Bridgeman Pte Ltd *v* Dukim International Pte Ltd
[2013] SGHC 220

Case Number : Suit No 767 of 2012/S

Decision Date : 24 October 2013

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Valerie Ang and Vithyashree (Straits Law Practice LLC) for the plaintiff; S Magintharan and James Liew (Essex LLC) for the defendant.

Parties : Bridgeman Pte Ltd — Dukim International Pte Ltd

Contract – Breach

Contract – Damages

24 October 2013 Judgment reserved.

Lai Siu Chiu J :

Introduction

1 This was a claim for goods sold and delivered. Bridgeman Pte Ltd ("the plaintiff") is a wholesaler of petrochemical products, including Automotive Diesel Oil ("ADO"). Dukim International Pte Ltd ("the defendant") is in the business of, *inter alia*, supplying ADO. Sometime in June 2009, the plaintiff and the defendant entered into an oral agreement ("the Agreement"), whereby the plaintiff was to supply and deliver ADO to the defendant's customers.

2 Under the Agreement, the plaintiff obtained its supply of ADO directly from an oil company, *viz*, the Singapore Petroleum Company ("the SPC"). The plaintiff then sold the ADO to the defendant who in turn on-sold the ADO to its customers (which were mainly Korean companies). As the defendant did not have its own transportation fleet, it was agreed that the plaintiff would deliver the ADO directly to the defendant's customers. The plaintiff would then bill the defendant based on the quantities of ADO delivered. Thereafter, the defendant would invoice its own customers.

3 Between June 2009 and October 2011, the plaintiff delivered ADO to the defendant's customers upon the defendant's requests. The defendant had also paid the plaintiff based on its invoices but ceased doing so sometime in August 2011. Notwithstanding the defendant's non-payment, the plaintiff continued to supply ADO to the defendant's customers until sometime in October 2011

4 In this suit, the plaintiff claims the sum of $576,957.12 against the defendant, being unpaid amounts for ADO supplied between 2 August 2011 and 14 October 2011. The defendant in turn raised a counterclaim for damages and/or restitution on the premise that it had been overcharged by the plaintiff for the supply of ADO. If the counterclaim succeeds, it operates as a set-off to the plaintiff's claim.

The Dispute

5 For ease of reference later in this judgment, I shall first identify the *dramatis personae* involved

in the dealings between the parties:

(a) Yeo Ching Joo ("Yeo"), a director of the plaintiff;

(b) Sng Chee Beng Andrew ("Sng"), a manager of the plaintiff;

(c) Moon Ki Kim ("Moon Ki"), the managing director of the defendant, and

(d) Kim Eon ("Kim"), the Senior Marketing Manager of the defendant.

6 In these proceedings, it is not disputed that the plaintiff had delivered ADO to the defendant's customers between 2 August 2011 and 14 October 2011. It is also not in dispute that the defendant had not paid the plaintiff for the supply of ADO during this period. Rather, the thrust of the defendant's counterclaim is that the plaintiff had overcharged the defendant for the supply of ADO on various occasions between June 2009 and October 2011.

7 In his affidavit of evidence in chief ("AEIC"), Moon Ki said that the Agreement was entered into after a meeting between the plaintiff and the defendant. Moon Ki said that both Kim and he had attended the meeting, while Yeo and Sng were the plaintiff's representatives. More pertinently, Moon Ki said that it was agreed at the meeting that the price (per litre) for the supply of ADO to the defendant was 5 cents (which was later reduced to 4 ½ cents) above the price (per litre) paid by the plaintiff to SPC for the ADO ("the SPC ADO price"). Furthermore, this price included all ancillary charges such as transportation and service fees.

8 The defendant alleged that during the course of their dealings, the plaintiff had misrepresented the daily SPC ADO price. Subsequently, the plaintiff had overcharged the defendant by rendering invoices based on those prices. Hence, the defendant counterclaimed for damages for breach of contract ("the Counterclaim for Breach of Contract"). In the alternative, the defendant counterclaimed for damages for misrepresentation ("the Counterclaim for Misrepresentation"). The defendant's third claim which was in the further alternative, was that the plaintiff had been unjustly enriched at the defendant's expense by overcharging for the ADO ("the Counterclaim for Unjust Enrichment:). The defendant sought restitution in the sum of $990,177.22, being the total amount of the alleged overcharging.

9 The plaintiff denied it had overcharged the defendant for the supply of ADO under the Agreement. In his AEIC, Yeo disputed Moon Ki's evidence as regards how the Agreement came about and the terms of the Agreement. Yeo claimed that the Agreement was concluded after three meetings between the plaintiff and the defendant. Yeo also said that Kim was not present at any of the three meetings. More pertinently, Yeo denied that the agreed price for the supply of ADO to the defendants was pegged to the SPC ADO price in any way. Instead, it comprised of the plaintiff's own ADO price (per litre) to the defendant ("the Bridgeman ADO price") plus a service and transportation charge of 6 cents (which was later reduced to 5 cents and thereafter, 4 ½ cents) per litre.

The Counterclaim for Breach of Contract

Admissibility of evidence of subsequent conduct

10 Before turning to the parties' submissions, I wish to briefly deal with a preliminary issue. In these proceedings, both parties have made submissions which relied on evidence of the conduct of the parties subsequent to the Agreement, to establish the agreed ADO price. This raises the issue of whether the court is entitled to look at the subsequent conduct of the parties in ascertaining the

agreed price for ADO under the Agreement.

11 The law in Singapore in this regard is not clear. In *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258 ("*Midlink*"), V K Rajah JC suggested (at [53]) that regard could be had to subsequent conduct in ascertaining contractual terms. Similarly, in *Econ Piling Pte Ltd v NCC International AB* [2008] SGHC 26 ("*Econ Piling*") at [63], Chan Seng Onn J took into account the conduct of the parties, after entering into an alleged agreement to dissolve a partnership, in determining whether such an agreement existed in the first place.

1 2 *Midlink* and *Econ Piling* were considered by Woo Bih Li J in *Sundercan Ltd and another v Salzman Anthony David* [2010] SGHC 92 ("*Sundercan*"). In *Sundercan*, Woo Bih Li J observed (at [26]) that:

> As for the plaintiff's argument that the defendant's conduct subsequent to 23 October 2008 was consistent with the existence of a concluded contract, it is not entirely clear as to whether the courts can look at conduct subsequent to the time of the formation of the contract to determine whether a contract was concluded. The plaintiffs relied on two cases, namely [*Econ Piling*] and [*Midlink*] to support the proposition but the point was not argued there. The courts there appeared to have assumed that subsequent conduct could be considered to determine the existence of a contract. I would add that estoppel by convention is a different matter.

Woo J later appeared (at [27]) to express the view that in most cases subsequent conduct could not be used to determine the existence of a contract. In any event, nothing turned on this as Woo J held that the defendant's subsequent conduct did not support the plaintiff's assertion that such conduct was unequivocal evidence of a concluded contract.

13 As regards the admissibility of evidence of subsequent conduct in the interpretation of a contract, the Court of Appeal, in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [132(d)], said:

> …[T]he principle of objectively ascertaining the contractual intention(s) remains paramount. Thus, the extrinsic evidence must always go towards proof of what the parties, from an objective viewpoint ultimately agreed upon. Further, where extrinsic evidence in the form of prior negotiations and subsequent conduct is concerned,… *there should be no absolute or rigid prohibition against evidence of previous negotiations or subsequent conduct, although, in the normal case, such evidence is likely to be inadmissible for non-compliance with the requirement set out at [125] and [128-129] above*. (We should add that the relevance of subsequent conduct remains a controversial and evolving topic that will require more extensive scrutiny by this court at a more appropriate juncture.)
>
> [emphasis added]

In effect, the appellate court in *Zurich Insurance* held that evidence of subsequent conduct would only be admissible if it is relevant to the exercise of ascertaining the objective intention of the contracting parties.

14 Although *Zurich Insurance* concerned the interpretation of a contract, I am of the view that the principles enunciated there can equally apply to the present case. Like the interpretation of contractual terms, the ascertainment of the terms of a contract involves an inquiry as to what the parties had objectively and ostensibly agreed upon. As contractual terms are to be determined *at the time the contract was entered into*, evidence of subsequent conduct would usually be irrelevant to

this exercise, and therefore, inadmissible as direct evidence of contractual terms.

15 However, as neither party made submissions on this issue, I am prepared to assume that evidence of subsequent conduct is admissible as direct proof of contractual terms. This however, is subject to the caveat that the subsequent conduct relied upon must be unequivocal evidence of the existence of the alleged contractual term.

16 For completeness, I would add that evidence of subsequent conduct would also be relevant is assessing the credibility of a witness. This is a pertinent point in cases like the present where the contract was not in writing and where the parties' versions of the terms of the contract are diametrically opposite.

The evidence at trial

17 To establish that the agreed price for the supply of ADO was pegged to the SPC ADO price, the defendant purported to rely on evidence of industry practice. In his AEIC, Moon Ki deposed that it was industry practice for wholesalers to supply ADO at a price pegged to the daily ADO price quoted to them by the oil company. Moon Ki also referred to the defendant's previous dealings with other wholesalers of ADO. In each of those cases, he said that the wholesaler had charged the defendant based on the SPC ADO price plus an agreed mark-up of between 5 and 6 cents.

18 The defendant also called as a witness one Lee Chin Chin ("Lee"), director of sales and marketing of the SE Loh Group ("SE Loh"), to support its position. SE Loh is a group of companies that is a wholesaler of ADO. For a brief period, sometime in June 2009, SE Loh supplied ADO to the defendant. Thereafter, from October 2011 until these proceedings, it resumed supplying ADO to the defendant. In her AEIC and in cross-examination, Lee confirmed Moon Ki's evidence as regards industry practice in the supply of ADO.

19 Counsel for the plaintiff ("Ms Ang"), contended that little weight should be given to Lee's and Moon Ki's evidence on industry practice. I agree. For a start, the quotations and invoices issued by the defendant's previous suppliers did not indicate whether they were based on the SPC ADO price as Moon Ki had alleged (although I am mindful that Lee testified that SE Loh's invoices were in fact based on the SPC ADO price).

20 More pertinently, I am of the view that evidence of industry practice is hardly conclusive of the agreed price for the supply of ADO under the Agreement. The defendant did not contend that there are statutory regulations governing contracts for the supply of ADO. Quite clearly then, it was open to the plaintiff and the defendant to contract on a basis that departed from the alleged industry practice.

21 In this regard, it was the plaintiff's case that it would never have agreed to supply ADO to the defendant on the basis of SPC's ADO price as it did not make commercial sense to do so. In cross-examination, Yeo explained that the plaintiff's expenses included, *inter alia*, – (a) the cost of maintaining its oil-tank trucks; (b) the payment of its drivers' wages, (c) insurance payments; and (d) yearly safety training for the drivers of the oil-tank trucks. Therefore, Yeo said, the plaintiff's mark-up on the SPC ADO price had to cover those expenses as well as include an element of profit.

22 Yeo's position in this regard was deceptively simple as a mark-up of 5 to 6 cents above the SPC ADO price would appear to be a meagre amount. However, after reviewing the evidence in its entirety, I give his testimony little weight.

23 At trial, Yeo appeared to suggest that charging a mark-up of 5 to 6 cents above the SPC ADO price was tantamount to charging at "cost price". However, no evidence was adduced by the plaintiff to substantiate Yeo's allegation. In particular, the plaintiff did not quantify the outgoings it had actually incurred. Nor did it adduce any evidence which showed its profit margins on the defendant's account and how the figures would have differed had it charged on the basis of the SPC ADO price. Absent such evidence, there is simply no way of knowing whether it would have made commercial sense for the plaintiff to have charged on the basis of the SPC ADO price.

24 In cross-examination, the defendant's counsel ("Mr Magin") had put to Yeo that it was industry practice to charge on the basis of the SPC ADO price plus a mark-up which covered all transportation and other ancillary charges. In response, Yeo agreed that for end-users, the price of ADO was usually pegged to the ADO price of an oil company. Although Yeo insisted that the same did not apply to the defendant who was not an end-user, his testimony contradicted his earlier allegation that it did not make commercial sense to charge on the basis of the SPC ADO price plus a fixed mark-up.

25 This brings me to another submission of Ms Ang, *viz*, that the relationship between the parties was that of a "willing buyer and willing seller". The gist of Ms Ang's submission was that under the Agreement, the plaintiff was to provide the defendant with a quotation before delivery, setting out the daily Bridgeman ADO price. If the defendant accepted the Bridgeman ADO price for that day, it would inform the plaintiff that it wanted ADO to be delivered to its customers.

26 Therefore, Ms Ang contended, if the defendant did not accept the Bridgeman ADO price, it could have looked elsewhere for its supply of ADO. However, the defendant did not do so and never objected to the plaintiff's invoices during their course of dealings. According to Ms Ang, the defendant received exactly what it had bargained for under the Agreement.

27 I am of the view that Ms Ang's contention is of marginal (if any) relevance to the price of ADO under the Agreement. The "willing buyer and willing seller" theory does not hold water unless the plaintiff did not agree to charge on the basis of the SPC ADO price. This is precisely what is in dispute in these proceedings.

28 I would add that on the evidence, I also find that the plaintiff did not provide the defendant with quotations of the daily ADO price before delivery. Rather, the defendant was only provided with a summary of the prices at which ADO had already been delivered. Further, the plaintiff also delivered ADO to some of the defendant's customers on a standing order basis, without the need for daily confirmation by the defendant. In those circumstances, Ms Ang's contentions as regards the "willing buyer and willing seller" theory is plainly untenable.

29 I now come to a different issue, *viz*, the communications between the parties shortly after entering into the Agreement. In this regard, three emails are pertinent. Mr Magin had submitted that from those emails, it can be inferred that the plaintiff had agreed to charge the defendant on the basis of the SPC ADO price plus a fixed mark-up.

30 The first email was that sent on 25 June 2009 by Moon Ki to one Joan, an employee of the plaintiff, and copied to Sng and Kim. It reads:

> As you are aware, *our diesel price to our customers is tied to the ADO price of SPC.* In order to meet the need to answer our customers who inquire price of a certain date and, especially, to invoice them with daily price, we would need to be updated on ADO price daily. Would you kindly develop a system so that myself and Eon, my colleague can be advised by email or by sms each day? Thank you for your assistance.

[emphasis added]

On the same day, Kim sent Joan an email which was copied to Sng to say:

> Hi my name is Kim Eon who was explained by Moonki as below. I would appreciate if you can advise ADO price of SPC for 24/25/25th Jun`09 as soon as possible.
>
> [emphasis added]

Thereafter, on 26 June 2009, Kim sent Moon Ki an email to say:

> …
>
> I had requested by email to Bridgeman but, since there was no reply, I called Andrew today and managed to receive the following: 24 June ($0.7175), 25 June ($0.6975), 26 June ($0.7100)! So, am I right to say that the price we invoice our customers will be these prices plus $0.11?
>
> …

31 Kim's evidence was that the plaintiff did not reply to his email on 25 June 2009. Therefore, he called Sng on 26 June 2009 to obtain the SPC ADO price. In this regard, it is not in dispute that Sng had provided Kim with the prices contained in Kim's email to Moon Ki on 26 June 2009. It is also not in dispute that Sng had provided Kim with the SPC ADO prices for those dates. Further, the documentary evidence adduced at trial showed that shortly after the Agreement was entered into, sometime between 13 June 2009 and 3 July 2009, the plaintiff had given its quotations and invoices to the defendant based on the SPC ADO price.

32 When he was referred to Kim's email (at [30] above) in cross-examination, Yeo initially claimed that he would never have given the defendant a quotation based on his cost price, *ie*, the SPC ADO price. However, when Mr Magin pointed out that Sng had in fact provided Kim with the SPC ADO price, Yeo changed his evidence. He then claimed that the defendant had asked for the plaintiff's support at the start of their relationship. Therefore, it was agreed that the plaintiff would temporarily charge the defendant on the basis of the SPC ADO price plus a fixed transportation and service charge. This was also Sng's evidence in cross-examination.

33 Sng was evasive when cross-examined on this issue. As regards Moon Ki's email, Sng claimed that he never read it. With regard to Kim's email, Sng admitted that his staff had informed him of the contents. Sng said that he was surprised that Kim had referred to the SPC ADO price in his email as this was contrary to what the parties had agreed. Therefore, he called Kim to explain that the agreed ADO price was in fact based on the Bridgeman ADO price and not the SPC ADO price.

34 I find Sng's evidence incredible. First, I do not believe that Sng had called Kim to clarify the terms of the Agreement. Instead, I accept Kim's evidence that it was he who had called Sng. This was corroborated by the email sent by Kim to Moon Ki on 26 June 2011. Moreover, Sng himself admitted at trial that it may have been Kim who had called him and that he had given Kim the SPC ADO price.

35 I also do not believe that the parties had entered into the temporary arrangement that Yeo and Sng both claimed. Had the parties indeed entered into such an arrangement, it would not have surprised Sng that Kim had asked for the SPC ADO price. There would also have been no reason for Sng to inform Kim that the information he had requested was contrary to what the parties had

agreed.

36 If the parties had in fact entered into the alleged temporary arrangement, I am of the view that Sng and Yeo would have mentioned it in their AEICs. They did not. Further, as I will explain shortly, Sng's AEIC made reference to a later period during the relationship where the plaintiff had allegedly agreed to temporarily charge on the basis of the SPC ADO price. In the light of this evidence, Sng's omission to mention the earlier arrangement was glaring. I believe Sng's and Yeo's evidence on this issue were afterthoughts.

37 Mr Magin submitted that the said emails support a strong inference that the agreed price of ADO under the Agreement was based on the SPC ADO price. Based on my findings at [31] to [34] above, I agree. I would add that even if the evidence set out at [26] to [32] above (being evidence of subsequent conduct) is inadmissible as direct proof of the terms of the Agreement, it was still very damaging to the credibility of both Yeo and Sng.

38 Between 2 and 17 June 2011, the plaintiff again supplied ADO to the defendant on the basis of the SPC ADO price plus a fixed mark-up. This followed a meeting between the plaintiff and the defendant sometime in May 2011 ("the May 2011 meeting"). According to Moon Ki and Kim, the defendant first came to know of the plaintiff's overcharging in or around May 2011. Therefore, they called the May 2011 meeting and confronted the plaintiff about the overcharging.

39 In his AEIC and in cross-examination, Sng admitted that the May 2011 meeting did occur. However, Sng claimed that defendant did not raise the issue of the plaintiff's failure to charge on the basis of the SPC ADO price. Instead, Moon Ki and Kim had merely mentioned that their customers had complained that the price of ADO was high. Moreover, Sng said that the defendant had again asked for the plaintiff's support by temporarily charging on the basis of the SPC ADO price plus the transportation and service charge.

40 I do not believe Sng's evidence that the defendant did not raise the issue of the overcharging at the May 2011 meeting. Sng's evidence on this point was contradicted by Yeo. In cross-examination, Yeo testified that during the May 2011 meeting, Moon Ki had alleged that the prices quoted in the plaintiff's invoices were not the SPC ADO prices. Yeo said that he had explained to Moon Ki that the plaintiff had never agreed to charge on the basis of the SPC ADO price.

41 Given the serious nature of the allegations made by the defendant at the May 2011 meeting, I find it incredible that the plaintiff would have agreed to support the defendant again by charging on the basis of the SPC ADO price. It my view, it is wholly unsurprising that Sng claimed that the issue of overcharging was never raised at the May 2011 meeting. In the circumstances, I find that the plaintiff had gone back to charging on the basis of the SPC ADO price because this represented the agreement reached between the parties.

42 Ms Ang also placed much reliance on the fact that the defendant continued to obtain its supply of ADO from the defendant, even after it came to discover of the overcharging in May 2011. She emphasised that it was open to the defendant look for an alternative supplier of ADO had it felt that the plaintiff's prices were too high.

43 Against this, it was Moon Ki's and Kim's evidence that it was important for the defendant to ensure that the supply of ADO to its customers was not interrupted. I accept their evidence in this regard. In my judgment, Ms Ang's contention (at [42]) is overly simplistic and is not consonant with commercial reality.

44 It is also noteworthy that although the defendant stopped paying the defendant in August 2011, the plaintiff continued to supply ADO to the defendant's customers up till 14 October 2011. In this regard, Moon Ki said that at the May 2011 meeting, he had informed Sng that the defendant required the plaintiff to set-off the quantum of the overcharging against future amounts due to the plaintiff under the Agreement. Although the plaintiff did not expressly agree to this, I find that the plaintiff's conduct in continuing to supply ADO notwithstanding the defendant's non-payment was an implied admission on the plaintiff's part that it had overcharged the defendant.

45 Finally, I come to Ms Ang's submission that the plaintiff would never have agreed to provide the defendant with quotations based on the SPC ADO price as the price was confidential. I find Ms Ang's submission to be untenable. For a start, the alleged confidentiality of the SPC ADO agreement was hardly conclusive of the price of ADO under the Agreement. Furthermore, Ms Ang's submission was contradicted by Yeo's and Sng's evidence that – (a) the plaintiff had temporarily agreed to charge the defendant based on the SPC ADO price for two periods during the course of their relationship; and (b) the plaintiff based its price to end-users of ADO on the SPC ADO price.

The decision

Liability

46 After having considered all the evidence and the submissions made by counsel, I find that the contractual price for the supply of ADO by the plaintiff to the defendant was the SPC ADO price plus an agreed mark-up. I accept Moon Ki's evidence that this was what the parties had agreed. Moon Ki's (and Kim's) testimony at the trial was generally consistent and corroborated by the objective evidence. Further, for the reasons which I have set out above, I did not find Yeo and Sng to be credible witnesses.

47 As the plaintiff had not charged the defendant on the basis of the SPC ADO price plus the agreed mark-up, it follows that the plaintiff had breached the Agreement.

Damages

48 Ms Ang had submitted that even if the defendant's counterclaim for breach of contract succeeded on liability, the defendant had not proven that it has suffered any loss. The thrust of Ms Ang's submission was that the defendant had in fact charged its own customers on the basis of whatever price the plaintiff had charged the defendant under the Agreement plus a mark-up. It did not matter therefore whether the plaintiff's price was the SPC ADO price or the Bridgeman ADO price. In doing so, the defendant had effectively passed on its loss to its customers. Consequently, Ms Ang submitted, the defendant should recover only nominal damages.

49 Ms Ang's submission is misconceived on the purpose of an award of damages for breach of contract. In *Robinson v Harman* (1848) 1 Exch 850 at 855, Parke B explained that:

> Where a party sustains loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation with respect to damages, as if the contract had been performed.
>
> [emphasis added]

50 Therefore, in assessing damages for breach of contract, the court looks at the performance which the party claiming damages had bargained for. This exercise does not involve a mere

comparison of the financial positions of a party before and after the breach had occurred. In *Attorney-General v Blake* [2001] AC 268 at 298, Lord Hobhouse made the pertinent point that:

> [Damages are] are substitute for performance…The error is to describe compensation as relating to a loss as if there has to be some identifiable physical or monetary loss to the plaintiff…

51 In the present case, the defendant's bargain was to buy ADO from the plaintiff at the SPC ADO price. Therefore, the damages required to put the defendant in the same position it would have been in had the contract been performed would be the *difference between the price the defendant had actually paid for the supply of ADO and the SPC ADO price*.

52 As a matter of principle, I am of the view that the contracts between the defendant and its customers have no bearing on the contract between the plaintiff and the defendant and the bargain lost by the defendant as a result of the plaintiff's breach.

53 Further, policy considerations also militate in favour of my conclusion. If the contracts between the defendant and its customers were based on the SPC ADO price, then by charging its customers on the basis of the Bridgeman ADO price, the defendant would have been in breach of contract *vis-à-vis* its customers. If the defendant cannot recover substantial damages in these proceedings, it would produce inequitable results should the defendant subsequently be sued by its customers for breach of contract. In that eventuality, the defendant would clearly have suffered "loss" (in the sense contended for by Ms Ang) as a result of the plaintiff's breach. However, the defendant would be precluded, by the doctrines of *res judicata* and issue estoppel, from commencing a fresh suit against the plaintiff.

54 Consequently, the defendant is entitled to recover substantial damages from the plaintiff for breach of contract. Such damages are to be assessed on the basis of the difference between the daily Bridgeman ADO price and the daily SPC ADO price for the period of their dealings.

55 In these proceedings, Sng and Moon Ki filed Supplementary AEICs, setting out different computations as regards the extent of the overcharging. According to Yeo, the correct figure was $907,982. Moon Ki on the other hand said it was $990,177.22.

56 The first issue arising from these competing computations concerns whether the Government Service Tax ("GST") of 7%, passed on by the plaintiff to the defendant, should be included in the computation. On the basis of the compensatory principle of damages, whatever amount charged by the plaintiff to the defendant for GST with regard to the overcharged amount should similarly be returned to the defendant by the plaintiff.

57 The second issue relates to the agreed mark-up at the start of the parties relationship. At trial, the plaintiff's position was that between 13 and 30 June 2009, the agreed transportation and service charge was 6 cents per litre. Conversely, the defendant (no doubt relying on the plaintiff's own statement of claim) claimed that the agreed mark-up was 5 cents per litre. The defendant thus contended that between 13 and 30 June 2008, the plaintiff had overcharged the defendant by 1 cent per litre

58 I do not agree with the defendant's contention in this regard. It is apposite here to have regard to an email dated 3 July 2009, sent by Moon Ki to Sng. In that email, Moon Ki informed Sng that Yeo had agreed to keep the margin at 5 cents. He then asked Sng to arrange for the *new margin* to be reflected in the plaintiff's invoices. Based on this evidence, I find that the original mark-up was 6 cents per litre. This was reduced to 5 cents per litre in or around July 2009. It follows that between

13 June 2009 and 30 June 2009, there was no overcharging on the plaintiff's part.

59 Having taken into account the matters set out at [55] to [57] above, there remains a difference of $17,851.35 between the plaintiff's and the defendant's respective computations. This difference arises because the parties disagree on the SPC ADO price as well as the quantity of ADO supplied on various days during the contractual period.

60 In the light of the voluminous bundles of invoices and delivery orders filed in these proceedings, counsel ought to have narrowed the scope of the Court's enquiry by stating with precision, the dates for which the figures were disputed and the dates on which they were not. Where the figures were disputed, counsel should also have directed the Court to the relevant documents which supported their respective claims. Regrettably, counsel failed to do so. In these circumstances, interlocutory judgment is to be entered for the defendant with damages to be assessed by the Registrar. In the interim, the parties may agree on a figure as regards the extent of the overcharging.

61 The defendant had also claimed damages for the alleged loss of business of one of its customers, *viz*, Dongah Geological Co Ltd ("Dongah"). I do not accept the defendant's claim in this regard as the defendant has not shown that the plaintiff's breach had caused it to lose that business.

62 Finally, the defendant claimed damages for the increased costs it had incurred in finding an alternative supplier of ADO. The defendant asserted that under its present arrangement with SE Loh, it has to pay a mark-up of 6 cents per litre. This was 1.5 cents higher than the mark-up it had agreed with the plaintiff. Therefore, the defendant sought to recover from the plaintiff the difference of 1.5 cents multiplied by the volume of ADO supplied to it by SE Loh.

63 I hold that the defendant's claim for damages under this head is plainly untenable as there was no fixed term for the arrangement between the plaintiff and the defendant. At all times, the defendant was free to get its ADO elsewhere. Similarly, the plaintiff was not obliged to supply ADO to the defendant for a fixed period of time. In such circumstances, no question of repudiatory breach arises. It follows that the defendant cannot recover damages for its extra costs in finding an alternative supplier of ADO.

The Counterclaims for Misrepresentation and Unjust Enrichment

64 Based on my findings above, it is not necessary for me to deal with the defendant's arguments in this regard.

Conclusion

65 For the reasons set out earlier, I allow both the plaintiff's claim and the defendant's counterclaim. There shall be final judgment for the plaintiff in the sum of $576,957.12 (see [4]). The defendant is awarded interlocutory judgment on its counterclaim with damages to be assessed. The damages are to be assessed by the Registrar with the issues of interest on the damages and costs of the assessment reserved to the Registrar. There shall be a set off of the plaintiff's claim with the defendant's counterclaim when assessed. Hence, the plaintiff's claim will not be paid pending assessment of the defendant's counterclaim and the outcome.

66 In the light of the pending assessment of the defendant's counterclaim, the issue of costs for this trial is also reserved to the Registrar even though both sides succeeded on their respective claim and counterclaim. For expediency, the parties may wish to come to an arrangement as regards waiver of costs but each side should reimburse the other party for its disbursements in full, again on a setoff

basis.