LF Construction Pte Ltd v Yeo Pia Thian (trading as System Aluminium Works) [2007] SGHC 45

Case Number : Suit 644/2005

Decision Date : 29 March 2007

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Kelvin Chia (Balkenende Chew & Chia) for the plaintiff; Nicholas Lazarus (Justicius Law Corporation) for the defendant

Parties : LF Construction Pte Ltd — Yeo Pia Thian (trading as System Aluminium Works)

29 March 2007 Judgment reserved.

Belinda Ang Saw Ean J:

1 The plaintiff, LF Construction Pte Ltd ("LF Construction"), was the main sub-contractor in a project involving the construction of a four-storey temple complex that comprised classrooms, meditation and dining halls and a monks' residence ("the Memorial Hall"). The project also included the reconstruction of a two-storey temple with an ancillary office ("the two-storey temple"). The project site was at the Kong Meng San Phor Kark See Monastery along Bright Hill Road. The defendant, Yeo Pia Thian ("Yeo"), trading as System Aluminium Works, was engaged initially by LF Construction to supply and install aluminium louvred vents and fascia for the project ("the 1st sub-contract works"). Soon thereafter, LF Construction engaged the defendant to supply and install fluorocarbon aluminium ceiling and fascia board for the project ("the 2nd sub-contract works"). Subsequently, variation works were required in 2004 to downsize the roof corners ("the variation works").

2 Disputes arose between LF Construction and the defendant concerning, *inter alia*, the sub-contract works that were defective and/or incomplete, and consequently, the responsibility for the additional time and expense taken to accomplish the sub-contract works whether by the defendant or third party contractors. In its pleaded case, LF Construction avers that the appointment of the defendant for the sub-contract works was evidenced by two letters of award. The letter of award for the 1st sub-contract works was dated 1 July 2002 ("the 1st Letter of Award" or "the 1st Sub-Contract"). The second letter of award for the 2nd sub-contract works was dated 15 October 2002 ("the 2nd Letter of Award" or "the 2nd Sub-Contract"). Both Letters of Award incorporated by reference the General Conditions and the Particular Conditions of the contract between LF Construction and the main contractor, Singapore Piling & Civil Engineering Pte Ltd ("Main Sub-Contract"). It is in respect of some of the terms of the Main Sub-Contract that the defendant had allegedly breached and those breaches formed the basis of LF Construction's claims against the defendant for abatement of the contract price, damages in respect of defective workmanship and non-completion of the works. In addition, LF Construction has claimed liquidated damages attributable to delays caused by the defendant. The claims in the re-amended Statement of Claim were quantified at $332,166.67. In its closing submissions, LF Construction summarised the final account for the sub-contract works resulting in the total sum of $271,105.30 due to LF Construction, a breakdown of which is as follows:

S/No	Description	Amount $
a)	Value of 1st sub-contract works	115,531.40
b)	Value of 2nd sub-contract works	485,460.00
c)	Variation works	20,000.00
	Sub-Total	620,991.40
	Less: (a) Retention Sum (5%)	(31,049.57)
	(b) Previous Payments	(590,900.00)
	(c) Backcharges (1st Sub-Contract)	(34,456.05)
	(d) Backcharges (2nd Sub-Contract)	(102,891.08)
	(e) LD claim (1st Sub-Contract)	(40,800.00)
	(f) LD Claim (2nd Sub-Contract)	(92,000.00)
	Total Amount Due to LF Construction	271,105.30

3 The defendant rejects all of LF Construction's claims. He denies that the Letters of Award evidenced the contract for the sub-contract works. The defendant claims that the sub-contracts were based on his quotations and oral conversations between himself and Liang Qing Ping ("Liang"), LF Construction's managing director. Furthermore, the 1st and 2nd Letters of Award were intended solely for the purpose of securing financing for the materials required for the sub-contract works. The defendant commenced the 1st sub-contract works on-site sometime in July 2002 and the works were completed in October 2003. In the case of the 2nd sub-contract works, the works commenced on-site sometime in mid-November 2002 and were completed in January 2004. It was also alleged that there was no fixed completion date for the 1st and 2nd sub-contract works respectively. After the issue of the Temporary Occupation Permit ("TOP") on 6 January 2004, LF Construction requested the defendant to carry out the variation works to downsize the roof corners of the Memorial Hall and the two-storey temple. The defendant treated the aforesaid instructions as a variation of the 2nd sub-contract works[note: 1]. The variation works were done in February or March 2004. It is the defendant's case that LF Construction delayed the progress of the 1st and 2nd sub-contract works by falling behind on the schedule for the builder's works and wrongfully withheld payment to the defendant on the progress claims and the variation works. Consequently, the defendant counterclaimed against LF Construction for payment of the outstanding sums allegedly payable to the

defendant for the sub-contract works and variation works in the total sum of $149,112.00. However, the final balance amount quantified by the defendant in his written submissions as due and owing to him is $99,708.00, a breakdown of which is as follows:

S/No	Description	Amount $
a)	1st sub-contract works	127, 262.00
b)	2nd sub-contract works	490,140.00
c)	Variation works	73,206.00
	Sub-Total	690,608.00
	Less: Previous payments	590,900.00
	Total Amount Due to Defendant	99,708.00

4 The defendant has counterclaimed for 19 months of storage charges which he says had increased to $54,000. This sum represents the charges for the storage of materials (*eg* aluminium panels, bull nose and pipes) over 27 months at $2,000 per month. As for the 5% retention sum withheld by LF Construction, the defendant contends that LF Construction is not entitled to withhold the money as the defects liability period has expired and the main contractor, Singapore Piling & Civil Engineering Pte Ltd ("Singapore Piling"), has released the retention moneys to LF Construction under the Main Sub-Contract.

Issue 1: The contractual basis of the sub-contract works and their terms

5 It is common ground that LF Construction engaged the defendant on two separate occasions to carry out the 1st and 2nd sub-contract works. The dispute is over the terms and conditions of the sub-contract works. As stated, the defendant in pleadings has denied that the Letters of Award formed the contractual basis of the sub-contract works in that they were received and executed by Yeo in November 2002 and that was after the sub-contract works had started. In that context, there was no consideration for the sub-contracts contained in or evidenced by the Letters of Award as LF Construction was relying on past consideration. Counsel for the defendant, Mr Nicholas Lazarus, explained that the Letters of Award came after the agreement for the 1st and 2nd sub-contract works was concluded on the basis of the defendant's quotations and oral agreements between Yeo and Liang. The defendant started the 1st and 2nd sub-contract works on the instructions of LF Construction.

6 The evidence does not bear out the defendant's contention that he started work at the site in July 2002 (or, at any rate, before 27 November 2002 when Yeo signed the Letters of Award) thereby undermining the defendant's contention that the quotations had been accepted by LF Construction's conduct in allowing the work to commence. Counsel for LF Construction, Mr Kelvin Chia, points out that the first progress claim was made in January 2003 for work done in December 2002, and Yeo had admitted to following this schedule of billing. Notably, Liang testified that the 1st

sub-contract works commenced substantially in December 2002. Even if, for the sake of argument, work had begun on the basis of the quotations, it does not mean that the Letters of Award do not have any effect or that they could not be taken to supplement the bare terms of the quotations. Mr Chia further points out that the quotations relied on by the defendant are devoid of terms which are usually evident such as the completion dates, provision for payments and retention moneys. All that the quotations contain is the price for the supply and installation of the items required. The defendant cited *Ng Bros Construction v Kaolin (Malaysia) Sdn Bhd* [1985] 1 MLJ 245 in support of the proposition that a quotation can give rise to a binding contract on acceptance. That decision is distinguishable on the facts in that the quotation was expressly accepted in a letter written by the defendant in that case. Liang in cross-examination maintained that Yeo was told that a detailed contract would follow in respect of the 1st sub-contract works. In contrast, Yeo denied that there was such a conversation. However, Yeo admitted in cross-examination that there was no mention by either he or Liang to each other that the quotations relied upon by the defendant would form the written part of the respective sub-contracts[note: 2]. Interposing for a moment, I agree with Mr Chia that the mere fact that a formal contract is entered into after work has begun does not mean that the formal document in no circumstances can have retrospective and prospective contractual effect. In the case of the 2nd sub-contract works, a Letter of Intent was sent on 27 August 2002 stating that a formal Letter of Award would also follow embodying all the terms and conditions pertaining to the work. Moreover, the fact that LF Construction used the quotations as a basis for preparing the Letters of Award, could not, without more, give rise to a tacit acceptance of the quotations as the contracts.

7 There is one critical aspect of this case that stands in the way of the defendant's pleaded case that he has to first resolve. Plainly, it is difficult to deny a signed document of its contractual character and Yeo's predicament is in explaining away his signature on the Letters of Award. It is not disputed that Yeo signed both Letters of Award. It is also not disputed that Yeo knew what he was signing even though he did not read the documents accompanying the Letters of Award. The defendant maintains that both Letters of Award including their respective enclosures were received and executed on 27 November 2002. In contrast, according to LF Construction, the 1st Letter of Award and enclosures comprising a set of sub-contract documents listed in the 1st Letter of Award were sent to the defendant in August 2002. In the case of the 2nd Letter of Award and enclosures, they were sent to the defendant on 15 October 2002. The conflicting testimony as to the date the documentation was despatched to and executed by Yeo is not critical for the determination of the issue before me. It is trite law that in the absence of fraud or misrepresentation, a person is bound by the document to which he has put his signature and it is immaterial whether the person has read its contents or chose to leave it unread. Notably, Yeo's written testimony that the Letters of Award served only to obtain financing from Chung Hwa Bank Limited[note: 3] must be disregarded as it has no evidential value for it departs from the defendant's pleaded case. Even if the testimony is true, in the absence of any specific plea of fraud or misrepresentation in the defence, the defendant as a matter of law is bound by the Letters of Award to which Yeo had put his signature. Concomitantly, he is also bound by the General and Particular Conditions, there being nothing ambiguous about the language in those conditions, and the usual effect of incorporating a document by express reference applies with the same force.

8 As an aside, it is nonetheless evident that the defendant had accepted the Letters of Award as evidencing the contractual relationship or that they supplement the various quotations to the extent that the terms of the quotations and the Letters of Award were consistent with each other. For instance, the defendant appears to have submitted his progress claims in accordance with the schedule stated in cl 2 of the Particular Conditions incorporated by cl 2(b) of the Letters of Award. In addition, the defendant's solicitors had written to LF Construction's solicitors on 17 September 2004

accepting LF Construction's proposal to litigate rather than arbitrate as was required under cl 17 of the General Conditions.

9 For these reasons, the defendant's case that the 1st and 2nd sub-contract works were based partly on the defendant's quotations, partly oral and partly by conduct is unfounded. I find that the relationship of the parties was regulated by the 1st and 2nd Letters of Award together with the General and Particular Conditions as incorporated accordingly.

Issue 2: LF Construction's claims under the 1st Sub-Contract

10 The primary complaint is that the defendant had failed to ensure water- tightness in the works undertaken and had resulted in the main hall experiencing water ingress. Allegedly, the source of water ingress was rainwater seeping into the roof ridge compartment through the aluminium louvres and joints between the aluminium panels and the top and bottom sills along the roof ridge. Consequently, various repair works at the roof ridge area had to be done to rectify the problem. It was also submitted that even if water leakage had not been caused by the defendant's works, nonetheless, the defendant's workmanship fell far short of the standard required under the 1st Letter of Award. In particular:

> (a) the defendant had failed to comply with the architectural drawings in so far as the aluminium louvres had only a 75 mm overlap when the drawings had provided for a 100 mm overlap;
>
> (b) the flimsiness of the top sills and panels which had to be reinforced by the application of stiffeners; and
>
> (c) badly constructed bottom sills which had to be reconstructed by LF Construction.

Chi Keat Sung ("Chi"), a director of LF Construction, testified to the defendant's shoddy workmanship. He detailed the shoddy workmanship with the following examples[note: 4]:

> a. The top and bottom sills were not integrated with the access doors and louvres along the 70 m roof ridge at both elevations. The access doors and louvres were constructed without solid frame works. They were formed with flimsy aluminium panels with rubberised material to make up 3 mm thickness.
>
> b. The panel joints were uneven.
>
> c. The top and bottom sills were deformed in shape.
>
> d. The access door panels were dropping off as the hinges were riveted onto the thin and flimsy composite panels.
>
> e. There were several gaps around the access doors and louvres.
>
> f. There was water leakage from most of the joints between the panels and the top and bottom sills along the roof ridge when it rained resulting in frequent water leakage staining the aluminium high ceiling.

11 The defendant's answer to LF Construction may be summarised as follows:

(a) LF Construction had not called a single consultant or expert to prove its case;

(b) It is unlikely that LF Construction would have engaged the defendant to carry out the variation works if, in fact, LF Construction had found the defendant's work shoddy; and

(c) The cause of water leakage was not due to the defendant's defective works.

In any event, the defendant disputes the amounts that are claimed by LF Construction. I will come to the specific objections in the course of this judgment.

12 I start with the main issue which is whether the alleged defective works that caused rainwater ingress were within the scope of the defendant's contractual obligations to begin with. The water leakage, LF Construction claims, was because the defendant had failed to take the necessary steps to ensure that gaps present after the installation of the aluminium louvres were plugged and made watertight as they should have been. This part of the works is commonly termed "wet trade" and in this case, LF Construction said that it was the responsibility of the defendant to undertake such works. The defendant disagrees, contending that his obligation was limited to the supply and installation of aluminium louvres stipulated in the architectural drawings. Although poor workmanship *per se* such as uneven joints, poor joint gaps, gaps and flimsy support, flimsy panels and doors and door panels without frames ("the second complaint") was raised as a fallback claim, LF Construction intends them as conjunctive arguments.

13 For these breaches, the following claims were made:

Item	Description	Unit	Rate/unit	Quantity	Amount claimed
(a)	Engagement of another sub-contractor for rectification works:				
	Supply and installation of new louvers	Lump sum	$51,240.00		$8,208.00
	Supply and fabrication of aluminium frames, doors and sleeve	Lump Sum	$8,760.00		$8,760.00

(b)	Dismantle existing louvred panels installed by the defendant	Man Day	$60.00 per man day; add $11.25 per hour for overtime	24 man days and 73 hours overtime	$2,261.25
(c)	Installation of new aluminium doors	Man Day	S$60.00 per man day; add S$11.25 per hour for overtime	21 man days and 69.5 hours overtime	$2,041.88
(d)	Installation of stiffeners to aluminium top and panels	Man Day	$60.00 per man day; add $11.25 per hour for overtime	22 man days and 61.5 hours overtime	$2,011.88
(e)	Rectification to the bottom sills:				
	Insert HY 150 with T10@500mm c/c including drilling holes	No.	$16.00	238	$3,808.00
	Construct RC bottom sills 150 mm x 100 mm high	Meters	$30.00	118	$3,540.00
(f)	Apply sealant to aluminium fixed panels	Man Day	$60.00 per man day; add $11.25 per hour for overtime	39 man days and 132 hours overtime	$3,835.01
Total					**$34,456.05**

14 LF Construction has to first establish breaches of the 1st Letter of Award as alleged before proving the quantum of the loss. It is incontrovertible that at some point in 2003, the defendant was made aware of water ingress at the project site. Despite the defendant's claim that out of goodwill, the parties "both cooperated to try to solve the problem", the issue of water ingress continued into

2004.

15 Chi testified that on account of the defendant's defective or poor workmanship, rainwater seeped through the aluminium louvres and gaps in the joints. The architectural drawings had provided for a 100 mm overlap between each louvred leaf but the defendant's louvres (when installed) had only a 75mm overlap. Yeo disagreed. He demonstrated, using the mock up of a section of the aluminium louvred vent, that the length of the leaf was 110mm. LF Construction also questioned whether the actual construction fitted the specifications in the architectural drawings. Inferentially, from the evidence, if the louvres supplied on-site had not complied with specifications, LF Construction would not have continued paying the defendant's earlier progress claims, especially when the value of the sub-contract work was verified on-site based on exact measurements. From the 12th progress certificate issued by LF Construction, the value of work done as of 26 February 2004 based on on-site measurement was $115,411.70, out of which a sum of $110,500 had been paid to the defendant. Above all, the fact that the louvres were eventually changed and upgraded to a more sophisticated louvre system is telling of a design problem that caused rainwater ingress rather than the defendant's defective workmanship. It is appropriate to start the discussion on the type of louvre system supplied by the defendant. Yeo explained that the architectural drawings required "normal" louvres and that was what he supplied. Yeo explained that "normal" louvres do not offer protection from rain. In contrast, triple bank louvres are superior in terms of design and performance and offer good weather protection. Although more expensive than normal louvres, the triple bank louvre system is effective in keeping rain out. It is suitable for use in locations exposed to prevailing winds and rain. This aspect of Yeo's testimony gathered from the material produced in his affidavit of evidence-in-chief was unchallenged. The fact that the original louvre system was eventually changed and upgraded to a triple bank louvre system showed, and I so find, that it was a design problem that caused rainwater ingress rather than the defendant's defective workmanship. The defendant's shop drawings and the mock up submitted for approval were based on architectural drawings provided by LF Construction. In my judgment, it was the inadequacy of the original louvre system, which is a matter of design rather than of workmanship, that was the cause of the water ingress and, hence, LF Construction has no remedy against the defendant. I agree with the defendant's submissions that the replacement of the triple bank louvres by the third party contractor, Aluminium & Technologies (ALTECH) Pte Ltd ("Altech"), was not rectification works but improvement works that reflected betterment by enhanced performance and sophistication of the louvre system. Since the defendant need not pay for the upgrading, the cost of dismantling the aluminium louvres installed by the defendant and replacing them with the triple bank louvre system represented work that would have had to be carried out in any event by reason of the design fault. The fact that Altech's quotation made no reference to the latter having to dismantle the existing louvres and that the work was done by LF Construction was immaterial. The point is that the problem stemmed from a design fault and the fact remains that the original louvre system had to be replaced and the cost of dismantling would have to be incurred. Moreover, LF Construction's in-house quantity surveyor, Sim Seok Cheng ("Sim"), agreed with Mr Lazarus that the cost of installing new doors was necessitated by the change from one louvre system to another. In my judgment, LF Construction has failed to prove that its pleaded loss was caused by the defendant. Therefore, LF Construction's claim in the sum of $34,456.05 fails.

16 For the sake of completeness, I should comment on the allegation that rainwater ingress was from gaps in the joints that was a matter of workmanship outside of the design. LF Construction again would have no remedy because wet trade work was outside the scope of the defendant's sub-contract works. Yeo had observed during cross-examination that the water ingress was caused by gaps between the concrete and the aluminium installations. Yeo maintains that there were no leakages from the joints between the aluminium panels and top and bottom sills. Rainwater ingress was through the aluminium louvres. The point of difference is that Yeo believes that the job of filling these gaps was LF Construction's and not the defendant's. In response, LF Construction points to

paragraph (v) of Appendix B to the Particular Conditions of the 1st Sub-Contract which states that the rates include:

> All fixing accessories, approved sealant, weather strip/seal all round, building frame in waterproofed non-shrink cement grout infill with waterproof additive, pointing frame in mastic, forming weather sill.

17 Even though Yeo conceded that wet trade work was described in this paragraph reproduced above, the only issue was whether this clause applied to the defendant. I am not persuaded that it does. As a matter of construction, paragraph (v) of Appendix B to the Particular Conditions appears to conflict with the primary obligation stated in the 1st Letter of Award which is for the "Supply and Installation of Aluminium Louvred Vents at Roof Ridge and Fascia" at the rates quoted with the 5% discount Yeo had agreed to earlier. In addition, Yeo clarified that he did not quote for "cement infill" (*ie* wet trade work)[note: 5]. He also explained that "installation" means "to fix at the site". The wet trade works, he said, was the obligation of LF Construction. Yeo said[note:6]:

> A: We [took] 4 days to install the 92 panels. So after install the panel, the LF is supposed to come back to do … the rest of the work because the bare concrete is not level, is uneven gap at top and bottom below …
>
> So they [are] suppose to come back to put the cement.
>
> Ct: So that's called the wet trade?
>
> A: Yah, wet trade, yah. But I think LF had left out this item. They do the mosaic outside of this bull nose, which is thicker than inside, so cause the water penetrate to the … edge there.
>
> …
>
> Ct: ... The wet trade, that means, they tidy up.
>
> A: Yah, tidy up.
>
> Ct: … So in terms of cementing the gaps, unevenness, to make it watertight ...
>
> A: Yah
>
> Ct: ... that, you say is LF's work, right?
>
> A: Yah, their scope of work.

18 To that extent, as a matter of construction, effect should be given to the typed-written statements in the 1st Letter of Award over paragraph (v) which is a printed term imported from another document covering all types of aluminium works. I note that there was no challenge to Yeo's testimony that after the defendant had installed the aluminium louvred vents in January 2003, it was LF Construction who carried out the wet trade work in July 2003[note: 7]. On any interpretation of the scope of work, the fact remains that on the defendant's unchallenged testimony, it was LF Construction who performed the wet trade work. LF Construction therefore has to explain the state of the workmanship. It is not enough to fallback on paragraph (v) of Appendix B to the Particular Conditions in answer to the matter identified here.

19 It follows from my findings that LF Construction's second complaint which has to do with poor workmanship such as uneven joints, poor joint gaps, gaps and flimsy support, flimsy panels and doors and door panels without frames[note: 8] also fails for the reasons stated. It follows that LF Construction has failed to prove that its pleaded loss was caused by the defendant. This is not to say that I have accepted the defendant's arguments that some of the defects were caused by the other sub-contractors on-site. In my view, this line of defence is not entirely persuasive for two reasons. The first reason is that the defendant's evidence as to what else could account for the defects has vacillated between blaming LF Construction's other sub-contractors to blaming the scaffolding. Naturally, the defendant's time-frame as to when the defects could have occurred also shifted. Yeo first claimed that all was fine in July 2003 when he took a picture to prove this (or, in fact, as late as October 2003 when he handed the work over and no complaints were made). Yet, in suggesting that the scaffolding was the cause of the damage, the defendant put the time as being in May or June 2003. The second reason is that it may well be true, as the defendant claims, that there was no notification of defective works by LF Construction during the handing over. LF Construction does not appear to have challenged this. LF Construction pointed out that there was a defects liability period and the mere handing over did not signal the end of the defendant's obligations in respect of any defects found subsequently. Indeed, on 18 April 2004, LF Construction wrote to the defendant alleging all sorts of defects in the latter's works. No response was ever given. Finally, inasmuch as the defendant complains that LF Construction had not called any expert witness, this is not a legal requirement. Equally, the defendant also has not called on any expert to dispute the evidence led by LF Construction. There is nothing material in the accusation that affects the claim.

Issue 3: LF Construction's claims under the 2nd Sub-Contract

20 The main complaint in respect of the 2nd sub-contract works was the failure of the defendant to carry out the works with reasonable speed, causing a delay in the completion of the works. According to LF Construction, the works needed to be completed by 15 November 2003 so as to meet the Building Control Authority ("BCA") inspection, failing which the issuance of the TOP for the project would be delayed.

21 It will be useful to highlight some salient events. A meeting was held on 20 October 2003 between LF Construction and the defendant to discuss the progress of the 2nd sub-contract works. The details of this meeting were recorded in LF Construction's letter dated 21 October 2003 to the defendant. The defendant agreed to complete the work by 15 November 2003 and signed a letter of undertaking to this effect on 23 October 2003. This letter of undertaking which was witnessed by Chi detailed a schedule of when the defendant was to begin and complete by 15 November 2003. As no work was being carried out as promised, LF Construction wrote to the defendant on 27 October 2003 and again on 29 October 2003. On 31 October 2003, an on-site inspection was done and it was recorded that only 30% of the north-eastern corner of the Memorial Hall had been completed. No other work was done on the other corners of the Memorial Hall or the two-storey temple. On 8 November 2003, the defendant attended a site meeting to discuss with LF Construction what was to be done. Present at the meeting were two representatives from Singapore Piling. At that meeting, the defendant was informed that the employer and architect required the project to be substantially completed so that TOP could be obtained by 29 November 2003 and the employer could occupy the premises from 1 December 2003. A follow up letter dated 8 November 2003 was sent to the defendant including a schedule of uncompleted ceiling works. It is helpful to reproduce the schedule[note: 9] for a better appreciation of the status of the works.

Schedule and of Status of Aluminium Roof Ceiling Works

Date: 8th Nov 2003

S/N	Description	Agreed start date	Agreed finish date	% completion elevation	% completion ceiling	Remarks
1)	4-storey Memorial Building					
a.	At North-western corner (Facing Evergreen H/Bright H Road)	26-10-03	18-11-03	30%	40%	3 Al. workers started. I beams completed re-shifting 28/10/03. Scaffold erected long time ago.
b.	At North-Eastern corner (Facing Evergreen H/Monks' quarters)	16-11-03	05-12-03	0%	0%	Boomlift available on 2/11/03. I beam shifted on 5/11/03.
c.	At South-Western corner(Facing2-sty temple/ Bright H. Rd)	15-11-03	30-11-03	0%	0%	5 workers. I beams Shifted on 2/11/03.
d.	At South-Eastern Corner(Facing 2-sty temple/ Monks' Quarters)	01-11-03	15-11-03	80%	70%	5 workers. I beam completed re-shifting 27/10/03.
2)	2-Storey Temple					

a.	At North-Eastern corner	16-11-03	10-11-03	0%	0%	Scaffold erected 30/10/03
b.	At North-Western corner	17-11-03	15-12-03	0%	0%	Scaffold erected long time ago
c.	At South-Eastern corner	11-11-03	25-12-03	0%	0%	Scaffold erected long time ago
d.	At South-Western corner	16-12-03	28-12-03	0%	0%	Scaffold erected long time ago

22 Even though the BCA inspection was rescheduled to 20 November 2003, the defendant did not complete the works. For the inspection to take place, LF Construction had to cover up parts of the works which the defendant had not completed and prematurely removed the scaffolding at the roof corners. After TOP was issued, in a meeting held on 4 December 2003 at the architect's office in which the defendant and Chi attended, LF Construction agreed to re-mobilise the boom lifts for the defendant's use and the defendant agreed to complete the two roof corners by the end of December 2003 and the rest by 15 January 2004. This arrangement was recorded in a letter dated 4 December 2003. Yet the defendant's progress continued to be slow. A site meeting was called on 18 January 2004. At this meeting LF Construction complained of a new issue. The bull nose profile at the roof corners was defective. The meeting and complaint were recorded in a letter dated 19 January 2004. In an earlier letter dated 18 January 2004, LF Construction urged the defendant to complete the works as soon as possible because the employer was planning to host some temple functions in March 2004. LF Construction's working sheet[note: 10], which assessed the value of the works as at 12 February 2004, indicated that the 2nd sub-contract works were 100% completed save for works at the two-storey temple which was verified as 90% completed. On 2 March 2004, the defendant agreed to complete the works by 20 March 2004 which by then included the variation works referred to in the defendant's quotation of 27 February 2004.

23 A review of the defendant's works was carried out on 10 March 2004. As it was evident that the works could not be completed by 20 March 2004, Liang and Chi met the defendant who again agreed to complete the works by end March 2004. On 16 March 2004, LF Construction wrote to the defendant lamenting the lack of progress. On 2 April 2004, LF Construction wrote confirming that the defendant had requested an extension of time to 5 April 2004 with a stern reprimand that the defendant had failed to deliver to date. On 18 April 2004, LF Construction notified the defendant of his failure to complete the works by 5 April 2004. In this letter, LF Construction purported to reserve its right to engage another sub-contractor to complete the works and warned that it would impose on the defendant the costs thereof, together with whatever additional charges there may be in insurance, supervisor staff, plant, etc.

24 It should be pointed out that the allegations in the various letters written by LF Construction to the defendant are corroborated by similar letters of complaints from Singapore Piling to LF Construction. These letters from Singapore Piling are put in evidence solely to prove that LF Construction had received from the main contractor complaints from time to time on the same subject matter (see *Subramanian v PP* [1956] 1 WLR 965 at 970). The employer's disappointment with the works was also recorded in the minutes of a special meeting dated 7 May 2004.

25 On 12 June 2004, LF Construction gave the defendant a further seven days to attend to the defects and outstanding works, failing which another sub-contractor would be engaged with the costs to be borne by the defendant. No response was forthcoming from the defendant and LF Construction proceeded to engage Altech on 21 June 2004. Other sub-contractors were also engaged to finish the works left undone by the defendant. The costs incurred were:

Item	Description	Unit	Rate/unit	Quantity	Amount Claimed
(a)	Provision of boom lifts:				
	Galmon (S) Pte Ltd	Lump Sum			$6,240.00
	Barnsburry Engineering (S) Pte Ltd	Lump Sum			$2,080.00
(b)	Dismantle & erection of scaffolding	m^3	$9.17	3,888	$14,261.18
(c)	Engagement of another sub-contractor to complete the outstanding works for aluminium cladding at roof corner of two-storey temple	Lump Sum			$43,320.00
(d)	Erection of temporary scaffolding to carry out item (c)	m^3	$9.17	900.00	$8,253.00

(e)	Temporary covering to roof corners of temple	Lump sum			$6,500.00
(f)	Rectification of bull nose to roof corners of Memorial Hall:				
	Purchase of fabricated material	Lump sum			$1,300.00
	Rental of boom lift	Monthly	$8,300.00	1.00	$3,320.00
	Skilled workers to install	Man day	$60.00	7.0	$420.00
(g)	Rental of boom lift to rectify cover-up stain mark	Monthly	$7,700.00	1.00	$3,080.00
(h)	Labour cost of Plaintiff's workers supplied to Defendant	Lump sum			$2,662.50
(i)	Advanced payment made by main contractor	Lump sum			$6,000.00
(j)	Insurance coverage from 1 January 2004 to 29 February 2004	Lump sum	$13,636.00		$5,454.40
Total					**$102,891.08**

26 At the trial, Yeo claimed either not to have received or read any of the letters sent by LF Construction to the defendant on the delays to his works. The claim that the letters were not received is not believable. In respect of the letter that Yeo says he did not receive on 12 June 2004, that same letter is in the agreed bundle of documents. Nonetheless, this does not account for the numerous other letters that Yeo implicitly acknowledges to have received but did not bother to read. In respect of these letters that Yeo did not bother to read, he cannot claim ignorance of those letters sent to his residence or his place of work. It is not just one letter that Yeo failed to read, but many. In any event, Yeo conceded in cross-examination that he was aware of the complaints about

his work as of April 2004.

27 In the circumstances, the litany of delays enumerated above points to only one conclusion: that the defendant must bear the responsibility for LF Construction having to engage another sub-contractor to complete the unfinished work. However, some of the claims overlap with LF Construction's liquidated damages claim. In respect of those overlapping claims, LF Construction may sue for breach of contract and prove the loss to recover damages in full or only claim the stipulated sum as a genuine pre-estimate of its loss. This legal position was made clear in *Bulsing Ltd v Joon Seng & Co* [1969-1971] SLR 565. In that case, the court held that where the sum stipulated as liquidated damages does not compensate for the actual loss suffered, the plaintiff has an election. He may either sue on the liquidated damages clause, in which case he cannot recover more than the stipulated sum, or he may sue for breach of contract and recover damages in full. With this principle in mind, I now turn to the various items of LF Construction's claim and the quantum. In assessing the claims, costs and expenses incurred on or before 31 December 2003 have been grouped together and treated as losses under liquidated damages. In its submissions, LF Construction has limited its claim to whatever payment it has not received from the main contractor for the various items (see [25] above). The defendant submits that the "only reason" why LF Construction was paid part of the backcharges was because LF Construction (and consequently the defendant) was not responsible for the delay to the completion of the 2nd sub-contract works[note: 11]. This is a specious argument for the reasons given below.

28 In relation to item (a) (see [25] above), the defendant's complaint is that LF Construction had used the boom lifts for its own benefit in terms of carrying out variation works to the roof corners and in conducting electrical works. Yeo had testified that the boom lifts were used by three parties (including the defendant). Therefore, it would be wrong to claim the full sum against the defendant. Mr Lazarus cites *Shia Kian Eng (trading as Forest Contractors) v Nakano Singapore (Pte) Ltd* [2001] SGHC 68 for the proposition that if the use of the equipment overlaps with other works, LF Construction has to prove that the amount of the costs it incurred was attributable to the defendant's work without which the court would be in no position to award damages. As for the allegation that the boom lifts were used for electrical works, this is not substantiated by the defendant. The defendant relies on an invoice from Galmon (S) Pte Ltd ("Galmon") wherein the boom lifts were said to be used for the purposes of electrical works. Although this invoice was in chronological sequence in respect of the rental period with the other invoices, this invoice for "electrical works" appears to be an anomaly as all the other invoices were for "erection works". In any case, I propose to approach this claim for rental of the boom lifts on the footing that the claim for $6,240 and the liquidated damages claim overlap. The invoices from Galmon were in respect of rentals charges from (a) 28 October 2003 to 10 November 2003; (b) 11 November 2003 to 18 November 2003; (c) 27 November 2003 to 31 December 2003; and (d) 1 January 2004 to 15 January 2004. In addition, Barnsburry Engineering (S) Pte Ltd's invoice was for hire charges before 31 December 2003. As I shall for the reasons stated later be allowing LF Construction's claim for liquidated damages, it would not be right for LF Construction to claim hire for the first three invoices. As for Galmon's last invoice for 15 days in January 2004 in the total sum of $6,150.01, I will allow LF Construction's recovery of 40% of the invoice sum, namely $2,460.

29 As for item (b), this was provided to allow the defendant access to complete its work. The scaffolding had to be taken down for the BCA inspection and re-erected after the inspection was over. Whatever modification of other works that took place thereafter using the scaffolding is more likely than not reflected in the "discount" of 60%. In any case, the claim for $14,261.18 (40% of the scaffolding costs) is allowable as it flows from the defendant's breach. I do not agree that the defendant was contractually obliged to provide scaffolding under para (t) of the Particular Conditions

of the 2nd Sub-contract as it could not be reconciled with the defendant's rates which exclude scaffolding. Those rates were used by LF Construction. This is consistent with Yeo's assertion that he was not required to provide scaffolding. However, the situation here is different.

30 For item (c), the main query posed by the defendant is whether LF Construction had mitigated its loss when it engaged Altech to finish the works. In the first place, the defendant did not plead this defence when the onus clearly lay with Yeo: *Geest plc v Lansiquot* [2002] 1 WLR 3111 at [16]. However, putting this aside, is the claim excessive? LF Construction's position is that one should not look merely at the difference between the quantum of damages claimed and the contractual price to determine whether the claim is reasonable. Bearing in mind the situation in which LF Construction found itself, it is only to be expected that engaging another sub-contractor on short notice will escalate the price as was the case in *Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd* [2004] 3 SLR 288 ("*Jia Min*"). By the time it became clear that the defendant had no interest or ability to complete the work on time, the date for completion was already past. At any rate, LF Construction did attempt to find another quote before appointing Altech. Sim explained that LF Construction sought another quotation before accepting Altech's. The burden of proving that LF Construction did not mitigate its loss is on the defendant (*Jia Min* at [73]), and the latter has not adduced any evidence beyond a bald assertion that the price was excessive to discharge this burden. In the circumstances, LF Construction's claim for $43,320 succeeds.

31 The defendant's assertion in respect of item (d) is untenable. Since item (d) follows from item (c), a finding for LF Construction on (c) would mean that the defendant is equally liable for item d) in the sum of $8,253.

32 For item (e), the defendant's assertion that he was not informed of the need to cover the roof corners is without basis. The defendant was so informed on 18 February 2004 by a letter which Mr Yeo claims not to have read. Curiously, Yeo then admits that he was informed and knew about the need to cover the roof corners. However, the defendant appears to be correct in that the invoice relied on by LF Construction does not indicate that the charges were for the temporary covering of the roof corners of the two-storey temple. Instead, they were charges for timber, pvc pipes and plywood. LF Construction's reply submission does not address this query. Accordingly, since the onus is on LF Construction to prove its loss, LF Construction should not be allowed to recover the $6,500 claimed. In any case, as I have indicated, the expenditure would have been incurred before 31 December 2003 and it would have been an item falling under liquidated damages. Consequently, the claim for $6,500 fails.

33 For item (f), the evidence does not clearly support LF Construction's claim. First, the defendant is correct in saying that there was a notation on the schedule of completion which appears to suggest that variation (not rectification) works had to be done. Second, while there are several letters written to the defendant claiming that the works were defective, there appears to be no other corroborating evidence of there being a defect. Third, Yeo explained in cross-examination that one reason he did not reply to the letter dated 19 January 2004 was because he did not agree that the work was defective. And finally, it would also seem that the design of the bull nose was still undergoing correction and modification even quite late in the day. Given that the burden of proof is on LF Construction, there is insufficient evidence to demonstrate that the significant part of the reconstruction of the bull nose had to do with the defendant's defective work and that it was not because the design had changed. Consequently, the claim for $1,300 fails.

34 Item (g) follows from item (f) above in that the stain marks were allegedly caused by the improperly constructed bull nose. Having not succeeded in its claim under item (f), LF Construction's claim under item (g) also fails. In addition, it should be pointed out that there appears to be no

evidence to support LF Construction's claim that the stain marks were attributable to the defendant's work or that LF Construction even told the defendant about those marks at any point in time. LF Construction's closing submissions and reply submissions simply iterate the presence of the stain marks and the expense of removing them. Therefore, this claim is disallowed.

35 Item (h) is allegedly for labour cost provided by LF Construction to ensure that the work was done in time. However, while it is true that LF Construction can only point to what appears to be an oral agreement to supply workers, the defendant did not dispute at trial that this item was erroneously claimed. It is only in his written submissions that the defendant makes a bare denial of this item of claim. In contrast, in a letter dated 18 December 2003, LF Construction told the defendant to "deploy more manpower to start installation work on this corner to complete by 27th Dec 2003". Given the urgency with which LF Construction was pressing the defendant to complete its work, it is more likely than not that LF Construction had supplied labour to the defendant to speed up the latter's progress. However, the debit note dated 28 February 2004 is for supply of labour in December 2003 and January 2004. For the same reason stated earlier, the January 2004 claim in the sum of $1,260 is recoverable, but not the claim for the month of December 2003 which comes under the claim for liquidated damages.

36 For item (i), there is no dispute that the defendant was given an advance of $6,000 in respect of its works by the main contractor but on LF Construction's account. This sum was then backcharged by the main contractor against LF Construction's account. LF Construction raises this item not as a claim *per se* but to say that in calculating the value of the work done by the defendant, this sum should be deducted so that the defendant does not get a windfall. In other words, to ignore this sum would be to translate an advancement into an additional payment. The defendant, on the other hand, appears to be labouring under the misconception that this is a claim and that it is entitled to keep the sum as payment for work done. While the defendant is mistaken in thinking that this item is a claim, the defendant is correct that the advance should be retained if work has been done. A deduction of this sum from its calculation of the value of the work done is required so as not to double-count what is owing to the defendant later on. I agree with LF Construction's approach and allowed recovery of $6,000.

37 Finally, in terms of item (j), LF Construction should be entitled to claim for the additional insurance needed to complete the work. The defendant's complaint that LF Construction had already been paid is partially true, but this payment is already reflected in the discount given. Accordingly, this claim of $5,454.40 (after 60% discount) is allowed.

Issue 4: LF Construction's Claim for Liquidated Damages

38 There is no dispute about LF Construction's calculation of the date of completion of the 1st and 2nd sub-contract works (viz., 15 April 2003 and 31 December 2003 respectively). The main defences raised by the defendant in response to LF Construction's claim for liquidated damages may be summarised as follows:

(a) Since the main contractor had granted an extension of time to 31 December 2003, it is expected that the same must apply to all sub-contracts;

(b) LF Construction did not provide any analysis as to how the defendant's delay caused the delay in the whole project;

(c) LF Construction's own work was still outstanding;

(d) There was no loss by LF Construction as the main contractor did not impose any damages on it; and

(e) The delay was in part caused through LF Construction's own fault.

39 All of these arguments are erroneously premised on the assumption that the liquidated claim is dependent on the main contractor's contract with LF Construction and ignores the separate contractual relationship between LF Construction and the defendant. Once there is an agreement for liquidated damages in the event of a delay in the completion of work, the defendant becomes liable for the damages unless it can raise a defence, such as the damages being in the nature of a penalty rather than a genuine pre-estimate of the loss.

40 This leaves the question of whether the delay was caused by LF Construction, the short point being that any alteration to the design of the works had been determined in September 2002, before the defendant acknowledged the Letters of Award. The 1st and 2nd Letters of Award clearly stipulate the period the sub-contract works had to be completed. In addition, there appears to be no evidence of the defendant ever objecting that LF Construction was disrupting its works. As such, the defendant has not shown why the liquidated damages should not be imposed on them. Given further that they have not taken issue with LF Construction's calculation of when the defendant had completed its works, it follows that the calculation of liquidated damages by LF Construction is valid and recoverable from the defendant.

Issue 5: The Defendant's Counterclaim

(i) 1st Sub-Contract Works

41 The burden of proving the sums alleged in the counterclaim is clearly on the defendant. In this case, the defendant merely relies on its own invoice for payment dated 12 January 2004. As it was a measurement contract, the final sum should be awarded based on an on-site verification. It would appear that the only on-site verification was conducted by Sim whose evidence is detailed in her affidavit of evidence-in-chief. The substance of her evidence was not challenged at trial or in the defendant's written submissions or reply. In my view, the burden on the defendant is not discharged and LF Construction's calculations stand.

(ii) 2nd Sub-contract Works

42 The dispute here is over the degree of completion of the defendant's work. LF Construction deducted 10% of the claim on the basis that the defendant only finished 90% of the work on the two-storey temple. There was no challenge against this calculation by the defendant. The only evidence Yeo could point to was an apparent concession by Sim that the defendant had completed the works. However, the extract relied on is quoted out of context and it is clear that Sim was referring to work done on the Memorial Hall and not the two-storey temple. In fact, LF Construction's position must be correct as it is supported by the defendant's own position in relation to its claim for incurring charges for storing material when Yeo refused to proceed with the completion of the works on the two-storey temple in view of LF Construction's supposed repudiatory breach. I pause to mention that the defendant complained that as LF Construction did not pay him for the variation work, the former was in repudiatory breach. However, non-payment is not a reason to suspend work (see *Jia Min* at [30]*, supra*). Again, the defendant has not discharged its burden of proving the value of the 2nd sub-contract works. As such, LF Construction's valuation is accepted.

(iii) Variation Works

43 The dispute over the final valuation of the variation works boils down to LF Construction's assertion that:

(a) the applicable rate for item (a) is $60 per unit and not $100;

(b) the defendant had claimed for additional alteration works that were not done; and

(c) the defendant's calculation for item (b) was too high.

44 Despite the defendant's initial quibble that it was never agreed that the applicable rate would be $60 per unit, Yeo conceded in cross-examination that there was no evidence supporting his claim. In fact, the only evidence adduced, which I accept, is a letter dated 2 March 2004 from LF Construction to the defendant stating unequivocally that the agreed rate was $60 per unit.[note: 12]

45 Yeo's evidence in court was that the variation works were done sometime in February or March 2004. LF Construction says that this contradicts his later evidence that the design of the works was finally settled in January 2004. There is no inconsistency because, as the defendant points out, it would have required about two months after the confirmation of the design to carry out the variation works. This squares with Yeo's claim that he finished the variation works in February or March 2004. Neither is it inconsistent that the defendant claims to have finished his 2nd sub-contract works in January 2004 because the work in question was additional to the original works. The burden of proof is on the defendant to prove his claim and while there is nothing to contradict his evidence, there is nothing that speaks in his favour either. A prime example is the defendant's claim for cutting the opening for lighting. Sim valued the claim at $2,000 compared to the defendant's valuation of $3,150 which has not been substantiated. As the burden of proof is on the defendant and he has not been able to either prove his claim amount or challenge Sim's valuation, LF Construction's valuation for this item of work at $2,000 stands.

46 As for the defendant's calculation of the variation works totalling $70,056 compared to Sim's valuation of $18,000. LF Construction asserts that there is a double claim here in that items 2–6 and items 7–8 of the Appendix to the defendant's counterclaim appear to describe the same works and is based on two different charges. As for item 7–8, a lump sum figure is being claimed whereas for items 2–6, the claim is for a total sum of $29,260 based on alleged rates and quantities. The defendant has not led evidence to prove the quantum of his claim. Given the absence of any contrary evidence, LF Construction's valuation of $18,000 as explained by Sim in her written testimony is accepted.

(iv) Storage Charges

47 It would appear that the defendant had claimed that LF Construction owed him storage charges that the defendant had to incur as a result of LF Construction's repudiatory breach in failing to make timely payment. Upon this breach, the defendant did not proceed to complete the variation works and had to incur charges for storing the unused material. In response, LF Construction argued that:

(a) there is no evidence of any agreement giving the defendant the right to stop work if LF Construction did not make payment;

(b) there is no common law right to stop work if LF Construction did not make payment;

(c) the defendant's claim for payment was premature;

(d) no notice was ever issued to LF Construction asking for payment; and

(e) the defendant had not accepted the repudiation as required.

48 Tellingly, the defendant makes no attempt to rebut these arguments in closing submissions, choosing only to tackle the issue of whether LF Construction had mitigated its loss. Without first establishing the liability of LF Construction to pay for the storage charges, there is no need to enquire into the mitigation of loss.

(v) Retention Sum

49 As the Letters of Award bind the defendant, it follows that cl 19.2 of the General Conditions operates. LF Construction argues that it is entitled to withhold the retention sum because as of 5 October 2005 when Yeo filed the counterclaim, the retention money was not due for release. One of the preconditions for the release of the money is that the maintenance period must have come to an end. This period expired only on 4 January 2006. Therefore, the sum of $31,049.57 was correctly withheld.

Result

50 For the reasons stated, there be judgment for LF Construction in the sum of $214,766.75 together with interest thereon at the rate of 6% from the date of the writ to payment. For expediency, the computation for the judgment sum of $214,766.75 is set out in the table below.

S/No	Description	Amount $
a)	Value of 1st Sub-Contract Works	115,531.40
b)	Value of 2nd Sub-Contract Works	485,460.00
c)	Variation Works	20,000.00
	Sub-Total	620,991.40
	Less: (a) Retention Sum (5%)	(31,049.57)
	(b) Previous Payments	(590,900.00)
	(c) Backcharges (2nd Sub-Contract)	(81,008.58)

	(d) LD claim (1st Sub-Contract)	(40,800.00)
	(e) LD Claim (2nd Sub-Contract)	(92,000.00)
	Total Amount Due to LF Construction	214,766.75

51 LF Construction is entitled to the costs of the action. As for the counterclaim, the defendant has not succeeded in the sense that in the end after setting off the sums due to him for work done by him, he is the paying party. The disputes in the main action and counterclaim are connected and as such I make no order on costs on the counterclaim. Finally, I would like to add that whilst this judgment in favour of LF Construction is for the sum of $214,766.75, it is open to the defendant before making payment of the judgment sum to exercise his right of set off in respect of the retention sum of $31,049.57.

[note: 1] Para 45 of Defence and Counterclaim (Amendment no 1)

[note: 2] Transcript of Evidence pg 368 lines 2–17

[note: 3] Para 42 of Yeo's affidavit of evidence-in-chief

[note: 4] Para 23 of Chi's affidavit of evidence-in-chief,

[note: 5] Transcript of evidence p435 line 18

[note: 6] Transcript of evidence p 356 line 17

[note: 7] Transcript of evidence p 417 line 4; p 436 line 8; p 437 line 1.

[note: 8] Para 148 of the Plaintiff's Written Submission; Para 5 of Plaintiff's Statement of Claim

[note: 9] 1AB page 273

[note: 10] 2AB 298

[note: 11] Para 80 of the defendant's reply submissions

[note: 12] 2AB pp 312-313