Progressive Builders Pte Ltd *v* Long Rise Pte Ltd
[2015] SGHC 223

Case Number : Originating Summons No 953 of 2014

Decision Date : 25 August 2015

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Chan Kah Keen Melvin and Ng MinHui (TSMP Law Corporation) for the plaintiff; Patrick Ong Kok Seng (David Ong & Co) for the defendant.

Parties : Progressive Builders Pte Ltd — Long Rise Pte Ltd

Building and Construction Law – Dispute resolution

25 August 2015

Lee Seiu Kin J:

Introduction

1 In this originating summons, the plaintiff applied to set aside an adjudication determination ("the Adjudication Determination") dated 19 September 2014 made by Mr Tan Tian Luh in adjudication application no SOP/AA/260 of 2014. The Adjudication Determination was made pursuant to an application by the defendant under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("the Act"). On 22 January 2015, I dismissed the plaintiff's application and ordered the plaintiff to pay the defendant costs fixed at $6,000 plus reasonable disbursements. I further ordered that the amount of $264,134.71 that had been paid into court be released forthwith to the defendant.

Background

2 The plaintiff, Progressive Builders Pte Ltd, was the main contractor for a housing project at Punggol West ("the Project"). By a letter of acceptance dated 24 July 2013 ("the Contract"), the plaintiff engaged the defendant, Long Rise Pte Ltd, as its subcontractor to supply labour and tools to carry out structural works for Blocks 316A and 316B of the Project ("the Contract Works").

Termination of the Contract

3 Sometime in late 2013, the working relationship between the parties deteriorated. The plaintiff claimed that the defendant was in breach of the Contract by failing to complete its works by the agreed dates despite various reminders and warnings. In a letter dated 1 July 2014, the plaintiff gave the defendant notice of its intention to terminate the Contract unless the defendant rectified the default within three days of the letter. The Contract was eventually terminated by the plaintiff by a letter dated 9 July 2014. The defendant, on the other hand, denied that it was in breach of the Contract and alleged that even if it was found to have breached the Contract, such breach was a direct result of the plaintiff's unreasonable conduct in under-certifying and under-paying progress claims which caused severe cash-flow problems for the defendant.

Relevant payment documents

4 On 25 June 2014, the defendant issued its progress claim 12 ("PC12") for work done in the month of June 2014. The plaintiff responded on 15 July 2014 by serving its payment certificate 10 on the defendant. I should point out that payment certificate 10 was in response to PC12 because progress claims 1 and 2 were not certified.

5 On 25 July 2014, the defendant sent its progress claim 13 ("PC13") to the plaintiff for the month of July 2014. Apart from work done in July 2014, PC13 included claims for work done prior to July 2014. The total claimed amount was S$296,817.84 (excluding GST). By this time, there was a total of 13 progress claims submitted to the plaintiff. It was not disputed that all the progress claims were submitted via e-mail and that the payment certificates (which constitute payment responses under the Act) were served on the defendant via e-mail.

Process leading up to adjudication

6 On 27 July 2014, the defendant served on the plaintiff a notice of intention to apply for adjudication in respect of PC12. However, the defendant did not follow up with the application because it was unable to raise the required adjudication deposits payable to the Singapore Mediation Centre ("the SMC"). On 26 August 2014, the defendant served on the plaintiff a notice of intention to apply for adjudication in respect of PC13 (served on 25 July 2014). In response, the plaintiff served payment certificate 11 on the defendant on 27 August 2014. The cover letter enclosing the payment certificate 11 expressly stated that:

> We wish to highlight that you have failed your contractual obligation and that we have terminated your Sub-contract on 9 July 2014. Therefore, your [PC13] is not a valid payment claim and that the attached payment certification is provided without prejudice to [the plaintiff]'s rights in this respect.

7 On 28 August 2014, the defendant lodged its adjudication application with the SMC. On 2 September 2014, the SMC informed the parties that it had appointed Mr Tan Tian Luh ("the Adjudicator") as the adjudicator for the matter. On 5 September 2014, the plaintiff lodged its adjudication response with the SMC.

Adjudication proceedings

8 On 11 September 2014, the parties attended the adjudication conference. Before the Adjudicator, the defendant contended that it was entitled to the claimed amount. By virtue of s 15(3) of the Act, the defendant submitted that the Adjudicator was precluded from considering the plaintiff's reasons for withholding payment because the plaintiff had failed to provide a payment response to PC13 within the statutory timeline.

9 The plaintiff, on the other hand, contested the validity of PC13 on three grounds:

(a) PC13 was defective because it was not served in accordance with the Act; e-mail was not permitted as a mode of service under the Act.

(b) PC13 was defective because the defendant sought to claim for works that had not been carried out, and consequently, no entitlement to payment had arisen.

(c) PC13 was defective because it failed to comply with s 10(3)(a) of the Act by taking into account claims prior to the reference period of PC13.

10 As the plaintiff had not served a payment response, the Adjudicator was precluded by s 15(3) of the Act from considering any reason for non-payment in the adjudication response. The plaintiff submitted that, should PC13 be found to be valid, the Adjudicator was not precluded from considering the plaintiff's reasons for withholding payment that were stated in previous payment responses. This was because the defendant had included amounts which were the subject of previous payment claims and therefore the earlier payment responses corresponding to such claims could be taken into account.

11 After hearing the parties' submissions, the Adjudicator made the following determinations:

(a) PC13 was served in accordance with the Act as e-mail was a valid mode of service under the Act; construing the Act otherwise would fall foul of s 12 of the Electronic Transactions Act (Cap 88, 2011 Rev Ed) ("the ETA").

(b) The plaintiff's reasons for withholding payment contained in previous payment responses could not be taken into account since these payment responses referred to payment claims other than PC13 and thus were not "relevant payment responses" for the purposes of s 15(3) of the Act.

12 Following these determinations, the Adjudicator allowed most of the defendant's claims, save for parts that the defendant had conceded. On 9 October 2014, the plaintiff filed this originating summons to set aside the Adjudication Determination.

Issues before this Court

13 The main issues that arose in the present application are as follows:

(a) Whether PC13 was validly served in accordance with the Act.

(b) Whether PC13 failed to comply with a mandatory or essential condition that had the effect of invalidating payment claims.

(c) Whether the Adjudicator complied with the principles of natural justice and/or misdirected himself in not taking into account the relevant payment responses.

My decision

14 It is settled law that the court may not review the merits of an adjudicator's decision when presented with a setting-aside application; it may only review matters relating to (a) the jurisdiction of the adjudicator, (b) a failure to comply with a mandatory or essential condition under the Act, and (c) a breach of natural justice (see *Citiwall Safety Glass Pte Ltd v Mansource Interior Pte Ltd* [2014] SGCA 61 at [46]–[47]).

15 Nonetheless, I was entitled to consider the issues presented since this application engaged all three grounds of review. The first issue concerned the validity of service of a payment claim which directly affected the jurisdiction of the Adjudicator. If there is no valid payment claim, the purported appointment of the adjudicator will be invalid and the resulting adjudication determination will be null and void (see *Lee Wee Lick Terence (alias Li Weili Terence) v Chua Say Eng (formerly trading as Weng Fatt Construction Engineering) and another appeal* [2013] 1 SLR 401 ("*Chua Say Eng*") at [66]). The second issue concerned the defendant's alleged failure to comply with s 10(3)(a) of the Act (a condition the plaintiff claimed to be essential) and the third issue centred on a breach of

natural justice.

Whether the service of PC13 was defective

16 The issue turns on whether s 37 of the Act exhausts the permissible means of service and if it does not, what other modes of service are permitted. Section 37 of the Act reads:

> **Service of documents**
>
> 37. —(1) Where this Act authorises or requires a document to be served on a person, whether the expression "serve", "lodge", "provide" or "submit" or any other expression is used, the document may be served on the person —
>
> (*a*) by delivering it to the person personally;
>
> (*b*) by leaving it during normal business hours at the usual place of business of the person; or
>
> (*c*) by sending it by post or facsimile transmission to the usual or last known place of business of the person.
>
> (2) Service of a document that is sent to the usual or last known place of business of a person under subsection (1) (*c*) shall be deemed to have been effected when the document is received at that place.
>
> (3) The provisions of this section are in addition to, and do not limit or exclude, the provisions of any other law with respect to the service of documents.

17 Both the Act and the Contract are silent on the propriety of service by e-mail. Before me, the plaintiff contended that the service of PC13 by e-mail was invalid as s 37 exhausts the permissible means of service under the Act. The plaintiff claimed that construing the provision otherwise would render superfluous s 37(3) of the Act which preserves the applicability of provisions of other laws with respect to the service of documents. On the other hand, the defendant argued that s 37 of the Act is merely facultative and not mandatory. To support its position, the defendant brought to my attention various decisions that have considered the validity of e-mail service under comparable provisions in various Australian jurisdictions.

18 I took the view that s 37 of the Act permitted e-mail service of documents as long as the said documents were brought to the attention of the intended recipient. My reasons are as follows.

1 9 *First*, on a plain reading, s 37 of the Act is permissive and not prescriptive. The permissive "may" is used in s 37(1) as opposed to imperative language such as "shall" or "must". This stands in contrast with other provisions in the same Act that are couched in mandatory language. For instance, s 13(3) of the Act uses the mandatory "shall" to require adjudication applications to be made within the prescribed time frame. The permissive nature of s 37(1) was alluded to by the Court of Appeal in *Chua Say Eng*, at [74]:

> … As for the mode of giving notice, Parliament has stopped short of requiring the information to be personally communicated to the respondent. This can be seen from the service requirements in s 37(1) of the Act: that provision states that documents "*may be served*" by personal delivery (s 37(1)(*a*)), by leaving the document at the respondent's usual or last known place of business (s 37(1)(*b*)), or by posting or faxing it to that place (s 37(1)(*c*)). *Other modes of service may*

also be possible. …

[emphasis added]

20 The adjudicator in *APP Pte Ltd v APQ Pte Ltd* [2013] SGSOP 22 considered the Court of Appeal's view in *Chua Say Eng* and on that basis, concluded that the service of a payment claim by e-mail was valid as long as the respondent had been given due notice.

21 *Secondly*, as shall be elaborated on below, my view comports with the position taken by other jurisdictions in the specific context of payment claims and more generally, in the context of documents other than a writ.

The position in New Zealand

22 New Zealand courts have yet to consider the validity of e-mail service of documents under their equivalent of our Act. However, it has been observed that the modes of service contained in s 80 of the Construction Contracts Act 2002 (New Zealand) ("s 80") are not exhaustive. That provision provides as follows:

Service of notices

Any notice or any other document required to be served on, or given to, any person under this Act, or any regulation made under this Act, is sufficiently served if—

(a) the notice or document is delivered to that person; or

(b) the notice or document is left at that person's usual or last known place of residence or business in New Zealand; or

(c) the notice or document is posted in a letter addressed to the person at that person's place of residence or business in New Zealand; or

(d) the notice or document is sent in the prescribed manner (if any).

23 It was noted in *Marsden Villas Ltd v Wooding Construction Ltd* [2007] 1 NZLR 807 (at [93]) that the service provisions of s 80 are not mandatory or exclusionary; if a document is served on a party in a different way and the evidence satisfies the court that the document has come to the attention of the party, then that is sufficient proof of service.

The position in Australia

24 The validity of e-mail service of payment claims was considered by the Victorian Supreme Court in *Metacorp Australia Pty Ltd v Andeco Construction Group Pty Ltd* [2010] VSC 199 ("*Metacorp*"). Section 50(1) of the Building and Construction Industry Security of Payment Act 2002 (Act 15 of 2002) (Vic) ("the Victorian Act") provides:

Service of notices

(1) Any notice or document that by or under this Act is authorised or required to be given to or served on a person may be given to or served on the person—

(a) by delivering it to the person personally; or

(b) by lodging it during normal office hours at the person's ordinary place of business; or

(c) by sending it by post or facsimile addressed to the person's ordinary place of business; or

(d) in such manner as may be prescribed for the purposes of this section; or

(e) in any other manner specified in the relevant construction contract.

25 The Victorian provision is *in pari materia* with s 37(1) of the Act save that the former further provides for service in such other manner as may be prescribed by the regulations or provided under the relevant construction contract. In concluding that service by e-mail was permitted by the Victorian Act, Vickery J in *Metacorp* held that (at [162]):

> *Section 50 of the Act is facultative, it is not mandatory*. It will be noted that the opening words used in subsection (1) are "may be given to or served". Section 50 is not a code. The section does not operate so that if there is no service under any of its limbs there is no service at all. The service provisions under s.50 of the Act are in addition to and do not limit or exclude the common law or the provisions of any other applicable legislation with respect of the service of notices, for example s. 109 X of the Corporations Act 2001.
>
> [emphasis added]

26 Vickery J was of the opinion that unless service of payment claim by e-mail was permitted, one would get the absurd situation where one party who acknowledges receiving a relevant document can be held not to have been served with it (at [164]). In the alternative, Vickery J held that in light of s 50(1)(e) of the Victorian Act which provides that service may be effected in "any other manner specified in the relevant construction contract", the service provision in the contract was broad enough to contemplate delivery by e-mail, in line with the common commercial practice in that case (at [167]).

27 I noted that the Adjudicator distinguished *Metacorp* on the basis that the decision rested on a finding of fact that allowed e-mail as a mode of service under s 50(1)(e) of the Victorian Act. However, this distinction is untenable since the finding of fact went to the alternative holding (above at [26]) and not Vickery J's primary holding that s 50 of the Victorian Act is facultative.

28 I also noted that the decision in *Metacorp* was in line with previous Australian authorities which have held, in various statutory contexts, that a document will be served if the efforts of the person who is required to serve the document have resulted in the person to be served becoming aware of the contents of the document (see for example *Capper v Thorpe* [1998] HCA 24 at [21]). In the same vein, in *Howship Holdings Pty Ltd v Leslie and another* (1996) 41 NSWLR 542, Young J held that (at 544B):

> The ordinary meaning of "service" is personal service, and personal service merely means that the document in question must come to the notice of the person for whom it is intended. The means by which that person obtains the document are usually immaterial. …

29 In *Falgat Constructions Pty Limited v Equity Australia Corporation Pty Limited* [2006] NSWCA 259 at [58], Hodgson JA said:

> [I]n my opinion it is clear that if a document has actually been received and come to the

attention of a person to be served or provided with the document, or of a person with authority to deal with such a document on behalf of a person or corporation to be served or provided with the document, it does not matter whether or not any facultative regime has been complied with … In such a case, there has been service, provision and receipt.

30 The above approach has been termed the "effective informal service rule" by Palmer J in the matter of *Woodgate v Garard Pty Ltd* [2010] NSWSC 508 at [42]. As I will observe later on, this rule is also supported by jurisprudence of the English courts.

The position in England

31 The English courts have considered, in a line of jurisprudence, the situation in which service of documents is effected by a mode not expressly referenced by the relevant statutory provision.

32 In *Sharpley v Manby* [1942] 1 KB 217, a notice had been served through ordinary non-registered post instead of registered post required by s 53 of the Agricultural Holdings Act, 1923. The provision reads:

Any notice … under this Act may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there. …

33 MacKinnon LJ concluded that the service was valid as the notice was delivered to and received by the person to whom the notice was to be given. He said at 221:

… s. 53 of the Act … does not require any ceremonial. It provides that a notice may be served on the person to whom it is to be given either personally, or by leaving it for him at his last known place of abode. It adds, as an alternative, that the person who has to serve the notice may do so by sending it through the post in a registered letter. If he did that, no doubt, he would get the additional advantage of being able easily to prove that he had served the notice by producing the postal receipt, but he can serve the notice personally or by leaving it at the tenant's last known place of abode. It seems to me impossible to say that under that section, if you use the post, you can only do so by the medium of a registered letter, and that, if you use the ordinary post, and the letter is delivered to and received by the person to whom the notice is to be given, you have not complied with the requirements of the Act.

3 4 *Stylo Shoes Ltd v Prices Tailors Ltd* [1960] Ch 396 dealt with a similar provision under the Landlord and Tenant Act, 1927. The issue was whether there had been valid service of a notice determining tenancy under s 23(1) of the Landlord and Tenant Act, 1927 since the said notice was delivered to an incorrect address. It was common ground between the parties that the notice was brought to the attention of the intended recipient.

35 Wynn-Parry J held that s 23(1) was permissive as to the mode of service, and the modes set out therein were not exhaustive. He further held that the purpose of the provision was to ensure that a notice was given and actually received and as this purpose had been achieved, it was immaterial that the letter had reached the tenants by way of their old address.

36 In *Hastie & Jenkerson v McMahon* [1990] 1 WLR 1575, the dispute before the English Court of Appeal centred on the propriety of service by fax which was not specified as a mode of service under O 65 r 5 of the Rules of the Supreme Court. The provision was applicable to documents other than those originating process or those required to be personally served. The following comments by Woolf

LJ are instructive (at 1579F and 1581E):

> The purpose of serving a document is to ensure that its contents are available to the recipient and whether the document is served in the conventional way or by fax the result is exactly the same …
>
> … The purpose of Ord. 65, r. 5 is not to restrict methods of service but to assist the parties to achieve service and if necessary to prove that that service has taken place in the specified circumstances. If … service can be proved to have taken place apart from reliance on the rule, then there is no need to make use of the rule. If, however, unlike this case there is no admission or other evidence of receipt of the document, recourse to the rule may be necessary.

37 The following passage by Glidewell LJ (at 1585D) adds further gloss on this matter:

> In my view *Sharpley v Manby* is authority, binding on us, for the proposition that if a document is served by a method not expressly provided for by the rules, but it is nevertheless proved that the document was delivered to and received by the person for whom it was intended (in time where that is material), good service has been effected. To this proposition the Rules of the Supreme Court add the provisions of Ord. 65 r. 5(1), the effect of which is that, if a document has been served by one of the methods set out in the rule, in the absence of any other evidence, there has been good service. If, however, it be proved that the document has not been received, the presumption derived from the rule that there has been good service can be rebutted.
>
> I emphasise that if a document is served by a means for which neither the rule nor statute provides, there will only be good service if it be proved that the document, in a complete and legible state, has indeed been received by the intended recipient. …

38 It appears that courts in Australia, England and New Zealand have affirmed the validity of service of documents by means other than those stated in the relevant statutory provision as long as the said documents have come to the attention of the intended recipient. These jurisdictions endorse what I regard as the proper approach to be adopted when a document or notice is served in a manner that is not specified by the Act. I should add that the "effective informal service rule" does not apply to originating processes such as writs where the requirements are considered *strictissimi juris* (see *In re A Debtor* [1939] Ch 251 at 256).

39 In my view, the legislative purpose of s 37 of the Act was to assist parties in bringing notices and documents required under the Act, not to shut out other modes of service. Since the permissive verb "may" is utilised in s 37, and there is nothing in the Act to bar the chosen mode of service, service will be valid where the document has indeed been brought to the attention of the intended recipient. The permissive nature of s 37 is further illustrated by the saving provision in s 37(3), which preserves the applicability of other laws in relation to service of documents. This reading is consonant with both the object of the Act and the commercial context in which the Act operates. The Act was enacted to help facilitate the cash flows of contractors by establishing a "fast and low cost adjudication system to resolve payment disputes" (see *Singapore Parliamentary Debates, Official Report* (16 November 2004) vol 78 at col 1113 (Cedric Foo Chee Keng, Minister of State for National Development)). Furthermore, a substantial proportion of communications and exchanges in the construction industry are conducted by e-mail (see *Singapore Construction Adjudication Review* (Chow Kok Fong *et al*)(Academy Publishing, 2013) at para 10.1). Therefore, it could not have been the legislative intention to shut out other modes of service if such service is effective in bringing the documents in question to the attention of the intended recipient. An unduly pedantic approach would be inimical to the objective of the Act which was to achieve an expeditious resolution of payment

disputes.

40 In view of the strict timelines imposed by the Act and the serious consequences flowing from a failure to comply with the timelines, it bears emphasising that the party alleging good service bears the onus of proving to the court's satisfaction that the document had indeed been brought to the attention of the other party and, where time is relevant, the date on which this was achieved.

41 In this instance, the evidence showed that the plaintiff had received PC13 on 25 July 2014 (the day it was sent) and had prepared its payment response (which was provided out of time) on that basis. Furthermore, the parties had been consistently dealing with each other via email. All payment claims and payment responses were provided to the relevant party via email. Seen in this light, the plaintiff's challenge to the validity of service of PC13 gave the impression of an opportunistic attempt to impugn the adjudication proceedings.

42 In any event, the "effective informal service rule" is part of the common law (see *Dwyer and another v Canon Australia Pty Ltd and others* [2007] SASC 100 at [27]) and falls within the saving in s 37(3) of the Act which preserves the applicability of "any other law with respect to the service of documents". Consequently, for the reasons I have stated above, the service of PC13 was valid.

Applicability of the ETA

43 For completeness, I note that the Adjudicator relied on s 12 of the ETA to reach his conclusion that service by e-mail was valid under the Act. Section 12 of the ETA provides:

> As between the originator and the addressee of an electronic communication, a declaration of intent or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic communication.

44 The reliance on s 12 of the ETA was misplaced since the plaintiff did not contest the validity of service by e-mail "solely on the ground that it is in the form of an electronic communication". Rather, the plaintiff sought to establish that s 37 of the Act contained an exhaustive list of the permissible modes of service and that e-mail was not one of them.

Whether PC13 was defective

45 While the plaintiff accepted that the defendant was entitled to include in its payment claim amounts that were the subject of previous payment claims, it argued that s 10(3)(*a*) of the Act required the reference period in the latest payment claim to encompass the reference periods of the previous payment claims. The plaintiff contended that PC13 failed to comply with s 10(3)(*a*) because it purported to be a "progress claim for July 2014" but included amounts for work done in previous months. The plaintiff further argued that s 10(3)(*a*) was so important that non-compliance would necessarily invalidate PC13. In my view, this ground for setting aside the Adjudication Determination was unmeritorious.

46 The formal requirements of a payment claim are set out in s 10(3) of the Act and reg 5(2) of the Building and Construction Industry Security of Payment Regulations ("SOPR") (Cap 30B, Rg 1, 2006 Rev Ed). Section 10(3) of the Act reads as follows:

> A payment claim —
>
> () shall state the claimed amount, calculated by reference to the period to which the

payment claim relates; and

(*b*) shall be made in such form and manner, and contain such other information or be accompanied by such documents, as may be prescribed.

47 Regulation 5(2) of the SOPR further provides that:

Every payment claim shall —

(*a*) be in writing;

(*b*) identify the contract to which the progress payment that is the subject of the payment claim relates; and

(*c*) contain details of the claimed amount, including —

(i) a breakdown of the items constituting the claimed amount;

(ii) a description of these items;

(iii) the quantity or quantum of each item; and

(iv) the calculations which show how the claimed amount is derived

48 The purpose of these statutory requirements was stated by the Court of Appeal in *Chua Say Eng* (at [74]):

… It seems to us that the legislated formal requirements for payment claims are designed to ensure that specified items of information are made available to the respondent before the claimant's rights under the Act are engaged. The emphasis is therefore not on the claimant's intention but on the respondent being given notice of certain information about the claim (such as the amount claimed, the contract under which the claim is made and a breakdown of the items constituting the claim).

49 It is pertinent to note, however, that non-compliance with the statutory requirements is not necessarily fatal to the payment claim and the resulting adjudication determination. Instead, the court should "proceed to examine whether any of the provisions which were not complied with was so important that it was the legislative purpose that an act done in breach of the provision should be invalid, so that non-compliance with such a provision would invalidate the adjudication determination" (see *Australian Timber Products Pte Ltd v A Pacific Construction & Development Pte Ltd* [2013] 2 SLR 776 at [30]).

Whether PC13 failed to comply with s 10(3)(a) of the Act

50 Case law has shown that the standard of compliance required by s 10(3)(*a*) of the Act is not an onerous one.

51 In *Shin Khai Construction Pte Ltd v FL Wong Construction Pte Ltd* [2013] SGHCR 4, the same issue was considered by the assistant registrar. In applying to set aside the adjudication determination, the plaintiff argued that the payment claim was defective because although it referred to the period "1.9.2012 to 25.9.2012", it sought to claim for works done outside of that period. The assistant registrar decided that the payment claim was not defective since it was clear from the first

page of the payment claim that the sum claimed was an accumulated sum.

52 In *APH Pte Ltd v API Co Ltd* [2013] SGSOP 18, the payment claim indicated that it was for "works done as at 31 August 2013". The respondent argued that this was no more than an open-ended statement that work was done up to a particular date but without a crucial and corresponding starting point for which the work in question was claimed, and was thus insufficient to constitute a "reference period" under the Act. The adjudicator disagreed. Instead, he found that s 10(3)(*a*) of the Act was complied with since the reference period could be inferred from the information found in the documents submitted with the payment claim.

53 Moreover, if we look to Australian decisions, it is clear that a degree of reasonableness must be read into the formal requirements for a payment claim. In *Multiplex Constructions Pty Ltd v Luikens and anor* [2003] NSWSC 1140, Palmer J observed at [76]:

> … A payment claim and a payment schedule should not, therefore, be required to be as precise and as particularised as a pleading in the Supreme Court. Nevertheless, precision and particularity must be required to a degree reasonably sufficient to apprise the parties of the real issues in the dispute.

54 In *Protectavale Pty Ltd v K2K Pty Ltd* [2008] FCA 1248, Finkelstein J stated at [12]:

> Nonetheless a payment claim must be sufficiently detailed to enable the principal to understand the basis of the claim. If a reasonable principal is unable to ascertain with sufficient certainty the work to which the claim relates, he will not be able to provide a meaningful payment schedule. That is to say, a payment claim must put the principal in a position where he is able to decide whether to accept or reject the claim and, if the principal opts for the latter, to respond appropriately in the payment schedule …

55 In the present case, I was satisfied that PC13 met the requisite standard under s 10(3)(*a*) of the Act. Although PC13 purported to be a "progress claim for July 2014", the first page of the payment claim stated that the claimed amount included a sum relating to "Dispute on the previous items". The attachment referred to then sets out the corresponding months in which the disputed items were previously claimed. Further, the defendant's cover email with PC13 stated unequivocally that this is "for the work done till end of July 2014". Thus, it was clear that the amount claimed in PC13 was not limited to works done in July 2014 and the plaintiff was sufficiently informed of the basis of the claim.

Whether the alleged non-compliance sufficed to invalidate PC13

56 Even assuming that I am wrong on that point, I was not convinced that the non-compliance in this instance was so essential that the payment claim was rendered invalid. The plaintiff sought to rely on *YTL Construction (S) Pte Ltd v Balanced Engineering & Construction Pte Ltd* [2014] SGHC 142 ("*YTL Construction*") for the proposition that a payment claim that failed to comply with s 10(3)(*a*) of the Act is necessarily invalid.

57 Upon closer analysis, *YTL Construction* did not assist the plaintiff's case at all. In *YTL Construction*, the defendant served on the plaintiff a payment claim for work done in August 2013. The payment claim stated that the cumulative value of the work done by the defendant from the start of the project till August 2013 was $6,152,032.37. The payment claim did not specify the amount claimed for the month of August 2013. When the defendant served the notice of intention to apply for adjudication, it claimed $897,889.83. Subsequently, when the defendant lodged its

adjudication application, it claimed a different amount. In those circumstances, the court found that the failure to state the claimed amount made it impossible for the plaintiff to ascertain the defendant's actual claim and consequently, that the payment claim was invalid for failing to comply with s 10(3)(*a*) of the Act.

58 Thus, it is clear that *YTL Construction* does not stand for the proposition that every non-compliance with s 10(3)(*a*) of the Act renders a payment claim invalid. Rather, a payment claim will only be invalidated where the failure to comply with s 10(3)(*a*) impeded the adjudication process. I was also of the view that an excessive technical approach should not be countenanced under the Act which is characterised by speed and informality. As stated in *Australian Timber*, "the requirement to provide details in a payment claim is to facilitate the implementation of the adjudication scheme in the Act, but not to trip up claimants" (at [80]). The plaintiff in this case did not seek to argue that it was unable to understand the basis of PC13 nor did it seek to argue that it was somehow prejudiced by the alleged non-compliance with s 10(3)(*a*) of the Act. On the contrary, it was clear from Payment Certificate 11 (which was served out of time) that the plaintiff knew exactly what the defendant was claiming for. Under these circumstances, I did not think it was the legislative purpose to invalidate PC13 for a failure to state precisely its reference period.

59 For the foregoing reasons, I found that PC13 did not fail to comply with s 10(3)(*a*) of the Act, alternatively, if there was any non-compliance, that did not suffice to render the payment claim invalid.

Whether the Adjudicator complied with principles of natural justice and/or misdirected himself

60 The observance of natural justice is a fundamental requirement of the adjudication procedure and adjudicators are required to comply with rules of natural justice – see s 16(3)(*c*) of the Act. The plaintiff alleged that the Adjudicator had failed to comply with principles of natural justice and/or misdirected himself.

6 1 *First*, the plaintiff claimed that the Adjudicator treated the issue of service by e-mail inconsistently because he determined that the service of PC13 by e-mail was valid but casted doubt on the validity of service of payment responses by e-mail. This is *inaccurate*. It is true that the Adjudicator regarded the service of PC13 by email to be valid. However, the Adjudicator did not cast doubt on the validity of service of payment responses by e-mail. Instead, what the Adjudicator did (at [78] of the Adjudication Determination) was merely to highlight the plaintiff's inconsistent position as regards service by e-mail: the payment responses that the plaintiff sought to rely upon were served by e-mail, a mode of service that the plaintiff had argued to be invalid in relation to service of the payment claim.

62 *Second*, the plaintiff claimed that the Adjudicator offended rules of natural justice by failing to consider its previous payment responses. It submitted that previous payment responses made in respect of earlier payment claims may be taken into account for the purposes of s 15(3) of the Act where a payment claim includes amounts that were the subject of previous claims. I disagreed with the plaintiff's submissions.

63 Section 15(3)(*a*) of the Act reads as follows:

> The respondent shall not include in the adjudication response, and the adjudicator shall not consider, any reason for withholding any amount, including but not limited to any cross-claim, counterclaim and set-off, unless —

(*a*) where the adjudication relates to a construction contract, the reason was included in the *relevant payment response* provided by the respondent to the claimant; or …

[emphasis added]

64 The purpose behind s 15(3) of the Act is to ensure that reasons for withholding payment are given in a timely fashion (see *Singapore Parliamentary Debates, Official Report* (16 November 2004) vol 78 at col 1112 (Cedric Foo Chee Keng, Minister of State for National Development)). This clear policy intent is manifest in s 15(3), which not only prohibits the respondent from including in the adjudication response a reason not found in the relevant payment response, but additionally contains a redundant provision that the adjudicator is not to consider such reason if it is included in breach of the subsection. In *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 at [38], the Court of Appeal also added a further ground, which is to prevent a respondent from ambushing a claimant with grounds of payment not already set out in his payment response.

65 I agreed with the Adjudicator's conclusion that the previous payment responses were irrelevant for the purposes of s 15(3)(*a*) of the Act. On a literal construction, a "relevant payment response" for the purposes of s 15(3)(*a*) must be a payment response to a payment claim which is the subject of an adjudication application. It logically follows that since the plaintiff's previous payment responses did not correspond to PC13, the subject of the adjudication application, they were irrelevant for the purposes of s 15(3).

66 Although one should not approach the Act from an unduly technical viewpoint, I see no reason why a respondent who chooses not to provide any payment response to a claim should be permitted to rely on its previous payment responses. Without an updated payment response, the claimant cannot know "whether all or any and if so which of the grounds previously advanced were now relied upon" (*Pacific General Securities Ltd and anor v Soliman and Sons Pty Ltd and ors* [2006] NSWSC 13 (at [71])) and thus run the risk of being ambushed by the respondent in the adjudication proceedings. To permit this would be tantamount to facilitating the mischief that s 15(3) sets out to prevent. To the argument that the payment claim contains claims that have been made previously and to which payments responses have been served, there is nothing to prevent the respondent from repeating those responses in part or in full. This would help parties crystallise the disputed issues and resolve them at the earliest available opportunity. This would also impose certainty on the proceedings and avoid prolonged adjudication proceedings where much time would be spent in determining which payment responses ought to be taken into consideration.

Conclusion

67 For the reasons given, I dismissed the plaintiff's application and ordered the plaintiff to pay the defendant costs fixed at $6,000 plus reasonable disbursements. I further ordered that the amount of $264,134.71 that had been paid into court be released forthwith to the defendant.