering various relevant factors. It cannot abrogate this responsibility by taking orders from other statutory boards unless it is under a legal duty to do so. PSA did not contend that it was under any legal duty to obey orders from either GSB or STPB in regard to the allocation or denial of berths in the cruise centre. I must therefore agree with the plaintiffs' submission that in so far as condition (iv) appears to be a direction by PSA to itself to take orders from either GSB or STPB to deny berths to cruise vessels it is a fetter on the proper exercise by PSA of its discretion and is therefore invalid.
>
> 100 I do not agree, however, that condition (iv) in itself invalidates all the guidelines as they are capable of being implemented without reference at all to condition (iv). Whilst theoretically PSA has agreed to take orders from GSB and STPB, whether it in fact does so is another matter. If PSA's decision to deny *Nautican* a berth was made on the basis of condition (iv), ie that it had been ordered by STPB and GSB to do so, then that decision would be invalid as PSA had not exercised its discretion in coming to the decision. If, however, the decision was PSA's alone, then condition (iv) would be irrelevant and would not operate to invalidate it. This brings me to the next issue which relates to the manner in which *Nautican* was denied a berth.

26 In our judgment, the above passage was irrelevant. *Lines International* dealt with the issue of whether the Port of Singapore Authority ("PSA"), which had the duty of promoting the use, improvement and development of the Singapore port (at [80]), had fettered its own discretion when it refused to allow a ship chartered by the plaintiff to berth. The issue arose as the plaintiff refused to comply with guidelines laid down by an *ad hoc* committee consisting of, *inter alia*, the Singapore Tourist Promotion Board ("STPB") and the Gambling Suppression Branch. Judith Prakash J held that PSA had not failed to make its own determination, as the decision to refuse to allow the ship to berth was a decision made by PSA itself and it had merely asked the STPB for its concurrence. STPB was not the deciding body (at [118]). Here, if r 2.2 is valid, the Adjudicator will then have to consider it and make a decision based on his understanding of the legal effect of the SMC Rules and deal with the situation in accordance with r 2.2. Nowhere was there any suggestion that the Adjudicator blindly followed r 2.2 in rejecting the Adjudication Response; instead it appeared that the Adjudicator gave effect to r 2.2 only because he had considered the legal effect of the SMC Rules and was of the view that it was a valid rule enacted by the SMC pursuant to the SOPA and he was obliged under s 16(2)(*b*) of the SOPA to reject it. The relevant paragraphs of the Adjudication Determination are as follows:

> 17. The Respondent's adjudication response had been lodged on 5 September 2013 at 4.32 pm. However, the Instructions in the Adjudication Response (Form AR-1) paragraph 4 clearly states in bold **"Documents which are submitted after the opening hours shall be treated as being lodged the next working day".** Hence, the adjudication response which was submitted after 4.30 pm was considered lodged on the next working day, i.e. 6 September 2013.
>
> 18. Since the adjudication response was lodged on 6 September 2013, after the due date of 5 September 2013, I reject the adjudication response in accordance to Section 16 (2) (b) of the Act, "an adjudicator shall reject any adjudication response that is not lodged within the period referred to in Section 15 (1)", which had expired on 5 September 2013.
>
> [emphasis in original]

Issue 4: Is the lodgement of the Adjudication Response two minutes late *de minimis*?

27 Finally, Mr Lee submitted that the lodgement of the Adjudication Response two minutes late was *de minimis*. He cited *Peake v Automotive Products Ltd* [1977] 3 WLR 853 in support. Therefore, it is necessary to briefly examine the facts in order to understand what was in issue in the case. There, a factory had a rule where work stopped at 4.25pm, but female workers were allowed to leave at 4.25pm while the male workers were only allowed to leave at 4.30pm. This was in the interest of safety and good administration so that women could avoid being caught in the rush for the gates at 4.30pm. Goff LJ (as he then was) held (at 858) that besides not being discriminatory, the case was one to which the *de minimis* rule applied.

28 Mr Lee sought to persuade us that as the filing of the Adjudication Response was only late by two minutes, the *de minimis* rule should apply here as well. We did not agree with Mr Lee's position. The scheme of the SOPA is to provide for speedy and temporary relief so as to minimise cash flow problems within the construction industry, leaving the parties' substantive rights to be determined on another occasion. In *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733, Judith Prakash J held (at [41]):

> 41 In my judgment, bearing in mind the purpose of the legislation, the court's role when asked to set aside an adjudication determination or a judgment arising from the same, cannot be to look into the parties' arguments before the adjudicator and determine whether the adjudicator arrived

at the correct decision. In this connection, I emphasise the intention that the procedure be *speedy and economical*. It would be recalled that one of the adjudicator's duties is to avoid incurring unnecessary expense. *If the court were to be allowed to look into questions of substance or quantum including questions like whether a proper payment claim had been served by the claimant, the procedure is likely to be expensive and prolonged. One can very easily envisage a situation (in fact such situations have already occurred) where the dissatisfied respondent first applies to the court for the adjudication determination to be set aside on the ground that, for example, the adjudication response should not have been rejected, and then when that application is rejected by the assistant registrar, appeals to the judge in chambers and finally when the appeal is unsuccessful, appeals again to the Court of Appeal.* Bearing in mind that the adjudication process could have been a two-step process involving a review, that would mean five steps in all before the dispute regarding the claimant's payment claim is finally disposed of. The more steps there are, the longer the process will take and the more expensive it will be. *Such an outcome would be contrary to the intention of Parliament that the adjudication procedure should afford speedy* interim *relief.* [emphasis added]

29 It is in this light that timelines under the SOPA have to be strictly complied with. As held by the Court of Appeal in *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 (at [42]):

> … Where the Act itself states that certain material is not to be considered in certain circumstances, this must, as a matter of logic, have the effect of qualifying some other provision that imposes a general requirement that the principles of natural justice must be applied. In this context, there is no reason to construe s 16(3)(c) as foreclosing an adjudicator's power (indeed, his obligation) to act exactly as the Act contemplates in s 15(3). We should not strain the natural construction of the Act to accommodate cases such as the present, where a respondent has failed through his own lack of diligence to file a payment response. *Everyone in the building and construction industry must be aware, or at least taken to be aware, of the rigorous application of the timelines in the Act, and if they ignore them, they do so at their own peril.* [emphasis added]

30 While the way we had applied r 2.2 might seem harsh in light of the fact that the Respondent's filing of the Adjudication Response was merely two minutes late, we were of the view that having regard to the principle of *temporary finality* undergirding the SOPA, the strict application of the rule did not seem that draconian. Proceedings under the SOPA are meant to proceed at a good pace, and sums due under adjudication determinations are to be honoured and paid promptly. That was the whole object of the scheme. There might be a case for applying the *de minimis* rule if the substantive rights of the parties had been impinged, but here clearly the parties will have another chance to obtain redress by filing a substantive suit on the merits or have the matter submitted to arbitration. Accordingly, we held that there was no place for the *de minimis* rule to apply in this case.

Conclusion

31 For the above reasons, we allowed the appeal. The costs of the appeal including the costs of Summons No 1563 of 2014 (which was the Respondent's unsuccessful application to strike out the Appellant's appeal to this court) and the costs of the proceedings below were fixed at $35,000 all in, inclusive of disbursements. The usual consequential order for payment out of the security followed.

Postscript: Should interest on the judgment sum be paid between 17 February 2014 and 6 May 2015?

32 Post-appeal, the parties disputed whether interest was to be paid on the judgment debt for the

period between 17 February 2014 and 6 May 2015 ("the Disputed Interest"). The period between 17 February 2014 and 6 May 2015 will be referred to as the "Relevant Period", being the period during which the Judgment was not yet overturned. We held that there was no reason for the Respondent to dispute the payment of the Disputed Interest and our reasons follow.

33 First, on the authority of *Nitrate Producers Steamship Co Ltd v Short Bros Ltd* [1922] All ER 710, where a first instance judgment is reversed by the Court of Appeal and subsequently restored by the House of Lords, the first instance court's judgment is restored and "remains standing as from the date when it was given" (at 712). The present case was similar in that the Court of Appeal restored the AR's decision not to set aside the Adjudication Determination. The AR's decision therefore stood from the date upon which it was given. Interest accrued from the date of the AR's decision, if not earlier, and there was no basis for the Respondent to dispute the payment of the Disputed Interest during the Relevant Period. We would add that, in cases where the trial court dismisses a plaintiff's claim for damages but the appellate court allows the plaintiff's appeal and its claim for damages, it is not unusual for the appellate court to order that interest run on the judgment sum from the date of the writ. In those situations, the fact that the trial court found in the defendant's favour does not relieve it of the obligation to pay interest even during the period when the trial court's judgment had not yet been overruled. Similarly, we cannot see how the mere fact that the Judgment had not been overturned during the Relevant Period should operate to relieve the Respondent of its obligation to pay the Disputed Interest.

34 Secondly, the awarding of interest on judgment sums is made pursuant to the court's equitable jurisdiction (*Crédit Agricole Indosuez v Banque Nationale de Paris* [2001] 1 SLR(R) 609 ("*Crédit*") at [7]) and seeks to do justice to the parties (*Singapore Airlines Ltd and another v Fujitsu Microelectronics (Malaysia) Sdn Bhd and others* [2001] 1 SLR(R) 38 ("*SIA*") at [23]). In *Crédit* the court stated (at [7]):

> … It would be plain from the rationale given by Lord Cairns in *Rodger* … that an order made in this regard is really in pursuance of the court's equitable jurisdiction. In considering this question, the court should seek to do *justice to all the parties, not just the appellant or the respondent*. … [emphasis added]

35 It is this overriding concern with doing justice to the parties that the court is ultimately concerned about, and in awarding interest on judgment sums, the technicalities of what basis interest is awarded upon should not unduly distract judges from the ultimate goal of seeking to do justice to the parties – the restitutionary basis upon which interest was ordered to be paid on the judgment sums in *SIA* and *Crédit* is but one way towards achieving this overarching aim of doing justice between the parties. In this case, we noted that despite the Adjudication Determination and the AR's ruling in favour of the Appellant, the Respondent did not pay over the judgment sum to the Appellant. Instead, the Respondent kept the sum, which it should have paid over to the Appellant, in a "current account for operational purposes, that ordinarily does not bear interest". The fact was that the Respondent failed to pay over the judgment sum to the Appellant when the Appellant was rightfully entitled to it. Such conduct is inexcusable and it suggested to us that doing justice to parties would entail an order that the Respondent pay interest during the Disputed Period.

36 Thirdly, the Respondent's reliance on the cases of *Borthwick v The Elderslie Steamship Company Limited (No 2)* [1905] KB 516 ("*Borthwick*") and *SIA* were misconceived. The Respondent submitted that *Borthwick* had held that interest was only payable on a judgment sum when there was a contract or where the principal money had been wrongly withheld (at 520). It also submitted that *SIA* held the focus should be on restitution from the respondent rather than compensation to the appellant in order to do justice to the parties. In that case, the appellant had paid the respondent a

sum of money pursuant to the first instance judgment, and the respondent had placed this sum "in an interest bearing account with a reputable financial institution". When the appellate court reversed and ordered that the money be returned to the appellant, it was held that all that justice required was that the respondent should also return to the appellant the interest the money had *in fact* earned, and not interest at a presumably higher rate of 6% (at [18]–[23]). In the present case, as noted in the preceding paragraph, the Respondent had kept the judgment sum in an account that was not interest-bearing, and so the Respondent's argument premised on *SIA* was that it did not have to pay any interest as none had in fact accrued.

37 In our view, the Respondent's reliance on *SIA* and *Borthwick* was of limited utility as those cases have to be understood on their facts. Turning first to *SIA*, the material difference between that case and the present was that in *SIA*, the respondent did pay interest on the judgment sum to the appellant upon the appellate court's allowing of the appeal. Hence the respondent's liability to pay interest even during the period when the first instance decision had not been overruled was not in dispute, and the only question was what the interest rate should be. In the present case, by contrast, the Respondent disputed its liability to pay interest at all during the Relevant Period.

38 Turning to *Borthwick*, the difference between that case and the present was that the relevant party in *Borthwick* had not wrongfully withheld the judgment sum, but in this case the Respondent's withholding of that sum was undoubtedly wrongful. In *Borthwick*, the issue was whether the English Court of Appeal's judgment which reversed the lower court's decision should be antedated so as to allow the plaintiff's claim for interest on the judgment debt for the period during which the lower court's judgment stood. The English Court of Appeal declined to antedate their judgment as in their view, the power to antedate ought to be exercised only on good grounds being shown and the plaintiff had failed to show good grounds (at 519–520). In its letter, the Respondent relied on the holding in *Borthwick* to contend that backdated interest could only be demanded by virtue of a contract or where the principal money was wrongfully withheld (see [36] above). That comment was first mentioned in *Caledonian Railway v Carmichael* (1870) LR 2 HL Sc 56 ("*Caledonian Railway*") at 66 by Lord Westbury. To better understand that comment it is necessary to understand the context in which it was made in *Caledonian Railway.* There, there was a long delay before the creditor ascertained or pursued his pecuniary claim through a jury, even though at all times, the debtor was willing to fulfil the judgment debt. When the creditor sought for interest on the judgment debt to be awarded for the period of the delay, Lord Westbury held that:

> … The jury having found the value of the stone as on that day, all the functions of the jury, and all the obligations of the statute, were fulfilled. There was no room for any interest to be demanded. Interest can be demanded only in virtue of a contract expressed or implied, or by virtue of the principal sum of money having been wrongfully withheld, and not paid on the day when it ought to have been paid. There was nothing of that kind here, and there is no room for any jurisdiction of any Court to consider the question of interest, that being, if it arise at all, a matter for the jury alone, in determining the amount of compensation, or the amount of purchase-money to be paid.

39 In relation to this statement of Lord Westbury, Collins MR in *Borthwick* said (at 520–521):

> ... The point that was decided in [*Caledonian Railway*] does not arise in [*Borthwick*], but the principle of the decision helps us in dealing with [*Borthwick*]. … the principle to be gathered from [*Caledonian Railway*] is that till the sum was ascertained there was no exigency on the railway company to pay anything, and consequently no sum on which they could be called on to pay interest. Lord Westbury pointed out that interest could only be demanded by virtue of a contract, or where the principal money had been wrongfully withheld. *Wrongful withholding of*

> *money due would be a cardinal factor in determining whether we ought to antedate the judgment of this Court, but where the withholding merely arises in the ordinary process of ascertaining liability it could not be properly called wrongful.* … [emphasis added]

40 In our view, the remarks of Lord Westbury must not be taken out of context. Wrongful withholding of the Disputed Interest was exactly what happened in the present case (see [35] above) and thus there was justification for antedating the present judgment. We would also add that we might have been inclined to rule otherwise if the Respondent had paid over the judgment sum upon the Adjudication Determination made against it with the money being returned to it pursuant to the Judgment which allowed its appeal – in this hypothetical scenario, we might have considered that less interest should be paid by the Respondent depending on the evidence before us as to the benefit the Respondent would have to disgorge (*Crédit* at [9]). However, that was not the case.

41 Finally, we observed that the lengthy delay giving rise to the Relevant Period was caused partly by the Respondent's own unsuccessful application (which was dismissed with costs) to strike out the Appellant's appeal to this court by way of Summons No 1534 of 2014. That being the case, we did not think it would be just to hold that the Respondent should not pay the Disputed Interest for the Relevant Period. We thus rejected the Respondent's request to avoid paying the Disputed Interest, and ordered it to pay the same to the Appellant.

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