IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 154

Suit No 10 of 2017

Between

Tan Gim Seng t/a G.S. Forklift Services

… *Plaintiff*

And

Sea-Shore Transportation Pte Ltd

… *Defendant*

And

Sea-Shore Transportation Pte Ltd

… *Plaintiff in Counterclaim*

And

Tan Gim Seng t/a G.S. Forklift Services

… *Defendant in Counterclaim*

GROUNDS OF DECISION

[Contract] — [contractual terms] — [implied terms]

[Limitation of Actions] — [equity and limitation of actions]

TABLE OF CONTENTS

Tan Gim Seng (trading as G S Forklift Services)
v
Sea-Shore Transportation Pte Ltd

[2018] SGHC 154

High Court — Suit No 10 of 2017
Chua Lee Ming J
6 – 8 March 2018; 9 March 2018

4 July 2018

Chua Lee Ming J:

Introduction

1 The plaintiff, Mr Tan Gim Seng trading as G.S. Forklift Services ("GSFS"), a sole-proprietorship, sued the defendant, Sea-Shore Transportation Pte Ltd, for $416,796.20 in respect of work done and services rendered at the defendant's request. On 17 May 2017, the plaintiff obtained summary judgment against the defendant for the sum of $399,163.70 with interest. The plaintiff proceeded to trial for the balance sum of $17,632.50.

2 The defendant filed a counterclaim seeking $685,200 being arrears of rental for the use of the defendant's premises and other charges, alternatively damages to be assessed.

3 On 9 March 2018, I gave judgment for the plaintiff on his claim, in the

sum of $17,632.50 with interest at 5.33% from the date of the writ until judgment. I also gave judgment for the defendant on its counterclaim in the sum of $69,784 with interest at 5.33% from the date of the writ until judgment. I ordered each party to bear its own costs.

4 The defendant has appealed against my decision on its counterclaim and the costs order.

Facts

5 In 1991, the plaintiff started work at Eastman Lift Truck Pte Ltd ("Eastman"). Whilst at Eastman, the plaintiff carried out repair and servicing work for the defendant's forklifts. The defendant was in the business of general warehousing and other transportation support activities. In the course of working at the defendant's premises at 14 Pioneer Sector 2 Jurong, Singapore ("the Pioneer premises"), the plaintiff came to know Mr Sharafdeen s/o S N Abdul Rasak ("Deen"). Deen had founded the defendant company together with Mr Vijayarahavan s/o Kuppasamy ("Ragu"). Deen managed the defendant together with Ragu until 2007.[1] Deen was a director of the defendant until January 2017; he remains a shareholder of the defendant.

6 The plaintiff subsequently left Eastman and started his own business in 2003 under GSFS. In 2005, the plaintiff started servicing the defendant's forklifts. Subsequently, in 2006, the plaintiff moved GSFS' business to the Pioneer premises and started operating from there. The plaintiff claimed that this was pursuant to an oral agreement reached with the defendant who was then represented by Deen. The terms of this agreement were in dispute in this action.

---

[1] Affidavit Evidence-in-Chief ("AEIC") of Balan Vijayarahavan Pillai, at para 5.

7 In 2007, Ragu lost his mental capacity and he passed away in 2008. Deen became the primary person managing the defendant's affairs.

8 Between 21 November 2006 and 20 November 2016,[2] GSFS occupied at first, one container, and later another three containers, at the Pioneer premises. Two of the containers were 40 feet long by eight feet wide and the other two were 20 feet long by eight feet wide. The two 40-foot containers were stacked one on top of the other as were the two 20-foot containers. In addition, GSFS occupied some additional ground space; the area of this additional ground space was in dispute. During this period, GSFS rendered repair services to the defendant. Between 2006 and 2016, the defendant paid GSFS about $300,000 for the services rendered.[3]

9 Ragu's son, Mr Balan Vijayarahavan Pillai ("Balan"), worked for the defendant between 1987 and 2002 or 2003.[4] In 2015, Balan returned to work for the defendant as chief operating officer.

10 In June 2016, one of GSFS' employees, Mr Hoi Sum Wah ("Hoi") left GSFS' employment. The defendant employed Hoi to perform all the servicing and repair works for their machinery. The defendant then ceased engaging the plaintiff for its repair works.

11 On 16 November 2016, the plaintiff sent the defendant a statement of accounts for the period from August 2011 to October 2016 and sought payment of the outstanding balance of $418,296.20.[5]

---

2 Defence and Counterclaim (Amendment No. 2), at para 7.

3 NE, 6 Mar 2018, at 25:21-24.

4 AEIC of Balan Vijayarahavan Pillai, at para 6.

5 Agreed Bundle ("AB") 59.

12 On 17 November 2016, the defendant replied, complaining that the plaintiff had not sent his statements of accounts on a monthly basis, and stating that it needed time to check the statement sent by the plaintiff.[6] Subsequently, that same day, Balan wrote to the plaintiff reminding him that there was "a new Executive Management in [the defendant] and that we will be reviewing all Debtors & Creditors throughly (*sic*) before any action is taken."[7]

13 Subsequently, the defendant sent the plaintiff a statement of accounts dated 28 November 2016.[8] The defendant's statement of accounts referred to an invoice dated 20 November 2016[9] from the defendant to the plaintiff for $625,200 being charges imposed by the defendant for the period from 21 November 2006 to 20 November 2016 for

(a) rental for 120 months for 2,500 sq ft at $1.20 per square foot (with $25,200 as goods and services tax (GST)); and

(b) utilities charges for 120 months at $2,500 per month.

14 By way of email dated 2 December 2016, the plaintiff noted that $1,500 of the outstanding balance of $418,296.20 due to GSFS had been paid. The plaintiff queried the defendant's invoice, pointing out that he had never received any document or invoice relating to the rental and utilities charges claimed by the defendant.[10]

---

6 AB 58–59.

7 AB 58.

8 AB 72.

9 AB 73.

10 AB 55–56.

15 Balan replied to the plaintiff on the same day stating that there was no mistake in the defendant's invoice and told the plaintiff that the defendant was "under New Executive Management with New 45% Shareholding partners" and that "[a]ll Tenants in [the defendant's] Premises will have to be accounted for under the New Executive Management".[11]

16 On 7 December 2016, the defendant, through its solicitors M/s UniLegal LLC, demanded payment of the sum of $11,956.30 from GSFS.[12] The letter of demand attached the defendant's statement of accounts dated 30 November 2016 in which the defendant set off $399,163.70 owed to GSFS against $411,120 due from GSFS, leaving a balance sum of $11,956.30 due from GSFS.[13] Apparently, for purposes of the letter of demand, the defendant limited its claim for rental and utilities charges to six years which explained why the statement of accounts reflected $411,120 instead of $625,200.[14]

17 On 6 January 2017, the plaintiff commenced the present action against the defendant for the sum of $416,796.20[15] being the balance outstanding from the defendant for work done and services rendered by the plaintiff at the defendant's request.

18 In its defence, the defendant denied liability on various grounds. In addition, the defendant counterclaimed against the plaintiff for the sum of $685,200 being rental and utilities charges.

---

11 AB 55.

12 AB 61.

13 AB 69.

14 AB 60.

15 $418,296.20 - $1,500 (see [14] above).

19 The plaintiff applied for summary judgment. On 12 May 2017, the Assistant Registrar entered judgment for the plaintiff in the sum of $399,163.70, which the defendant had acknowledged to be owing to the plaintiff in its statement of accounts dated 30 November 2016 (see [16] above). The defendant was given leave to defend against the balance sum of $17,632.50. The defendant did not appeal against the Assistant Registrar's decision.

The plaintiff's claim for the balance sum of $17,632.50

20 There is no appeal against my decision on the plaintiff's claim. However, a brief explanation would be helpful for context and completeness.

21 One of the pleaded defences was an allegation that there was an agreement between the parties that the plaintiff would do work and render services at the defendant's request in return for the plaintiff being allowed to operate his business at the Pioneer premises and that neither party would claim against the other for rental, utility charges or professional fees.[16]

22 The Assistant Registrar's decision on the plaintiff's application for summary judgment meant that the defendant had failed in its defence that there was any such agreement. In my view, this defence was therefore no longer available to the defendant with respect to the plaintiff's claim for the outstanding balance of $17,632.50.

23 The plaintiff's claim for the outstanding balance of $17,632.50 was based on eight invoices which were supported by Service/Repair Reports which had been signed by the defendant's representative, certifying that the jobs had been done to the defendant's satisfaction.[17] Having no answer to these

---

16 Defence and Counterclaim (Amendment No. 2), at para 3.

Service/Repair Reports, the defendant accepted in its closing submissions that the plaintiff had carried out the work described in the Service/Repair Reports but submitted that the plaintiff had overcharged the defendant. The defendant agreed to pay a reasonable sum to be determined by this court.[18]

24 In my judgment, the defendant's submission that the plaintiff had overcharged it for the work done was plainly unsustainable. The defendant's yard manager, Mr Verlachamy V K ("Bala"), testified that the usual practice was that the plaintiff would commence work only after the defendant had agreed to the scope of the work to be done and the cost/rate to be charged.[19] There was no evidence suggesting that this practice had not been followed with respect to the work which was the subject matter of the eight outstanding invoices.[20]

25 I therefore entered judgment for the plaintiff in the sum of $17,632.50 with interest at 5.33% per annum from the date of the writ until the judgment.

The defendant's counterclaim

26 The defendant pleaded that it agreed to rent and/or license space at the Pioneer premises to the plaintiff, and that it was an express term, or alternatively an implied term, of the agreement that the plaintiff would pay a reasonable sum for rental and other charges. It was not disputed that there was no agreement as to the amount that the plaintiff was to pay. The defendant claimed that the plaintiff occupied a space of 2,500 square feet for 10 years (from 21 November 2006 to 20 November 2016) and quantified its *quantum meruit* claim at $685,200 based on the following:[21]

---

17 AB 88–103.

18 Defendant's Closing Submissions ("DCS"), at para 13.

19 NE, 7 Mar 2018, at 130:3-5.

20 NE, 7 Mar 2018, at 130:14-131:7.

(a) Rental for 2,500 sq ft at $1.20 per square foot per month plus 7% GST, *ie*, $3,210 per month.

(b) $2,500 per month for utilities.

27 The defendant pleaded in the alternative that the plaintiff was liable to the defendant based on unjust enrichment.

28 In his defence to the counterclaim, the plaintiff pleaded that in 2006, Deen agreed to let the plaintiff use the space occupied by him at the Pioneer premises free of charge and that this arrangement was to allow the plaintiff to be present on-site to provide quick service to the defendant so that the defendant's forklifts could operate consistently. The plaintiff denied any agreement that he was to pay for utilities.[22]

29 None of the defendant's witnesses had any personal knowledge of the agreement between the plaintiff and the defendant and the evidence that was adduced by the defendant did not support the counterclaim. Balan testified as follows:

(a) His late father, Ragu, had told him that there was an agreement between the plaintiff, Deen, and his late father for the plaintiff to defer payment of the rental and utilities charges until the plaintiff's finances were in better shape ("the original agreement"). The defendant would pay the plaintiff for repair works carried out at the defendant's request.[23] There was no agreement as to the amount of rental to be charged but the

---

21 ($3,210 + $2,500) x 120.

22 AEIC of Tan Gim Seng, at paras. 12-13.

23 AEIC of Balan Vijayarahavan Pillai, at para 15.

plaintiff was to be charged for utilities at cost. Further, it was for the plaintiff to decide when he was able to pay the defendant.[24]

(b) In around 2011, both the plaintiff and defendant were facing financial difficulties. The plaintiff and Deen agreed to vary the original agreement and they agreed that the defendant would not charge the plaintiff rental and utilities charges and the plaintiff would not charge the defendant for services provided to the defendant ("the varied agreement"). The defendant thus ceased to be liable to pay for the plaintiff's services from August 2011.[25]

30 Balan's evidence clearly did not support the defendant's counterclaim. His assertions were very different from what the defendant had pleaded in its counterclaim. First, the alleged original agreement contradicted the defendant's pleaded counterclaim which did not mention any deferment of payment by the plaintiff. Second, the alleged varied agreement also contradicted the counterclaim which pleaded an agreement under which it was an express term, alternatively an implied term, that the plaintiff would pay a reasonable sum for rental and other charges. Third, the alleged varied agreement meant that the plaintiff was not liable to pay rental or utilities charges.

31 In any event, Balan's assertion that under the varied agreement the defendant was not liable to pay for the plaintiff's services after August 2011 was contradicted by the defendant's own evidence. It was clear that the defendant had made several payments to the plaintiff after 2011.[26] In addition, the defendant's own statement of accounts acknowledged that the defendant

---

24 NE, 7 Mar 2018, at 151:20-22.

25 AEIC of Balan Vijayarahavan Pillai, at paras 22–24.

26 AEIC of Tan Gim Seng, at para 28 and p 76.

owed the plaintiff for services performed after August 2011.[27] It will be recalled that summary judgment had been entered against the defendant for $399,163.70 based on the defendant's acknowledgement (see [19] above).

32 I also noted that when the plaintiff queried the defendant's invoice for rental and utilities charges, Balan's response was that the defendant was under a "New Executive Management" and that all tenants in the defendant's premises had to be "accounted for" (see [14]–[15] above). One would have expected Balan to refer to the alleged agreements but his reply to the plaintiff did not mention any agreement.

33 In my view, Balan's testimony about the original and varied agreements was an afterthought to try to explain why the defendant had not been billing the plaintiff for rental and utilities over the years. However, this afterthought did more harm than good to the defendant's counterclaim.

34 Ironically, it was evidence adduced by the plaintiff that supported the defendant's counterclaim save with respect to the rental for the space of one 20-foot container. Deen, who gave evidence on behalf of the plaintiff, testified as follows:

> (a) The defendant faced heavy penalties for delays.[28] He therefore agreed (as the then director of the defendant) to let GSFS operate from the Pioneer premises rent-free so that GSFS could render quick and responsive services to the defendant.[29]

---

27 AB 74–79.

28 NE, 7 Mar 2018, at 29:21-28.

29 AEIC of Sharafdeen s/o S N Abdul Rasak, at para 5.

(b) The space allocated to GSFS was the space of a 20-foot container and GSFS could use this space rent-free until it decided to move out or when the defendant required GSFS to leave the premises.[30]

(c) Deen told Balan he could recover the rental for the use of any additional space occupied by GSFS at the Pioneer premises.[31]

(d) There was no agreement that the plaintiff would not charge the defendant for services rendered.[32]

(e) He only agreed to let the plaintiff use one 20-foot container space rent-free. There was no agreement that the plaintiff could use utilities free of charge.[33]

35 The plaintiff was recalled to take the stand after Deen had given his evidence. The plaintiff confirmed that the first container that he used belonged to the defendant and that he brought the other three containers to the Pioneer premises in 2012.[34] The plaintiff also agreed that Deen told him he could use one container space rent-free but claimed that it was for one 40-foot container instead of one 20-foot container as stated by Deen.[35] However, I accepted Deen's objective evidence in preference to the plaintiff's.

36 The additional space occupied by the plaintiff was clearly visible and known to the defendant. By its conduct, the defendant permitted the plaintiff's

---

30 AEIC of Sharafdeen s/o S N Abdul Rasak, at para 6; NE, 7 Mar 2018, at 39:23-31.

31 NE, 7 Mar 2018, at 31:22-32; 41:26-31; 59:18-60:5.

32 NE, 7 Mar 2018, at 31:8-14.

33 NE, 7 Mar 2018, at 60:21-26.

34 NE, 7 Mar 2018, at 66:8-23.

35 NE, 7 Mar 2018, at 66:24-29.

use of the additional space. The plaintiff knew or expected that he had to pay for the use of any additional space at the Pioneer premises. In my view, the facts justified implying an agreement that the plaintiff would have to pay for his use of the additional space.

37 I also accepted Deen's evidence that the only agreement with the plaintiff was for the plaintiff to use one container space rent-free.[36] The plaintiff agreed that he had no discussions with Deen about charges for utilities.[37] The plaintiff was using electricity, water and diesel for its business.[38] This was known to the defendant who by its conduct permitted the plaintiff to do so. It did not make any commercial sense that the defendant would have agreed to let the plaintiff have unlimited use of the utilities without having to pay for such use. The defendant had permitted the plaintiff to operate his business at the premises and the plaintiff was charging the defendant for services rendered to the defendant.[39] On top of that, the plaintiff was also servicing other customers. In my view, there was an implied agreement between the parties that the plaintiff could use the defendant's utilities but that the plaintiff would have to pay for what he used.

38 I concluded as follows:

(a) The defendant agreed to let the plaintiff use one 20-foot container space at the Pioneer premises rent-free until he decided to move out or the defendant required him to leave.

---

36 NE, 7 Mar 2018, at 51:17-28.

37 AEIC of Tan Gim Seng, at para 12.

38 NE, 7 Mar 2018, at 110:14-19.

39 NE, 7 Mar 2018, at 22:15-30.

(b) The defendant permitted the plaintiff to use additional space at the Pioneer premises. The plaintiff knew or expected that he had to pay for the use of any additional space at the Pioneer premises. There was an implied agreement that the plaintiff was to pay rental for the use of the additional space.

(c) The defendant permitted the plaintiff to use the utilities at the Pioneer premises. The plaintiff knew or expected that he would have to pay for his share of the utilities expenses at the Pioneer premises. There was an implied agreement that the plaintiff would have to reimburse the defendant for his use of the utilities.

Defendant's counterclaim for rental

39 It was not disputed that in the absence of any express agreement as to the amount of rent, the plaintiff was to pay reasonable rent. The plaintiff accepted that $1.20 per square foot (as claimed by the defendant) was reasonable.[40]

40 The defendant claimed that the total space occupied by the plaintiff at the Pioneer premises was about 2,500 sq ft. However, the defendant adduced no evidence to substantiate this allegation. No photographs or measurements were produced. Balan testified that the figure of 2,500 sq ft was just his estimate based on what he saw.[41] The defendant's yard manager, Bala, also testified that his estimate of the space used by the plaintiff was just based on what he saw.[42] Bala added that in addition to the space occupied by the four containers, the plaintiff also occupied an additional area equal to about four 20-foot containers.[43] Whilst

40 Plaintiff's Skeletal Closing Submissions, at para 25.

41 NE, 8 Mar 2018, at 4:23-27; 26:26-30; 29:20-22.

42 NE, 7 Mar 2018, at 115:20-26.

on the stand, both Balan and Bala drew plans[44] to show the area occupied by the plaintiff. Both plans were different despite the fact that Balan claimed to have arrived at the estimate of 2,500 sq ft in consultation with Bala.[45]

41 In my judgment, there was no credible evidence that I could rely on to substantiate the defendant's assertion that the plaintiff occupied 2,500 sq ft of space at the Pioneer premises. It would have been fairly easy for the defendant to take measurements, yet it inexplicably failed to do so. The burden of proof was squarely on the defendant and the defendant failed to discharge this burden.

42 The plaintiff admitted that he occupied one 40-foot container until 2012 when he added two 20-foot containers and another 40-foot container. There being no evidence to the contrary, I accepted the plaintiff's evidence that the additional two 20-foot containers and one 40-foot container were added only in 2012. The plaintiff further admitted that he used additional space of about 48 sq ft which was equivalent to the space occupied by two forklifts.[46] The space occupied by the plaintiff was therefore as follows:

(a) Before 2012: 368 sq ft.[47]

(b) From 2012 to November 2016: 1,008 sq ft.[48]

---

43 NE, 7 Mar 2018, at 117:1-2.

44 Exhibits D1 and D2.

45 NE, 8 Mar 2018, at 17:22-24.

46 NE, 6 Mar 2018, at 21:1-5.

47 (40 x 8) + 48.

48 (2 x 40 x 8) + (2 x 20 x 8) + 48.

43 As the plaintiff was allowed to occupy only 160 sq ft (*ie*, one 20-foot container) rent-free, I ordered the plaintiff to pay rent at $1.20 per square foot for 848 sq ft[49] from January 2012 until November 2016 (*ie*, 59 months). This worked out to $60,038.40.[50]

44 As for the period before 2012, the plaintiff had to pay rental for an additional space of 208 sq ft.[51] However, as the defendant's claim was a claim based on contract, it was subject to a six-year limitation period under s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed). As the writ was filed on 6 January 2017, the defendant's claim for rental accrued before 6 January 2011 was time-barred. I ordered the plaintiff to pay rent for the period from January to December 2011 at $1.20 per square foot for 208 sq ft. This worked out to $2,745.60.

45 In its closing submissions, the defendant submitted that the rental of $1.20 per square foot should be increased by 14% to reflect the fact that the plaintiff was also using its space at the Pioneer premises to do work for other customers.[52] I rejected this submission. First, this was not pleaded. Second, this submission was not supported by the evidence. The evidence was that the standard rates charged by the defendant ranged between $0.80 and $1.50 per square foot.[53] The defendant claimed $1.20 per square foot as a reasonable rental to charge in this case. How the plaintiff used the space was not relevant. I noted also that it was clear from the evidence that the defendant had permitted the plaintiff to operate from the Pioneer premises for all of its work including work

---

49 1008 – 160.

50 $1.20 x 848 x 59.

51 368 – 160.

52 DCS, at paras 75-77.

53 NE, 7 Mar 2018, at 95:11-13.

for other customers. Third, the proposed increase of 14% was based on nothing more than an assumption that the plaintiff spent at least one day per week doing work for other customers,[54] with nothing to back up this assumption. It seemed to me that this submission was representative of defendant's general disregard for the rules of evidence in its conduct of this case.

46 The total rent payable by the plaintiff was therefore $62,784.

Defendant's counterclaim for utilities charges

47 The defendant claimed that the plaintiff's share of utilities charges was $2,500 per month. It was not disputed that (a) there was no separate meter for the plaintiff's consumption of electricity or water,[55] (b) the defendant never kept any record of the plaintiff's use of any of the utilities,[56] and (c) there was no agreement as to how the plaintiff's share of the utility charges at the Pioneer premises was to be computed.

48 The defendant's counterclaim was short on details as to how the figure of $2,500 per month was computed. In his testimony, Balan explained that the figure of $2,500 per month was computed based on 30% of the average expenses incurred by the defendant per month at the Pioneer premises for electricity, water, diesel, and yard maintenance (which included sewerage and clearing of drains). Balan admitted that 30% was his own estimate based on what he claimed he knew.[57] No other details were given to substantiate his claim.

---

54 DCS, at para 76.

55 NE, 8 Mar 2018, at 13:23-14:8.

56 NE, 8 Mar 2018, at 6:21-24; 22:28-31.

57 NE, 8 Mar 2018, at 24:31-25:2.

49 In my view, the defendant's claim of $2,500 per month was at best, speculative. There was no basis upon which I could reasonably attribute to the plaintiff a 30% share of the defendant's utilities expenses. In fact, the evidence also raised serious doubts about the reliability of Balan's estimate of 30%.

50 First, even based on the defendant's case, the total area occupied by the plaintiff at the Pioneer premises was a mere 1.2% of the total area of the Pioneer premises. This was of course not in itself evidence of what the plaintiff's share of the utility charges should be. However, in my view, it was some indication as to the speculative nature of Balan's estimate of 30%. Further, it was clear that the defendant itself accepted that it was reasonable to pro-rate expenses based on the area occupied. The defendant's financial statements showed its total expenses for water and electricity for the Pioneer premises as well as the defendant's other premises at the Benoi Sector depot.[58] In its closing submissions, the defendant apportioned the expenses between these two premises according to their respective areas.[59]

51 Second, it was difficult to imagine that the plaintiff could have been responsible for 30% of the water consumption at the Pioneer premises given that the defendant had to wash containers at the premises.[60]

52 Third, Balan claimed that he had observed the plaintiff taking two to three eight-gallon drums of diesel per week.[61] There was no evidence as to how many times or the period over which he observed this. In any event, instead of charging the plaintiff the cost of diesel based on this alleged observation, the

---

58 Defendant's Bundle of Documents, at p 112.

59 DCS, at para 83.

60 NE, 8 Mar 2018, 35:29-30.

61 NE, 8 Mar 2018, at 34:10-15.

defendant simply apportioned 30% of all the diesel costs incurred by the defendant, to the plaintiff.[62] The capacity of the diesel tank was 12,000 litres. Each eight-gallon drum is equivalent to about 36 litres.[63] Based on Balan's evidence, assuming three drums of diesel per week, the amount of diesel used by the plaintiff per month would have been about 432 litres, which was less than 4% of the tank capacity. Of course, the relevant comparison is not against the capacity of the tank but the total volume of diesel used. However, no evidence was produced as to the total volume of diesel used at the Pioneer premises although the defendant had to have had that information. For example, the average amount of diesel purchased periodically to fill the tank could have given some indication of the total average volume of diesel used monthly. However, the defendant chose simply to attribute 30% to the plaintiff.

53 Fourth, the defendant could also have adduced evidence of the utility bills incurred by the defendant at the Pioneer premises after the plaintiff left the premises. Assuming no other changes in circumstances, that could have given some indication at least of the amount that should be attributed to the plaintiff. Inexplicably, no such evidence was adduced.

54 The burden of proof was again squarely on the defendant. The defendant failed to discharge this burden. In my view, the allocation of 30% of the defendant's expenses for utilities to the plaintiff, was completely arbitrary. I decided that the appropriate order was for the plaintiff to pay for his use of utilities at a nominal rate of $100 per month. As the counterclaim for utilities charges was again based on contract, it was subject to the six-year limitation period under s 6(1)(*a*) of the Limitation Act. The defendant's counterclaim for

62 NE, 8 Mar 2018, at 23:23-25.

63 NE, 8 Mar 2018, at 23:16-18.

utilities charges was thus limited to the period from January 2011 until November 2016, *ie*, 70 months. The total amount that the plaintiff had to pay therefore worked out to $7,000.

55 Accordingly, I entered judgment for the defendant on its counterclaim in the sum of $69,784 with interest at 5.33% per annum from the date of the writ until judgment.

Unjust enrichment

56 As stated at [27] above, the defendant pleaded an alternative claim for rental and utilities charged based on unjust enrichment. In my view, the alternative claim based on unjust enrichment must fail.

57 There is no freestanding claim in unjust enrichment on the abstract basis that the retention of the benefit is "unjust" – there must be a particular recognised unjust factor or event which gives rise to a claim: *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 ("*Anna Wee*") at [134]. It is not sufficient simply to assert that the retention of the benefit is unjust: *Anna Wee* at [136]. Yet, this was precisely all that the defendant pleaded with respect to its alternative claim in unjust enrichment. It was only in its closing submissions that the defendant raised an alleged lack of consent as the unjust factor in support of its unjust enrichment claim.

58 The defendant referred me to *AAHG, LLC v Hong Hin Kay Albert* [2017] 3 SLR 636 in which I expressed the view (at [74]) that lack of consent should be recognised as an unjust factor. The Court of Appeal has not ruled on this point. However, what is more important in the present case is that the defendant did not plead lack of consent as the unjust factor that it was relying on.

59 In any event, the findings that I have made clearly do not support any lack of consent.

60 In its closing submissions, the defendant made two other submissions:

(a) First, the defendant referred to *Eng Chiet Shoong and others v Cheong Soh Chin and others and another appeal* [2016] 4 SLR 728 ("*Eng Chiet Shoong*") at [35] for the proposition that a *quantum meruit* claim exists as part of the law of unjust enrichment and that recovery of compensation for work done where there is no express contract may be made on a *quantum meruit* basis.[64]

(b) Second, the defendant referred to Charles Mitchell, Paul Mitchell & Stephen Watterson, *Goff & Jones: The Law of Unjust Enrichment* (Sweet & Maxwell, 9th Ed, 2016), at para 5-33, for the proposition that where a defendant has permission to occupy the claimant's land but no binding terms are agreed about payment, a claim in unjust enrichment lies to recover the value of the defendant's use and occupation.

61 It seems to me that the simple answer is that based on the findings that I have made, the counterclaim in this case was contractual in nature. There was no need to resort to the law of unjust enrichment. As the Court of Appeal said in *Eng Chiet Shoong* at [41]:

> … there are two alternative approaches toward the award of a reasonable sum for work done. The first is *contractual* in nature and can be premised on the basis of either an implied contract *or* an implied term (depending on the precise facts before the court). The second is premised on *restitution or unjust*

64 DCS, at paras 27–28.

> *enrichment* (the more historical basis being that of *quasi-contract*). The first will take precedence over the second.
>
> [*Emphases in original*]

Costs

62 The plaintiff succeeded in its claim in full whilst the defendant succeeded only in part of its counterclaim. The amount awarded to the defendant was larger than that awarded to the plaintiff. The plaintiff's claim was relatively straightforward whereas the defendant's counterclaim involved more issues. All other things being equal, it would be reasonable to expect that any costs awarded to the defendant in respect of its counterclaim would be higher than the costs awarded to the plaintiff on its claim.

63 However, the defendant failed to prove many of its allegations. The defendant failed to prove the agreement which it alleged existed. Instead, it was Deen's evidence (given as witness for the plaintiff) that provided the basis for the plaintiff's liability to pay rent for the additional space occupied by it and for its use of utilities. The defendant also failed to prove the area which it alleged was occupied by the plaintiff, and the share of utilities charges which it alleged should be borne by the plaintiff.

64 The defendant had scant regard for its obligation to produce evidence to substantiate its allegations. It came to court without making the effort to produce relevant evidence. The defendant cannot expect this court to simply accept Balan's estimates which were arbitrary and unsubstantiated. The defendant's conduct of this case has in my view caused unnecessary effort and time to be spent by all involved.

65 Taking the above circumstances into consideration, in my judgment, this

was an appropriate case for an order that each party should bear its own costs.

Conclusion

66 For the above reasons:

(a) I entered judgment for the plaintiff in the sum of $17.632.50 with interest at 5.33% per annum from the date of the writ to the date of judgment;

(b) I entered judgment for the defendant on its counterclaim in the sum of $69,784 with interest at 5.33% per annum from the date of the writ to the date of judgment; and

(c) I ordered each party to bear its own costs.

Chua Lee Ming
Judge

Nadiah Li Feng binte Mahmood (Kim & Co.) for the plaintiff
by original action and defendant in the counterclaim;
Mohamed Nawaz Kamil and Wong Joon Wee
(Providence Law Asia LLC) for the defendant
by original action and plaintiff in counterclaim.