Qwik Built-Tech International Pte Ltd *v* Acmes-Kings Corp Pte Ltd [2013] SGHC 278

Case Number : Suit No 225 of 2012

Decision Date : 31 December 2013

Tribunal/Court : High Court

Coram : Lionel Yee JC

Counsel Name(s) : Anil Changaroth (Aequitas Law LLP) for the plaintiff; Irving Choh Thian Chee and Lim Bee Li (Optimus Chambers LLC) for the defendant.

Parties : Qwik Built-Tech International Pte Ltd — Acmes-Kings Corp Pte Ltd

Building and construction law – Building and construction contracts – Lump sum contract

Building and construction law – Quantum meruit

Building and construction law – Sub-contracts – Claims by sub-contractor

31 December 2013 Judgment reserved.

Lionel Yee JC:

Introduction

1 This case involves various claims for monies due and payable arising from a building construction project at Kuda Huraa Island, Male' Atoll, the Republic of the Maldives ("the Project").

2 The plaintiff company ("the Plaintiff") is in the business of designing and fabricating lightweight steel framing systems to be used in building structures. The Plaintiff is run by a husband and wife duo, namely Mr Eng Chua Rong-Di (also known as "Ero Chua") and Ms Khoo Kooi Lean (also known as "Amanda Khoo"). Ero Chua is the Plaintiff's manager whereas Amanda Khoo is the Plaintiff's managing director.

3 The defendant company ("the Defendant") is in the business of providing plumbing, heating and other related services. The Defendant has a subsidiary company called Acmes-Power Building Services Pte Ltd ("APBS"); it holds 99% of the shares in APBS. Mr Wong Khio Kong (also known as "Joe Wong") is a director of both the Defendant and APBS. Mr Yeo Kuei Ping (also known as "Randy Yeo") is the project manager of APBS who was in charge of the Project.

4 In or around August 2010, Joe Wong and Ero Chua were introduced to each other by a mutual friend and Joe Wong came to know of the Plaintiff. Subsequently, when Joe Wong learnt that a company called HPL Resorts (Maldives) Pte Ltd ("HPL") was seeking tenders for a building works project in the Maldives (*ie*, the Project), he approached the Plaintiff to ask whether the Plaintiff was interested to participate in the Project. The Plaintiff was interested and from about September 2010 to October 2010, the Plaintiff, HPL and HPL's quantitative surveyors for the Project, KPK Quantity Surveyors Pte Ltd ("KPK"), discussed the possibility of using the Plaintiff's lightweight steel framing system for the Project. However, the Plaintiff did not have enough finances to undertake the Project as a main contractor and so it was agreed that APBS would submit a tender for the Project instead and the Plaintiff would submit its design proposal for the steel framing system through APBS.

5 HPL awarded the Project to APBS on 2 December 2010 for a fixed sum of US$2,184,950.00. [note: 1] On 14 February 2011, the Plaintiff forwarded a quotation addressed to Joe Wong and APBS dated 8 February 2011 and with the reference no. APBS/BOH/ML/080211 (the "First Quotation") via e-mail to Randy Yeo, copied to Joe Wong and Ero Chua. The First Quotation set out the Plaintiff's quote of S$1,143,400.00 (excluding goods and services tax ("GST")) for fabrication of the steel framing systems for the Project and the supply of a number of other items, as well as other terms and conditions. The First Quotation was not signed or returned to the Plaintiff.

6 On 28 February 2011, Ero Chua, Amanda Khoo, Joe Wong and Randy Yeo met to discuss the First Quotation and the Project (the "28 February 2011 Meeting"). Randy Yeo prepared and subsequently circulated via e-mail the minutes of the meeting. Pertinently, one of the points recorded in the minutes was: "The project profit sharing, after less all operation/ administration costs, shall be distributed between APBS and [the Plaintiff]." Save for an e-mail from Amanda Khoo dated 1 March 2011, there was no further written correspondence between the parties concerning the minutes. The Plaintiff's position was that the minutes did not accurately set out what was discussed and agreed upon during the 28 February 2011 Meeting.

7 Until early March 2011, the Plaintiff had issued its quotation and invoices to APBS. Amanda Khoo's e-mail of 1 March 2011 forwarded a pro-forma invoice dated 28 February 2011 (with reference no. PI-0001-20110228) for S$300,000 addressed to Joe Wong of APBS. But shortly thereafter, the Plaintiff received instructions from Joe Wong and the Defendant's staff to re-issue the delivery orders, tax invoice and pro-forma invoice under the name of the Defendant instead of APBS. [note: 2] Apparently, this was because payment of the S$300,000 was to be made to the Plaintiff by way of a letter of credit; as APBS did not have a letter of credit facility, the Defendant's letter of credit facility was to be used instead, which meant that the relevant documentation had to be changed to reflect the name of the Defendant instead of APBS. Accordingly, in early March 2011, the Plaintiff reissued its delivery orders, tax invoice and pro-forma invoice for S$300,000 to the Defendant instead of APBS. [note: 3] The Plaintiff also issued a new quotation which had the same form and content as the First Quotation save that it was addressed to the Defendant instead of APBS. For ease of reference, I shall refer to this new quotation that was addressed to the Defendant as the "Main Contract". On or around 11 March 2011, Joe Wong signed the Main Contract on behalf of the Defendant. [note: 4] Thereafter, the Plaintiff continued to issue commercial invoices, delivery orders and packing lists to the Defendant or under the Defendant's name instead of APBS. However, the Defendant argues that it is not the proper party to the present suit as only APBS had a contractual relationship with the Plaintiff.

8 The Plaintiff proceeded to complete fabrication of the steel framing system for the Project. Accordingly, the Plaintiff says that it is entitled to payment of S$1,223,438, being the sum of S$1,143,400.00 under the Main Contract with 7% GST. The Defendant however asserts that the Plaintiff is not entitled to the full price stated in the Main Contract for various reasons, the primary ones being that the amounts stated in the Main Contract were only for budgetary purposes and the Plaintiff and APBS were in a partnership where they would share the profits at the end of the Project and therefore the Plaintiff should only be paid at cost for those items which were verified by supporting documents as having been supplied. [note: 5]

9 Further, during the course of the Project, the parties entered into further agreements whereby the Plaintiff would procure tools and equipment, additional building materials and technical support staff to assist with and supervise the installation of the steel framing system. The Plaintiff says that it is entitled to a total sum of S$413,496.35 pursuant to these further contracts. [note: 6] In contrast

the Defendant says that the Plaintiff is only entitled to S$178,281.75 under the further contracts and thus counterclaims (assuming that it is the proper party to the present suit) the sum of S$34,583.75, being the monies allegedly paid in excess to the Plaintiff. [note: 7]

The proper defendant argument

10 The Defendant's first line of defence was that APBS and not the Defendant was the proper defendant in the present proceedings. The Defendant argued that the Plaintiff was aware at all times that the Defendant was not involved in the Project, given that:

(a) the tender for the Project was awarded to APBS and not the Defendant;

(b) while the Defendant made four payments to the Plaintiff up to 4 March 2011 and another payment of S$100,000 on 13 May 2011 [note: 8], the payment vouchers for those payments made by the Defendant contained the words "APBS a/c" [note: 9] and the rest of the payments were made by APBS;

(c) up to March 2011, the Plaintiff's invoices were all addressed to APBS;

(d) Joe Wong had signed the Main Contract on behalf of the Defendant purely for the purposes of obtaining a letter of credit to make the payment of S$300,000 to the Plaintiff;

(e) while the Defendant's name and letterhead was used on commercial invoices and packing lists after the Main Contract was signed, this was done only because APBS did not have an export permit which was required to ship the building materials and tools to the Maldives; and

(f) after the Main Contract was signed, e-mail communications exchanged between Amanda Khoo, Joe Wong and Randy Yeo continued to refer to APBS as the party involved in the Project. [note: 10]

11 I do not find these arguments convincing. It is correct that at the beginning, when the Project was awarded to APBS in December 2010, the Plaintiff was working together with APBS and not the Defendant. As the Defendant pointed out, the Plaintiff had, at KPK's request, sent a formal letter to HPL and KPK backdated to 16 October 2010 confirming that the Plaintiff was "interested to participate in this tender and are cooperating with M&E specialist" and would be submitting a tender "under the company of [APBS]". [note: 11] It is also the case that the Plaintiff's First Quotation was addressed to APBS and up to March 2011, the Plaintiff had looked to APBS for payment. However, the position changed in March 2011 when the Plaintiff received instructions to amend the invoices and other documents to reflect the name of the Defendant instead of APBS. The Main Contract was duly addressed to the Defendant and it set out the terms and conditions of the Plaintiff's quotation for the Project. On 11 March 2011, Joe Wong signed the acknowledgement slip on the second page of the Main Contract, confirming the Defendant's "acceptance of the contents of this letter" on behalf of the Defendant. [note: 12] The Main Contract was thus a formal written agreement entered into between the Plaintiff and the Defendant; *prima facie* the Defendant is bound by its terms: see *L'Estrange v F Graucob Ltd* [1934] 2 KB 394 at 404.

12 Even if the First Quotation was amended to reflect the name of the Defendant instead of APBS for the purposes of using the Defendant's letter of credit facility, this does not necessarily displace the Defendant's obligations under the Main Contract. In other words, the *reason* why the Defendant's name was used in the Main Contract is not dispositive of the *status* (or lack thereof) of the

Defendant as a contracting party. Similarly, there is little to the Defendant's point that the commercial invoices and other documents were only addressed to the Defendant so that the Defendant's export permit facility could be used to ship the building materials and tools to the Maldives.

13 The Defendant submitted that neither the Plaintiff nor the Defendant had any intention to create any legal relations with each other because the Plaintiff knew that the Defendant was only an "accessory" used to obtain a letter of credit. [note: 13] But where there is an express agreement, the burden of proving that there is nevertheless no intention to create legal relations is on the party who asserts it, and this burden is a heavy one: see *Edwards v Skyways Ltd* [1964] 1 WLR 349 at 355. It has not been discharged in this case. There is no evidence of any statement made to the Plaintiff or of an understanding between the parties that the Defendant should not be contractually bound by the Main Contract, either solely or in conjunction with APBS, despite the new wording of the Main Contract and despite the fact that the commercial invoices and other documents were all addressed to the Defendant. The Defendant cannot now rely on its uncommunicated belief that the Main Contract would not be binding on it.

14 While the Defendant is correct to say that APBS continued to be involved with the Plaintiff after the Main Contract was signed, this does not detract from the Defendant's status as a contracting party. None of the documents cited by the Defendant showing dealings between the Plaintiff and APBS after March 2011 indicate otherwise. I note that while there were e-mail communications after the Main Contract referring to APBS as the party involved in the Project (see [10(f)] above), there were also communications between the parties which were premised on the Defendant being a party to the Project. [note: 14] In fact, the evidence as a whole suggests that the parties had simply proceeded on the basis that the Defendant and APBS were interchangeable as far as the Plaintiff was concerned. But whether the Defendant was in a contractual relationship with the Plaintiff solely or in a manner which was co-extensive with APBS, the Defendant is still a proper party to the present suit.

The partnership argument

15 Another of the Defendant's main arguments was that the Defendant and the Plaintiff were in a partnership where they would jointly tender for the Project, with the Defendant handling the mechanical and electrical works and the Plaintiff handling the building works with their lightweight steel framing system, and any profits at the end of the Project would be equally distributed between the parties (the "partnership argument"). [note: 15] Conversely, the Plaintiff maintained that it was engaged by the Defendant as a contractor for the Project. [note: 16]

16 At the outset, I find the partnership argument of marginal relevance to the present proceedings. The present case involves claims by the Plaintiff for sums of monies allegedly due under a written contract as well as a number of primarily oral agreements. The defence raised by the Defendant, apart from the argument that it was not the proper defendant to be sued by the Plaintiff, was essentially that the Plaintiff was only entitled to reimbursement at cost price (*ie*, without any mark-up) for the items provided because the parties had agreed to share any profits from the Project. It was with this end in mind that the Defendant canvassed the partnership argument at length in its written submissions. [note: 17] But the division of profits is neither a precondition to the existence of a partnership nor a necessary consequence of the establishment of a partnership; it is merely a common incident of a partnership relationship: see s 2(3), Partnership Act (Cap 391, 1994 Rev Ed); *Excel Golf Pte Ltd v Allied Domecq Spirits and Wine (Singapore) Ltd (No 2)* [2004] SGHC 162 at [98]; Roderick I'Anson Banks, *Lindley & Banks on Partnership* (Sweet & Maxwell, 19th Ed, 2010) ("*Lindley &*

Banks") at paras 2-10 to 2-13. The following passage from *Lindley & Banks* at para 7-13, which the Defendant also cited in its written submissions, is pertinent:

> [T]he crucial question is the *purpose* for which the existence of a supposed partnership must be proved: if a third party seeks to make persons liable as partners, then all that must be established is such liability, the existence or otherwise of a true partnership being largely irrelevant. If, on the other hand, it is a question of liability as between the alleged partners, it will be necessary to prove the existence of a partnership in point of fact. … [emphasis in original]

Similarly, all that the Defendant has to establish in this case is that there was an agreement between the parties to share the profits from the Project and that the Plaintiff would only charge the Defendant for items provided at cost. The existence or otherwise of a true partnership between the parties is largely irrelevant in this context.

17 In my judgment, there is insufficient evidence of any profit-sharing agreement between the parties or of any agreement that the Defendant would only pay for the items provided by the Plaintiff at cost price. Prior to 28 February 2011, while it is likely that there were discussions on a profit-sharing or joint venture arrangement of some sort, it is not clear that those discussions had culminated in an actual agreement between the parties. For example, an e-mail dated 26 February 2011 from Amanda Khoo to Joe Wong and Randy Yeo refers to "50% share in Acmes" under the heading "additional issue". [note: 18] From the context, this would appear to refer to an issue to be taken up between the parties, but there is no correspondence showing that this issue was followed up on.

18 Randy Yeo testified that there was a verbal agreement that the parties would share the profits from the Project and that the Plaintiff would charge for items it provided at cost price, pointing to the minutes of the 28 February 2011 Meeting where he had recorded that "[t]he project profit sharing, after less all operation/ administration costs, shall be distributed between APBS and [the Plaintiff]". [note: 19] The Defendant thus submitted that the parties had discussed and agreed on the manner of profit-sharing during the 28 February 2011 Meeting. [note: 20]

19 The evidence from the Plaintiff's witnesses, however, suggested otherwise. Shortly after the minutes were sent out by Randy Yeo, Amanda Khoo said in an e-mail dated 1 March 2011: "In regards of the minute received, I will highlight points to you shortly, that I was not sure of your phrase." [note: 21] Amanda Khoo, whom I observed to have a limited command of English, testified that what she had meant in her e-mail was that the minutes recorded certain things as having been agreed upon during the 28 February 2011 Meeting when in fact they had not and that she did not understand some phrases used in the minutes, including the part about profit-sharing. [note: 22] However one interprets Amanda Khoo's e-mail of 1 March 2011, it is clear from this document that there was no unequivocal concurrence by the Plaintiff to the contents of the minutes of the 28 February 2011 meeting. Moreover, Amanda Khoo testified that after her e-mail of 1 March 2011, she had followed up on these issues with Joe Wong or Randy Yeo during subsequent meetings in the Plaintiff's factory although she could not remember what they had talked about. [note: 23] This was not contradicted by the Defendant. Ero Chua similarly testified that while the issue of profit-sharing was discussed at the 28 February 2011 Meeting, the parties had never reached an agreement on this issue. [note: 24]

20 In any event, any discussions between the parties before 11 March 2011 would have been overtaken by the Main Contract which was signed by Joe Wong on behalf of the Defendant on that day. As I have indicated, the terms of the Main Contract are *prima facie* binding on the Defendant

and I can see no reason to hold otherwise. There are certain e-mails after 11 March 2011 that allude to the parties being "partners" in the Project but again there is no clear indication that the parties had reached an agreement on profit sharing. For example, an e-mail from Joe Wong to Amanda Khoo dated 23 March 2011 stated: "Are you sure we are partners in this joint venture? If yes at 50%/50% joint venture, you should also finance half the project." [note: 25] The conditional reference in Joe Wong's e-mail to whether the parties were in a "50%/50% joint venture" is not consistent with the existence of an agreement on the terms asserted by the Defendant. Moreover, if there was indeed a profit-sharing agreement between the parties, one would expect each side to be kept informed of and to have some say over the costs incurred for the Project by the other party. In the present case, while the Defendant asserted that the Plaintiff was required to submit its original supplier's invoices for verification, none of the Defendant's or APBS' invoices relating to the mechanical and electrical works (which were, according to the Defendant, either APBS' or its responsibility under the alleged agreement) were ever given to the Plaintiff. [note: 26]

The Main Contract

21 The terms of the Main Contract are binding on the Defendant, contrary to its submissions. [note: 27] I have already rejected the Defendant's argument that the Main Contract was not legally binding because it was only signed for the purposes of utilising the Defendant's letter of credit facility. The Defendant's argument that the Main Contract was not binding on the parties as it was only for budgetary purposes since the parties were in a profit-sharing partnership is also untenable.

22 The Defendant raised two other points in support of its argument that the Main Contract should not be binding on the parties. First, the Defendant highlighted that there was no requirement that the Plaintiff provide a performance bond whereas HPL had imposed the need for a performance bond on APBS. [note: 28] I am however unable to see how the presence or absence of a requirement to furnish a performance bond has a bearing on the issue of whether the Main Contract is binding on the Defendant.

23 Second, the Defendant pointed out that the Main Contract did not contain any unit rates which rendered the terms of the Main Contract "unbelievable" because the Plaintiff would potentially be "contractually obliged to supply infinite amounts of steel" to the Defendant. [note: 29] The Main Contract was not lengthy or detailed; it was drafted in the form of a quotation addressed to Joe Wong and the Defendant and contained a simple table itemising the materials, parts and labour to be provided. The Defendant contended that there was a degree of uncertainty as to the scope of work to be carried out by the Plaintiff because while a price was stated for each item in the table, no unit rates were stated and for certain items, no quantities were stated; it was thus difficult to ascertain what constituted extra work regarding those items for which neither the unit rate nor the quantity was stipulated.

24 However, I observe that the Main Contract contained the title "FABRICATION ON QWIK STEEL FRAMING SYSTEMS FOR EX-FACTORY ONLY TO THE BUILDING WORKS (BACK OF HOUSE) PROJECT, AT KUDA HURAA ISLAND, MALE' ATOLL, REPUBLIC OF MALDIVES". This is an obvious reference to the Project and to HPL's letter of acceptance awarding the Project to APBS on 2 December 2010. By the Defendant's own admission, the Plaintiff was very involved in the tender process for the Project and the Plaintiff's engineering consultant had produced design drawings for the Project which were submitted as part of the tender documents. [note: 30] HPL's letter of acceptance of 2 December 2010, which Joe Wong had signed to confirm APBS' agreement to its terms [note: 31] and which the Defendant said was forwarded by him to the Plaintiff on the same day [note: 32], incorporated various

correspondence and tender documents into the contract between HPL and APBS, including design drawings [note: 33]. It would have thus been in the contemplation of the parties at the time they entered into the Main Contract that the scope of works required to be carried out by the Plaintiff would be as defined in HPL's letter of acceptance of 2 December 2010. To the extent that the Main Contract did not specify the unit rate or the quantity of certain materials or items to be provided, the Plaintiff's obligation would be to supply such quantities as would be required for the purposes of the Project as defined by the contract between HPL and APBS. In other words, for these items, the Main Contract was a lump-sum contract in that the Plaintiff undertook to perform defined work (*viz*, fabrication of steel framing systems for the Project) at a fixed price. The Plaintiff's Amanda Khoo confirmed this and the fact that the Plaintiff would accordingly bear the risk if more materials entailing a higher cost than stated in the Main Contract were needed. [note: 34]

25 The Defendant in its written submissions initially claimed that only S$797,151.50 (excluding 7% for GST) was due to the Plaintiff under the Main Contract. [note: 35] The figure of S$797,151.50 was computed by Ms Irene Patricia Hong Chu Hwee ("Patricia Hong"), APBS' project coordinator in charge of performing an internal audit of the Project. She arrived at this figure by adding up the value of the items provided by the Plaintiff as stated in the invoices of the Plaintiff's suppliers, and where supplier's invoices were not furnished, in the goods declaration forms which were generated by the Maldivian customs authorities who inspected the goods upon their arrival in the Maldives, and then subtracting from the total sum: (a) S$28,095.67 being the cost of doors which were delivered but were alleged to be of the wrong specification and (b) S$407.22 being customs taxes incurred for certain items which were not working, not ordered, or not needed by the Defendant. [note: 36] In oral submissions, it was clarified by counsel for the Defendant that the sum of S$28,095.67 for the wrong doors was no longer in issue given that the Plaintiff had already supplied acceptable replacement doors and was not claiming any further amount for the replacement from the Defendant. As for the sum of S$407.22 for unnecessary customs taxes paid by the Defendant, I note that the relevant items related to additional tools or materials which were not under the Main Contract, and I will deal with the claimed deduction of S$407.22 later on. Thus the amount that the Defendant claimed the Plaintiff was entitled to under the Main Contract should in fact be revised to S$825,654.39.

26 In my judgment, the Plaintiff is *prima facie* entitled to the full price stated in the Main Contract of S$1,143,400.00 plus 7% for GST, amounting to S$1,223,438.00. The Defendant's method of computation using the Plaintiff's supplier's invoices and customs declaration forms is based on its assumption that the Plaintiff is only entitled to claim for the materials and items provided at cost price, which I have already rejected in dealing with the Defendant's partnership argument earlier. There is no evidence that the supplier's invoices and customs declaration forms were to form the basis of computing how much the Plaintiff was entitled to be paid. Moreover, with one exception, the Defendant has not taken the position that the Plaintiff carried out *less* work than was required of it under the Main Contract. The one exception relates to item no 5 of the table in the Main Contract which provides for 160 sets of windows to be provided at the price of S$48,800. Patricia Hong testified and counsel for the Defendant submitted that fewer than 160 sets of windows were supplied. [note: 37] This was supported by the invoices and packing lists provided. [note: 38] During oral submissions, counsel for the Defendant submitted that only 132 units of windows were supplied, which counsel for the Plaintiff did not dispute. [note: 39] The Defendant is therefore entitled to a diminution of the price in the Main Contract by the amount required to make good this particular omission: *Hoenig v Isaacs* [1952] 2 All ER 176.

27 The amount required to make good the shortfall of 28 windows would usually be the cost price of obtaining them in the market but no such information was available in this case. In the absence of

any contrary evidence, I will use the contract price as evidence of the market price of the 28 windows. Thus, the Plaintiff is entitled to payment under the Main Contract of S$1,214,300.20 being the full contract sum of S$1,143,400.00 less S$8,540 for the shortfall of 28 windows (*ie*, 28/160 x S$48,800) with the addition of 7% for GST.

The Further Contracts

28 It is not disputed that the parties also entered into further agreements for the Plaintiff to supply tools and equipment ("the Tools Contract"), additional building materials ("the Materials Contract"), and technical support staff to assist with the installation of the steel framing system ("the Technical Support Contract") for the Project. I refer to these agreements collectively as the "Further Contracts".

The Tools Contract and the Materials Contract

29 The Plaintiff's position on the Tools Contract and the Materials Contract was that the Plaintiff agreed to supply tools and equipment as well as various additional building materials required for the Project on the understanding that the Plaintiff would be paid and reimbursed for these items based on their purchase price plus a 15% mark-up for profit and attendance. [note: 40] However, the Defendant's position was that there was no such agreement and the Plaintiff was to supply the necessary tools and additional building materials only at cost price, *ie*, at the price which the Plaintiff paid its supplier for the items. [note: 41] Additionally, the Defendant contended that it was not liable to pay for certain tools and additional building materials which were: (a) already to be provided by the Plaintiff under the Main Contract; (b) not in fact sent by the Plaintiff to the Maldives; (c) not ordered or required by the Defendant; (d) not working; or (e) used items.

Rate of remuneration

30 I deal first with whether the items provided under the Tools Contract and the Materials Contract were to be charged by the Plaintiff at cost price or with a 15% mark-up. The Tools Contract and the Materials Contract appear to be primarily oral agreements concluded in an informal and rather piecemeal fashion. [note: 42] According to Ero Chua, Joe Wong had promised him that the Defendant would pay the Plaintiff a 15% mark-up for tools at a meeting sometime in January 2011 as well as a 15% mark-up for the additional building materials on unspecified occasions between January and March 2011. [note: 43] But Ero Chua's evidence on this point was contradicted by Amanda Khoo's testimony that she would add a percentage mark-up for all items provided by the Plaintiff which was not fixed and could vary from less than 10% to 35% depending on the quantity of items ordered. [note: 44] It was also pointed out by Patricia Hong and in the Defendant's written submissions that based on the invoices provided, the Plaintiff's mark-up far exceeded 15% in some cases. [note: 45] On the part of the Defendant, Joe Wong agreed in cross-examination that he had requested Ero Chua to procure tools and additional building materials and that Ero Chua should be paid for the additional materials "[o]n a fair market rate". [note: 46] But Joe Wong later said that he told Ero Chua that Ero Chua would have to help him purchase the tools and additional building materials needed "at the supplier cost without mark-up because that is our margin of profit". [note: 47] Randy Yeo also testified that the parties' "understanding" since October 2010 was that the Plaintiff was only supposed to charge the Defendant the cost price of any tools or materials. [note: 48]

31 In my judgment, it is more likely that although the parties envisaged that the Plaintiff would be paid by the Defendant for the tools and additional building materials provided, no price or specific

mark-up had been agreed upon. The Plaintiff's position that a 15% mark-up had been agreed was directly contradicted by Amanda Khoo's testimony as well as the documentary evidence showing that in actual fact, the Plaintiff had applied widely varying mark-up rates which ranged from no mark-up at all (see *eg*, D3 items 1–3) to a mark-up of over twenty times the price charged by the supplier to the Plaintiff (see D2 item 54). However, from the inconsistent and vague testimonies of the Defendant's witnesses on this issue, I am also not persuaded that there was an agreement to charge the Defendant only the cost price of any tools or additional building materials. While there were e-mails showing that the Defendant had repeatedly requested for the original supplier's invoices from the Plaintiff apparently since April 2011 [note: 49], none of these e-mails mentioned the price that the Plaintiff was to be paid, whether at cost or with a certain mark-up. The minutes of the 28 February 2011 Meeting, which Randy Yeo himself prepared, stated that the Plaintiff was "to work out the tools costs" without more. [note: 50] In so far as the Defendant's position in this regard is linked to its assertion that there was a profit-sharing "partnership" agreement between the parties, I am unable, for the reasons set out earlier, to find that such an agreement did exist.

32 Since I have found that the amount of payment had not been agreed upon although the Plaintiff was entitled to payment by the Defendant for the tools and additional building materials provided, the Defendant's argument that contractual *quantum meruit* should not apply in the present case because parties did expressly agree on a rate of remuneration, relying on the case of *Rabiah Bee bte Mohamed Ibrahim v Salem Ibrahim* [2007] 2 SLR(R) 655, fails. This is not a case where the rate of remuneration was covered by an express contract or agreement between the parties. Therefore a term that the Plaintiff would be remunerated at a reasonable rate for these items is to be implied into the Tools Contract and the Materials Contract.

33 The Plaintiff then has the burden of adducing evidence to show what that reasonable rate is: *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 at [118]. However, there was insufficient evidence adduced by the Plaintiff in this regard. First, information as to the prices which the Plaintiff had been charged by its suppliers was available for only a minority of the tools and additional building materials which are the subject of the Plaintiff's claim. Second, there was no evidence adduced by the Plaintiff as to any additional costs it incurred in obtaining the tools and additional building materials from its suppliers or what a reasonable mark-up for its overheads and other related costs would be. There was only evidence from Ero Chua that what the Plaintiff did was to call up its regular suppliers and place orders for whatever tools were needed over the telephone. [note: 51] Given the inadequacies of the evidence before me, I find that the Plaintiff is only entitled to be paid the cost price of the tools and additional building materials provided, which, in the case of items for which there is no evidence of the cost price, will be computed by using as a proxy the average percentage of the mark-up applied for those items for which such evidence was provided. I note that to the extent that a reasonable rate for these items would have included the Plaintiff's overheads for Ero Chua's efforts in procuring the tools and additional building materials while he was on site in the Maldives, this will be addressed when I deal with the Plaintiff's claim for Ero Chua's wages under the Technical Support Contract below.

Items to be provided under the Main Contract

34 I come to those tools and additional building materials which the Defendant says were already to be provided by the Plaintiff under the Main Contract. If such items are a necessary part of the items which were to be provided under the Main Contract, they are included in the relevant lump sum amount and the Plaintiff is not entitled to additional payment for them.

35 I start with the Tools Contract. The Defendant tendered exhibit "D2" which was a spread-sheet

summarizing the items claimed by the Plaintiff under the Tools Contract as well as the Defendant's position on the various items. In D2, items 38–41, 57–58, 76–78, and 83 were alleged by the Defendant to be part of the steel structural system to be provided under the Main Contract.

(a) Item 38 referred to an '"L" steel bracket'. According to Amanda Khoo, this was an additional "stiffener" for areas where heavy equipment (*eg*, a plasma television) would be hung. [note: 52] However, Joe Wong disagreed with this description by Amanda Khoo and stated that an "L" steel bracket was used to join two elements together or used in anything that required a 90-degree joint. [note: 53] Patricia Hong similarly stated that an "L" steel bracket was used to hold two pieces of metal together and was thus part of the Plaintiff's "steel structure system material". [note: 54] On all accounts, this bracket is affixed to the steel structure and should *prima facie* be regarded as forming part of it. I also find the descriptions of item 38 by Joe Wong and Patricia Hong more convincing than Amanda Khoo's. Item 38 is therefore to be regarded as falling under the Main Contract.

(b) Amanda Khoo explained that items 39–41 were either tools or used in scaffolding and thus were not included in the Main Contract. This was not contradicted by the Defendant and I therefore accept that the Plaintiff is entitled to claim additional payment for these items.

(c) As for items 57–58, 76–78, and 83, these referred to items such as bolts and washers which Amanda Khoo explained were used (i) to hold the steel structure together; or (ii) to fix it to the ground; or (iii) to secure the staircase. [note: 55] These items should therefore be regarded as part of the "Steel Structure" and/or "Staircase" for which the Plaintiff quoted a lump sum in the Main Contract and I am unable to allow a separate claim for them.

36 As for the Materials Contract which was similarly summarised in a spread-sheet in exhibit "D3", it was conceded by Amanda Khoo in cross-examination that items 4, 5, 15–18, and 29–33 of D3 were included in the quotation under the Main Contract. [note: 56] These items therefore cannot be the subject of a separate claim for payment by the Plaintiff.

37 Counsel for the Defendant questioned Amanda Khoo on item 42 which concerned "heat shield rolls". Amanda Khoo explained that this was additional insulation material for roofing and walls and was not the same as "rockwool" which was provided for in the Main Contract. [note: 57] There was no evidence adduced to the contrary and thus I accept that Plaintiff is entitled to additional payment for item 42.

Items not sent to the Maldives

38 The Defendant claims that the Plaintiff should not be able to claim for certain items which were not in fact sent to the Maldives. The Defendant's position and Patricia Hong's evidence was that each and every item which was shipped over to the Maldives would have been recorded in a goods declaration form by the Maldives customs service officer who inspected the containers containing the items upon their arrival at the port for the purposes of determining the amount of customs duties to be paid; thus any item that was not stated in the declaration form, although it might have been stated in the commercial invoice prepared by the Plaintiff, should be considered as not having been sent. [note: 58] On the other hand, the Plaintiff took the position that all the contested items had been sent to the Defendant, [note: 59] relying upon the fact that the contested items were stated in packing lists, commercial invoices and other documents prepared by the Plaintiff.

39 I note at the outset that one of the contested items, *viz*, "welding rod" (item 15 in D2), could be found in a goods declaration form generated by the Maldives customs authorities as stated in para 30(d) of the Plaintiff's written submissions; the Plaintiff is thus entitled to payment for this item in any event.

40 For the items which are listed in documents prepared by the Plaintiff but which are not listed in the goods declaration forms, I find the goods declaration forms to be more reliable as evidence of which items were actually sent (or not sent) to the Maldives and received by the Defendant. The accuracy of the documents prepared by the Plaintiff that recorded the items it sent over was undermined by the fact that Amanda Khoo herself conceded to discrepancies between the packing list and the delivery order in relation to the wall cam set claimed under the Tools Contract. [note: 60] In contrast, there was no evidence which cast doubt on the reliability of the goods declaration forms generated by the Maldivian authorities during their inspection upon the arrival of the goods. I therefore exclude items 2, 27–29, 75, 80 (in part) and 81 in D2 from the Tools Contract as well as items 20, 25 (in part), 26 (in part), 29 (in part), 30 (in part), and 42 (in part) in D3 from the Materials Contract.

Items not ordered by the Defendant, items not working or used items

41 The Defendant submitted that they should not be charged for items which they did not order, which were not working or which were previously used. [note: 61] A list of these items was set out in Patricia Hong's affidavit. [note: 62]

42 Of the items that the Defendant alleges were not ordered, only item 94 of D2 should be excluded from the Tools Contract. Amanda Khoo accepted in cross-examination that item 94 in D2 was not her item and the Plaintiff would not be charging for it. [note: 63] Items 17 and 19 of D2 related to safety helmets and safety vests respectively and while the Defendant claims that these items were not specifically ordered, there was no evidence that any protest had been raised when they were delivered to the Maldives or that any attempt had been made to return them. In fact, Joe Wong, when questioned as to what had become of the safety helmets and safety vests, said that some had in fact been used on site and that all had probably been thrown away when they vacated the site. [note: 64] As for item 3 of D3, Amanda Khoo explained and Randy Yeo agreed that this related to tiles for vanity tops which were initially rejected by HPL but eventually approved and used in the Project. [note: 65] The Plaintiff is thus entitled to claim payment for items 17 and 19 of D2 as well as item 3 of D3.

43 A somewhat anomalous item is item 87 of D2 which relates to a "labour for stuffing charge" of $1,500 based on a rate of $500 per container. This related to payments which the Plaintiff claimed for supplying labour to help the Defendant load the items supplied by the Plaintiff on to containers. The only evidence that the parties had agreed on this came from Amanda Khoo and Ero Chua but it is not clear from their accounts that the parties had agreed on a rate of $500 per container. [note: 66] However, given that: (a) the Plaintiff was not responsible for loading and packing the items that it supplied into the containers for shipment because the Main Contract expressly provided that the items were sold "ex-factory" [note: 67]; (b) it is not disputed that the Plaintiff did help with such packing; and (c) while Ero Chua appeared to suggest that the Plaintiff had assisted the Defendant in loading or stuffing the containers on a "goodwill" basis, [note: 68] this was in the context of assistance given by Amanda Khoo and primarily in relation to her preparation of documents rather than a reference to the other labourers engaged by the Plaintiff, the Plaintiff is, in my judgment, entitled to

be paid a reasonable sum for the assistance it provided to the Defendant. As there was no evidence that the charge of $500 per container was unreasonable, I find the Plaintiff entitled to be paid the $1,500 it claims.

44 As for items which the Defendant alleges were not working, *viz*, items 3, 9, 11 and 12 of D2, the burden of proving this is on the Defendant and the Defendant has not adduced sufficient evidence to show that any of these items were not working during the course of the Project. While Patricia Hong stated in her AEIC that she had made a record of materials and tools which were reported not to be working when received on site, she did not have personal knowledge of this fact and the record she made, if it exists, was not exhibited. Moreover, Amanda Khoo testified that she was never informed that any of these items were not working until after this action was commenced. [note: 69] I find, therefore, that the Plaintiff is entitled to claim payment for items 3, 9, 11 and 12 of D2.

45 The Defendant further submits that there was an agreement between the parties that the Defendant would not be charged for used tools and thus item 56 of D2 (used safety helmets) should not be charged to the Defendant. As for the evidence of such an agreement, counsel for the Defendant pointed me to an e-mail from Joe Wong dated 31 August 2011 to Ero Chua that stated: "The tools shall be left for site used and no additional cost shall be levied". [note: 70] He also pointed me to the minutes of the 28 February 2011 meeting which stated: "[The Plaintiff] to work out the tools costs. However, for tools to be re-used or shipping back for other projects. The cost shall be borne by [the Plaintiff]." [note: 71] The above statements however do not bear out the Defendant's claim that any used tools were to be provided by the Plaintiff free of charge. They appear to deal with tools which had already been sent over and used on site or which would be returned after they were used *in the Maldives*, not tools which were already used at the time they were sent over to the Maldives. The Defendant, on whom the burden lies, has not proven the existence of the agreement that it claims. The Plaintiff is accordingly entitled to claim payment for item 56 of D2. I note however that in relation to item 17 of D2 (which concern *new* safety helmets) (see [42] above) Amanda Khoo did accept that two out of these 32 safety helmets were used rather than new ones [note: 72] and thus these two used helmets should be priced at the same rate as item 56 of D2.

46 As regards the Defendant's claim for unnecessary customs taxes it had to pay for items which were not working, not ordered or not needed, I have only excluded item 94 of D2 for the reasons set out above. The taxes paid in respect of this item were US$44.32 and, using a conversion rate of S$1.23 to US$1, this would amount to S$54.51. [note: 73] This amount is to be deducted from the payments owing by the Defendant.

Amounts due under the Tools Contract and the Materials Contract

47 Accordingly, apart from those items which I have decided to exclude as stated above, the Plaintiff is entitled to claim the cost price of the tools and additional building materials provided. This will be the price stated in the Plaintiff's supplier's invoices where available. For those items where no supplier's invoices were provided, I will ascribe the average mark-up from those items for which the Plaintiff's supplier's invoices are available. For the Tools Contract, the cost price was available for only 13 tools, namely items 43–46, 51, 52, 54, 55, 62, 69, 72, 74, and 82 of D2. The mark-up for these tools was very significant and ranged from 33% to more than 2000% with an average of 336.92%. The Plaintiff is accordingly entitled to a notional cost price of 22.89% (*ie*, (100/436.92) x 100%) of the value of the items in D2 for which no supplier's invoices were provided.

48 As for the Materials Contract, there were many items for which there was no mark-up at all and

the average percentage mark-up for those items for which supplier's invoices were provided (*viz*, items 1–3, 11–14, 19, 21–24 and 42 of D3) was only 3.08%. The notional cost price of those items in D3 for which supplier's invoices were not provided will thus be 97.01% (*ie*, (100/103.08) x 100%) of their claimed value.

49 This computation methodology above does not apply to item 87 of D2 ("labour for stuffing charge") since this item was not a tool procured by the Plaintiff from its suppliers.

50 The Plaintiff is therefore entitled to claim the sum of $4,901.58 under the Tools Contract (see Annex A), subject to a deduction of $54.51 for customs taxes paid as indicated in [46] above, and the sum of S$155,516.53 under the Materials Contract (see Annex B).

The Technical Support Contract

51 Under the Technical Support Contract, the Plaintiff agreed to provide technical support staff to assist, inspect and supervise the installation of the steel framing system on site for the Project. The Plaintiff says that the terms of this agreement were that the Defendant would pay the Plaintiff for the technical support staff provided based on a rate of S$80 per day (for the period between 8.00am and 5.00pm) and would also reimburse the Plaintiff for all travelling and accommodation expenses of the technical support staff. [note: 74] The Plaintiff therefore claims payment for the salaries and travelling and accommodation expenses of seven workers, as set out in exhibits "D4" and "D5". The Plaintiff also claims overtime rates of S$15 per hour for each worker, S$400 per day for Ero Chua's work on site as well as travelling and accommodation expenses for Ero Chua, Amanda Khoo and Kevin Burrows, the professional engineer engaged by the Plaintiff for the Project. The Defendant's position was that there was only an agreement for the Defendant to pay for three workers at S$80 per day. Overtime rates were not agreed upon and moreover, the overtime hours were not verified by the Defendant. [note: 75] The Defendant agrees that the Plaintiff should be reimbursed for the travelling and accommodation expenses of the workers save for those expenses which were incurred for reasons unrelated to the Project (*eg*, the worker was going on home leave). [note: 76]

52 First, the Defendant's argument that it is only obliged to pay for three out of the seven workers (*ie*, Mr Kaliappan Ramesh ("Ramesh"), Mr Yu Wei Jun and Mr Mola Suwit) is without merit. The remaining 4 workers whose wages the Plaintiff is claiming (*ie*, Mr Sumranchit Vichai, Mr Saleeroop Phaiwan, Mr Khin Zaw and Mr Khotjan Senee) were specifically identified in e-mails from Amanda Khoo to Joe Wong and Randy Yeo around the end of May 2011, confirming that these workers were to be sent over to the Maldives to assist the Defendant with the erection of the steel works. [note: 77] It is not disputed that they were deployed for the Project and there is no evidence that either Joe Wong or Randy Yeo had objected to their deployment. In fact the Defendant, in response to the above e-mails, proceeded to make travel arrangements for two of the workers. [note: 78] Moreover, the Defendant's argument did not make sense since it appeared from exhibit "D5", the Defendant's spread-sheet itemising the travel and accommodation expenses claimed for the technical support staff, that the Defendant had in fact paid for the travel expenses of Mr Sumranchit Vichai and Mr Saleeroop Phaiwan and had agreed to pay the travel expenses of Mr Khin Zaw and Mr Khotjan Senee. The Defendant must be taken to have agreed to the deployment of all four workers by the Plaintiff for the Project and to pay a reasonable rate to the Plaintiff in respect of them. It follows that the Plaintiff is entitled to claim payment for the seven workers set out in P3. As for the rate at which they should be paid, the rate of S$80 per day for each worker was recorded in the minutes of the 28 February 2011 Meeting and although only three workers were contemplated in those minutes, it would be reasonable for this rate to apply to the four additional workers since there was no evidence that these additional workers were deployed to do significantly different work from that of the first three

workers.

53 Second, I am not satisfied that there was an agreement between the parties for the Defendant to pay the Plaintiff an overtime rate of S$15 per hour per worker. There was neither evidence of any such agreement nor evidence of any industry practice or market standard to this effect. There was also no provision for overtime rates in the minutes of the 28 February 2011 Meeting which stated that "[t]he rate for each worker shall be S$80/- per day". [note: 79] It appears that the overtime rate of S$15 per hour was arrived at by Amanda Khoo by taking the normal rate of S$10 per hour (S$80 divided by 8 hours) and multiplying that by 1.5 times, which she said was the "standard rate of Singapore". [note: 80] Amanda Khoo also claimed that she had informed Joe Wong in an e-mail around January 2011 that she would be charging an overtime rate of S$15 per hour for each worker but this document was not located. [note: 81] During oral submissions, I sought further clarification from counsel on this issue and in particular whether there was any authority for implying payment for overtime in this case. There was however no response from counsel by the deadline I stipulated. While I am aware of provisions in Part IV of the Employment Act (Cap 91, 2009 Rev Ed) mandating overtime payments in certain cases, the claims in this case pertain to work done in the Maldives and the Plaintiff did not contend that these provisions of the Employment Act applied to the workers in question, nor was there any evidence to that effect. I am therefore unable to find that the Plaintiff is entitled to any overtime payment. The rate of $80 per day would accordingly apply for each day which the relevant workers worked on the Project.

54 Third, with regard to the claim for reimbursement of all travelling and accommodation expenses of the workers, the Defendant disputed a number of items in D5 for various reasons. I shall deal with the disputed items in turn.

(a) The Defendant says that it is not liable for the travel expenses for Ramesh's trip from the Maldives to India and back (part of item 1 of D5) because he was going for his own annual leave. However Amanda Khoo's explanation was that Ramesh did *not* go on leave but had to leave the Maldives in order to renew his visa and that Ramesh had to return to the Maldives to finish the job since the Plaintiff had no other supervisors in Singapore. [note: 82] Her testimony was not contradicted by the Defendant. There were also e-mails showing that Joe Wong and Randy Yeo were aware of and had assisted the Plaintiff in facilitating Ramesh's departure from the Maldives and subsequent return. [note: 83] I thus allow the Plaintiff's claim in item 1 of D5.

(b) Item 3 of D5 related to travel expenses for one of the Plaintiff's workers who allegedly did not turn up for work. Amanda Khoo explained that this supervisor had reported for work for only three days before he had to return to Singapore because he could not get used to the weather in the Maldives. [note: 84] I note, however, that no wages were claimed for this individual and there were no log cards exhibited to show that he attended work. The Plaintiff is therefore not allowed to claim for this item since it is doubtful whether this worker did any work on site at all for the Defendant.

(c) Parts of items 9, 10 and 11 of D5, which related to travel and accommodation expenses for Amanda Khoo, Ero Chua and Kevin Burrows respectively, were also disputed. The Defendant first disputed travel expenses of S$736 for a trip by Amanda Khoo to the Maldives in June 2011 on the ground that no invoice for this sum was provided. However, the documentary evidence indicates that Amanda Khoo did travel to the Maldives for the purposes of the Project and that the Defendant knew and/or consented to this. [note: 85] The lack of an invoice does not, in the absence of an express agreement to the contrary, invalidate the Plaintiff's claim and the Plaintiff

is entitled to a reasonable sum for the cost of a return air ticket from Singapore to Male. The sum of S$736 claimed for Amanda Khoo's air ticket is, in my judgment, reasonable since it is in fact significantly lower than the cost of other similar trips which the Defendant has accepted that it would pay for. For the same reasons, I will allow the Plaintiff's claim for travel expenses for Ero Chua's trip to the Maldives in August 2011 and for Kevin Burrows' two trips to the Maldives but in the absence of an invoice showing that a higher cost of the air tickets had in fact been incurred, the Plaintiff may only claim a reasonable cost pegged at the lower sum of S$736 for Amanda Khoo's air ticket. Finally, I also allow the travel and accommodation expenses for Ero Chua's trip to Bangkok around the end of May 2011. The Defendant in D5 disputed this on the ground that Ero Chua made this trip for personal business purposes but Amanda Khoo's testimony, which was supported by the documentary evidence, was that this trip was for the purposes of recruiting more workers for the Project. [note: 86]

55 Fourth, I am not satisfied that there was an agreement for the Defendant to pay the Plaintiff S$400 per day in respect of Ero Chua's work on site. Ero Chua and Amanda Khoo accepted that there was no such agreement as to his salary. [note: 87] However, I accept that the parties did agree that Ero Chua should be deployed to assist with and supervise the Project. The minutes of the 28 February 2011 Meeting stated that the Plaintiff was "confirmed to have three workers and Ero" for the Project. [note: 88] There is also no dispute that Ero Chua was on site doing work for the Project for the 67 days claimed by the Plaintiff. As with the Tools Contract and the Materials Contract, I therefore find that there is an implied term that the Plaintiff is entitled to reasonable remuneration for Ero Chua's work done on site. As for what constitutes reasonable remuneration, the best basis available would be Ero Chua's salary around the time of the Project, which Amanda Khoo testified was S$2,000 a month. [note: 89] Pro-rating this sum of S$2,000 according to a 22-workday month, the Plaintiff is thus entitled to the sum of S$6,090.91 (67 x S$2,000/22) in respect of Ero Chua's work on site for the Project.

56 The total amount due to the Plaintiff under the Technical Support Contract is thus S$72,609.71 (see Annex C below).

Conclusion

57 To summarize the discussion above, I find that the following sums, totalling S$1,447,273.51, are due to the Plaintiff:

(a) S$1,214,300.20 under the Main Contract (see [27] above);

(b) S$4,901.58 under the Tools Contract (see Annex A), from which $54.51 is to be deducted for unnecessary customs taxes paid by the Defendant (see [46] above), leaving a total of S$4,847.07;

(c) S$155,516.53 under the Materials Contract (see Annex B); and

(d) S$72,609.71 under the Technical Support Contract (see Annex C).

58 It was not disputed that the Defendant had already paid to the Plaintiff the sum of S$1,010,017.00 for the Project. [note: 90] Therefore, the Defendant is to pay the Plaintiff the balance of S$437,256.51.

59 The Defendant is to bear the Plaintiff's costs of this action, as taxed or agreed.

Annex A: amounts due to the plaintiff under the Tools Contract

S/No	Description	Amount (S$)
1	12v Compressor with 3 hose terminal	114.45
2	55 & 56 Air Riveter x 1	137.34
3	Rubber hose 50m	34.34
4	"C" Clamp	85.84
5	"D" Clamp	11.45
6	Snipper	3.43
7	Anti Rush	4.58
8	Cordless drill	206.01
9	Masonary drill	45.78
10	Electrical drill	206.01
11	Grinder-Hitachi & Makita	34.34
12	Fibre cutter	57.23
13	Electrical welding machine	80.12
14	Welding rod @5box/1ctn	140.29
15	Electrical cable	61.44
16	Safety helmet	41.27
17	Safety belt	27.47
18	Safety vest	43.49
19	6" power bit	2.75
20	3" power bit	2.29
21	Gas cutting hose	45.78
22	Pen knife	1.83
23	Pen knife blade	2.29
24	Black ink	2.06
25	Laser for levelling	160.23
26	Scaffold frame 1219 x 914mm	16.48

27	Scaffold frame 1219 x 1930mm	123.61
28	Scaffold jack base 600mm	14.65
29	Scaffold cross brace 2198mm	43.95
30	Catwalk panel	58.60
31	Monkey ladder	11.45
32	Clamp - 48mm x 48mm	4.94
33	Bone joint	6.64
34	Round pipe	45.32
35	Hex screw bit	11.45
36	Silver/white Philip head bits (1100)	16.48
37	Philip head bit 1500mm	2.86
38	Plastic plug dia 8 x 3"	25.00
39	Masonry drill bit - dia 8mm x L210mm	9.50
40	Masonry drill bit - dia 16mm x L210mm	18.50
41	Ear plug	9.00
42	Steel Chalk	1.83
43	White Chalk	1.83
44	Multi cutter	3.43
45	DeWalt 14.4v	173.96
46	Electrical drill - 10amp	320.00
47	Electrical drill - 13amp	115.00
48	Glass hand glove	6.87
49	Industrial plug - male plug	30.00
50	Industrial plug - female plug	18.00
51	Used safety helmat-yellow & white	1.37
52	Files	3.66
53	Stanley screw driver	5.04
54	Stanley sniper	22.89
55	Welding glove	7.50
56	Marking ink	2.06
57	Hole saw 50mm dia.	22.89
58	Sharpening block	

59	Wood drill	
60	Chain block	152.22
61	Riverter	103.01
62	Aiko cutter disc 350x3x25.4m	45.00
63	100 x 2.5x16mm cutting disc	36.62
64	Grinding wheel	20.60
65	Strip chains	11.00
66	Wool glove	27.47
67	Nail bags	30.00
68	Industrial commercial socket	91.56
69	16amp industrial plug	5.72
70	Cutting wheel	18.36
71	Flexible Extension Cable 250/440v size 3 x 40 x 0076 x 3 rolls & 70 x 0076 x 1 roll	22.89
72	5 mtr measuring tape	8.24
73	Cutter knife	1.83
74	Cutter knife's blade	0.27
75	Drill Bit - 3/16	4.58
76	Drill Bit – 12	2.75
77	Drill Bit - 16 - 3/8	3.89
78	Drill Bit - 20 - 3/8	5.72
79	Labour for stuffing charge	1,500.00
80	Tool boxes	103.01
Total		**4,901.58**

Annex B: amounts due to the plaintiff under the Materials contract

S/No	**Description**	**Amount (S$)**
1	White Horse Porcelain Texture Tile 300mm x 300mm - VMSE30002	20,679.75
		38,580.75
		4,797.00
2	White Horse Ceramic Tile 300mm x 300mm - C30000	22,815.00
		11,583.00

3	White Horse Homogenous Tile Matt 300mm x 300mm - 3001M	965.25
4	Master Frame Main Tee - 3.6m White	596.61
5	Master Frame Cross Tee - 1.2m White	1,105.91
6	Wall Angle 22/22 - 10' White	340.99
7	M20 Gypro Ceiling - 9mm x 595 x 1195mm	945.85
8	Fibrous Plaster Access Panels with aluminium edging 9mm x 600mm x 600mm	1,047.71
9	Internal-HP 200 Sealer	500.00
		1,500.00
10	Internal-HP Ecomatt (White Watsonia)	873.00
		1,091.25
11	External-HP 300 Sealer	90.00
		2,250.00
12	External-HP Hyshield (White Watsonia)	310.40
		465.60
		1,940.00
13	Corner Bead PVC 8'	2,600.00
14	S11 Stopping	1,680.00
15	UEC Joint Compound 28kg	540.00
16	Fiber Mesh Tape - 50mm x 70m	2,280.00
17	Liquid Render 2000F (Fine) 28kg	2,880.00
18	Soudalex 25 lm Grey	98.95
19	Fix All E White	107.10
20	Windows/Doors - Semi Auto Sliding Track	4,365.45
21	Ceiling Batten 10 ft	756.68
22	Heat Shield Rolls 1.25m x 50m	26,920.28
Total		**155,516.53**

Annex C: amounts due to the plaintiff under the technical support contract

Wages (Exhibit D4)			
S/No	**Name**	**Description**	**Amount (S$)**

1	Kaliappan Ramesh	152.5 days worked at a daily rate of S$80	12,200.00
2	Yu Wei Jun	85 days worked at a daily rate of S$80	6,800.00
3	Mola Suwit	86 days worked at a daily rate of S$80	6,800.00
4	Sumranchit Vichai	86 days worked at a daily rate of S$80	6,880.00
5	Saleeroop Phaiwan	86 days worked at a daily rate of S$80	6,880.00
6	Khin Zaw	80 days worked at a daily rate of S$80	6,400.00
7	Khotjan Senee	80 days worked at a daily rate of S$80	6,400.00
8	Ero Chua	67 days worked pro-rated at S$2,000 per month	6,090.91
Sub-total			**58,450.91**
Travel & Accommodation Expenses (Exhibit D5)			
1	Kaliappan Ramesh	Air Ticket SQ departure from SG - BKK - SG dated 22nd Mar 2011	1,074.80
		Air Ticket departure from MLE - INDIA - MLE dated 16th Jun 2011	600.00
2	Yu Wei Jun	Air Ticket departure SG - MLE - SG dated 12th Apr 2011	1,145.00
3	Mola Suwit	Air Ticket departure from SG - MLE - SG dated 19th Apr 2011	1,145.00
4	Khotjan Senee	Air Ticket departure from SG - MLE - SG dated 12th Jun 2011	1,185.00
5	Khin Zaw	Air Ticket departure from SG - MLE - SG dated 12th Jun 2011	1,185.00
6	Khoo Kooi Lean	Air Ticket departure from SG - MLE - SG dated 12th Jun 2011	736.00
7	Ero Chua	Air Ticket SQ departure from SG - MLE -SG dated 19 Apr 2011	1,145.00
		Air Ticket SQ departure from SG- MLE - SG dated 10 May 2011	1,165.00
		Air Ticket departure from MLE to BKK to MLE dated 28th May 2011	675.00
		Accomodation & Expenses in BKK 29th May to 2nd Jun 2011	750.00
		Air Ticket departure from SG - MLE - SG dated 28th Aug 2011	736.00
8	Kevin Burrows	Air Ticket departure from SG - Mle - SG dated 19th Apr 2011 Quek's replaced for Kevin's Jetstar air tickets departure Auckland-SG-BKK-SG-Auckland dated 12 Apr 2011	1,145.00
		Air Ticket departure from Auckland-SG-MLE	736.00
		Air Ticket departure from SG - MLE - SG dated 19 Apr 2011	736.00
			14,158.80
Total			**72,609.71**

[note: 1] 1ABD 232–234; DW4 AEIC at pp 82–91.

[note: 2] 1ABD 403; PW1 AEIC at p 95.

[note: 3] 1ABD 374–381.

[note: 4] 1ABD 324–325.

[note: 5] Defendant's closing submissions dated 21 October 2013 at paras 148–158, 161.

[note: 6] BOP 7 (Statement of Claim at paras 14–17); Plaintiff's closing submissions dated 19 October 2013 at paras 19–21.

[note: 7] Defendant's closing submissions dated 21 October 2013 at para 204; Transcript of Evidence dated 18 September 2013 at pp 136–137; DW3 AEIC at para 40.

[note: 8] 6ABD 2221.

[note: 9] 6ABD 2205, 2206, 2208.

[note: 10] Defendant's closing submissions dated 21 October 2013 at paras 49–53; 4ABD 1476, 1490; 5ABD 1830, 2024, 2077–2078.

[note: 11] 1ABD 213, 224–225.

[note: 12] 1ABD 325.

[note: 13] Defendant's closing submissions dated 21 October 2013 at para 62.

[note: 14] 3ABD 993, 1002

[note: 15] Defendant's closing submissions dated 21 October 2013 at paras 68, 75.

[note: 16] Plaintiff's closing submissions dated 19 October 2013 at para 5.

[note: 17] Defendant's closing submissions dated 21 October 2013 at paras 68–122.

[note: 18] 1ABD 368–369.

[note: 19] Transcript of Evidence dated 18 September 2013 at pp 64–66.

[note: 20] Defendant's closing submissions dated 21 October 2013 at para 95.

[note: 21] 1ABD 384.

[note: 22] Transcript of Evidence dated 13 September 2013 at pp 18–19, 27, 45.

[note: 23] Transcript of Evidence dated 13 September 2013 at pp 23–25, 58.

[note: 24] Transcript of Evidence dated 10 September 2013 at pp 37, 81.

[note: 25] 2ABD 531; see also 5ABD 1755, 1757.

[note: 26] Transcript of Evidence dated 19 September 2013 at pp 49, 113.

[note: 27] Defendant's closing submissions dated 21 October 2013 at paras 126–127, 148–150.

[note: 28] Defendant's closing submissions dated 21 October 2013 at paras 137–139.

[note: 29] Defendant's closing submissions dated 21 October 2013 at paras 131–136.

[note: 30] Defendant's closing submissions dated 21 October 2013 at paras 77–81.

[note: 31] DW4 AEIC at p 90.

[note: 32] Defendant's closing submissions dated 21 October 2013 at para 81.

[note: 33] DW4 AEIC at pp 83, 84, 86.

[note: 34] Transcript of Evidence dated 12 September 2013 at pp 5, 15.

[note: 35] Defendant's closing submissions dated 21 October 2013 at para 161.

[note: 36] Defendant's closing submissions dated 21 October 2013 at paras 151–161; DW3 AEIC at paras 21, 40, 43(ii); Transcript of Evidence dated 19 September 2013 at pp 57–66.

[note: 37] Transcript of Evidence dated 19 September 2013 at p 59.

[note: 38] 6ABD 2372–2373, 2383–2384.

[note: 39] Transcript of Evidence dated 13 November 2013 at pp 75–77.

[note: 40] BOP 4 (Statement of Claim at paras 8–9).

[note: 41] Defendant's closing submissions at paras 101, 164.

[note: 42] See PW1AEIC at paras 57–61; Transcript of Evidence dated 11 September 2013 at p 27.

[note: 43] PW1 AEIC at paras 57–58, 60.

[note: 44] Transcript of Evidence dated 13 September 2013 at pp 76–80.

[note: 45] Transcript of Evidence dated 19 September 2013 at pp 51–52; Defendant's closing submissions dated 21 October 2013 at para 174.

[note: 46] Transcript of Evidence dated 19 September 2013 at p 103.

[note: 47] Transcript of Evidence dated 19 September 2013 at p 112.

[note: 48] Transcript of Evidence dated 18 September 2013 at p 50.

[note: 49] 6ABD 2156, 2158, 2162, 2169.

[note: 50] 1ABD 372.

[note: 51] Transcript of Evidence dated 11 September 2013 at pp 23, 29.

[note: 52] Transcript of Evidence dated 17 September 2013 at p 68.

[note: 53] Transcript of Evidence dated 19 September 2013 at p 115.

[note: 54] Transcript of Evidence dated 19 September 2013 at p 54.

[note: 55] Transcript of Evidence dated 17 September at pp 69–71

[note: 56] Transcript of Evidence dated 13 September 2013 at pp 98–99.

[note: 57] Transcript of Evidence dated 13 September 2013 at pp 95–97.

[note: 58] Defendant's closing submissions dated 21 October 2013 at para 180; Transcript of Evidence dated 19 September 2013 at p 25.

[note: 59] Plaintiff's closing submissions dated 21 October 2013 at paras 29–30.

[note: 60] Transcript of Evidence dated 17 September 2013 at pp 42–43.

[note: 61] Defendant's closing submissions dated 21 October 2013 at para 182.

[note: 62] DW3 AEIC at para 20.

[note: 63] Transcript of Evidence dated 13 September 2013 at p 123.

[note: 64] Transcript of Evidence dated 19 September 2013 at p 114.

[note: 65] Transcript of Evidence dated 17 September 2013 at pp 71–74; Transcript of Evidence dated 18 September 2013 at pp 126–127.

[note: 66] Transcript of Evidence dated 5 September 2013 at pp 35–37; Transcript of Evidence dated 17 September 2013 at p 63.

[note: 67] Defendant's closing submissions dated 21 October 2013 at para 140; 1ABD 324.

[note: 68] Transcript of Evidence dated 5 September 2013, at pp 35, 44.

[note: 69] Transcript of Evidence dated 13 September 2013 at pp 116–119.

[note: 70] 6ABD 2158.

[note: 71] 1ABD 372.

[note: 72] Transcript of Evidence dated 13 September 2013 at p 120.

[note: 73] DW3 AEIC at para 21.

[note: 74] BOP 6 (Statement of Claim at para 11).

[note: 75] Defendant's closing submissions dated 21 October 2013 at para 193.

[note: 76] Defendant's closing submissions dated 21 October 2013 at paras 196–198.

[note: 77] 3ABD 941–942, 945–946.

[note: 78] 3ABD 946–948

[note: 79] 1ABD 372.

[note: 80] Transcript of Evidence dated 17 September 2013 at pp 59–60.

[note: 81] Transcript of Evidence dated 13 September 2013 at pp 135, 138–139.

[note: 82] Transcript of Evidence dated 13 September 2013 at pp 140–143.

[note: 83] 3ABD 991–992.

[note: 84] Transcript of Evidence dated 13 September 2013 at p 145.

[note: 85] 3ABD 993, 1002

[note: 86] Transcript of Evidence dated 13 September 2013 at p 148; 5ABD 1860, 1865.

[note: 87] Transcript of Evidence dated 11 September 2013 at p 9; Transcript of Evidence dated 17 September 2013 at p 60.

[note: 88] 1ABD 372.

[note: 89] Transcript of Evidence dated 11 September 2013 at p 73.

[note: 90] Transcript of Evidence dated 13 September 2013 at pp 111–112.

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