Eng Seng Precast Pte Ltd *v* SLF Construction Pte Ltd
[2015] SGHC 252

Case Number : Originating Summons No 410 of 2015 (Summons No 2618 of 2015)

Decision Date : 28 September 2015

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Lim Ker Sheon and Ang Minghao (Characterist LLC) for the plaintiff; Loy Wee Sun (Loy & Co) for the first defendant.

Parties : Eng Seng Precast Pte Ltd — SLF Construction Pte Ltd

Building and Construction Law – statutes and regulations

28 September 2015

Lee Seiu Kin J:

1 On 6 May 2015, the plaintiff obtained an order of court ("the Order") under s 27(1) of the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("the SOP Act") granting leave to enforce an adjudication determination dated 6 April 2015 ("the Determination") and made pursuant to Adjudication Application No 40 of 2015 ("the Adjudication Application"). In summons no 2618 of 2015, the defendant applied to set aside the Determination. On 12 August 2015, after hearing submissions from counsel, I allowed the defendant's application and set aside the Determination and, as a consequence, the Order.

2 Central to the defendant's application is the question whether a contract involving the supply of prefabricated components for building works, with offsite manufacture and not involving any work onsite, falls within the definition of "construction contract" or "supply contract" in the SOP Act ("the Main Issue"). This is a matter which has received disparate treatment from adjudicators in Singapore and I now give my written grounds of decision in the hope that this may provide guidance for adjudicators.

Background

3 The defendant was the main contractor for a construction project described as "Part A: Building Works at Woodlands Neighbourhood 7 Contract 32 (Total 128 Dwelling Units); Part B: Contingency Works". On 25 April 2013, the defendant awarded a sub-contract ("the Contract") to the plaintiff for the "supply and delivery of precast concrete components for the entire project, all as specified" at a fixed price unit rate of $835 per cubic metre amounting to an estimated sum of $2,720,597.

4 The Contract appears to be a standard form contract intended to apply to construction contracts and supply contracts as defined in s 2 of the SOP Act, albeit with some modifications. The terms of payment and payment response were set out in cl 6 of the Contract. Specifically, the timelines to be adhered to were set out at cll 6.11 and 6.12, which stated:

> 6.11 Within twenty-one (21) days after the payment claim is served on the Main Contractor by the Sub-[C]ontractor, the Main Contractor shall respond to the payment claim by providing a

payment response at http://www.sunhuan.com.sg for a period of sixty (60) days after the monthly payment claim is submitted by the Sub-Contractor, who shall be entitled to payment of any sum stated therein as due to the Sub-Contractor on the date immediately upon expiry of thirty-five (35) days after, if the Sub-Contractor is a taxable person under the Goods and Services Tax Act who has submitted to the Main Contractor a tax invoice for the payment, [in] accordance to and in compliance with Section 8 of the SOP Act, the date the tax invoice is submitted to the Main Contractor or in any case, the date immediately upon expiry of thirty-five (35) days from the date of the payment response as provided by the Main Contractor.

6.12 Where the Sub-Contract is a supply contract, the payment shall become due and payable on the date immediately upon the expiry of sixty (60) days after the payment claim is served under sub-clause 3 above (i.e. on the 25th day of each calendar month) or such other earlier date as the parties may agree in writing.

5 These clauses appeared to be drafted with ss 8, 10 and 11 of the SOP Act in mind. On 25 November 2014, the plaintiff served a payment claim on the defendant for the sum of $747,229.13 in relation to goods supplied under the Contract. The Adjudication Application indicated that the defendant had filed a payment response on 11 December 2014. No payment was made and the Adjudication Application was lodged by the plaintiff on 30 January 2015, 66 days after the filing of the payment claim. It was specified by the plaintiff in the Adjudication Application form that the Contract was a "[p]ure supply contract". In the Determination, the adjudicator held that the defendant was liable for the sum of $559,245.31. The defendant then sought to resist the plaintiff's application to enforce the Determination by way of this summons.

6 The only ground for the defendant's application was that the Adjudication Application was not made within the stipulated time and the Determination was therefore invalid for want of jurisdiction on the part of the adjudicator. The defendant contended that the Contract was a construction contract under the SOP Act. This meant that, pursuant to cl 6.11 of the Contract, the payment response must be filed within 21 days of the payment claim and the adjudication application, within 35 days thereafter. On the other hand, were the Contract a supply contract under the SOP Act, there would have been no irregularity as the Adjudication Application was within seven days of the 60-day deadline for payment under cl 6.12.

The relevant provisions of the SOP Act

7 The terms "construction contract" and "supply contract" are defined in s 2 of the SOP Act as follows:

"construction contract" means an agreement under which —

(*a*) one party undertakes to carry out construction work, *whether including the supply of goods or services or otherwise*, for one or more other parties; or

(*b*) one party undertakes to supply services to one or more other parties;

"supply contract" means an agreement under which —

(*a*) one party undertakes to supply goods to any other party who is engaged in the business of carrying out construction work or who causes to be carried out construction work;

(*b*) the supply is for the purpose of construction work carried out or caused to be carried out

by the second-mentioned party; and

(*c*) the first-mentioned party is not required to assemble, construct or install the goods at or on the construction site,

but does not include such agreements as may be prescribed.

[emphasis added]

8 At first blush, there is a simple dichotomy between the two types of contracts; so long as the contract involves only supply and delivery of goods to a party carrying out construction work for and the supplier is not required to "assemble, construct or install the goods at or on the construction site", then (apart from prescribed agreements) it is a supply contract. In the present case it was not disputed that the Contract called for the supply and delivery of goods and the plaintiff did not undertake any other work onsite. Hence it is a supply contract. However the apparently simple and logical definitions, which rely on the term "construction work", are complicated by the definition of that term. "Construction work" is defined in s 3(1) of the SOP Act as:

(*a*) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures (whether permanent or not) that form, or are to form, part of the land;

(*b*) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works that form, or are to form, part of the land, including walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for the purpose of land drainage, coast protection or defence;

(*c*) the installation in any building, structure or works of fittings that form, or are to form, part of the land, including systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, and security or communications systems;

(*d*) any operation which forms an integral part of, is preparatory to, or is for rendering complete, works of the kind referred to in paragraph (*a*), (*b*) or (*c*), including —

(i) land reclamation;

(ii) site clearance, earth-moving, excavation, tunnelling and boring;

(iii) the laying of foundations;

(iv) the erection, maintenance or dismantling of scaffolding;

(v) *the prefabrication of components to form part of any building, structure or works, whether carried out at or on the construction site or elsewhere*; and

(vi) site restoration, landscaping and the provision of roadways and other access works;

(*e*) the external or internal cleaning of buildings, structures or works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension; or

(*f*) the painting or decorating of the external or internal surfaces of any building, structure or

works; …

[emphasis added]

9 It was also not disputed that the precast concrete components (hereafter called "prefabricated components") that constitute the subject matter of the Contract fall within the provision in s 3(1)(*d*)(v) of the SOP Act. Because that provision provides that offsite work carried out to produce prefabricated components is construction work, the plaintiff was undertaking construction work as the prefabricated components were produced offsite. The Contract is therefore also a construction contract.

The arguments of the respective parties on the Main Issue

10 The defendant submitted that the Contract was a construction contract under the SOP Act on two grounds. First, it argued that the phrase "but does not include such agreements as may be prescribed" which is found in the definition of "supply contract" but not in the definition of "construction contract", demonstrates Parliament's intention to exclude construction contracts from the ambit of supply contracts where the two overlap. Second, it argued that a "harmonious construction" of the SOP Act should be adopted to effect reconciliation between the definitions of "supply contract" and "construction contract", such that any contract falling within both definitions would be deemed a construction contract.

11 The plaintiff contended that the phrase "such agreements as may be prescribed" in the definition of "supply contract" refers to such contracts as may be prescribed in subsidiary legislation made under s 41(1) of the SOP Act. The plaintiff further argued that supply contracts constituted a category of contracts carved out of construction contracts. Accordingly, a contract satisfying the definition of a supply contract, being the more specific category, should be treated as such and not as a construction contract. In the alternative, it submitted that a claimant was entitled to proceed on either basis where a contract falls within both definitions.

The proper interpretation of "supply contract" and "construction contract" in the SOP Act

12 As I have highlighted above at [2], contracts for the supply and delivery of prefabricated components have been the subject of consideration by a number of adjudication determinations under the SOP Act. In the Determination, the adjudicator agreed with the plaintiff that there is nothing in the SOP Act prescribing any agreement as falling outside the definition of "supply contract". He was therefore of the view that there was no reason why the Contract was not a supply contract under the SOP Act.

13 However, as the defendant emphasised, other adjudicators have come to a different conclusion. In Adjudication Application No 142 of 2009, the adjudicator adopted the reasoning of the defendant, holding that contracts that *prima facie* fall within both the definitions of "supply contract" and "construction contract" would necessarily be excluded from the ambit of the former due to the phrase "but does not include such agreements as may be prescribed". He therefore held that the contract for the fabrication, supply and delivery of prefabricated components was a construction contract under the SOP Act. The same reasoning was adopted by the adjudicator in Adjudication Application No 70 of 2015, who held that a contract for the fabrication, supply and delivery of prefabricated components was a construction contract under the SOP Act.

14 The possibility that a claimant be allowed to elect between the payment procedure for supply contracts and that for construction contracts where a contract falls within both definitions did not

appear to have been considered by the adjudicators. The plaintiff urged me to find, in the alternative, that the Contract falls within both definitions and in such a case a claimant was entitled to elect to make the payment claim as a construction contract or a supply contract. The plaintiff argued that in the present case, it had made the claim as a supply contract which provided for more generous timelines for the defendant and therefore the latter was not prejudiced.

15 I disagreed with the plaintiff that a contract could fall under both definitions in the regime under the SOP Act for the following reasons. Firstly, from the entirety of the SOP Act, there is no indication that the legislature envisaged a contract as being capable of falling within both definitions. Indeed, the opposite is true as "contract" is defined in s 2 of the SOP Act to mean "a construction contract or a supply contract" – the use of the word "or" contemplates that no contract may fall within both categories. Secondly, such an outcome would introduce another uncertainty in SOP Act regime. The SOP Act was intended to provide a fast, low cost and efficient procedure for progress payments to be processed. An interpretation that favours certainty would be the one that is preferred. The plaintiff's contention that a claimant may make an election merely shifts the uncertainty to the party receiving the payment claim, who would not know what timelines apply to the contract between them until he receives every individual payment claim and sees the election. There also appeared to me to be no principled basis for the sub-contractor to be given the power of election to the exclusion of the main contractor, as the plaintiff suggested. Ultimately, the adoption of the plaintiff's proposed framework would introduce an element of uncertainty in the existing regime that is wholly inconsistent with the object and purpose of the legislation, which is to provide a fast and effective means of making progress claims. In my view, the SOP Act envisages that a contract is either a construction contract or a supply contract.

"but does not include such agreements as may be prescribed"

16 I first deal with the defendant's submission on the significance of the phrase "but does not include such agreements as may be prescribed" to the interpretation of the relevant terms in the SOP Act. As I understood it, its submission was that the inclusion of these words in the definition of "supply contract" and not "construction contract" necessarily means that any overlap has to be resolved in favour of a finding that the contract in question is a construction contract. That is, construction contracts are "prescribed" as excluded contracts under the definition of "supply contract".

17 The plaintiff submitted that the phrase "as may be prescribed" was merely intended to allow the relevant Minister (or any authorised body) to supplement the SOP Act by passing subsidiary legislation, and that it would have been phrased in the present tense had the draftsman intended to refer to prescriptions made in other provisions of the SOP Act. That phrase was therefore intended to refer to any subsidiary legislation that was subsequently promulgated. The plaintiff pointed to such a prescription in reg 3 of the Building and Construction Industry Security of Payment Regulations (Cap 30B, Reg 1, 2006 Rev Ed) ("the SOP Regulations"), which states:

> **Agreements excluded from definition of "supply contract"**
>
> 3. The definition of "supply contract" in section 2 of the Act does not include agreements which do not contain any provision specifying or identifying the construction site or the construction project in relation to which goods are to be supplied.

18 However it is not as straightforward as contended by the plaintiff. Section 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the Interpretation Act") defines "prescribed" to mean both prescribed by the Act in which the word occurs and by any subsidiary legislation made thereunder.

There is therefore nothing in the Interpretation Act to suggest that the use of the term "prescribed" only refers to matters set out in subsidiary legislation or that a prescription be set out with some degree of specificity.

19 The decision by the High Court of Australia of *Anthony Hordern and Sons Limited and others v The Amalgamated Clothing and Allied Trades Union of Australia* (1932) 47 CLR 1 ("*Anthony Hordern*") is instructive in this regard. In *Anthony Hordern*, the matter to be determined was the validity of an order by the Commonwealth Court of Conciliation and Arbitration. This order required that employers give preference to unionists when employing female operatives. The relevant provisions that were considered to be the source of the court's power to make such an order were ss 38(*a*) and 40(1)(*a*) of the Commonwealth Conciliation and Arbitration Act 1904 (Cth) ("the CCA Act"). The more general provision was held to be s 38(*a*), which allowed the court to "hear and determine the dispute *in manner prescribed*" [emphasis added]. Section 40(1)(*a*) on the other hand, stated that preference could only be given "other things being equal". The applicants attacked the validity of the order on the ground that the power to make such an order was circumscribed by s 40(1)(*a*), and the making of the order had exceeded those boundaries.

20 The High Court of Australia held that "[w]hen the Legislature explicitly gives a power by a particular provision which prescribes the mode in which it shall be exercised and the conditions and restrictions which must be observed, it excludes the operation of general expressions in the same instrument which might otherwise have been relied upon for the same power". On this basis, it held that s 40(1)(*a*) *prescribed* the manner in which the court may make an award of preference in exercising its jurisdiction under s 38(*a*). This was despite the fact that there was no clear indication in the CCA Act that s 40(1)(*a*) was intended to do so. Similarly, in the present case, I did not think that construction contracts could not have been "prescribed" as excluded contracts simply because there was no specific reference to it.

21 I also did not think that the conditional form of the prescription was determinative. The plaintiff submitted that words in the present tense are commonly used where a prescription is made within an Act itself and that the use of the word "may" refers to prescriptions in subsidiary legislation that have yet to be promulgated. However the plaintiff did not go so far as to say that this was always the case. A clear expression of such intention would be where the provision contains words such as "prescribed by the Minister" or "prescribed under the regulations". Such is not the case here and it is equally possible that the use of the word "may" was intended to refer to prescriptions in both the SOP Act *and* in its subsidiary legislation.

22 On the other hand, there was also nothing that suggested that construction contracts are "such agreements as may be prescribed" by virtue of s 3(1)(*d*)(v) of the SOP Act. That provision provides the definition of "construction work" upon which the definitions of "construction contract" and "supply contract" rely. The major difficulty is that the prescription in the definition of "supply contract" is *exclusionary* in nature – there is no context in which one may discern what the nature of "such agreements" may be. What the defendant, in effect, sought to do was to interpret the exclusion in the definition of "supply contract" to mean "subject to any other provisions of this Act". I did not think that was a possible interpretation as the two concepts are very different. Furthermore, if such was the intention of the draftsman, the definition of construction work would have included such words as "notwithstanding any other provisions to the contrary".

"whether including the supply of goods or services or otherwise"

23 Independent of whether constructions contracts are "prescribed" to be excluded from the definition of "supply contract", the defendant argued that in respect of contracts for the supply of

prefabricated components, which is specifically defined as construction work in s 3(1)(*d*)(v) of the SOP Act even though the work is not carried out on the site, it should be presumed that they were intended to be dealt with within the more specific category of construction contracts and not the more general category of supply contracts. That is, the legal maxim *generalibus specialia derogant* (the more specific provisions override the general ones) applied: see Oliver Jones, *Bennion on Statutory Interpretation* (LexisNexis, 6th Ed, 2013) at p 1038.

24 The plaintiff did not contest the application of the maxim, but argued that it was supply contracts which were the more specific. It pointed out that the Building and Construction Industry Security of Payment Act 1999 (Act 46 of 1999) (NSW) ("the SOP Act (NSW)"), from which the SOP Act was derived, does not define supply contracts separately. Instead, contracts for the supply of goods and services are in the SOP Act (NSW) subsumed under the umbrella term of "construction contract": see Christopher Chuah *et al*, *Annotated Guide to the Building and Construction Industry Security of Payment Act 2004* (Sweet & Maxwell Asia, 2004) (the "*SOPA Guide*") at para 2.23. The key to determining Parliament's intention behind the departure from the SOP Act (NSW), the plaintiff argued, lies in the third limb of the definition of a "supply contract" in the SOP Act. Consequently, when goods supplied for the purpose of construction work are not required to be assembled, constructed or installed the goods at or on the construction site by the supplier, it is Parliament's intention that the simpler procedure for supply contracts under the SOP Act apply.

25 I was unable to agree with either party in this regard. Neither category was to me a subset of the other. The plaintiff may have been right in pointing out that both supply contracts and construction contracts fall within the umbrella of "construction contract" in the SOP Act (NSW), but this was not a case in which Parliament retained the definition of "construction contract" wholesale in the SOP Act while creating a separate category of supply contracts as a subset. Amendments were also made to the definition of "construction contract" in the SOP Act, seemingly to ensure coherence with the definition of "supply contract".

26 Under the SOP Act (NSW), "construction contract" is defined to mean "a contract or other arrangement under which one party undertakes to carry out construction work, or to supply related goods and services, for another party". The key differences between the respective definitions of "construction contract" in the SOP Act (NSW) and the SOP Act are:

(a) The addition of the phrase "whether including the supply of goods or services or otherwise" to limb (*a*) of the definition of "construction contract" in the SOP Act.

(b) The removal of any reference to supply of goods in limb (*b*).

In my view, under the SOP Act, supply contracts and construction contracts are two distinct categories; there is no broader or more specific category.

27 I did not agree with the plaintiff's argument that this interpretation would mean that all supply contracts would necessarily be construction contracts due to the broad scope of construction work under the SOP Act with the consequence of rendering supply contracts otiose. The plaintiff argued that this meant that the supply of sand for "land reclamation" under s 3(1)(*d*)(i) or the supply of concrete or steel rebars for the "laying of foundations" under s 3(1)(*d*)(iii) of the SOP Act, would be classified as construction contracts.

28 With respect, the plaintiff's submission conflates the *carrying out* of construction work and the *supply* of products for the purpose of carrying out construction work. It is not the case, as the plaintiff's examples appeared to suggest, that a contract for the supply of materials for the purpose

of construction work is necessarily a construction contract. After all, that forms part of the definition of a supply contract. Where a contract involves both the carrying out of construction work and the supply of goods by the same party, this falls within the definition of "construction contract", as is clear from the words "whether including the supply of goods or otherwise". It also falls outside the definition of "supply contract", which excludes contracts that require the contracting party to "assemble, construct or install the goods *at or on the construction site*" [emphasis added]. It is only in cases involving the supply and offsite manufacture of prefabricated components that there is an apparent overlap, in that such cases appear to fall within both the definitions of "supply contract" and "construction contract".

29 In my opinion, the resolution of this issue requires a harmonious construction of the SOP Act. The following are the factors that support the conclusion that such contracts are construction contracts and not supply contracts:

(a) Offsite production of prefabricated components clearly fall within the definition of "construction work" and therefore a contract that calls for such work falls within the definition of "construction contract".

(b) The words "whether including the supply of goods or services or otherwise" in the definition of "construction contract" envisages that a contract in which a party carries out construction work and supplies goods at the same time is a construction contract.

(c) The SOP Act envisages that a contract cannot at the same time be a construction contract and a supply contract: see [15] above.

In view of these factors I held that a contract for the supply and offsite manufacture of prefabricated components, even one not involving any element of onsite work, is a construction contract and not a supply contract.

Whether the Determination should be set aside

30 Aside from the question of whether the Contract was a construction contract or a supply contract under the SOP Act, the plaintiff submitted that the Determination ought not be set aside for two reasons. First, it argued that there was no jurisdictional error, the classification of the contract being a question of fact to be determined by the adjudicator. Second, it contended that there had been no prejudice to the defendant, given that it would have failed to meet its payment obligations in any case and had not been precluded from making substantive arguments to the adjudicator. I did not find either submission persuasive.

31 In deciding whether an adjudication determination should be set aside, the test is whether the provision that has been breached is "so important that *it is the legislative purpose that an act done in breach of the provision should be invalid*" (emphasis in original): *Lee Wee Lick Terence (alias Li Weili Terence) v Chua Say Eng (formerly trading as Weng Fatt Construction Engineering) and another appeal* [2013] 1 SLR 401 ("*Chua Say Eng*") at [67]. *Chua Say Eng* did not address whether an adjudication application that was out of time and therefore in breach of s 13(3)(*a*) of the SOP Act was such an act. Nevertheless, this is an issue that has been the subject of consideration in the High Court. In *YTL Construction (S) Pte Ltd v Balanced Engineering & Construction Pte Ltd* [2014] SGHC 142 at [47]–[49], Tan Siong Thye J set aside an adjudication application that was similarly made out of time, stating:

47 The timelines under the SOP Act are therefore very tight so as to facilitate "cash flow by

establishing a fast and low cost adjudication system": *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 ("*W Y Steel*") at [25]. The importance of observing such tight timelines was elaborate[d] by McDougall J in the Australian decision of *Chase Oyster Bar v Hamo Industries* [2010] NSWCA 190 …

48 Hence, the legislative intent was for the 7-day timeline in s 13(3)(*a*) to be observed strictly such that the adjudicator must, without any room for discretion, reject an adjudication application lodged out of time. This would also mean that there is no room for waiver of the formal requirements by the parties to the adjudication. Even though this may seem draconian, the observations by the Court of Appeal in *W Y Steel* at [22] must be borne in mind:

> Statutory adjudication of building and construction disputes takes the concept one step further. Interim payment claims *per se* are not granted temporary finality under the adjudication scheme. Instead, the parties enter into an expedited and, indeed, an abbreviated process of dispute resolution in which payment claims and payment responses must be made within the stipulated deadlines to an adjudicator, who is himself constrained to render a quick decision. As a species of justice, it is admittedly somewhat roughshod, but it is fast; and any shortcomings in the process are offset by the fact that the resultant decision only has temporary finality. The party found to be in default has to pay the amount which the adjudicator holds to be due (referred to in the Act as the "adjudicated amount"), but the dispute can be reopened at a later time and ventilated in another more thorough and deliberate forum.

49 Therefore the adjudicator should have rejected the adjudication application as required by s 16(2) which circumscribes the adjudicator's jurisdiction. There is no exception to this obligation. The Plaintiff also succeeds on this ground of setting aside.

32 I agree. It was clear to me that s 16(2)(*a*) of the SOP Act, which states that an adjudicator "*shall* reject … any adjudication application that is not made in accordance with section 13(3)(*a*), (*b*) or (*c*)" [emphasis added], demonstrates Parliament's intention that non-compliance with these provisions will result in a determination being set aside. Whether or not the defendant in the present case suffered prejudice was irrelevant given that the adjudicator had no jurisdiction to make the Determination to begin with. Accordingly, I set aside the Determination.

Conclusion

33 I therefore allowed the defendant's application with costs and set aside the Determination and the Order.

34 It would be no surprise if the plaintiff had felt somewhat aggrieved by the setting aside of the Determination, having gone through the adjudication process and had the dispute decided in its favour on the merits. In my view, this was due to two factors. The first was that the SOP Act departed from the SOP Act (NSW) in providing for two types of contracts, construction and supply, with two different timelines. But this would not have been a problem if the SOP Act had adopted a simple and logical dichotomy, *ie*, whether or not the contract entails work to be carried out on the site. Instead, the SOP Act made a contract involving the prefabrication of components, even where no work is done onsite, a construction contract. This had required the complicated analysis carried out in these grounds of decision to come to a conclusion on the matter. It is therefore not surprising that adjudicators cannot figure out what to do, much less contractors who have to make a claim. It is hoped that with this decision, any supplier will know that a payment claim for supply and offsite manufacture of prefabricated components, even where the supplier has not undertaken to do any

work onsite, will have to be made under the timelines for a construction contract.

35 Nevertheless, I foresee that there might be further issues as to what constitutes prefabricated components. If, as I suspect, the original intention is to cover only major building components such as walls, floors, bathrooms, or structural members such as beams and columns, it might be necessary to explicitly define the word "prefabrication" in any future amendments to the SOP Act.